

STATE ETHICS  
COMMISSION MEETING

December 9, 2022

**PUBLIC MATERIALS**

**PUBLIC MATERIALS**  
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## STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Garrey Carruthers, Member  
Hon. Celia Foy Castillo, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member

Friday, December 9<sup>th</sup>, 2022, 9:00 a.m. to 1:00 p.m. (Mountain Time)

Meeting Link: [Click Here](#)

Meeting ID: 249 033 4843

Passcode: THx8A7

### Public Meeting

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of October 14, 2022 Commission Meeting

### Commission Meeting Items

### Action Required

- |   |     |
|---|-----|
| 4. Advisory Opinion No. 2022-10<br>( <i>Branch</i> )                                  | Yes |
| 5. Resolution 2022-07 (Annual Open Meetings Act Resolution)<br>( <i>Boyd</i> )        | Yes |
| 6. Update on settlements of litigated and pre-litigation matters<br>( <i>Farris</i> ) | No  |

7. 2022 Annual Report  
(*Farris*)

Yes

**Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings), 10-15-1(H)(7) (attorney client privilege pertaining to litigation), and 10-15-1(H)(2) (limited personnel matters).**

8. Discussion regarding current and potential litigation:  
(*Randall, Manierre*)

- a. Commission authorization of civil action regarding violations of Sections 10-16-3 and 10-16-3.1(C), and 10-16-4(A) of the Governmental Conduct Act by an elected official of a local public body
- b. Commission authorization of civil action regarding violations of the Procurement Code by a public officer and public employees
- c. Commission authorization of civil action regarding violations of Section 10-16-4(C) of the Governmental Conduct Act by a former public officer and employee
- d. Update for Commission regarding Resolution 2022-05

9. Discussion of administrative matters under the State Ethics Commission Act subject to settlement approval:  
(*Boyd, Randall*)

- a. Administrative Complaint No. 2022-18
- b. Administrative Complaint No. 2022-32
- c. Administrative Complaint No. 2022-33
- d. Administrative Complaint No. 2022-34

10. Discussion regarding administrative matters under Revised Uniform Law on Notarial Acts:  
(*Branch*)

- a. 2022-NP-05 (*In re commission of Perez*)
- b. 2022-NP-10 (*In re commission of Miller*)
- c. 2022-NP-12 (*In re commission of Hanson*)
- d. 2022-NP-13 (*in re commission of Galloway*)
- e. 2022-NP-15 (*In re commission of Munch*)
- f. 2022-NP-16 (*In re commission of Cordova*)
- g. 2022-NP-17 (*In re commission of Al-Assi*)

11. Discussion regarding administrative matters under State Ethics Commission Act  
(*Manierre*)

- a. Administrative Complaint No. 2022-044 (lack of jurisdiction)
- b. Administrative Complaint No. 2022-043 (lack of jurisdiction)
- c. Administrative Complaint No. 2022-042 (lack of jurisdiction)
- d. Administrative Complaint No. 2022-041 (lack of jurisdiction)
- e. Administrative Complaint No. 2022-039 (lack of jurisdiction)

(*Farris*)

- f. Administrative Complaint No. 2022-037 (recommended dismissal under 9(C) and (D))
- g. Administrative Complaint No. 2022-06 (90-day extension)
- h. Administrative Complaint No. 2022-032 (90-day extension)
- i. Administrative Complaint No. 2022-030 (90-day extension)
- j. Administrative Complaint No. 2022-027 (90-day extension)
- k. Administrative Complaint No. 2022-015 (authorization to seek subpoena)

12. Executive Director 2022 evaluation  
(*Lang*)

No

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**Upon applicable motion, Commission returns from executive session**

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13. **Authorizations of Civil Actions**  
(*Farris*)

Yes

- a. Commission authorization of civil action regarding violations of Sections 10-16-3 and 10-16-3.1(C), and 10-16-4(A) of the Governmental Conduct Act by an elected official of a local public body
- b. Commission authorization of civil action regarding violations of the Procurement Code by a public officer and public employees
- c. Commission authorization of civil action regarding violations of Section 10-16-4(C) of the Governmental Conduct Act by a former public officer and employee

14. **Actions on Administrative Complaints**

Yes

Administrative Matters under State Ethics Commission Act:  
(*Farris*)

- a. Administrative Complaint No. 2022-044 (lack of jurisdiction)
- b. Administrative Complaint No. 2022-043 (lack of jurisdiction)
- c. Administrative Complaint No. 2022-042 (lack of jurisdiction)

- d. Administrative Complaint No. 2022-041 (lack of jurisdiction)
- e. Administrative Complaint No. 2022-039 (lack of jurisdiction)
- f. Administrative Complaint No. 2022-037 (recommended dismissal under 9(C) and (D))
- g. Administrative Complaint No. 2022-06 (90-day extension)
- h. Administrative Complaint No. 2022-030 (90-day extension)
- i. Administrative Complaint No. 2022-027 (90-day extension)
- j. Administrative Complaint No. 2022-015 (authorization to seek subpoena)
- k. Administrative Complaint No. 2022-18 (settlement approval)
- l. Administrative Complaint No. 2022-32 (settlement approval)
- m. Administrative Complaint No. 2022-33 (settlement approval)
- n. Administrative Complaint No. 2022-34 (settlement approval)

Administrative Matters under Revised Uniform Law on Notarial Acts: Yes  
(Branch)

- a. 2022-NP-05 (*In re commission of Perez*)
- b. 2022-NP-10 (*In re commission of Miller*)
- c. 2022-NP-12 (*In re commission of Hanson*)
- d. 2022-NP-13 (*in re commission of Galloway*)
- e. 2022-NP-15 (*In re commission of Munch*)
- f. 2022-NP-16 (*In re commission of Cordova*)
- g. 2022-NP-17 (*In re commission of Al-Assi*)

15. Discussion of next meeting: No  
(Lang)

16. Public Comment No

17. Adjournment

*For inquiries or special assistance, please contact Suha Musa at [Ethics.Commission@state.nm.us](mailto:Ethics.Commission@state.nm.us)*

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Hon. William F. Lang  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Garrey Carruthers  
Hon. Celia Foy Castillo  
Ronald Solimon  
Judy Villanueva

## **STATE ETHICS COMMISSION**

### **Commission Meeting Minutes of October 14, 2022 | 9:00AM-12:00PM New Mexico State Capitol Room 309**

#### **[Subject to Ratification by Commission]**

#### **1. Call to Order**

Chairman Lang Calls the Meeting to Order at 9:03 AM.

#### **2. Roll Call**

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner  
Stuart M. Bluestone, Commissioner  
Hon. Garrey Carruthers, Commissioner  
Hon. Celia Foy Castillo, Commissioner  
Ronald Solimon, Commissioner  
Judy Villanueva, Commissioner  
Hon. William Lang, Chair

#### **3. Approval of Agenda**

Executive Director Farris sought an amendment to the agenda, striking items 4, 8, 11, 12b, and 12e. Commissioner Bluestone asked for an explanation for the amendment, and Director Farris explained the amendments were required because of staff illness, the unavailability of the guest speaker, and the investigations relating to stricken items, considering their progress, did not warrant a subpoena. Commissioner Baker moved to amend and adopt the agenda; Commissioner Solimon seconded. Hearing no further discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the agenda as adopted unanimously.

#### **4. Approval of August 5, 2022 Commission Meeting Minutes**

Chair Lang sought a motion to approve the minutes of the August 5, 2022 Commission meeting. Commissioner Bluestone moved to approve the minutes; Commissioner Foy-Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the minutes unanimously.

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## **Commission Meeting Items**

### **5. FY24 Budget Request and Strategic Plan**

Executive Director Farris presented the Commission's FY24 budget request and corresponding strategic plan to the Commission. The Director and Commissioners emphasized the growing role of the Commission in state proceedings, expansions in staffing, and responsibilities.

### **6. The consequences of *State v. Gutierrez, et al.* for the Commission and potential legislative amendments to the Governmental Conduct Act**

Director Farris and Anne Kelly, of the Office of the Attorney General, offered views on the impact of the New Mexico Supreme Court's opinion in *State v. Gutierrez, et al.* on the ability of the State Ethics Commission and prosecutorial offices to enforce the Governmental Conduct Act. Ultimately, they presented how there should be little to no change in the administration or role of the Commission with respect to enforcement of the Governmental Conduct Act. Director Farris also offered possible amendments to Sections 3, 4, 8, and 9b of the Governmental Conduct Act.

### **7. Potential legislative amendments for inclusion in 2022 Annual Report**

#### **a. Disclosure Act**

Director Farris presented a discussion draft of the Disclosure Act, in anticipation of its introduction in the upcoming session. Commissioner Baker asked about comments from legislators, to which Director Farris explained there has been mixed reactions. Commissioner Bluestone expressed a concern regarding legislative familial relationships with registered lobbyists and whether they would require disclosure. Commissioner Villanueva inquired about penalties against those who don't file. Chair Lang inquired about the appropriate reach of a disclosure statute.

#### **a. Amendments to Campaign Reporting Act**

Director Farris presented a discussion draft on the Campaign Reporting Act ("CRA"). The proposed amendments include provisions stating that legislators may not charge interest on their personal loans to their campaigns. Commissioners Carruthers, Villanueva and Chair Lang expressed support for including a provision that confirms that the contributions of single member LLCs and other completely controlled business entities are attributable under the CRA's provisions regarding attribution and contributions limit. Director Farris said that while there is potential for this amendment, the bill sponsors might not be willing to include such an amendment.

### **8. Executive Session**

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings), and 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Baker moved to enter executive session; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and entered executive session.



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---Beginning of Executive Session---

The following matters were discussed in executive session:

- Discussion regarding current and potential litigation:
  - Commission authorization of declaratory judgment action regarding violation of Article IX, Section 14 of the New Mexico Constitution
  - Commission authorization of civil action regarding violations of Section 10-16-8 of the Governmental Conduct Act by a former employee of a local public body
  - Commission authorization of civil action regarding violations of Sections 10-16-3(A), 10-16-3.1(C), and 10-16-4(A) of the Governmental Conduct Act by an employee of a local public body
  - Commission authorization of civil action regarding violations of Sections 1-19-26.4, 1-19-34.3(B), and 1-19-27.3 of the Campaign Reporting Act
- Discussion of administrative matters under the State Ethics Commission Act subject to settlement approval:
- Discussion regarding administrative matters under State Ethics Commission Act
  - Administrative Complaint No. 2022-004
  - Administrative Complaint No. 2022-027 (Leave to issue subpoenas)
  - Administrative Complaint No. 2022-031
  - Administrative Complaint No. 2022-035
- The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an appropriate motion.

---End of Executive Session---

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Upon returning from Executive Session, Commissioner Baker is absent and excused.

## 9. Actions on Civil Litigation

Director Farris asked the Commission for the following motions on the following litigative matters:

- **Commission authorization of declaratory judgment action regarding violation of Article IX, Section 14 of the New Mexico Constitution:** Director Farris sought a motion to authorize the attorney staff to file a declaratory judgment action seeking a declaration that, considering its refundability and transferability provisions, the new solar development income tax credit violates the Anti-Donation Clause of the New Mexico Constitution. Commissioner Carruthers moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Carruthers, Solimon, Villanueva and Chair Lang voted in the affirmative. Commissioners Bluestone and Foy-Castillo voted in the negative. The motion failed for lack of consent

of “at least two members of the largest political party in the state and two members of the second largest political party in the state” under NMSA 1978, Section 10-16G-3(H).

