

Ethics law for Members of the New Mexico Legislature

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State Ethics Commission

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Room 307, State Capitol

In satisfaction of NMSA 1978, § 10-16-11(E)





AGENDA

1. PRINCIPLES

Why we have government ethics laws and agencies

2. LAW

The main constitutional and statutory ethics laws that apply to Members

3. PROCEDURE

The State Ethics Commission administrative and advisory process

4. QUESTIONS

I will hang around after Mr. Quiner's presentation if any Member has specific questions.

The Public Trust Principle

The property, powers and prerogatives of government office belong to and are for the benefit of the public only, not the officials holding the office. *See* NMSA 1978, § 10-16-3(A).

The Disclosure Principles

- **Disclosure as deterrent:** Disclosure of who and what might influence an elected official allows constituents to check that the uses of government office are for the benefit of the public and not the official.
- **Democracy for realists:** Considering the democracy we have, disclosure is necessary for representation.

“This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” Citizens United v. Federal Election Commission (2010)

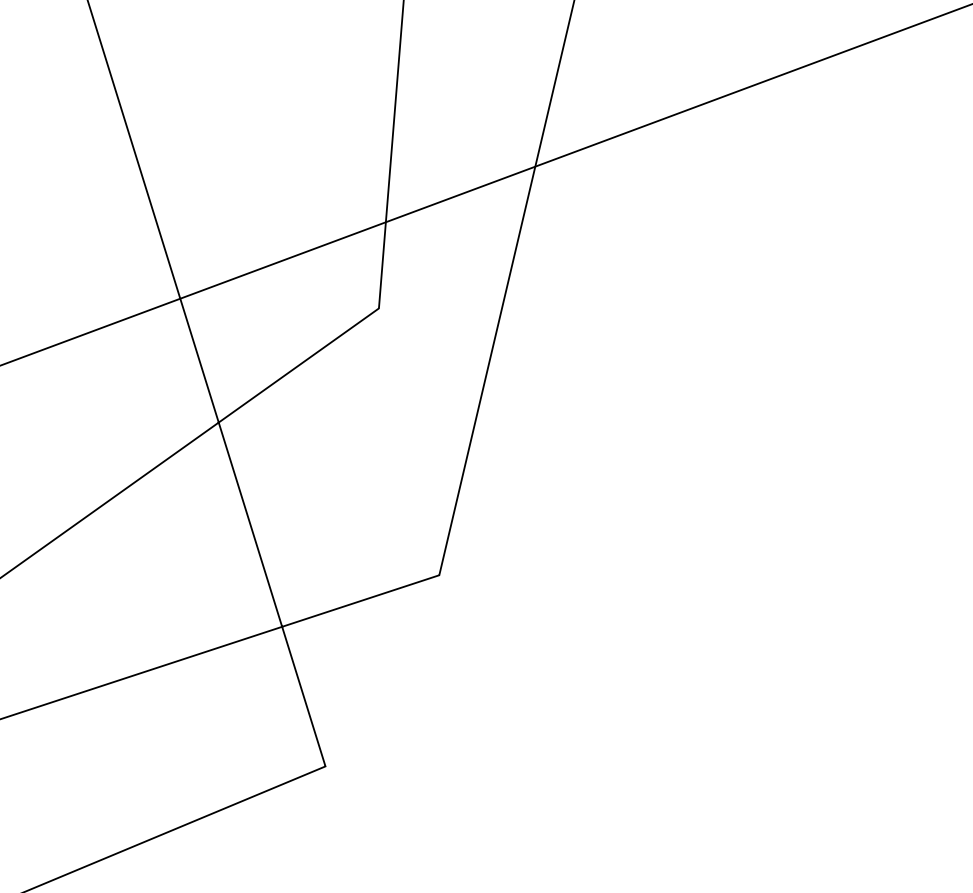
THESE PRINCIPLES ORGANIZE OUR LAW

Public trust principle

- Bribery & Solicitation Clause, N.M. Const., Art. IV, § 39
- Interest in Contracts Clause, N.M. Const., Art. IV, § 28
- Emoluments Clauses, N.M. Const., Art. IV, § 28; Art. X, § 1
- Anti-Donation Clause, N.M. Const., Art. IX, § 14
- Governmental Conduct Act
- Procurement Code
- Gift Act

Disclosure principles

- Financial Disclosure Act
- Campaign Reporting Act
- Lobbyist Regulation Act
- Governmental Conduct Act, §§ 10-16-3(C) & 10-16-4.2
- Procurement Code, § 13-1-191.1



