2015 COA 62

Scott Gessler, individually and in his official capacity as Colorado Secretary of State, Plaintiff-Appellant,

v.

Dan Grossman, Sally H. Hopper, Bill Pinkham, Matt Smith, and Rosemary Marshall, in their official capacities as members of the Independent Ethics Commission; and the Independent Ethics Commission, Defendants-Appellees.

No. 14CA0670

Court of Appeals of Colorado, First Division

May 7, 2015

City and County of Denver District Court No. 13CV30421 Honorable Herbert L. Stern, III, Judge

Cynthia H. Coffman, Attorney General, Michael Francisco, Assistant Solicitor General, Kathryn A. Starnella, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellant

Cynthia H. Coffman, Attorney General, Lisa Brenner Freimann, First Assistant Attorney General, Russell B. Klein, First Assistant Attorney General, Joel W. Kiesey, Assistant Attorney General, Denver, Colorado, for Defendants-Appellees

Luis Toro, Margaret Perl, Denver, Colorado, for Amicus Curiae Colorado Ethics Watch.

OPINION

GABRIEL, JUDGE.

¶ 1 Plaintiff, former Colorado Secretary of State Scott Gessler, appeals the district court's judgment affirming the Colorado Independent Ethics Commission's (IEC's) determination that he breached the public trust by using public funds for personal and political purposes. We conclude that the IEC (1) had jurisdiction over this matter; (2) did not make an arbitrary or capricious decision; and (3) did not violate Gessler's due process rights with respect to the notice of the charges against him. Accordingly, we affirm.

I. Background

¶ 2 At all times pertinent here, Gessler was Colorado's Secretary of State. In August 2012, he traveled to Florida to attend and present at the "National Election Law Seminar, " a two-day program sponsored by the Republican National Lawyers Association (RNLA), and then to attend the Republican National Convention (RNC), which was being held in a different Florida city. The RNLA seminar ended during the day on August 25, 2012, and Gessler stayed an additional night at an increased hotel rate and at the state of Colorado's expense. The next day, he traveled to the RNC.

¶ 3 As pertinent here, Gessler used his statutorily provided discretionary fund, *see* § 24-9-105, C.R.S. 2014 (the discretionary fund statute), to pay the $1278.90 in documented travel and meal expenses that he incurred to attend the RNLA seminar. In addition, he requested the reimbursement of "any remaining discretionary funds" in his discretionary account. He did not, however, initially provide any documentation supporting this request. Notwithstanding the absence of documentation, he ultimately received $117.99 as a result of his request.

¶ 4 Amicus curiae, Colorado Ethics Watch, subsequently filed a complaint against Gessler with the IEC. In this complaint, Colorado Ethics Watch alleged that Gessler had made false statements on travel expense reimbursement requests submitted to the state and had misappropriated state funds for personal or political uses. The IEC determined that the complaint was not frivolous and, after investigation, conducted an evidentiary hearing at which Gessler appeared through counsel and testified.

¶ 5 The IEC ultimately found, among other things, that (1) Gessler spent $1278.90 of his discretionary account primarily for partisan, and therefore personal, purposes, in violation of the discretionary fund statute's requirement that the fund be used in pursuance of official business; (2) Gessler's acceptance of reimbursement of the balance of his discretionary account without any documentation or detail of expenses incurred violated the discretionary fund statute because the payment was personal in nature and not in pursuance of official business; and (3) by committing each of the foregoing violations, Gessler had also breached the public trust for private gain, in violation of the public trust statute, § 24-18-103, C.R.S. 2014.

¶ 6 Gessler sought judicial review of the IEC's findings, asserting that (1) the IEC's enabling provision was unconstitutionally vague and overbroad; (2) the IEC's jurisdiction is limited to investigating improper gifts to public officers and, thus, the IEC exceeded its jurisdiction here; (3) the IEC's findings of fact were arbitrary or capricious; and (4) the IEC violated Gessler's due process rights by, among other things, providing insufficient notice of the charges against him. The district court ultimately rejected these contentions, either expressly or implicitly, in a detailed and thorough written opinion.

¶ 7 Gessler now appeals.

II. Jurisdiction

¶ 8 Gessler first contends that the district court erred in concluding that the IEC had jurisdiction over this case because (1) article XXIX, section 5 of the Colorado Constitution (section 5) applies only to gifts, influence peddling, and standards of conduct and reporting requirements that expressly delegate enforcement to the IEC; (2) neither the discretionary fund statute nor the public trust statute falls within the ambit of section 5; and (3) the IEC has construed its jurisdiction so broadly as to render section 5 vague and overbroad. We are not persuaded by these arguments.