- **Commission authorization of civil action regarding violations of Section 10-16-8 of the Governmental Conduct Act by a former employee of a local public body:** Director Farris sought a motion to authorize the staff to file a civil action against Mary Lou Kern for violations against Sections 10-16-8, revolving door provisions, of the Governmental Conduct Act. Commissioner Bluestone moved as stated above; Commissioner Foy-Castillo seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon, Villanueva, and Chair Lang voted in the affirmative and approved the motion. Commissioner Baker is absent and excused.
- **Commission authorization of civil action regarding violations of Sections 10-16-3(A), 10-16-3.1(C), and 10-16-4(A) of the Governmental Conduct Act by an employee of a local public body:** Director Farris sought a motion to authorize the staff to file a civil action against Hector Rangel for violations against Sections 3A, 3.1C, and 4A of the Governmental Conduct Act. Commissioner Bluestone moved as stated above; Commissioner Foy-Castillo seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon, Villanueva, and Chair Lang voted in the affirmative and approved the motion. Commissioner Baker is absent and excused.
- **Commission authorization of civil action regarding violations of Sections 1-19-26.4, 1-19-34.3(B), and 1-19-27.3 of the Campaign Reporting Act:** Director Farris sought a motion to authorize the staff to file a civil action against Working Families Organization for various violations against the Campaign Reporting Act. Commissioner Bluestone moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon, Villanueva, and Chair Lang voted in the affirmative and approved the motion. Commissioner Baker is absent and excused.

**10. Actions on Administrative Complaints Nos. 2022-004, 2022-014, 2022-006, 2022-031, and 2022-035.**

Director Farris asked the Commission for the following motions on the following administrative cases:

- **In administrative case 2022-004, motion for a 90-day extension:** Commissioner Bluestone moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon and Villanueva voted in the affirmative and approved the motion. Chair Lang recused himself. Commissioner Baker is absent and excused.
- **In administrative case 2022-014, motion for settlement approval:**

Commissioner Carruthers moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon, Villanueva, and Chair Lang voted in the affirmative and approved the motion. Commissioner Baker is absent and excused.

- **In administrative case 2022-027, motion for subpoena authorization:** Commissioner Carruthers moved as stated above; Commissioner Foy-Castillo seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon, Villanueva, and Chair Lang voted in the affirmative and approved the motion. Commissioner Baker is absent and excused.

- **In administrative case 2022-031, motion for an order of dismissal due to a lack of jurisdiction:**

Commissioner Bluestone moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon, Villanueva, and Chair Lang voted in the affirmative and approved the motion. Commissioner Baker is absent and excused.

- **In administrative case 2022-035, motion for an order of dismissal due to a lack of jurisdiction:**

Commissioner Foy Castillo moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Bluestone, Carruthers, Foy-Castillo, Solimon, Villanueva, and Chair Lang voted in the affirmative and approved the motion. Commissioner Baker is absent and excused.

#### **11. Selection of Next Meeting**

Chair Lang confirmed that the next meeting would take place on December 9, 2022. The location and method for this meeting will be determined by the Chair.

#### **12. Public Comments**

Commissioner Villanueva highlighted a recently-published article in the Santa Fe New Mexican praising the Commission's work.

No additional public comments were made.

#### **13. Adjournment**

Chair Lang raised adjournment of the meeting. With no objections made, the meeting was adjourned at 12:17PM.

**[Subject to Ratification by Commission]**



## STATE ETHICS COMMISSION

### **[Draft] ADVISORY OPINION NO. 2022-10**

December 9, 2022<sup>1</sup>

### **QUESTIONS PRESENTED<sup>2</sup>**

An individual served as a deputy secretary of a state agency. After leaving the agency, may the individual work on a contractual basis for a healthcare corporation during the year after the individual separated from the state agency?

After the one-year separation period may this individual join the healthcare corporation as an employee?

### **ANSWER**

Yes, to both questions.

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<sup>1</sup> This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” NMSA 1978, § 10-16G-8(A)(2) (2019). On August 3, 2022, the Commission received a request for an informal advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(A) NMAC. Commissioner Bluestone requested that it be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC.

## ANALYSIS

### 1. Relevant law

The Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1993, as amended through 2019) prohibits a former government employee from representing a person or corporation in dealings with the government in a matter in which that employee personally and substantially participated while a state employee.<sup>3</sup> The Governmental Conduct Act does not define “matter,”<sup>4</sup> and New Mexico courts have not addressed whether one or more matters are the same in the context of subsection 10-16-8(B). Subsection 10-16-8(B), however, is modeled on Rule 16-111(A)(2) NMRA and ABA Model Rule of Professional Conduct 1.11(a)(2).<sup>5</sup> While the individual who requested the advice is not an attorney, the comparison to Rule 16-111 NMRA is helpful in this assessment. The rule

represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the

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<sup>3</sup> See NMSA 1978 § 10-16-8(B) (2011).

<sup>4</sup> See NMSA 1978, § 10-16-2 (2011).

<sup>5</sup> Rule 16-111(A)(2) NMRA and ABA Model Rule 1.11(A)(2) provide:

[A] lawyer who has formerly served as a public officer or employee of the government . . . shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

Like the Governmental Conduct Act, these rules are “intended to deal with what [is] conventionally referred to as the “revolving door” situation of lawyer transfer between government and private employment.” See Discussion Appendix to Proposed Model Rule of Professional Conduct 1.11 at the February 1983 ABA Midyear Meeting, in ABA Ctr. for Prof’l Responsibility, A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013 279 (Art Garwin ed., 2013); see also Rachel E. Boehm, *Caught in the Revolving Door: A State Lawyer’s Guide to Post-Employment Restrictions*, 15 REV. LITIG. 525, 533 (Summer 1996) (collecting state statutes, including subsection 10-16-8(B), which “are the same or similar to the standard imposed by . . . ABA Model Rule 1.11”).

special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.

Rule 16-111 NMRA, comment [4]; *accord* ABA Model Rule of Professional Conduct 1.11 cmt.

The Governmental Ethics Task Force, created by Laws 1992, Chapter 109, and signed into law by Governor Bruce King, drafted the Governmental Conduct Act's revolving door provisions. The task force described subsection 10-16-8's purposes in similar terms:

The amendments proposed by the task force preclude public officers and employees, after leaving government service, from representing any person before or against the government on specific matters in which the former officer or employee participated personally and substantially while in government. . . . This provision is designed to balance the competing interests involved—ensuring that the government officer or employee acts only in the public interest and not in a way that might “feather his or her nest” for post-government employment, while at the same time not barring the officer or employee from representation before his or her agency for such a long period that it would deter government recruitment of the best talent available.

Rep. H. John Underwood & James B. Mulcock, *Governmental Ethics Task Force, Final Report—Findings and Recommendations*, at 19 (N.M. Legislative Council Service Info. Memo. No. 202.90785, Jan. 27, 1993).

Given subsection 10-16-8(B) and Rule 16-111(A)(2)’s shared phrasing and purpose, the definition and interpretation of the word “matter” in the latter context guides the Commission’s analysis.<sup>6</sup> Rule 16-111 NMRA and ABA Model Rule of Professional Conduct 1.11 define the term “matter” as follows:

“matter” includes: (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Rule 16-111(E) NMRA; *accord* ABA Model Rule of Prof. Conduct 1.11(e).

In determining whether two or more matters are the same for purposes of subsection 10-16-8(B), the Commission will consider whether the matters’ underlying facts, parties, and temporal relationship are the same or overlap substantially. *See Roy D. Mercer, LLC v. Reynolds*, 2013-NMSC-002, ¶ 26, 292 P.3d 466 (concluding that Rule 16-111 “indicate[s] a fact-specific, transactional approach to determining the scope of ‘[the] matter’”) (second alteration original); *see also* Rule 16-111 cmt. [10] (“In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties and the time elapsed.”).

Next, subsection 10-16-8(D) of the Governmental Conduct Act provides that “[f]or a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the

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<sup>6</sup>*Cf. Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) (“When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well.”); *Marquez v. Larrabee et al.*, 2016-NMCA-087, ¶ 12, 382 P.3d 968 (stating that New Mexico courts may look to the Federal Rules of Civil Procedure and caselaw interpreting those rules for guidance in interpreting substantially similar provisions in New Mexico court rules); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (West 2012) (discussing “prior-construction” canon of statutory interpretation).



state agency or local government agency at which the former public officer or employee served or worked.” NMSA 1978, § 10-16-8(D) (2011).

## 2. Application to the facts presented in the request for advice

The requester is a former deputy secretary who served in state government. The request indicates that the former deputy secretary, through their limited liability company, will work as a contractor for a healthcare corporation during the year after she separated from state government and, after that initial year, the corporation might hire her as an employee. Under the contract, the former deputy secretary will assist in writing a proposal for a contract award and, upon award, direct the implementation of contract services. During the contract period, the requester will not have direct or indirect communications with either the state agency that formerly employed her or other state entities that have responsibilities relating to the contract.

These facts do not indicate that, by contracting with or seeking employment by the healthcare corporation, the former deputy secretary would represent a person or corporation in their dealings with the government in a matter in which the former deputy secretary personally and substantially participated while a state employee. Indeed, because the facts indicate that, during the contract period, the former deputy secretary will not directly or indirectly communicate with state agencies that oversee the contract, it seems the former deputy secretary will not “represent” the healthcare corporation before any state agency, whether on a matter the former deputy secretary previously participated in personally and substantially or otherwise. Accordingly, the former deputy secretary may, as the contract provides, assist in writing a proposal for a procurement and, upon award, direct implementation for the corporation without acting as the corporation’s agent before any state agency and triggering either of the prohibitions on representation set out in subsections 10-16-8(B) or (D).

We observe that subsection 10-16-8(B)’s prohibition is perpetual.<sup>7</sup> If, in the future (and perhaps after the contract period expires), the requester’s duties for the

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<sup>7</sup> See 2020 Op. Ethics Comm’n No. 2020-02 at 3 (stating that subsection 10-16-8(B)’s restriction on a former public officer’s or employee’s representation is stringent because it does not expire) and Office of the New Mexico Attorney General, Governmental Conduct Act Compliance Guide at 37 (2015) (“Subsection B creates an absolute restriction on certain former public officers or employees. It prevents them from representing a person in the person’s dealings with the



healthcare corporation requires the requester to represent their employer or another on a matter that overlaps with her work for state government, the requester will need to consider whether her participation in the matter, as a former deputy secretary, was personal and substantial. Those facts are not presented in the request, and this advisory opinion does not address them.

We also observe that subsection 10-16-8(A)(2) of the Governmental Conduct Act prohibits a state agency “from entering into a contract with , or tak[ing] any action favorably affecting, any person or business that is: . . . assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency’s making that contract or taking that action.” According to the request, the requester did not interact or have communication with the agencies involved in the procurements during her tenure in state government; accordingly, the former deputy cabinet secretary’s assistance to a corporation in preparing a written proposal for submission to those agencies does not appear to implicate those agencies’ duty not to enter into a contract or take other favorable action under subsection 10-16-8(A)(2).

