

2021 OCT -8 PM 12: 25

This is amendment to 1.8.1 NMAC, amending Sections 9 & 13, effective 10/26/2021.

1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

A. Advisory opinions. The commission may issue advisory opinions on matters related to ethics upon request.

(1) A request for an advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) Upon receiving a request for an advisory opinion, the ~~[commission]~~ director or the director's designee:

(a) must provide the requester with a written confirmation of receipt; and

(b) may ask the requester if the requester would prefer to receive an informal advisory opinion.

(3) Within sixty days of receiving a request for an advisory opinion, the commission must either:

(a) issue an advisory opinion;

(b) inform the requester that the commission will not be issuing an advisory opinion and provide an explanation for the commission's decision; or

(c) inform the requester that the commission requires more than sixty days to issue an advisory opinion, and notifies the requester about the status of the request every thirty days thereafter.

(4) Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

(5) At the request of any commissioner, the director or the director's designee shall draft an advisory opinion based on any legal determination issued by the director, the general counsel, or a hearing officer for the commission to consider for issuance as an advisory opinion.

B. Informal advisory opinions. A person may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request.

(1) A request for an informal advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act or the Governmental Conduct Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) An informal advisory opinion is specific to the person who requests the advice and the facts presented in the request.

(3) An informal advisory opinion is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.

(4) If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

[1.8.1.9 NMAC-N, 10/15/2020; A, 10/26/2021]

1.8.1.13 ADDRESS ~~[FOR FILING DOCUMENTS]:~~

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

C. By email: ethics.commission@state.nm.us.

[1.8.1.13 NMAC-N, 1/1/2020; Rn & A, 10/15/2020; A, 10/26/2021]