A. Standard of Review and Rules of Construction

¶ 9 On appeal from a district court's review of a final agency action, we apply the same standard of review as the district court, namely, the standard set forth in section 24-4-106(7), C.R.S. 2014. *See Idowu v. Nesbitt*, 2014 COA 97, ¶ 21, 338 P.3d 1078, 1082.

¶ 10 Section 24-4-106(7) provides, in pertinent part:

If the court finds no error, it shall affirm the agency action. If it finds that the agency action is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of this article or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the agency action and . . . afford such other relief as may be appropriate. In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party.

¶ 11 In applying this standard, we presume the validity and regularity of administrative proceedings and resolve all reasonable doubts as to the correctness of administrative rulings in favor of the agency. *Idowu*, ¶ 21, 338 P.3d at 1082.

¶ 12 In addition, a reviewing court must give deference to the reasonable interpretations of the administrative agency that is authorized to administer and enforce the statute at issue. *See Coffman v. Colo. Common Cause*, 102 P.3d 999, 1005 (Colo. 2004). However,

Constitutional interpretation and statutory interpretation present questions of law that we review de novo. As part of our de novo review, "we may consider and defer to an agency's interpretation of its own enabling statute and [of] regulations the agency has promulgated." Such deference, however, is not warranted where . . . the agency's interpretation is contrary to constitutional and statutory law.

Gessler v. Colo. Common Cause, 2014 CO 44, ¶ 7, 327 P.3d 232, 235 (quoting *Bd. of Cnty. Comm'rs v. Colo. Pub. Utils. Comm'n*, 157 P.3d 1083, 1088 (Colo. 2007); other citations omitted); *see also City of Arlington v. FCC*, 133 S.Ct. 1863, 1871 (2013) (noting that the deferential standard of review normally afforded agency determinations applies equally to an agency's construction of a jurisdictional provision of a statute that the agency administers).

¶ 13 With respect to constitutional construction,

our obligation is to give effect to the intent of the electorate that adopted it. In giving effect to that intent, we look to the words used, reading them in context and according them their plain and ordinary meaning. Where ambiguities exist, we interpret the constitutional provision as a whole in an attempt to harmonize all its parts.

Harwood v. Senate Majority Fund, LLC, 141 P.3d 962, 964 (Colo.App. 2006). If the language is unambiguous, we must enforce it as written. *Colo. Ethics Watch v. Senate Majority Fund, LLC*,

275 P.3d 674, 682 (Colo.App. 2010), *aff'd*, 2012 CO 12, 269 P.3d 1248. If the language contained in a citizen-initiated measure is ambiguous, "a court may ascertain the intent of the voters by considering other relevant materials such as the ballot title and submission clause and the biennial 'Bluebook, ' which is the analysis of ballot proposals prepared by the legislature." *In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo. 1999).

B. Scope of Section 5

¶ 14 Applying the foregoing principles of constitutional construction here, we first reject Gessler's assertion that section 5 applies only to gifts, influence peddling, and standards of conduct and reporting requirements that expressly delegate enforcement to the IEC.

¶ 15 Section 5 provides, in pertinent part, "The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article *and under any other standards of conduct and reporting requirements as provided by law*." Colo. Const. art. XXIX, § 5(1) (emphasis added). That section further provides that the IEC "shall have authority to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of this article *and any other standards of conduct and reporting requirements as provided by law*." *Id.* (emphasis added). And section 5(3)(a) provides that any person may file a written complaint with the IEC asking whether a public officer "has failed to comply with this article *or any other standards of conduct or reporting requirements as provided by law* within the preceding twelve months." Colo. Const. art. XXIX, § 5(3)(a) (emphasis added).