Finally, under the Governmental Conduct Act, for one year after leaving state employment, former state employees may not represent a person or corporation for pay before the state agency that employed them. *See* § 10-16-8(D). If the requester will have no communications with their former employer, then, again, she would not represent the healthcare corporation before her former state agency and, thus, her contract work for the healthcare corporation would not involve “represent[ation] . . . before” her former employer in violation of subsection 10-16-8(D). Likewise, nothing in subsection 10-16-8(D) prohibits the former deputy cabinet secretary from seeking and obtaining employment with the healthcare corporation, either now or in the future.

## CONCLUSION

The former deputy secretary may work as a contractor for a healthcare corporation during the year after she separated from state employment, so long as

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government on a matter in which the public officer or employee participated “personally and substantially” while working for either the state agency or local government involved. The amount of the contract or the length of time that the employee has been gone from public service is immaterial.”).

she does not represent the healthcare corporation before her former state agency for pay. After the one-year “cooling off” period, the former deputy cabinet secretary may seek employment with the healthcare corporation, but may not represent the healthcare corporation or another person before the government on any matter in which she personally and substantially participated while a state employee.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**

**JEFFREY L. BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. GARREY CARRUTHERS, Commissioner**

**HON. CELIA FOY CASTILLO, Commissioner**

**RON SOLIMON, Commissioner**

**JUDY VILLANUEVA, Commissioner**



## STATE ETHICS COMMISSION

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### **Resolution No. 2022-07: State Ethics Commission annual open meetings resolution**

WHEREAS, THE STATE ETHICS COMMISSION met in regular session virtually, via Zoom on Friday, December 9, 2022, at 9:00 a.m., as required by law; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 10-15-1 to -4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public;

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the State Ethics Commission to determine annually what the Office of the Attorney General State of New Mexico regards as reasonable notice of public meetings; and

NOW, THEREFORE, BE IT RESOLVED by the State Ethics Commission that:

1. All meetings shall be held at the place and time as indicated in the meeting notice.

2. Unless otherwise specified, regular meetings may be held every other month subject to the call of the Chair of the State Ethics Commission. The agenda will be available at least seventy-two hours prior to the meeting from the State Ethics Commission's website. Copies of the agenda will also be posted at the offices of the State Ethics Commission and on the State Ethics Commission's website at <https://www.sec.state.nm.us/>.

3. Notice of regular meetings other than those described in Paragraph 2 will be given ten days in advance of the meeting date. The notice will include a copy of the agenda or information on how a copy of the agenda may be obtained. If not included in the notice, the agenda will be available at least seventy-two hours before the meeting and posted on the State Ethics Commission's website or, if the Commission's website is not available, on DFA's website.

4. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. The State Ethics Commission will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chair or a quorum of members with twenty-four hours prior notice, unless threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within ten days of taking action on an emergency matter, the State Ethics Commission will notify the Attorney General's Office.

5. For the purposes of regular meetings described in Paragraph 3 of this resolution, notice requirements are met if notice of the date, time, place and agenda is posted at the offices and on the website of the State Ethics Commission. Copies of the written notice shall also be emailed to anyone who has made a written request for notice of public meetings.

6. For the purposes of emergency meetings described in Paragraph 4, notice requirements are met if notice of the date, time, place and agenda is posted at the offices and on the website of the State Ethics Commission or, if such offices or website is not available, at the offices and on the website of the DFA. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

7. In addition to the information specified above, all notices shall include the following language: If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the State Ethics Commission at [Ethics.Commission@state.nm.us](mailto:Ethics.Commission@state.nm.us) at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Commission if a summary or other type of accessible format is needed.

8. The State Ethics Commission may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under

Section 10-15-1 of the Open Meetings Act. (a) If any meeting is closed during an open meeting, such closure shall be approved by a vote of a quorum of members taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting. (b) If a closed meeting is conducted when the Commission is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public. (c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure. (d) Except as provided in Section 10-15-1 of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Commissioners in an open public meeting.

Adopted by the State Ethics Commission this 9th day of December, 2022.

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The Hon. William F. Lang  
New Mexico State Ethics Commission, Chair

## **SETTLEMENT AND RELEASE**

This Settlement and Release Agreement ("Agreement") is made by NEW MEXICO STATE ETHICS COMMISSION ("Releasor"), and GABRIEL VARGAS, SCOTT CLARK (individually and doing business as Double Eagle Property Tax Consultants), and DOUBLE EAGLE REAL ESTATE, LLC (collectively the "Releasees"). Each is referred to individually as a "Party" or collectively as the "Parties".

### **RECITALS**

- A. Gabriel Vargas was an employee of the Sandoval County Assessor's Office ("SCAO") from on or about March 19, 2012, through August 30, 2019.
- B. On or about April 1, 2020, Mr. Vargas began working with Scott Clark and Double Eagle Property Tax Consultants (collectively "Double Eagle").
- C. On or about October 27, 2021, the State Ethics Commission ("SEC") filed a Complaint in the Second Judicial District Court, Cause No. D-202-CV-2021-06201, which alleged Mr. Vargas's work with Double Eagle between April 1, 2020, and September 1, 2020, violated New Mexico's Governmental Conduct Act, NMSA 1978, Sections 10-16-8(B) and (D) (the "Lawsuit.")
- D. On or about May 2, 2022, the District Court entered a Memorandum Opinion and Order dismissing the claims against Double Eagle. The District Court did not enter a final judgment against Double Eagle.
- E. On November 8, 2022, the Parties participated in a settlement conference with Mediator Michael Cadigan. The Parties reached an agreement to amicably resolve any and all issues, claims, demands, and/or damages, of whatever nature, that exist, or could exist, by and among them, relating in any way to claims made or which could have been made in the Lawsuit.
- F. The Parties desire to enter into this Agreement to memorialize the agreement reached, by and between the Parties.

### **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the Parties agree as follows:

1. **Consideration.** Releasees shall pay to Releasor the sum of Thirteen Thousand Dollars (\$13,000.) This amount shall be payable to the State of New Mexico General Fund. Mr. Vargas shall pay not more than Five Thousand Dollars (\$5,000) of this amount. The remaining amount shall be paid by Double Eagle. These amounts shall be paid within ten (10) days of the execution of this Settlement and Release.

2. **Release and Discharge.** In consideration of the payment and subject to the conditions more fully contained herein, Releasor hereby releases, acquits, and forever discharges Releasees, and all of their past, present and future officers, directors, shareholders, attorneys, agents, consultants, principals, members, servants, representatives, employees, heirs, personal representatives, beneficiaries, administrators, predecessors in interest, successors in interest, subsidiaries, affiliates, partners, limited partners, privies, insurers, and assigns, from any and all rights, claims, demands, and damages, of whatever nature, actions and causes of action of any kind whatsoever, known or unknown, suspected or unsuspected, which Releasor asserted or could have asserted as part of the Lawsuit.
3. **Dismissal of Lawsuit.** The Parties agree that upon the execution of this Agreement and receipt of payment of the above-described consideration by Releasees, Releasor will dismiss, with prejudice, all claims against Releasees which Releasor asserted or could have asserted as part of the Lawsuit.
4. **Payment in Full and Final Settlement.** The Parties agree that the money to be paid pursuant to this Agreement shall represent final and full satisfaction and settlement of all rights and claims Releasor may have relating in any way to all released claims. It is the intent of the Parties to fully and effectively dismiss and release any and all claims that Releasor had or could have had against Releasees as it relates to the claims contained in the Lawsuit. The Releasor agrees that no further claims, complaint, causes of action, whether civil actions, administrative or otherwise, may be filed or instituted against Releasees from the facts or circumstances described in the Lawsuit. This Settlement Agreement is intended to have the broadest possible effect so that the allegations arising from Releasors' claims as asserted or which could have asserted in the Lawsuit be finally and forever put to rest. The SEC confirms that it is not currently aware of any facts which would support a possible violation of the Governmental Conduct Act by Releasees other than those alleged in the Lawsuit.
5. **Non-Prosecution Agreement.** The SEC agrees that Releasees will not be prosecuted for any violations of NMSA 1978, Sections 10-16-8(B) or (D) for any work done by Gabriel Vargas on behalf of any client or employer relating to real property in Sandoval County beginning on or after January 1, 2023. This non-prosecution agreement shall not apply to any potential or alleged violations of NMSA1978, Sections 10-16-8(B) or (D) in the event Mr. Vargas returns to government employment after the execution of this Agreement and later seeks to perform work for private entities or persons.
6. **Adequate Consideration.** The Parties agree that the consideration noted in Paragraph 1 represents adequate consideration for this Settlement Agreement.
7. **Mutual Non-Disparagement.** As further consideration for this Agreement, the Parties agree not to make any disparaging comments about one another. "Disparaging




comments” are (1) any denigrating or derogatory statement about one another or the services provided or (2) comments or representations intended to bring any Releasee or the Releasor into disrepute. The Releasees and Releasor agree not to make disparaging comments in any written or verbal form, including in print or electronically, including but not limited to statements on social media or other websites. This provision does not preclude the parties from discussing the facts, pleadings, and resolution of the Lawsuit in a manner that does not disparage the Parties. Moreover, it is expressly agreed that this provision does not constrain the SEC from publicly expressing any opinion on the SEC’s interpretation of the Governmental Conduct Act, to include the SEC’s view as to the availability of vicarious liability and disgorgement under the Act, and further does not preclude the SEC from discussing the facts, pleadings, and resolution of this lawsuit in the course of SEC business (e.g. training, legislative testimony and Commission meetings) in a manner that does not disparage Releasees.

8. **Media Release.** In the event the SEC issues a media release, it shall first seek the approval of Mr. Vargas for review and compliance with Paragraph 7 of this Agreement. Mr. Vargas shall not unreasonably withhold approval of any media release.
9. **Warranty of Capacity to Execute Settlement Agreement.** The Parties represent and warrant that no other person or entity has any interest in the claims, demands, damages, actions or causes of action referred to in this Agreement and each have the right and authority to execute this Agreement. Further, the Parties represent and warrant that the execution of this Agreement violates no law, rule, agreement or instrument by which it may be bound or to which they are a party.
10. **Compromise of a Disputed Claim.** The Parties agree that this Agreement represents a compromise of disputed rights, demands, claims, actions and causes of action, taking into account, among other things, the costs and risks associated with litigation. It is further agreed that nothing contained within this Agreement shall be considered an admission for any such claims, demands, damages, actions, or causes of action, such liability or wrongdoing being expressly denied. Nothing in this Agreement constitutes an admission of liability or wrongdoing by Releasees.
11. **Entire Agreement.** The Agreement represents the entire agreement between the Parties regarding the matters set forth herein and shall be binding upon and shall inure to the benefit of the executors, administrators, representatives, heirs, successors and assigns of each.
12. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico.
13. **Severability.** If, after the effective date hereof, any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and shall




be unenforceable between the Parties only to the extent of such prohibition or ineffectiveness without invalidating the remainder of the provision or of this Settlement Agreement.


