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Hon. William F. Lang
Jeff Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Ron Solimon
Judy Villanueva
Frances F. Williams

STATE ETHICS COMMISSION

Commission Meeting Minutes of August 7, 2020 | 9:00am-2:00pm

Virtually Via Zoom
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[SUBJECT TO RATIFICATION BY COMMISSION]

The meeting began with introductions from public attendees.

1. CALL TO ORDER AND ROLL CALL:

The meeting was called to order by Chair Lang. The roll was called. The following Commissioners were present:

Jeffrey Baker, Commissioner
Stuart Bluestone, Commissioner
Hon. Garrey Carruthers, Commissioner
Judy Villanueva, Commissioner
Frances Williams, Commissioner
Hon. William Lang, Chair

Commissioner Ron Solimon was absent.

2. AMENDMENT OF AGENDA:

- Chair Lang moved to amend the agenda to replace reference to the public rule hearing portion of the meeting to an "opportunity for public comment on the proposed rules under consideration." When making the motion, Chair Lang explained that the Commission would conduct a properly-noticed public rule hearing at a subsequent meeting, so that the Commission may maintain compliance with the State Rules Act and the Default Procedural Rule for Rulemaking. Commissioner Villanueva seconded the motion to amend the agenda; Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the agenda was amended as proposed.

3. APPROVAL OF AGENDA:

Chair Lang sought a motion to approve the agenda as amended. Commissioner Williams moved to approve the agenda as amended; Commissioner Baker seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the agenda was approved.

4. APPROVAL OF JUNE 5, 2020 COMMISSION MEETING MINUTES:

- Chair Lang sought a motion to approve the minutes of the June 5, 2020 meeting. Commissioner Bluestone moved to approve the minutes; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative, and the minutes were approved unanimously.

5. OATH FOR COMMISSIONER BAKER

SEC General Counsel Walker Boyd administered the oath of office to Commissioner Baker. GC Boyd also stated that he would reach out to Commissioner Solimon at a later date to administer his oath. (GC Boyd administered Commissioner Solimon's oath on the following Monday, August 10, 2020).

6. ADVISORY OPINION 2020-05.

- Director Farris provided an overview of Advisory Opinion 2020-05.
 - o Advisory Opinion 2020-05 responds to the following question:
 - *Two companies, which are separately registered as suppliers to the State, share the same office address. Each company separately submitted an identical twenty-item bid in response to an invitation to bid. Do the identical bids of these two companies constitute price fixing or collusion or violate the Procurement Code?*
 - o The advisory opinion concludes:
 - *Under the facts presented, and assuming there are no other relevant facts, the bids that GM Emulsion and GME General Building submitted would violate the Procurement Code.*
- Chair Lang sought a motion to approve Advisory Opinion 2020-05. Commissioner Baker moved to approve advisory opinion as written; Commissioner Bluestone seconded. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative, and the advisory opinion was approved unanimously.

7. ADVISORY OPINION 2020-06.

- Director Farris provided an overview of Advisory Opinion 2020-06.
 - o Advisory Opinion 2020-06 responds to the following question:
 - *Under the Governmental Conduct Act, may a cabinet secretary or another state employee work remotely from outside of the state on a permanent or near-permanent basis, when their job duties are ordinarily based in New Mexico?*
 - o The advisory opinion concludes:
 - *Subsection 10-16G-3(A) of the Governmental Conduct Act prohibits an out-of-state telework accommodation that either inhibits a state employee's duties or otherwise obstructs the public interest. Beyond this general statement, the Commission does not have enough information about the specific telework accommodations of the Secretary of Education or the former DFA PIO to provide an opinion as to whether those arrangements violate the Governmental Conduct Act.*
- Chair Lang sought a motion to approve Advisory Opinion 2020-06 as written. Commissioner Baker moved to approve the Advisory Opinion as written; Commissioner Carruthers seconded. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative, and the advisory opinion was approved unanimously.

BEGINNING OF OPPORTUNITY FOR PUBLIC COMMENTS. NMSA 1978, § 14-4-5.3(A); 1.24.25.12(A) NMAC.

GC Boyd stated that written public comments were received regarding amendments to 1.8.1.9-10 NMAC (informal advisory opinions); 1.8.1.16 NMAC (Commission meetings); and proposed 1.8.4 NMAC (code of ethics). **(All written public comments are appended to the end of these minutes. See Appendix 1, Open Meeting Materials).**

Representatives of organizations that submitted pre-filed written public comments presented summaries of submitted comments, and other members of the public provided comments not previously submitted to the staff:

- a. Lily Irvin-Vitela (New Mexico First) provided an overview of written public comments from New Mexicans for Ethics Coalition, New Mexico Ethics Watch, the League of Women Voters, the New Mexico Press Association, and New Mexico Foundation for Open Government previously submitted to the commission. *See Appendix 1.*
- b. Tony Ortiz (New Mexico Ethics Watch) provided a summary of the written comments submitted.
- c. Gabriela Ibanez Guzman (Somos Un Pueblo Unido) Provided a summary of the written comments submitted.
- d. Paul Biderman (Contractor with SEC working on development of the proposed model code) provided an update on the Commission's proposed model code and provided feedback in relation to public comments.
- e. Melanie Majors (New Mexico Foundation for Open Government) provided a summary of written comments submitted and NM sunshine laws.
- f. Ken Resnick provided comments on the implementation of proposed code of ethics and suggested an emphasis on trainings.
- g. Chris Mechels provided comments on the Commission's jurisdiction and advocated for expanded jurisdiction for the Commission to address more widespread instances of corruption at the local level.
- h. Heather Rindels (Los Lunas School District) inquired whether the proposed model code would apply to local government jurisdictions and advocated for the Commission's jurisdiction to be expanded to local governments.
- i. Mark Hayden (State Purchasing Agent) provided comments in support of expanding the Commission's jurisdiction to local government entities.