¶ 16 Gessler's assertion that section 5 applies only to gifts, influence peddling, and other standards of conduct and reporting requirements that expressly delegate enforcement to the IEC appears to be based on his view that "as provided by law" refers to the IEC's ability to hear ethics complaints arising under "any other standards of conduct or reporting requirements." The plain language of section 5, however, contains no requirement that the referenced standards of conduct and reporting requirements expressly delegate enforcement to the IEC. Nor does Gessler cite any applicable authority supporting his interpretation of "as provided by law, " and we have seen none. To the contrary, authority construing that phrase in other contexts has concluded that "as provided by law" invokes laws already in existence. *See, e.g., Wells Fargo Bank, N.A. v. Kopfman*, 226 P.3d 1068, 1073-74 (Colo. 2010) (interpreting the phrase "revived as provided by law, " which appears in the statute concerning the revival of judgments, as referring to the revival of judgments pursuant to C.R.C.P. 54(h)); *see also McCasland v. Miskell*, 890 P.2d 1322, 1326 (N.M. Ct. App. 1994) ("We think the phrases 'in the manner specially provided by law, ' or 'in the manner provided by law' . . . mean in accordance with existing statutory procedure."); *Black's Law Dictionary* 1224 (6th ed. 1990) (defining "provided by law" to mean "prescribed or provided by some statute").

¶ 17 Accordingly, Gessler's jurisdictional challenge based on the language of section 5 fails.

C. Public Trust Statute

¶ 18 Gessler further contends that the public trust statute does not fall within the ambit of section 5 because it is "hortatory" only and does not provide a specific standard of conduct. Again, we disagree.

¶ 19 The public trust statute, which appears in an article entitled "Standards of Conduct" and a part entitled "Code of Ethics, " provides in pertinent part:

The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

§ 24-18-103(1).

¶ 20 This language creates a fiduciary duty in public officials, an interpretation confirmed by the title of the section, "Public trust – breach of fiduciary duty, " and the remaining provision of the statute, which focuses on remedies available when a public officer's conduct departs from his or her fiduciary duties. *See* § 24-18-103(2) ("A public officer . . . whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust."). Accordingly, the public trust statute sets forth specific standards of conduct.

¶ 21 In addition, we note that article XXIX, section 6 of the Colorado Constitution provides an express remedy for violations of the public trust for private gain. Gessler's interpretation of the public trust statute would arguably render that constitutional provision superfluous or a nullity, and we must avoid any such construction. *See Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65, 80 (Colo. 2008) (noting that we must avoid any construction that would render a constitutional provision either superfluous or a nullity).

¶ 22 Accordingly, we conclude that the public trust statute falls within the ambit of section 5.

D. The Discretionary Fund Statute

¶ 23 Gessler likewise contends that the discretionary fund statute does not fall within the ambit of section 5. That statute makes funds available to certain elected state officials "for expenditure in pursuance of official business as each elected official sees fit." § 24-9-105. Gessler asserts that (1) the statute relates to compensation, and compensation is expressly excluded from article XXIX; (2) he has unfettered discretion over the use of his discretionary funds; and (3) the statute provides no specific standard of conduct as required by article XXIX. We reject each of these arguments in turn.

¶ 24 First, we disagree with Gessler's premise that article XXIX excludes standards of conduct related to compensation. In support of his argument, Gessler cites to article XXIX, section 1(d) of the Colorado Constitution. That section provides, "Any effort to realize personal

financial gain through public office other than compensation provided by law is a violation of [the public] trust." The section, however, is a general statement of the purposes of article XXIX, not a limitation on the IEC's jurisdiction. Indeed, the section does not even mention the IEC.

¶ 25 Moreover, section 1(d) does not exempt compensatory standards from consideration. Rather, it makes clear that public officials may properly be compensated as provided by law for their work but that any effort to realize personal financial gain beyond such lawful compensation violates the public trust. *See id.*

¶ 26 Even if section 1(d) could be read as excluding standards of conduct regarding compensation from the IEC's jurisdiction, however, we disagree with Gessler's assertion that the discretionary fund constitutes compensation.

¶ 27 Compensation is defined as "[r]emuneration and other benefits received in return for services rendered; esp., salary or wages." *Black's Law Dictionary* 342 (10th ed. 2009). The discretionary funds, which are provided in statutorily fixed amounts, are not received in return for services rendered. Nor do they reflect remuneration, given that the money remains the property of the state and may only be used "in pursuance of official business." *See* § 24-9-105; *see also* § 24-21-104(3)(c), C.R.S. 2014 ("[W]henever moneys appropriated to the department of state during the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the department of state for the next fiscal year . . . ."); § 24-75-102(1)(a), C.R.S. 2014 ("Except as otherwise provided by law, any moneys unexpended or not encumbered from the appropriation to each department for any fiscal year shall revert to the general fund or, if made from a special fund, to such special fund."). Accordingly, the discretionary fund does not constitute "compensation" under the plain meaning of that term.