14. **Amendment.** This Agreement shall not be modified or amended except in writing signed by the Parties.
15. **Effective Date.** This Agreement shall become effective immediately upon execution by the Parties.
16. **Effective in Counterparts.** To expedite the conclusion of this matter, the Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. By so proceeding, the Parties further agree that the Agreement shall be and is binding upon each of them, just if the Agreement had been executed otherwise. Faxed or scanned and emailed copies of manually executed signature pages to this Agreement shall be enforceable without the need for delivery of an original signature.
17. **Fees and Costs.** Each Party agrees to pay its own mediation fees, attorneys' fees, and court costs.

By:   
GABRIEL VARGAS

November 18, 2022  
(Date)

By:   
SCOTT CLARK (individually and on behalf of  
Double Eagle Property Tax Consultants and Double  
Eagle Real Estate LLC)

November 18, 2022  
(Date)

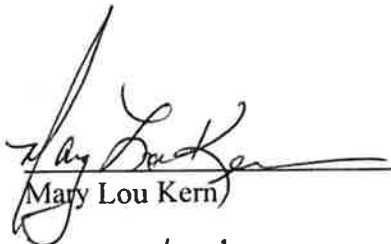
By:   
JEREMY FARRIS, as Executive Director for the  
New Mexico State Ethics Commission

Nov. 17, 2022  
(Date)

## SETTLEMENT AGREEMENT

The Executive Director of the State Ethics Commission, on behalf of the State Ethics Commission, and Mary Lou Kern hereby stipulate as follows:

1. Ms. Kern agrees to comply with the revolving-door provisions of the Governmental Conduct Act set out in NMSA 1978, Section 10-16-8(B) and (D).
2. Ms. Kern agrees to pay a \$500 civil penalty to the State Ethics Commission within ten (10) days of signing this agreement.
3. Upon receipt of the \$500 civil penalty, the Commission agrees it will not pursue a civil enforcement action for Ms. Kern's violations of Section 10-16-8(B) and (D) of the Governmental Conduct Act related to Ms. Kern's work on behalf of Roadrunner Health, LLC on the Colfax County Request for Proposals #2022-02 for Medical and Mental Health Services.

  
Mary Lou Kern

Dated: 11/29/22

  
Jeremy Farris, Executive Director

Dated: 11/29/22



# STATE ETHICS COMMISSION

<https://sec.state.nm.us>

800 Bradbury Dr. SE  
Suite 215  
Albuquerque, NM 87106  
(505) 827-7800

# STATE ETHICS COMMISSION

## ANNUAL REPORT

# 2022

To: New Mexico  
Legislature &  
Gov. Michelle  
Lujan Grisham

STATE of NEW MEXICO

SEC 25

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# OPENING MESSAGE

December XX, 2022

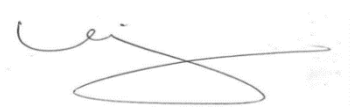
On behalf of the State Ethics Commission, I am pleased to offer the third annual report of the Commission's activities. Under statute, the State Ethics Commission shall "submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor."

In 2022, the Commission made progress in achieving its extensive constitutional and statutory mandates. The Commission:

- handled \_\_\_ administrative complaints newly filed in 2022;
- issued 10 formal advisory opinions and several informal letter opinions;
- filed a civil action to enforce disclosures required by the Campaign Reporting Act against an out-of-state organization making independent expenditures;
- enforced the "revolving door" provisions of the Governmental Conduct Act through a civil action and resulting settlement requiring defendants to pay \$13,000 to the State of New Mexico; and
- provided continuing legal education and ethics trainings to audiences around the state.

On behalf of the Commissioners, I want to thank the New Mexico Legislature and the Governor for their continued support of the Commission. Public trust takes years of work by each branch of government to build and preserve and can be too easily lost. Like those New Mexicans who worked over 40 years for the Commission's creation, we believe that the State Ethics Commission plays a central part in ensuring ethical and accountable government in New Mexico.

Respectfully,



Hon. William F. Lang (Ret.) Chair, New Mexico State Ethics Commission, on behalf of State Ethics Commissioners Jeffrey L. Baker, Stuart M. Bluestone, Hon. Garrey Carruthers, Hon. Celia Foy Castillo (Ret.), Ronald Solimon, and Judy Villanueva.



## COMMISSION MEMBERS

**Hon. William F. Lang, Chair**

Appointing authority: Governor Michelle Lujan Grisham

Term expires: June 30, 2026

**Jeffrey L. Baker, Member**

Appointing authority: Legislatively appointed Commissioners

Term expires: August 10, 2024

**Stuart M. Bluestone, Member**

Appointing authority: Speaker of the House, Brian Egolf

Term expires: June 30, 2023

**Hon. Garrey Carruthers, Member**

Appointing authority: Minority Floor Leader of the Senate, Stuart Ingle

Term expires: June 30, 2023

**Hon. Celia Foy Castillo, Member**

Appointing authority: President Pro Tempore of the Senate, Mimi Stewart

Term expires: June 30, 2025

**Ronald Solimon, Member**

Appointing authority: Legislatively appointed Commissioners

Term expires: August 10, 2024

**Dr. Judy Villanueva, Member**

Appointing authority: Minority Floor Leader of the House, James Townsend

Term expires: June 30, 2025

## HISTORY OF THE STATE ETHICS COMMISSION

The Commission is the product of over 40 years of work by Governors, state legislators, advocacy organizations, and other New Mexicans fighting for accountable government.

In 2017, the Legislature passed a joint resolution to amend the New Mexico Constitution to create an independent ethics commission. The House of Representatives unanimously passed this joint resolution (66-O), and the Senate passed it on a vote of 30-9. The legislation gave the New Mexico electorate the final decision on whether to create an independent ethics commission. In November 2018, over 75% of New Mexican voters voting on the ballot question elected to amend the Constitution to add Article V, Section 17, creating an independent and bipartisan ethics commission. With this election, New Mexico became the 45th state to create an independent ethics commission.

The New Mexico Constitution provides for the Commission's seven-member composition and directs the process for the appointment of the Commissioners. N.M. Const. Art. V, § 17(A). It also empowers the Commission to adjudicate alleged violations of, and issue advisory opinions regarding, ethical standards and reporting requirements for "state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts" and for such other jurisdiction as provided by law. N.M. Const. Art. V, § 17(B). Finally, the state Constitution empowers the Commission with subpoena powers, as provided by law, and enables the Commission to "have such other powers and duties and administer or enforce such other acts as further provided by law." N.M. Const. Art. V, § 17(C).

In the 2019 legislative session, the Legislature unanimously enacted enabling legislation, Senate Bill 668 (Laws 2019), which created the State Ethics Commission Act, providing for additional structure for the Commission and delegating to the Commission a specific set of powers. Senate Bill 668 also amended the Governmental Conduct Act, the Procurement Code, the Campaign Reporting Act, the Lobbyist Regulation Act, the Voter Action Act, the Financial Disclosure Act, and the Gift Act, delegating additional adjudicatory and civil enforcement powers to the Commission. Governor Michelle Lujan Grisham signed Senate Bill 668 into law on March 28, 2019.

The organizational provisions of the State Ethics Commission Act took effect on July 1, 2019, and the statute's jurisdictional and enforcement provisions took effect on January 1, 2020.

# ORGANIZATION

## Commissioners

The State Ethics Commission is comprised of seven commissioners. The State Ethics Commission Act sets forth a procedure for appointing commissioners that ensures a bi-partisan independent commission.

The Commission has a unique appointment process. The Speaker of the House of Representatives, the Minority Floor Leader of the House, the President Pro Tempore of the Senate, and the Minority Floor Leader of the Senate each appoint one Commissioner. The four legislatively appointed Commissioners then appoint two additional Commissioners. Finally, the Governor appoints the Commission's Chair, who must be a retired judge. No more than three Commissioners may be members of the same political party. Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms.

There are also statutory requirements regarding who may serve as a Commissioner. To qualify, a person must be a New Mexico voter; not have changed party registration in the five years preceding appointment; and not have been in the two years preceding appointment a public official, a public employee, a candidate, a lobbyist, a government contractor, or an office holder in a political party at the federal or state level.

## Commission Staff

The administrative, advisory, investigative, and enforcement functions of the Commission are performed by the agency's staff. The State Ethics Commission Act creates two staff positions: the Executive Director and General Counsel. The Commission hires the Director, and the Director hires the General Counsel and all other staff. Each statutorily created office is subject to limited terms. Under the Act, the Director may serve for, at most, two six-year terms; the General Counsel may serve for, at most, two five-year terms. The Commission's current staff members are as follows:

### **Executive Director | Jeremy D. Farris**

Jeremy D. Farris is the State Ethics Commission's founding Executive Director. He previously served as General Counsel to New Mexico's Department of Finance and Administration and practiced law at Bondurant, Mixson & Elmore in Atlanta, Georgia and Freedman Boyd Hollander & Goldberg in Albuquerque, New Mexico. Jeremy clerked for the Honorable Julia S. Gibbons on the United States Court of Appeals for the Sixth Circuit; the Honorable Judith K. Nakamura on the New Mexico Supreme Court; and the Honorable James O. Browning on the United States District Court for the District of New Mexico. He holds a law degree from Harvard Law School, a doctorate and master's degree from the University of Oxford, where he was a Rhodes Scholar, and a Bachelor of Science from the Georgia Institute of Technology.

### **General Counsel | Walker Boyd**

Walker Boyd is the first State Ethics Commission General Counsel. He previously practiced law at Peifer, Hanson and Mullins, P.A., and clerked for the Honorable James A. Parker on the United States District Court for the District of New Mexico and the Honorable J.



Miles Hanisee on the New Mexico Court of Appeals. He holds a law degree from the University of New Mexico, where he served as Editor in Chief of the New Mexico Law Review.

#### **Special Counsel | Caroline “KC” Manierre**

KC serves as special counsel to the State Ethics Commission. She previously practiced law at Rothstein Donatelli LLP, and prior to that served as an Assistant Attorney General at the Office of the New Mexico Attorney General. She holds a law degree from the University of New Mexico, and a Bachelor of Arts in International Studies and Spanish from the University of Denver.

#### **Deputy General Counsel | Rebecca Branch**

Rebecca Branch serves as the State Ethics Commission’s Deputy General Counsel. She previously served as Deputy Director of Litigation and Deputy Director of Consumer Protection at the Office of the New Mexico Attorney General. She also was with the Office of the Superintendent of Insurance as Legal Counsel. Rebecca began her legal career at the Branch Law Firm. She holds a law degree from University of Denver, Sturm School of Law and a Bachelor of Arts in History from Alfred University.

#### **Deputy General Counsel | Jessica Randall**

Jessica Randall serves as the State Ethics Commission’s Deputy General Counsel. She was previously an Assistant County Attorney for the County of Bernalillo, working on a wide variety of municipal law issues. Before that, she served as a prosecutor in the Eleventh, Thirteenth, and Second Judicial Districts, where she tried dozens of cases before a jury. She holds a law degree from the University of New Mexico School of Law and received her Bachelor of Arts from the University of Vermont, where she majored in English and Philosophy.

#### **Finance and Administration Director | Wendy George**

Wendy George serves as the State Ethics Commission Director of Finance and Administration. She previously served as Budget Manager to New Mexico’s Department of Finance and Administration and has many years of governmental financial experience. She also has corporate financial and compliance experience working for Wells Fargo and Ameriprise Financial in Minneapolis, MN. She holds a Bachelor’s of Science in Business Management from Cardinal Stritch University.