END OF OPPORTUNITY FOR PUBLIC COMMENT.

8. EXECUTIVE SESSION

- Chair Lang sought a motion to enter a closed executive session to discuss pending administrative complaints and potential litigation pursuant to the Open Meetings Act, NMSA 1978, § 10-15-1(H)(3), and the State Ethics Commission Act, NMSA 1978, § 10-16G-10 & 13(B). Commissioner Bluestone moved to enter executive session; Commissioner Villanueva seconded. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative, and the Commission entered executive session.
- The Commission discussed the following administrative complaints:
 - o Administrative Complaint No. 2020-007

- Administrative Complaint No. 2020-015
 - Administrative Complaint No. 2020-016 & 2020-017
 - Administrative Complaint No. 2020-018
 - Administrative Complaint No. 2020-020
 - Administrative Complaint No. 2020-029
- The Commission discussed the referral by Secretary of State of arbitrator's award in The Matter of the Arbitration of the Office of the Secretary of State and Cowboys for Trump.
 - The matters discussed in the closed meeting were limited only to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session.

9. ACTIONS ON ADMINISTRATIVE COMPLAINTS

- **Administrative Complaint No. 2020-007**
 - Director Farris requested a motion to enter an order of dismissal for the complainant's claims against the entity respondent for lack of personal jurisdiction and other claims for lack of subject matter jurisdiction, while maintaining other claims in Administrative Complaint No. 2020-007.
 - Chair Lang sought a motion to issue the order of dismissal as stated above. Commissioner Carruthers moved to issue the order of dismissal; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the order of dismissal was issued.
 - Director Farris requested a motion for the Commission's authorization for staff to seek subpoenas related to the remaining claims in administrative case No. 2020-007.
 - Chair Lang sought a motion to authorize staff to petition the state district court for subpoenas as stated above. Commissioner Bluestone moved to grant the authorization; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the authorization was granted.
- **Administrative Complaint No. 2020-015**
 - Director Farris requested a motion to enter an order of dismissal for all claims in Administrative Complaint No. 2020-015 for lack of jurisdiction.
 - Chair Lang sought a motion to issue the order of dismissal. Commissioner Baker recused himself from the vote. Commissioner Bluestone moved to issue the order of dismissal; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All remaining Commissioners voted in the affirmative, and the dismissal was issued.
- **Administrative Complaint Nos. 2020-016 & 2020-017**
 - Director Farris requested a motion to enter an order of dismissal for all claims in Administrative Complaint Nos. 2020-016 and 2020-017 for lack of jurisdiction.
 - Chair Lang sought a motion to issue the order of dismissal. Commissioner Villanueva moved to issue the order of dismissal; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the dismissal was issued.
- **Administrative Complaint No. 2020-018**

- Director Farris requested a motion to enter an order of dismissal of all claims in Administrative Complaint No. 2020-018 for lack of personal jurisdiction.
 - Chair Lang sought a motion to issue the order of dismissal. Commissioner Carruthers moved to issue the order of dismissal; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the dismissal was issued.
- **Administrative Complaint No. 2020-020**
- Director Farris requested a motion to enter an order of dismissal for all claims in Administrative Complaint No. 2020-020 for lack jurisdiction.
 - Chair Lang sought a motion to issue the order of dismissal. Commissioner Villanueva moved to issue the order of dismissal; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the dismissal was issued.
- **Administrative Complaint No. 2020-029**
- Director Farris requested a motion to enter an order of dismissal of all claims in Administrative Complaint No. 2020-029 for lack of jurisdiction.
 - Chair Lang sought a motion to issue the order of dismissal. Commissioner Carruthers moved to issue the order of dismissal; Commissioner Baker seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative; and the dismissal was issued. Commissioner Bluestone explained his vote, noting his view that the Commission had jurisdiction for the claim the complainant asserted.

10. ACTION ON REFERRAL BY SECRETARY OF STATE OF ARBITRATOR’S AWARD IN THE MATTER OF THE ARBITRATION OF THE OFFICE OF THE SECRETARY OF STATE AND COWBOYS FOR TRUMP.

- Chair Lang sought a motion for the Commission to refrain from enforcing the SOS’s arbitration award and have staff provide the basis for the Commission’s decision to the SOS. Commissioner Bluestone so moved; Commissioner Carruthers seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in in the affirmative, and the motion passed unanimously.
- Commissioner Bluestone moved to direct the staff to seek a subpoena regarding Cowboys for Trump’s compliance with the Campaign Reporting Act; Commissioner Williams seconded the motion. Chair Lang conducted a roll-call vote. The Commissioners voted as follows:
 - Commissioner Baker, against
 - Commissioner Bluestone, for
 - Commissioner Carruthers, against
 - Commissioner Villanueva, against
 - Commissioner Williams, for
 - Chair Lang, against
- The motion failed for lack of the concurrence required by Section 10-16G-3(H).

11. DISCUSSION OF NEXT MEETING

- Commissioner Williams moved to meet monthly or every six weeks by default; Commissioner Baker seconded. After discussion among the Commissioners, Commissioner Williams withdrew her motion.

- The Commissioners decided to meet next on Friday, August 28, 2020, at 9:00am, to review and approve the budget for FY22

12. PUBLIC COMMENTS

Members of the public were invited to provide comments to the Commission. No additional public comments were made.

13. ADJOURNMENT

Chair Lang sought a motion to adjourn. Commissioner Carruthers moved to adjourn; Commissioner Bluestone seconded. All Commissioners voted in the affirmative, and the meeting was adjourned.

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