¶ 28 We are not persuaded otherwise by Gessler's argument that the discretionary fund is necessarily compensation because the discretionary fund statute appears within an article entitled "Compensation of State Officers." The same article also has a section addressing mileage reimbursements. *See* § 24-9-104, C.R.S. 2014. Mileage reimbursements, by definition, are repayments for money advanced, not compensation. *See Black's Law Dictionary* at 1476 (defining "reimbursement" as "[r]epayment" or "[i]ndemnification"). Accordingly, the mere fact that the discretionary fund statute appears within the title relating to compensation does not necessarily mean that the fund constitutes compensation.

¶ 29 Second, the discretionary fund statute, on its face, did not give Gessler unfettered discretion over the use of the Secretary of State's discretionary funds. To the contrary, the use of those funds was (and is) limited to the "pursuance of official business." § 24-9-105. Moreover, we perceive no language in the discretionary fund statute indicating that Gessler was the sole and exclusive arbiter of what uses were "in pursuance of official business, " regardless of his use of those funds. Indeed, to construe the statute as Gessler does would lead to absurd results because it would allow the Secretary of State to spend the funds on anything he or she wishes, as long as he or she says the use is in the pursuance of official business. We cannot follow a statutory construction that would lead to an absurd result. *Town of Erie v. Eason*, 18 P.3d 1271, 1276 (Colo. 2001).

¶ 30 Third, assuming without deciding that article XXIX requires sufficiently specific standards of conduct, for the reasons discussed above, we disagree with Gessler's assertion that in the circumstances presented here, the discretionary fund statute provides no specific standard of conduct. To the contrary, that statute limits the use of the discretionary funds to the "pursuance of official business, " and as the IEC concluded, by using funds from his discretionary account for other than official business, Gessler breached the public trust for public gain in violation of the public trust statute.

¶ 31 For these reasons, we reject Gessler's assertion that the discretionary fund statute does not fall within the ambit of section 5.

E. Vagueness and Overbreadth

¶ 32 With respect to Gessler's contingent argument that the IEC has construed its jurisdiction so broadly as to render section 5 vague and overbroad, we first note that to establish the unconstitutionality of a provision of the Colorado Constitution, a plaintiff bears the "heavy burden" of proving that the provision is unconstitutional beyond a reasonable doubt. *See Bollier v. People*, 635 P.2d 543, 545 (Colo. 1981).

¶ 33 To establish that a constitutional provision is unconstitutionally vague on its face, a plaintiff must show that the provision is impermissibly vague in all of its applications. *Table Servs., LTD v. Hickenlooper*, 257 P.3d 1210, 1215 (Colo.App. 2011). A law is impermissibly vague if it forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess as to its meaning and differ as to its application. *Id.* at 1214. Terms need not, however, be defined with mathematical precision. *Id.* Rather, the provision must be sufficiently specific so as to give fair warning of the conduct prohibited. *Id.*

¶ 34 To establish that a constitutional provision is unconstitutionally overbroad, a plaintiff must show that the law punishes a substantial amount of protected free speech, judged in relation to the provision's plainly legitimate sweep. *Dallman v. Ritter*, 225 P.3d 610, 625 (Colo. 2010).

¶ 35 Here, we need not determine the outer limits of the IEC's jurisdiction. Rather, we need only note that we have construed section 5 so as to recognize the applicable limits to the IEC's jurisdiction. Having thus construed section 5, we need not address Gessler's contingent assertion that a different construction might raise vagueness or overbreadth concerns.

¶ 36 For all of the foregoing reasons, we conclude that the IEC had jurisdiction here.

III. Arbitrary or Capricious

¶ 37 Gessler next contends that if the IEC had jurisdiction here, then its decision was arbitrary or capricious because he properly used his discretionary funds to attend the RNLA seminar and to reimburse himself for unreported mileage. We are not persuaded.

A. Standard of Review

¶ 38 As noted above, on appeal from a district court's review of a final agency action, we apply the same standard as the district court, namely, the above-quoted standard set forth in section 24-4-106(7). *See Idowu*, ¶ 21, 338 P.3d at 1082. Under this standard, a final agency decision may not be reversed unless, as pertinent here, it is arbitrary or capricious. *Id.*; *accord* § 24-4-106(7).