#### **Communications and Administrative Manager | Suha Musa**

Suha serves as the State Ethics Commission’s Communications and Administrative Manager, and is the Custodian of Public Records. A recent graduate, she has previously worked with the International Institute of Minnesota as an Immigration Services intern to assist new Americans, along with working as the Associated Students of the University of New Mexico as the Executive Director of Governmental Affairs. She holds a Bachelors of Arts in International Studies and Political Science from the University of New Mexico.

#### **Contract Paralegal | Shariesse McCannon**

Shariesse is the Commission’s contract paralegal, supporting the litigation and investigatory work of the Commission’s attorney staff. Before working with the Commission, Shariesse served as a paralegal with the Judicial Standards Commission and the Branch Law Firm.

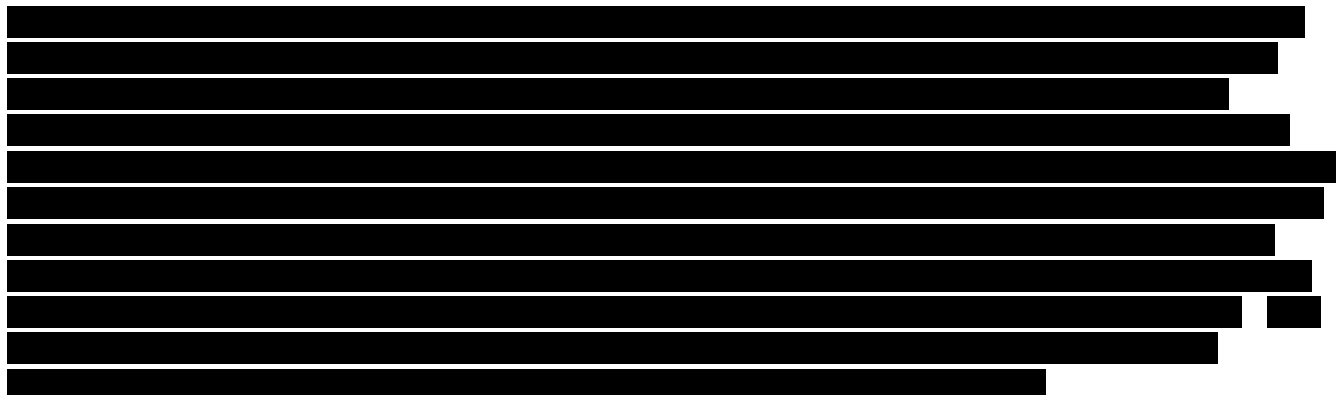
**Legal Summer Clerks | Xaveria Mayerhofer & Miguel Quintana**

During the summer of 2022, the Commission invited two law students from the University of New Mexico School of Law to participate in Commission's work. Xaveria Mayerhofer and Miguel Quintana (currently in their 2L year) performed various legal research and drafting projects. They attended both depositions and Commission meetings. The Commission is committed to working with the University of New Mexico School of Law to introduce successive classes of UNM Law students to the Commission's legal work through summer clerkships.

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## FISCAL REPORT

The following chart reflects revenues, expenditures, and changes in net position for the fiscal year ending June 30, 2022.



## OPERATIONS

The Commission has five main functions: (i) investigation and adjudication of administrative complaints filed with the Commission; (ii) issuance of advisory opinions and advisory letters upon request; (iii) civil enforcement of New Mexico's ethics and disclosure laws in state court; (iv) issuance of a model code of ethics for state agencies and the provision of ethics and governmental conduct trainings for legislators, state agencies, and local public bodies; and (v) recommendations for statutory amendments to improve New Mexico's ethics and disclosure laws. Below is a profile of the Commission's progress in 2022 year across these functions and a report of the Commission's workload.

### Administrative Complaints

#### *Adjudication of Administrative Complaints*

The Commission's adjudication of administrative complaints alleging ethics violations is divided across four roles. The Executive Director (or his designee) determines jurisdiction. The General Counsel (or his designee) determines whether the allegations of a complaint are supported by probable cause. In administrative matters where the General Counsel determines a complaint is supported by probable cause, a hearing officer then holds a hearing and issues findings of fact and conclusions of law. The Commission sits as an appellate body, reviewing hearing officer determinations if and when appealed. The Commission currently has a Memorandum of Understanding with the Administrative Hearings Office for hearing officer services. The Commission also has a professional services contract with the Honorable Alan C. Torgerson, retired federal Magistrate Judge for the United States District Court for the District of New Mexico, for hearing officer services.

The Commission's adjudication of administrative complaints is controlled by the provisions of the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended 2021), and the Commission's rules of procedure for administrative cases, promulgated at 1.8.3 NMAC. The Commission has also established and maintains its [Proceedings Portal](#), a web-based case management and docketing system where parties and their attorneys may submit and view filings on the docket. To review the Commission's rules of administrative procedure, click [here](#). To review the Commission's rulemaking record for 1.8.3 NMAC, click [here](#).

#### *Developments in 2022: the Revised Uniform Law on Notarial Acts*

2022 saw one significant development in the law regarding the Commission's adjudication of administrative complaints. Under Section 14-14A-22 of the Revised Uniform Law on Notarial Acts, NMSA 1978, §§ 14-14A-1 to -32 (2021, as amended through 2022), the Commission "may deny, refuse to renew, revoke, suspend or impose a condition as notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public . . . ." To administer this authority, the Commission receives, investigates and prosecutes complaints filed by third parties alleging violations of the laws governing notaries public. The Commission issued [Resolution 2022-01](#), which governs how the Commission and its staff conduct administrative matters regarding notaries public. If the Commission takes an adverse action on a notary public's commission, the Secretary of State publishes that adverse action on the publicly available database of notaries public.

### ***The Commission's administrative ethics caseload***

Below is a profile of the Commission's caseload for administrative complaints alleging ethics violations in 2022, presented by quarter.

<b>Q1 (January – March)</b> <b>Rolled Over From 2021-Q4: 19</b> <b>New Filed in 2022-Q1: 9</b> <b>Closed in 2022-Q1: 12</b>	<b><u>Complaints filed in Q1</u></b> Governmental Conduct Act: 7 Campaign Reporting Act: 4 Financial Disclosure Act: 3 Lobbyist Regulation Act: 1 State Ethics Commission Act: 1 Gift Act: 1 Other: 1
<b>Q2 (April – June)</b> <b>Rolled Over From 2022-Q1: 16</b> <b>New Filed in 2022-Q2: 14</b> <b>Closed in 2022-Q2: 15</b>	<b><u>Complaints filed in Q2</u></b> Governmental Conduct Act: 9 Campaign Reporting Act: 10 Lobbyist Regulation Act: 1 State Ethics Commission Act: 4 Other: 2
<b>Q3 (July – September)</b> <b>Rolled Over from 2022-Q2: 13</b> <b>New Filed in 2022-Q3: 14</b> <b>Closed in 2022-Q3: 5</b>	<b><u>Complaints filed in Q3</u></b> Governmental Conduct Act: 7 Campaign Reporting Act: 4 Lobbyist Regulation Act: 0 State Ethics Commission Act: 6 Other: 2
<b>Q4 (October – December 20)</b> <b>Rolled Over from 2022-Q3:</b> <b>New Filed in 2022-Q4:</b> <b>Closed in 2022-Q4:</b>	<b><u>Complaints filed in Q4</u></b> Governmental Conduct Act: 6 Campaign Reporting Act: 10 Procurement Code: 2
<b>2022 Cumulative Case Data</b> <b>Total Rolled Over from 2021:</b> <b>Total Filed in 2022:</b> <b>Total Closed in 2022: 23</b> <b>Total Pending on Dec. 21, 2022: 19</b>	

### ***The Commission's RULONA caseload***

Below is a profile of the Commission's caseload for administrative complaints filed against notaries public in 2022, presented annually.

<b>Complaints filed in 2022: 21</b> <b>Cases closed in 2022: 9</b> <b>Cases rolled over to 2023: 12</b>	<b><u>Dispositions</u></b> Dismissals: <b>X</b> Settlements: <b>Y</b> Suspensions of commission as notary public: <b>Z</b> Revocations of commission as notary public: <b>N</b>
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## ADVISORY OPINIONS

The State Ethics Commission may issue advisory opinions requested in writing by “a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer.” NMSA 1978, § 10-16G-8(A)(1). Under the State Ethics Commission Act, requests for advisory opinions are confidential and not subject to disclosure under the Inspection of Public Records Act. Additionally, advisory opinions are binding on the Commission in any subsequent administrative proceeding concerning a person who acted in good faith and in reasonable reliance on an advisory opinion.

The Commission has adopted two special rules regarding advisory opinions. First, the Commission allows persons subject to the Governmental Conduct Act to submit a request for an informal advisory letter to the Director or General Counsel. Such requests are also confidential, but informal advisory letters are not binding on the Commission unless and until the Commission votes to adopt the informal advisory letter as an advisory opinion. Second, the Commission allows any Commissioner to request that any legal determination made in a confidential administrative proceeding be converted into an advisory opinion.

The New Mexico Compilation Commission publishes all of the Commission’s advisory opinions on NMOneSource.com, the free, online public access to the master database of official state laws.

Below is a profile of the advisory opinions the Commission issued in 2022.

### GOVERNMENTAL CONDUCT ACT

#### **Advisory Opinion 2022-01 (Feb. 4, 2022)**

Question: A Member of the House of Representatives is contracted to do project work through his local Soil and Water Conservation District. The project is funded with federal funds and is located on federal land. As a Member of the House of Representatives, he has no voice in determining project funding or other project details. Yet, the Member would like to be certain that no conflict of interest exists in regards to his position as a member of the House of Representatives. Please provide your opinion on this matter.

Conclusion: Subsection 10-16-9(A) of the Governmental Conduct Act applies to the award of any contract between a Soil and Water Conservation District (“SWCD”) and a Member of the House of Representatives. Under that statute, to receive the contract, (i) the Member must disclose his interest in the contract to the SWCD; and (ii) the SWCD must award the contract following the Procurement Code, without resorting to the Procurement Code provisions allowing for the award of sole-source or small-purchase contracts. If the Member happens to also be a supervisor on the SWCD, then he must also recuse from any decision the supervisors take on the award of the contract. [Read the full opinion.](#)

#### **Advisory Opinion 2022-03 (April 1, 2022)**

Question 1: A Member of the House of Representatives has a son who is a fencing and welding contractor. Can the son legally bid on state projects like right-of-way fences for the Department of Transportation or other state projects?

Question 2: The son of the spouse of the Member is a building contractor who holds a GB-98 license and a degree in engineering. Can the son bid on state funded jobs that are offered by schools, cities, villages, state agencies, et al.?

Conclusion 1: Yes.

Conclusion 2: Yes. [Read the full opinion.](#)

#### **Advisory Opinion 2022-06 (June 10, 2022)**

Question 1: During legislative sessions, are there any limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?

Question 2: Outside of legislative sessions, are there limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?

Question 3: Are there limitations on communications between a legislator and the board members or employees of an entity that either contracts with or employs the legislator?

