

A PROPOSED RESOLUTION CONCERNING CONTRACTUAL WHISTLEBLOWER PROTECTION FOR GARFIELD COUNTY EMPLOYEES

Offered by 2016 Democratic Candidate for the Garfield County Commission

John Acha

RESOLUTION NO. _____

A RESOLUTION CONCERNING CONTRACTUAL WHISTLEBLOWER PROTECTION FOR GARFIELD COUNTY EMPLOYEES

Recitals

- A. The Board of County Commissioners hereby determines and declares that employees of Garfield County should never suffer retaliation for communicating information about illegal activities, unethical practices or other forms of official misconduct.
- B. The interests of Garfield County and the larger interests of the citizens of Garfield County are served by encouraging all employees to speak out fully and frankly on any official misconduct that comes to their attention without fear of retaliation.
- C. Therefore, the purpose of this resolution is to eliminate the possibility or the threat of any adverse employment action that may be taken against any county employee for disclosing such information.

Resolution

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Garfield County, Colorado, that:

- A. The forgoing Recitals are incorporated by this reference as part of the resolution.
- B. Definitions -- As used in this resolution:
1. "Adverse Employment Action" means any direct or indirect form of employment discipline or penalty, including, but not limited to, dismissal, suspension, demotion, transfer, reassignment, official reprimand, adverse performance evaluation, withholding of work, denial of any compensation or benefit, layoff, or threat of any such discipline or penalty.
 2. "Appropriate Reporting Authority" means any officer, board or commission, or other person or entity vested with legal authority to receive, investigate, or act upon reports of official misconduct by officers and employees of the city and county, including, by way of example:
 - (a) The County Manager and any Assistant County Managers;

(b) The Board of County Commissioners, any committee of the Board, and individual members of the Board of County Commissioners;

(c) The County Auditor;

(d) The District Attorney's Office and other law enforcement agencies;

(e) An Employee's supervisor; or

(f) The supervisor for the employee who is alleged to have engaged in the official misconduct that is the subject of the report.

3. "Corrective Action" means the relief requested by an Employee making a complaint pursuant to this ordinance. Such Corrective Action shall include: reinstatement to position, offer of employment in the position applied for or equivalent, back pay, restoration of all benefits and seniority rights, and the expunging of the records of discipline.

4. "Employee" means any current or former employee of Garfield County or applicant for employment with Garfield County.

C. Retaliation prohibited -- Any Employee, officer, or elected official who has authority to take, direct others to take, recommend, or approve any Adverse Employment Action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, an Adverse Employment Action with respect to any Employee because of any disclosure of information by an Employee which the Employee or applicant reasonably believes evidences:

(1) a violation of any law, rule, ordinance, or regulation, or

(2) gross mismanagement, a gross waste of funds, an abuse of authority, or

(3) a substantial and specific danger to public health or safety.

D. Limitation on Protection -- The protections afforded by this resolution shall not apply to any employee:

(1) Who discloses information that the employee knows to be false or who discloses information without regard for the truth or falsity thereof;

(2) Who discloses information in a manner prohibited by law including, by way of example, information that is prescribed as being confidential by law; or

(3) Whose disclosure of information and subsequent alleged retaliation occurred prior to the effective date of this resolution.

E. Must Disclose to Appropriate Reporting Authority -- It shall be the obligation of an employee who wishes to disclose information under the protection of this resolution to make a good faith effort to provide to an Appropriate Reporting Authority the information to be disclosed in addition to any other method of disclosure chosen.

F. Remedies -- The following remedies are available to any Employee and the availability of these remedies is contractually guaranteed to each Employee:

1. Any Employee alleging a violation of this the protections afforded by this resolution may seek Corrective Action by filing a complaint with the County Attorney's office specifying the factual and legal basis that shows a violation occurred. Such complaint must be made within 30 days of the Adverse Employment Action alleged to be retaliatory. The County Attorney's office may draft a form that shall be used by any Employee seeking Corrective Action.

2. Any Employee seeking Corrective Action may request that the Office of the County Attorney recommend to the Board of County Commissioners a stay of the Adverse Employment Action alleged to be retaliatory. Any stay requested shall be recommended to the Board of County Commissioners within 14 days after the date the request is made if the Office of the County Attorney determines, in its unreviewable discretion, that such a stay would be appropriate. The Office of the County Attorney shall allow any department that would be subject to a stay under this subsection to comment to the Office of the County Attorney on such stay request. A stay granted under this subsection shall remain in effect for such period as the Board of County Commissioners determines to be appropriate and such stay may be modified or dissolved at any time if the Board of County Commissioners determines that such a modification or dissolution is appropriate.

3. In any case involving an alleged violation of this resolution, the Office of the County Attorney shall recommend such Corrective Action as it considers appropriate if the Employee has demonstrated that a disclosure was a contributing factor in the Adverse Employment Action which was taken or is to be taken against such Employee. The Employee may demonstrate that the disclosure or protected activity was a contributing factor in the Adverse Employment Action through circumstantial evidence, such as evidence that — the official taking the Adverse Employment Action knew of the disclosure or protected activity, and the Adverse Employment Action occurred within a period of time such that a reasonable person could conclude that the disclosure or protected activity was a contributing factor in the Adverse Employment Action.

4. Corrective Action is not appropriate and shall not be recommended if, after a finding that a protected disclosure was a contributing factor for an Adverse Employment Action, it is demonstrated by clear and convincing evidence that the same Adverse Employment Action would have been taken in the absence of such disclosure.

5. If the Office of the County Attorney recommends Corrective Action, the County Attorney's office shall present its factual and legal findings and Corrective Action recommendation to the Board of County Commissioners for ratification within 90 days of receiving an Employee's complaint.

6. If the Office of the County Attorney does not recommend Corrective Action, the Office of the County Attorney shall present its factual and legal findings to the complaining Employee within 90 days of receiving an Employee's complaint and take no further action.

7. If the event the Corrective Action requested by the Employee is not granted, because either the Board of County Commissioners rejected the Office of the County Attorney's recommendation or the Office of the County Attorney did not recommend the Corrective Action sought by the Employee, the aggrieved Employee may, within 90 days of receiving notice that the Corrective Action requested is not being taken, file a complaint in any court of competent jurisdiction to enforce this resolution against the Board of County Commissioners and have that court order Corrective Action consistent with this ordinance.

8. In the event an Employee obtains relief pursuant to this resolution through judicial action, Garfield County shall be liable to the Employee for reasonable attorney's fees and any other reasonable costs incurred in obtaining such relief.

9. Upon a determination by the County Attorney's office that a violation of this resolution has occurred, any supervisor who committed the violation shall be subject to appropriate disciplinary action by the supervisor's appointing authority, up to and including termination from employment.

10. This resolution is intended to create contractual liability between the Board of County Commissioners and Garfield County Employees and any court or arbiter interpreting this resolution shall interpret this resolution as creating such liability.

DATED this ____ day of _____, A.D. 20__

GARFIELD COUNTY BOARD OF
COMMISSIONER, GARFIELD
COUNTY, COLORADO

Clerk of the Board

Chairperson