¶ 39 In order to conclude that an administrative agency has acted arbitrarily or capriciously, we must determine that no substantial evidence exists in the record to support the agency's decision. *Moya v. Colo. Ltd. Gaming Control Comm'n*, 870 P.2d 620, 624 (Colo.App. 1994). There must be a clear error of judgment, and we may not substitute our judgment for that of the agency. *See id.* An agency decision is not arbitrary or capricious if it reflects a "conscientious effort to reasonably apply legislative standards to particular administrative proceedings." *Id.*

B. RNLA Seminar and the RNC

¶ 40 Here, substantial evidence in the record supports the IEC's determination that Gessler improperly used his discretionary fund to attend the RNLA seminar and the RNC. The RNLA's mission statement includes the goal of advancing Republican ideals and provides, "The RNLA further builds the Republican Party goals and ideals through a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates." Moreover, the IEC found, and Gessler does not appear to dispute, that the RNLA seminar registration form required attendees to state that they support the RNLA's mission.

¶ 41 In addition, several sessions at the seminar addressed partisan political issues, and Gessler testified that he could not specifically recall details of what was discussed at the seminar, including the contents of the session at which he was a scheduled speaker. He testified at some length, however, regarding his assumptions as to what subjects might have been addressed.

¶ 42 And when Gessler submitted his request to be reimbursed for his attendance at the RNLA seminar and the RNC, he stated, "These expenses were incurred while meeting with constituents, county clerks, lobbyists, staff and legislators to discuss state business." He, however, could only recall three (and perhaps five) Coloradans with whom he met at the seminar, and none were county clerks, staff, or legislators.

¶ 43 In light of this evidence, we conclude that the IEC's finding that Gessler misused his discretionary fund to attend the RNLA seminar and the RNC was not arbitrary or capricious.

¶ 44 We are not persuaded otherwise by the subsequent IEC advisory opinions that Gessler cites in his appellate briefs. Gessler cites these opinions in the context of his argument that the IEC's findings were arbitrary and capricious. Because these opinions were not part of the administrative record or the judicial review action, however, we generally may not consider them. *See Sierra Club v. Billingsley*, 166 P.3d 309, 316 (Colo.App. 2007) (noting that an appellate court may not review on appeal a document that was not part of the administrative record).

¶ 45 Even if we could consider these opinions by way of taking judicial notice, as Gessler asserted for the first time during oral argument, they do not persuade us that the IEC's findings were arbitrary and capricious. One of the two advisory opinions covered whether Gessler could properly accept a registration waiver to attend the RNLA's next National Election Law Seminar, and the other addressed whether Gessler's Deputy Secretary of State could properly accept travel expenses from her office to accompany Gessler to the seminar. *See Acceptance of Travel Expenses Paid by a Third Party*, Advisory Op. No. 14-10 (IEC July 23, 2014); *Acceptance of Travel from the State*, Advisory Op. No. 14-13 (IEC July 23, 2014). Neither of these opinions directly addressed either the discretionary fund statute or the public trust statute. Moreover, the latter opinion expressly noted that it was limited to the "specific facts presented by the Deputy Secretary to the Commission, " none of which mentioned any partisan political activities. *See Acceptance of Travel from the State*, Advisory Op. No. 14-13, at 4. Accordingly, the opinions are not pertinent here, where the IEC's decision did not turn on the fact that Gessler attended the RNLA seminar, but rather on his having used his discretionary fund primarily for partisan political, and thus personal, purposes, including attending the RNC.

¶ 46 For the same reasons, we are not persuaded by Gessler's argument that his conduct could not have violated any applicable standards of conduct because the Colorado Supreme Court had approved his attendance at the RNLA seminar for continuing legal education (CLE) credit. Again, the IEC did not sanction Gessler for attending the seminar. It sanctioned him because he used his discretionary fund primarily for partisan political purposes, even though a portion of the trip involved an approved CLE program.

C. Mileage

¶ 47 Substantial evidence in the record also supports the IEC's determination that Gessler improperly used his discretionary fund to reimburse himself for what he now claims was undocumented mileage.