Conclusion: No, to each question. [Read the full opinion.](#)

#### **Advisory Opinion 2022-09 (Aug. 5, 2022)**

Question: An individual serves as an appointed officer of a public post-secondary educational institution. The individual's spouse is an employee of the institution. May the officer participate in the review and approval of a contract that will increase the wages paid to the officer's spouse?

Conclusion: No. [Read the full opinion.](#)

#### **Advisory Opinion 2022-10 (Dec. 9, 2022)**

Question 1: An individual served as a deputy secretary of a state agency. After leaving the agency, may the individual work on a contractual basis for a healthcare corporation during the year after the individual separated from the state agency?

Question 2: After the one-year separation period may this individual join the healthcare corporation as an employee?

Conclusion: Yes, to both questions. [Read the full opinion.](#)

### **CAMPAIGN REPORTING ACT**

#### **Advisory Opinion 2022-02 (Feb. 4, 2022)**

Question 1: A candidate sought a municipal, school district, or special district elected office, and the candidate received contributions to support the candidate's election to that office. Does the Campaign Reporting Act, NMSA 1978, Sections 1-19-1 to -37 (1979, as amended through 2021), prohibit the candidate from retaining and using those contributions to support the candidate's subsequent campaign for an office covered by the CRA?

Question 2: A municipal judge intends to run for county office in 2022 and seeks to transfer contributions received as a candidate for judicial office to a newly-formed campaign committee that supports his candidacy for county office. Does the CRA prohibit the transfer?



Conclusion 1: No.

Conclusion 2: Yes. [Read the full opinion.](#)

#### **Advisory Opinion 2022-05 (April 1, 2022)**

Question 1: May New Mexico political committees that make contributions to candidates, officeholders, and candidates solicit unlimited contributions from allowable persons on behalf of political committees that make only independent expenditures?

Question 2: If the answer to question 1 is yes, may candidates and officeholders solicit unlimited contributions from allowable persons for an independent expenditure committee that will make expenditures to support the candidate or officeholder who is soliciting funds on the committee's behalf?

Conclusion 1: Yes.

Conclusion 2: No. [Read the full opinion.](#)

#### **Advisory Opinion 2022-08 (Aug. 5, 2022)**

Question: May a political committee make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question?

Conclusion: Yes. [Read the full opinion.](#)

### **ANTI-DONATION CLAUSE**

#### **Advisory Opinion 2022-04 (April 1, 2022)**

Question: The Taos County Cooperative Weed Management Area ("Taos CWMA") has applied for a \$19,949 grant from the Forestry Division of the New Mexico Energy, Minerals and Natural Resources Department to address noxious weeds on forest-adjacent land located in Taos County and owned by Southern Methodist University. The Taos Chapter of the Native Plant Society of New Mexico ("Taos NPSNM"), a 501(c)(3) organization, is one of the members of the Taos CWMA and has agreed to be the fiscal sponsor for the project. If the Forestry Division grants the funds, the Taos CWMA members (which include several governmental entities) and the Southern Methodist University will provide matching in-kind contributions valued at \$19,949. Under the match, the Southern Methodist University will provide all of the labor to complete the project. The Forestry Division "has indicated that the proposal has been approved, but they are concerned that this project might in some way violate NM's anti-donation law." The request asks the Commission's attorney staff to provide an opinion.

Conclusion: Under the Anti-Donation Clause, whether the Forestry Division may grant \$19,949 to the Taos NPSNM, a 501(c)(3) organization, depends on whether the State receives valuable consideration in exchange for the granted funds. [Read the full opinion.](#)



## PROCUREMENT CODE

### **Advisory Opinion 2022-07 (Aug. 5, 2022)**

Question: At the May 16, 2022, Albuquerque City Council meeting, the Council passed Floor Amendment No. 13 to the City's operating budget bill. According to an "explanation" contained in the amendment and to an official press release, the amendment added "\$250,000 for a Council directed sponsorship to Planned Parenthood of New Mexico." The operating budget bill was passed and then signed by Mayor Tim Keller. The questions presented to the State Ethics Commission are:  
(1) Does the 'Council-directed sponsorship to Planned Parenthood of New Mexico,' a private corporation, violate Article IX, Section 14 of the Constitution?  
(2) Does the 'Council-directed sponsorship to Planned Parenthood of New Mexico' violate the Procurement Code?

Conclusion: No, to each question. [Read the full opinion.](#)

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## CIVIL ENFORCEMENT & LITIGATED MATTERS

In addition to its quasi-judicial power to adjudicate administrative matters and issue advisory opinions, the Commission also has a discretionary executive power to pursue civil enforcement actions in state court to remedy violations of New Mexico's ethics laws. Under State Ethics Commission Resolution 2020-04, when the Commission receives referrals from other state agencies such as the Office of the State Auditor, the Office of the Attorney General, or the Office of the Secretary of State, or receives allegations from others, the Commission reviews and assess those matters to determine whether to proceed with a civil enforcement action. In 2022, the Commission was involved in the following litigated or civil enforcement matters:

### (1) Litigated matters

#### **(a) *State Ethics Commission v. Gabriel Vargas & Double Eagle Real Estate LLC*, D-202-CV-2021-06201.**

On October 27, 2021, the Commission filed a civil complaint in the Second Judicial District Court against Gabriel Vargas, a former commercial appraiser in the Sandoval County Assessor's Office, and Double Eagle Real Estate LLC, doing business as Double Eagle Property Tax Consultants, to enforce the revolving-door provisions of the Governmental Conduct Act, Sections 10-16-8(B) and 10-16-8(D), NMSA 1978 (2011).

The Commission's lawsuit alleged that from 2012 to August 30, 2019, Mr. Vargas was a commercial appraiser with the Sandoval County Assessor's Office. During this time, Mr. Vargas was personally and substantially involved in assessing the valuations of hundreds of commercial properties in Sandoval County, including annual valuations of Presbyterian Healthcare Services' Rust Medical Center. On January 1, 2019, using the cost-based method Mr. Vargas had applied in prior tax years, the Sandoval County Assessor's Office assessed the taxable value of Rust Medical Center at \$22,290,864. Double Eagle, on behalf of Presbyterian, protested that valuation. In August 2019, after discussions with Double Eagle's owner, Scott Clark, Mr. Vargas negotiated and settled the total taxable value of Rust Medical Center at \$14,103,498.

In the spring of 2020, Mr. Vargas joined Double Eagle. Within one year of leaving the Sandoval County Assessor's Office and working as a Double Eagle employee, Mr. Vargas represented tax protestants before the Sandoval County Assessor's Office. Furthermore, shortly after Mr. Vargas joined Double Eagle, Double Eagle, assisted by Mr. Vargas, represented Presbyterian Healthcare Services in its protest of Sandoval County's 2020 valuation of Rust Medical Center. In the protest, Double Eagle represented that the value of Rust Medical Center was \$7,051,749—less than a third of the \$22,290,864 that the Sandoval County Assessor's Office, had originally assessed for 2019. After learning of Mr. Vargas's involvement in numerous 2020 tax protests, the Sandoval County Attorney sent a cease-and-desist letter to Double Eagle and Mr. Clark, apprising Double Eagle of the prohibitions that Section 10-16-8 imposes on former government employees.

On September 1, 2020, Mr. Vargas and Mr. Clark represented Presbyterian Healthcare Services before the Sandoval County Valuations Protest Board, despite Mr. Vargas's participation in the valuation of Rust Medical Center and despite the Sandoval County Attorney's cease-and-desist letter. Mr. Clark directed Mr. Vargas to represent Presbyterian and controlled the manner that Mr. Vargas conducted that representation. In exchange for services related to the protest of the

2020 valuation of Rust Medical Center, including Mr. Vargas's unlawful representation, Presbyterian Healthcare Services paid Double Eagle approximately \$13,000.

On October 1, 2021, the State Ethics Commission authorized a civil action to remedy violations of the Governmental Conduct Act's revolving door provisions. Through its suit, the Commission sought civil fines, injunctive relief, corporate vicarious liability as to Double Eagle, and equitable relief requiring Double Eagle to disgorge the fee that Presbyterian Healthcare Services paid Double Eagle.

This lawsuit involved extensive motion practice and discovery. On November 18, 2022, after a mediation conducted by Michael Cadigan, the State Ethics Commission and Mr. Vargas and Double Eagle agreed to settle the matter. Mr. Vargas and Double Eagle agreed to pay \$13,000.00 in exchange for the State Ethics Commission's stipulated dismissal of its enforcement action.

[Read \(1\) the Commission's press release related to this civil enforcement action; \(2\) the Commission's complaint; and \(3\) the Commission's press releases related to the settlement.](#)

**(b) *In re: State Ethics Commission petition for issuance of subpoena duces tecum pursuant to NMSA 1978, § 10-16G-10(J)*** (Nos. D-307-ET-2020-01, Nos. A-1-CA-39403, A-1-CA-39841, A-1-CA-39959, S-1-SC-38929).

Following the General Counsel's investigation of an administrative complaint filed against Representative Rebecca Dow, the Commission petitioned the District Court for a subpoena to require Representative Dow to sit for a deposition. After the District Court granted the Commission's petition, Representative Dow moved to quash the Commission's subpoena. The District Court denied that motion and granted the Commission's motion to compel. After Representative Dow refused to comply with the District Court's order, the Commission moved for and was awarded sanctions. Representative Dow noticed five appeals in the Court of Appeals and petitioned the Supreme Court for writs of prohibition and superintending control and requested an emergency stay. The Commission filed a response. The Supreme Court denied Representative Dow's petition, and Representative Dow then stipulated to a dismissal of four of the five appeals. After Representative Dow entered a settlement agreement with the Commission's General Counsel, and after the Commission approved that settlement, Representative Dow stipulated to a dismissal of her remaining appeal. The Supreme Court and the Court of Appeals issued orders unsealing the appellate proceedings. On August 16, 2022, the Court of Appeals entered a final order of dismissal of Representative Dow's appeal.

[Read the Commission's Consolidated Response to Dow's Verified Petition for Writ of Prohibition or Writ of Superintending Control and Dow's Request for Emergency Stay, \*Dow v. Martin, et al.\*, No. S-1-SC-38928 \(N.M. Sup. Ct. Aug. 6, 2021\).](#)

**(c) *State Ethics Commission v. Working Families Organization, Inc.***, D-506-CV-2022-00942

On November 2, 2022 the State Ethics Commission filed a lawsuit against the Working Families Organization, Inc. ("WFO") to enforce the disclosure provisions of the Campaign Reporting Act. As alleged in the complaint, WFO spent thousands of dollars on text message advertising campaigns seeking to influence the outcome of a New Mexico ballot question regarding the Permanent School Fund. The text message advertisements lacked required

disclosures as to the identity of the persons who paid for and authorized the advertisements, and WFO refused to comply with the Campaign Reporting Act's registration and disclosure obligations for advertising expenditures.

In 2019, the Legislature amended the Campaign Reporting Act to shine light on "dark money" in New Mexico's elections, requiring groups that pay for advertisements or advocacy in support of candidates to be minimally transparent about who funded those efforts. The Campaign Reporting Act allows New Mexicans to know who funds efforts to influence their votes, and groups, like WFO, must tell them.