¶ 48 Gessler testified that he submitted a lot of mileage reimbursement requests, but he explained that he did not do so with respect to the reimbursement at issue here because "to go through every single penny and mile and whatnot it just ended up being a waste of time when there is no benefit from it." Thus, he stated that he took the remainder of his discretionary fund as an unsubstantiated personal payment "because it was $117, and it was downright easier to pay the taxes since my tax rate is so low nowadays than to reconstruct my entire calendar to find out what could have been in there." For this reason alone, we conclude that the IEC did not act arbitrarily or capriciously in refusing to credit Gessler's assertion that the reimbursement request was for mileage. Gessler chose to treat those funds as additional compensation, not as a mileage reimbursement, and he cannot fault the IEC for doing the same.

¶ 49 Likewise, although Gessler claims that he later produced documentation to support his claim for unreimbursed mileage, the IEC was not required to credit that documentation, especially given that his conduct here was different from how he had proceeded on prior occasions, when he supported reimbursement requests with attached receipts or other contemporaneous documentation. *See Baldwin v. Huber*, 223 P.3d 150, 152 (Colo.App. 2009) ("[D]eterminations concerning the credibility of the witnesses, the weight to be given to the

evidence, and the resolution of any evidentiary conflicts are factual matters solely within the province of the [agency] to decide as the trier of fact.").

¶ 50 Accordingly, we conclude that the IEC's finding that Gessler improperly used his discretionary fund to reimburse himself for undocumented expenses was not arbitrary or capricious.

IV. Procedural Due Process

¶ 51 Finally, Gessler contends that he was denied procedural due process because he was not given advance and adequate notice of the standards of conduct that he was accused of having violated. We disagree.

¶ 52 Procedural due process requires that a respondent be notified of the nature of the proceedings and apprised of the right to present evidence in his or her own behalf. *Colo. State Bd. of Med. Exam'rs v. Boyle*, 924 P.2d 1113, 1117 (Colo.App. 1996). For purposes of agency adjudicatory proceedings,

[a]ny person entitled to notice of a hearing shall be given timely notice of the time, place, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Unless otherwise provided by law, such notice shall be served . . . at least thirty days prior to the hearing.

§ 24-4-105(2)(a), C.R.S. 2014.

¶ 53 Even if the notice provided is insufficient, however, errors in administrative proceedings do not require reversal unless the complaining party can show that he or she was prejudiced. *Joseph v. Mieka Corp.*, 2012 COA 84, ¶ 67, 282 P.3d 509, 520.

¶ 54 Here, we conclude that Gessler received more than ample notice of the claims asserted against him. Although the initial complaint filed by Colorado Ethics Watch alleged the violation of three criminal statutes, those violations were premised on Gessler's violation of the discretionary fund statute, which Gessler addressed at length in his response to the complaint. In addition, Gessler received both a pre-hearing order and an amended pre-hearing order over one month before the hearing. The amended pre-hearing order set forth six standards of conduct or reporting requirements that the IEC felt were potentially applicable, including the discretionary fund and public trust statutes that Gessler was ultimately found to have violated.

¶ 55 Accordingly, we conclude that Gessler received constitutionally adequate notice here. *See* § 24-4-105(2)(a); *Boyle*, 924 P.2d at 1117.

¶ 56 We are not persuaded otherwise by Gessler's argument that the IEC's notice was constitutionally deficient because some of the standards of conduct identified by the IEC were not actually ruled upon. Gessler cites no authority to support this proposition, and we are aware of none.

¶ 57 Nor are we persuaded by Gessler's assertion that he was denied adequate notice because in the IEC's amended pre-hearing order, the IEC reserved the right "to consider additional standards of conduct and/or reporting requirements, depending on the evidence presented, and the arguments made, at the hearing in this matter." Although we agree that considering new standards of conduct after the close of evidence could violate due process, *see In re Ruffalo*, 390 U.S. 544, 551 (1968) ("The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused."), Gessler concedes that no additional charges were added here. Accordingly, the IEC's reservation of the right to consider additional standards of conduct did not result in any actual deprivation of notice.

¶ 58 In any event, the record belies any claim of prejudice to Gessler. Gessler, through experienced and able counsel, mounted a vigorous defense to the charges against him, including in his pre-hearing efforts to have the case dismissed and at the evidentiary hearing. His pleadings and the evidence presented at the hearing amply demonstrate that he was well aware of the charges against him and that he was able to defend against them fully and appropriately. *See Joseph*, ¶¶ 67-68, 282 P.3d at 520.

V. Conclusion

¶ 59 For these reasons, the judgment is affirmed.

JUDGE TAUBMAN and JUDGE BOORAS concur.