The litigation is ongoing.

[Read the Commission's complaint.](#)

**(d) *New Mexico Families Forward v. State Ethics Commission*, D-202-CV-2022-06262**

In relation to an administrative case, New Mexico Families Forward sought a writ of mandamus to prohibit the Commission from exercise its jurisdiction to adjudicate an administrative complaint alleging a violation of the Lobbyist Regulation Act. The Court issued an alternative writ of mandamus and required the Commission to show cause why it should not dismiss an administrative complaint for lack of jurisdiction. The Commission filed a motion to quash the alternative writ of mandamus. The litigation is ongoing.

[Read the Commission's Motion to Quash Alternative Writ of Mandamus.](#)

**(2) Matters that the Commission settled pre-litigation**

**(a) *New Mexicans for Michelle*.** In response to an inquiry from the Commission's Executive Director, the candidate committee, New Mexicans for Michelle, paid a \$4,200 excess contribution to the public election fund. On October 1, 2021, the candidate committee received contributions from Intrepid Potash that exceeded the lawful limit on contribution amounts by \$4,200. On December 21, 2021, and January 19, 2022, Commission staff inquired into whether the candidate committee had refunded the contribution and asked that it be deposited in the public election fund, as required by the Campaign Reporting Act. On January 20, 2022, the candidate committee confirmed that it had sent a check for \$4,200 to the State of New Mexico, for deposit into the public election fund. The public election fund provides public financing for eligible candidates seeking election to appellate court and district court offices. Contribution limits and disclosure requirements are critical components of state laws that ensure free and fair elections, and enforcement of these laws is one of the Commission's core responsibilities.

[Read the January 19, 2022 letter from J. Farris, Executive Director, State Ethics Commission, to John Wertheim, Treasurer, New Mexicans for Michelle.](#)

**(b) *Georgene Louis*.** In response to a demand letter, Representative Georgene Louis paid a \$250 fine—the amount statutorily available for a violation of Section 10-16-3(A) of the Governmental Conduct Act—in exchange for the Commission's agreement not to file a civil enforcement action against her. On the night of February 13, 2022, a Santa Fe Police Department Sergeant stopped Representative Louis on Saint Francis Drive and subsequently

arrested her. After reviewing the lapel footage taken by the SFPD Sergeant, the State Ethics Commission concluded that Representative Louis violated the Governmental Conduct Act by referencing her legislative office and displaying her legislative license plate in an attempt to obtain favorable treatment from the SFPD Sergeant—either through a direct appeal for favorable treatment or by persuading the Sergeant that the cause of her behavior and appearance was fatigue from legislative service, not the effects of alcohol. On April 5, 2022, the Commission’s Executive Director made a settlement demand, offering Representative Louis the opportunity to pay the amount equivalent to the statutory fine (\$250), in exchange for the Commission refraining from filing a civil enforcement action in state court. On April 27, 2022, Representative Louis paid the amount equivalent to the statutory fine.

[Read the April 5, 2022 letter from J. Farris, Executive Director, State Ethics Commission, to Georgene Louis, State Representative, House District 26.](#)

**(c) *Mary Lou Kern.*** In response to a demand letter, Mary Lou Kern, the former county manager of Colfax County and newly elected Colfax county commissioner, paid a \$500 fine and signed an admission of liability in exchange for the Commission’s agreement not to file a civil enforcement action against her. Ms. Kern violated Subsections 10-16-8(B) and 10-16-8(D) of the Governmental Conduct Act by representing persons for pay before Colfax County within the year following her departure from employment as the Colfax County manager and by representing Roadrunner Health LLC before Colfax County on procurement matters in which she worked personally and substantially during her employment with Colfax County. On November 18, 2022, Ms. Kern agreed to pay \$500, the amount equivalent to the statutory fine for two violations of the Governmental Conduct Act’s revolving-door provisions and admit liability.

[Read the October 25, 2022 letter from C. Manierre, Special Counsel, State Ethics Commission to Mary Lou Kern](#)

### **(3) Financial Disclosure Act Compliance.**

On Monday, May 23, 2022, the Office of the Secretary of State, following its attempts to achieve voluntary compliance, referred 155 individuals who were out of compliance with the filing requirements required under the Financial Disclosure Act. On June 21, 2022, at the Commission’s direction, Executive Director Farris sent a letter to Governor Lujan Grisham, informing her that certain state agency heads and gubernatorially appointed members of boards and commissions had failed to file a 2022 financial disclosure statement. Following that letter, and through the collaborative work of the Office of the Governor, all of the individuals who the Office of the Secretary of State identified as non-compliant, and who the State Ethics Commission staff determined were subject to the Financial Disclosure Act, filed a 2022 financial disclosure statement.

[Read the June 21, 2022 Letter from J. Farris, Executive Director, State Ethics Commission to Governor Michelle Lujan Grisham.](#)



## TRAININGS

Under the Governmental Conduct Act, the State Ethics Commission shall advise and seek to educate all persons required to perform duties under the Governmental Act—that is, all legislators and all elected or appointed officials or employees of a state agency or a local government agency who receives compensation or per diem. Further, under the Governmental Conduct Act, the Commission has a biennial responsibility to develop and provide to all legislators a minimum of two hours of ethics continuing education. Similarly, under the State Ethics Commission Act, the Commission is authorized to offer annual ethics trainings to public officials, public employees, government contractors, lobbyists and other interested persons. The Commission has developed presentations that Commission staff can offer to government agencies around the state. Also, during 2022, Commission staff have offered several trainings regarding the ethics laws, as detailed below. For more information on the Commission’s presentations and trainings, visit: [www.sec.state.nm.us/transparency/](http://www.sec.state.nm.us/transparency/)

- **January 19, 2022** – Ethics Presentation to the New Mexico Association of Counties, County Attorneys (Director Farris and General Counsel Boyd).
- **January 22, 2022** – Ethics Presentation to the New Mexico Museum Board of Regents (Deputy General Counsel Branch)
- **January 25, 2022** – Ethics Presentation to the Department of Cultural Affairs (Deputy General Counsel Branch)
- **April 8, 2022** – Ethics Presentation to New Mexico Municipal League, Municipal Officials Leadership Institute (Director Farris)
- **April 19, 2022** – Ethics Presentation to UNM Law, Legislative and Administrative Process Class (General Counsel Boyd)
- **May 17, 2022** – Ethics Presentation to New Mexico Municipal League, Municipal Officials Leadership Institute (Director Farris)
- **May 19, 2022** – Ethics Presentation to New Mexico Association of Government Accountants (General Counsel Boyd)
- **August 11, 2022** – “State Constitutional Limitations to the Tax Power,” Revenue Stabilization and Tax Policy Committee Tax Summit (Director Farris)
- **August 23, 2022** – “Current efforts in New Mexico ethics law,” Capitol Counsel CLE (Director Farris)
- **August 24, 2022** – Ethics Presentation to the Opportunity Enterprise Review Board (Deputy General Counsel Branch)
- **August 25, 2022** – “Current efforts in New Mexico ethics law,” New Mexico Foundation for Open Government / Local News Fund’s Media Accelerator (Director Farris)
- **August 29, 2022** – “The three traditions of American jurisprudence,” University of New Mexico School of Law, Law Review (Director Farris)
- **August 30, 2022** – The Anti-Donation Clause, New Mexico Finance Authority Oversight Committee (Director Farris)
- **September 26, 2022** – The Anti-Donation Clause, Legislative Finance Committee Staff (Director Farris)
- **October 12, 2022** – Ethics Presentation to the Regulation and Licensing Department and Boards and Commissions under RLD’s purview (Deputy General Counsel Branch)
- **October 25, 2022** – Ethics Presentation to the Certified Forensic Examiners (Deputy General Counsel Branch)

- **October 26, 2022** – Ethics Presentation to the Regulation and Licensing Department and Boards and Commissions under RLD’s purview (Deputy General Counsel Branch)
- **November 9, 2022** – “Ethics Law for the staff of the Speaker of the House,” Speaker of the House Staff (Director Farris)
- **November 16, 2022** – Presentation to Department of Finance and Administration, Local Government Division, Annual Budget Conference (General Counsel Boyd and Director Farris)
- **November 16, 2022** – Ethics Presentation to the Regulation and Licensing Department and Boards and Commissions under RLD’s purview (Deputy General Counsel Branch)
- **November 30, 2022** -- Ethics Presentation to New Mexico Municipal League, Municipal Officials Leadership Institute (Director Farris)
- **December 1, 2022** -- Ethics Presentation to New Mexico Municipal League, Municipal Officials Leadership Institute (General Counsel Boyd)
- **December 1, 2022** – Panel discussion with Tripp Jennings, NM InDepth, Santa Fe Farmer’s Market Institute (Director Farris)
- **December 8, 2022** -- Ethics Presentation to the New Mexico Association of Counties, Better Informed Public Officials conference (Director Farris).
- **December 12, 2021** – Ethics Training for Legislators (Director Farris)

## LEGISLATIVE RECOMMENDATIONS

The Commission offers the following recommendations for the First Session of the Fifty-Sixth Legislature.

### **(1) Recommendations for Amendments to the Governmental Conduct Act**

The Commission recommends a set of amendments to the Governmental Conduct Act. As a consequence of the New Mexico Supreme Court's opinion in *State v. Gutierrez, et al.*, No. S-1-SC-38367, *consolidated with* No. S-1-SC-38283, as well as the Commission's experience in adjudicating and enforcing the Governmental Conduct Act over the past three years. The Commission has learned a great deal about the statute, including its several gaps and shortcomings. The Governmental Conduct Act needs amendment to make the statute clearer, fairer, and better able to achieve its purpose—namely, that individuals working in government in New Mexico use the powers and property of their government office only to benefit the public, and not to benefit themselves. Among other amendments, the Commission recommends: (i) a new purpose section; (ii) a reorganization of the main conduct-regulating, anti-corruption sections; (iii) the inclusion of certain provisions that follow the federal Hatch Act that specifically address what a government employee may not do with respect to engaging in political activity in connection with their government employment; (iv) a clarification that employers can be liable for their employees' revolving-door violations; and (v) amendments that make the civil penalty provision both fairer and more of a deterrent.

[Read the discussion draft of an act amending the Governmental Conduct Act; read the memorandum from J. Farris, Executive Director, State Ethics Commission, to L. Lopez, Senator, State Senate District 11 \(Nov. 10, 2022\), regarding amendments to the Governmental Conduct Act.](#)

### **(2) Recommendations for Amendments to the Campaign Reporting Act**

Over the past three years, the Commission has achieved an understanding of the gaps and loopholes in the Campaign Reporting Act that persons have relied on to avoid disclosure of the source of the funds used to pay for political advertisements. Based on these lessons, the Commission recommends a set of amendments to the Campaign Reporting Act related to disclosure of the sources of the funds for independent expenditures and to personal loans that candidates make their own campaign committees.

*First*, the Commission recommends closing current statutory gaps related (i) to attack ads that do not expressly refer to an election or contain an appeal to vote; and (ii) to expenditures on the eve of an election.

*Second*, the Commission recommends making clear that the Campaign Reporting Act disallows persons making independent or coordinated expenditures from concealing the



identity of contributors who contribute more than five thousand dollars (\$5,000) during an election cycle, where (i) the contributor requested in writing that that the contribution.<sup>1</sup>

*Third*, the Commission recommends amendments to require persons—including out-of-state groups—who make independent expenditures to disclose the source of significant funds (i.e., funds exceeding \$5,000) used to make independent expenditures, whether or not the donations or were made or received for the purpose of supporting a ballot question or candidate in a New Mexico election. If a person making independent expenditures uses funds to make independent expenditures related to elections subject to the Campaign Reporting Act, disclosure requirements should apply, no matter what was said or intended when the initial fundraising occurred.

*Fourth*, the Commission recommends a set of amendments that concern disclosure of personal loans that candidates make to their own political campaigns. The current practice in New Mexico is that candidate committees report the amount of the loan principal that candidates have loaned their campaigns, as well as any expenditures that candidate committees make to repay debts. These are significant disclosures, but they are not specific or demanding enough to deter the threat of corruption that can accompany loans that candidates to their campaign committees. The Campaign Reporting Act currently does not require disclosure of the terms of the loan, including any interest. Nor does the Act currently require that the campaign committee demonstrate evidence that a loan was actually made. Because the Campaign Reporting Act allows candidate committees to expend campaign contributions raised to repay loans, including personal loans that a candidate makes to their campaign, New Mexico needs additional safeguards to prevent candidates from converting campaign contributions into a personal source of income.

Accordingly, the Commission recommends amendments to the Campaign Reporting Act that (i) impose certain disclosure of loans that candidates make to their own political campaigns, including proof that the loan was made and the loan's terms; and (ii) constrain the rate of interest that a candidate can charge on a personal loan that they make to their own campaign.

[Read the discussion draft of an act amending the Campaign Reporting Act.](#)

### **(3) Recommendations for Amendments to the Procurement Code**

The Commission recommends a set of amendments to the Procurement Code related to chief procurement officers, the award of sole source contracts, and procurement under existing price-agreement contracts. In the Second Session of the Fifty-Sixth Legislature, Senator Tallman introduced Senate Bill 114 to amend the Procurement Code along these lines. That legislation had the endorsement of the Legislative Finance Committee. Since then, the commission's staff have provided the Legislative Finance Committee staff with additional analysis and proposals regarding this legislation.

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<sup>1</sup> The Commission's recommendations for amendment to the Campaign Reporting Act align with [Senate Bill 387](#) introduced by Senator Wirth in the First Session of the Fifty-Fifth Legislature. Senate Bill 387 passed the Senate on a vote 35 to 3 and was referred to the House Judiciary Committee, which gave the bill a "do pass" recommendation. The bill, however, was not voted on by the House of Representatives.

*First*, through the course of the Commission’s work, the Commission became aware that the State Purchasing Agent, at the request of other cabinet agencies, amended statewide price agreements, which were issued following an invitation to bid, to remove the caps and reporting requirements for procurements based on those statewide price agreements. In 2020, the Legislature imposed reporting requirements and reimposed caps on procurements issued under statewide price agreements, but only those agreements procured with a request for proposals. Because many significant statewide price agreements—including the statewide price agreement for general construction services—had been procured pursuant to an invitation to bid, the State Purchasing Agent (at the request of other cabinet agencies) amended the statewide price agreements to remove the caps and reporting requirements. As a result, any state agency or local public body may procure construction from a single vendor who is a party to the price agreement, at no limit, and with no duty to report to the Legislative Finance Committee or the General Services Department the amount of public funds committed to that single vendor. This result is an invitation to preferential procurement based on considerations other than the maximization of returns on the public’s dollar and, moreover, seems exactly opposite of what the Legislature hoped to achieve with Laws 2020, Chapter 66, Section 1, which amended Section 13-1-154.1 of the Procurement Code. Accordingly, the Commission recommends amendment to Section 13-1-154.1 to provide that all procurements under price agreements, irrespective of whether the price agreement is procured by a request for proposals or an invitation to bid, are subject to legislatively imposed caps and reporting requirements.

*Second*, the Commission recommends amendment to Section 13-1-198 of the Procurement Code, which imposes additional civil penalties for kickbacks. Currently, the section seems to address kickbacks between contractors and subcontractors, but not circumstances where a public official or public employee receives a kickback. Moreover, the Code does not expressly prohibit public officials or public employees from soliciting or receiving a kickback. Therefore, the Commission recommends amending Section 13-1-198 to allow for an additional civil penalty upon a showing that a contractor or subcontractor made a kickback to a public official or public employee. This amendment would make clear that the Code prohibits such kickbacks.

[Read the discussion draft of an act amending the Procurement Code.](#)

#### **(4) The Disclosure Act**

The Commission recommends the “Disclosure Act” as a replacement for the Financial Disclosure Act. Representatives McQueen, Garratt, and Townsend and Senator Tallman introduced this legislation as House Bill 149 in the Second Session of the Fifty-Sixth Legislature. As the American Law Institute has reported:

Disclosure by public servants of financial and other information is a key component of most government ethics systems. Disclosure reminds public servants of ethics principles, detects and deters conflicts of interests, facilitates enforcement of ethics rules, and promotes public confidence in government. Transparency is one of the most important principles underlying a representative

democracy, and ethics rules that enhance transparency not only improve the quality of government and the ethical commitments of public servants but also reinforce public confidence in government. Public confidence in government in turn is critical to the continued public support that is the ultimate foundation of our representative democracy.

American Law Institute, *Principles of Law: Government Ethics*, Tentative Draft No. 3, Ch. 6 (Disclosure), Introductory Note (April 9, 2021).

The current Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended 2021) seeks to balance the public interest in disclosure against public servants' privacy interests by giving public servants significant discretion in deciding whether to make a disclosure and what they must disclose. The Commission believes that this approach to disclosure is flawed in at least two respects:

*First*, the Financial Disclosure Act is vague and undemanding as to what must be disclosed. It requires public servants to disclose sources of gross income in excess of \$5,000, but does not require disclosure of the specific source of the income. Instead, a public servant need only disclose the "general category descriptions that disclose the nature of the income source . . . [in] broad categories." § 10-16A-3(D)(2) (2021). But requiring disclosure only of "broad category descriptions" does not suffice to alert the public of whether a public servant is subject to a financial conflict of interest. Take as an example a state legislator who receives income by selling pesticides to farms, and another state legislator who makes more than \$5,000 from the sale of organic produce. While legislation proposing a partial ban on the use of pesticides would have different effects on these financial interests, both legislators are required only to report income from "farming and ranching" on their financial disclosure statements. § 10-16A-3(D) (2021). As a result, the Financial Disclosure Act does not remind the disclosing senators of their potential obligations under the state's ethics laws, and the public is not able to determine what (if any) conflicts of interest might affect the legislators' votes.

*Second*, the Financial Disclosure Act contains significant omissions in several categories of reporting requirements—*e.g.*, the identification of specific sources of income, the identification of ownership assets, business-entity relationships, liabilities, membership and other positions in non-profit organizations, and gifts. Because Financial Disclosure Act omits these requirements, it does not do enough to inform the public whether officials in state government are engaged in self-dealing, are subject to conflicts of interest, and are in compliance with the duties that the Governmental Conduct Act and other statutes impose. In short, it is not a very effective disclosure law.

Over the past three years, the Commission and its staff have received input from organizations in New Mexico that have bemoaned the Financial Disclosure Act's shortcomings. The Commission staff have also carefully reviewed the American Law Institute's *Principles of Law: Government Ethics*, Tentative Draft No. 3 (April 9, 2021), which includes principles relating to disclosure in government. As a result, the Commission recommends a new statute—the Disclosure Act—to replace the current Financial Disclosure Act as a more comprehensive and more effective approach to disclosure in government.

[Read the "Disclosure Act," House Bill 149 \(55th Legis., 2nd Sess.\).](#)

## **(5) Recommendations for Amendments to the Lobbyist Regulation Act**

The Commission recommends the following amendments to the Lobbyist Regulation Act:

*First*, to slow the revolving door between government service and lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

A. A former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary shall not accept compensation as a lobbyist for a period of two calendar years after the conclusion of service as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.

B. A lobbyist's employer shall not compensate a former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary as a lobbyist for a period of two calendar years after the person served as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.

C. A person who violates a provision of this section is subject to a civil penalty of five thousand dollars (\$5,000) for each violation.

*Second*, to allow for transparency when the family member of a legislator is lobbying for a bill, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

A. A legislator shall, before voting on a bill, disclose that the legislator's family member is lobbying on a bill on which the legislator must vote.

B. As used in this section, "family member" means a spouse, daughter, son, parent or sibling.

*Third*, to increase transparency of lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

A lobbyist or lobbyist's employer that is required to file an expenditure report, pursuant to the provisions of Section 2-11-6 NMSA 1978, shall file two additional reports with the secretary of state indicating (i) what bills the lobbyist or lobbyist's employer is taking a position on; and (ii) whether the lobbyist or lobbyist's employer is supporting or opposing those bills, including the specific items in the bills that the lobbyist or lobbyist's employer is supporting or opposing. These additional reports are due to the secretary of state both one week after the start of the legislative session and one week after the bill introduction deadline.

The Commission's recommendations for amendment to the Lobbyist Regulation Act align, to some extent, with [Senate Bill 311](#) and [Senate Bill 314](#), introduced by Senator Steinborn in the First Session of the Fifty-Fifth Legislature. Those bills did not receive a committee hearing.

**(6) Recommendations for the State Ethics Commission Act following the Commission’s October 1, 2021 special report on jurisdiction**

On October 1, 2021, the Commission submitted the report on jurisdiction required by Laws 2019, Ch. 86, § 37(A). In its report, the Commission recommended two limited expansions of the Commission’s jurisdiction with respect to the Commission’s administrative proceedings: First, the Commission recommended expansion of its subject matter jurisdiction to include those provisions of the New Mexico Constitution that limit emoluments, extra compensation, and legislative interests in civil offices and in contracts—constitutional provisions that are at the center of the state’s ethics laws and naturally fall within the State Ethics Commission’s constitutional mandate and competence. Second, the Commission recommended expansion of its personal jurisdiction to include jurisdiction for public agencies, because personal jurisdiction for both entity and individual respondents would enable the Commission to issue remedies against state agencies and state instrumentalities that would remain effective even if the official or employee who is directly responsible for a violation separates from the agency or from state service altogether. To enact these recommendations, the Commission would support an amendment to NMSA 1978, Section 10-16G-9(A) as follows:

The commission has jurisdiction to enforce the applicable civil compliance provisions for public agencies, public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyist employers of:

- (1) the Campaign Reporting Act;
- (2) the Financial Disclosure Act;
- (3) the Gift Act;
- (4) the Lobbyist Regulation Act;
- (5) the Voter Action Act;
- (6) the Governmental Conduct Act;
- (7) the Procurement Code;
- (8) the State Ethics Commission Act;
- (9) the Revised Uniform Law on Notarial Acts; ~~and~~
- (10) Article 9, Section 14 of the constitution of New Mexico;
- (11) Article IV, Section 27 of the constitution of New Mexico;
- (12) Article IV, Section 28 of the constitution of New Mexico;
- (13) Article V, Section 12 of the constitution of New Mexico; and
- (14) Article XX, Section 9 of the constitution of New Mexico.