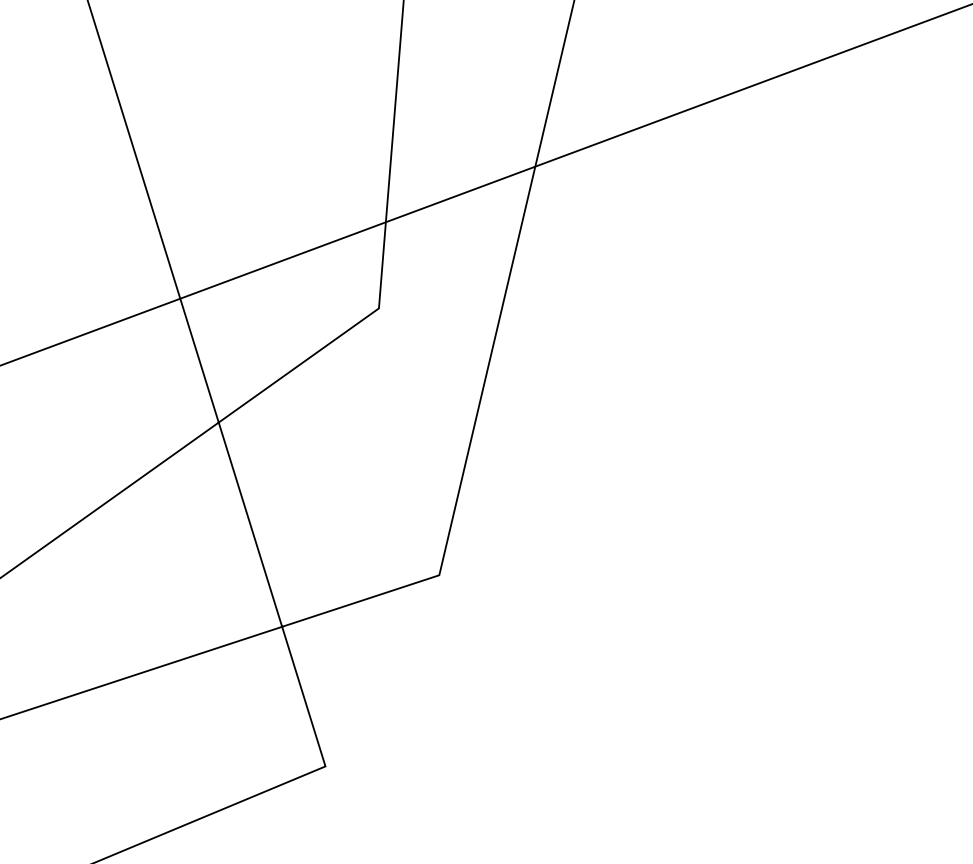
**ETHICS LAW FOR
MEMBERS:** (1) no
quid pro quo;

No quid pro quo

“Any member of the legislature who shall vote or use [their] influence for or against any matter pending in either house in consideration of any money, thing of value or promise thereof, shall be deemed guilty of bribery.” N.M. Const., Art. IV, § 39.

“[A]ny member of the legislature who shall solicit from any person or corporation any money, thing of value or personal advantage for his [or her] vote or influence as such member shall be deemed guilty of solicitation of bribery.” N.M. Const., Art. IV, § 39.

“No legislator . . . may request or receive, and no person may offer a legislator . . . , any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.” § 10-16-3(D).



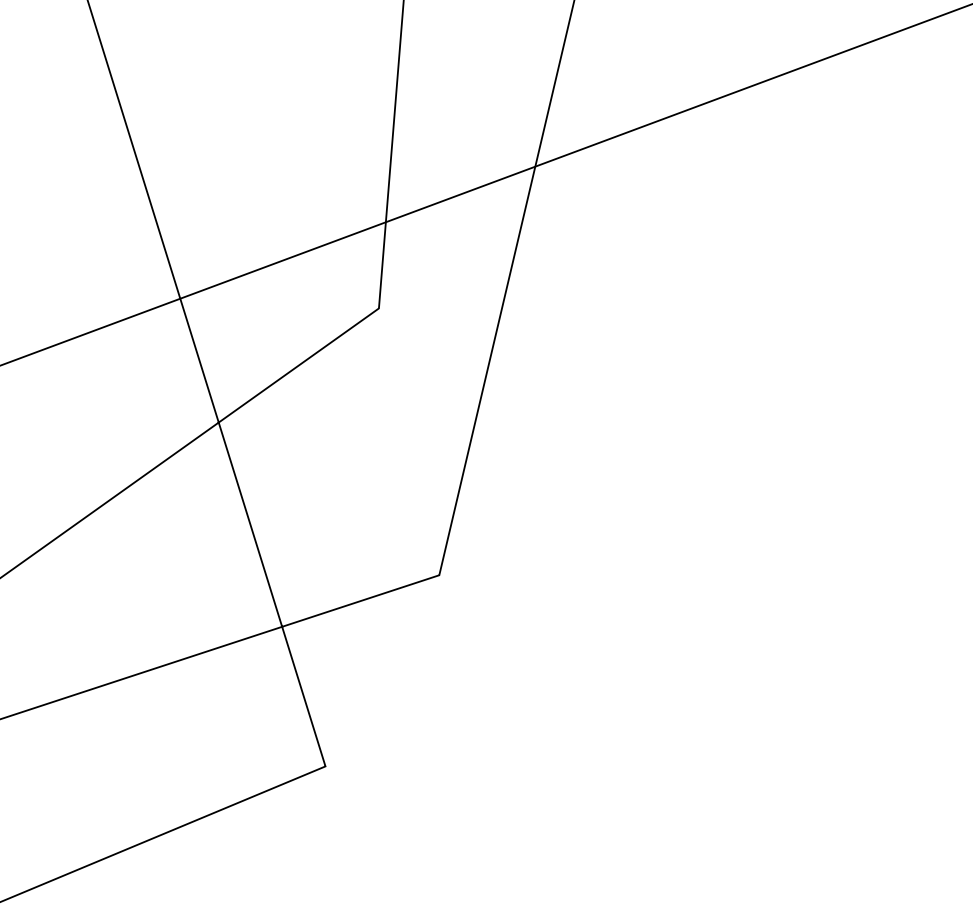
ETHICS LAW FOR MEMBERS: (2) contracting with the government;

Contracts with the government

“[N]or shall any member of the legislature during the term for which he [or she] was elected nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term.” N.M. Const., Art. IV, § 28.

“A state agency shall not enter into a contract . . . with a legislator, the legislator’s family or with a business in which the legislator or the legislator’s family has a substantial interest unless the legislator has disclosed the legislator’s substantial interests and unless the contract is awarded in accordance with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract.” § 10-16-9(A).

Erring on the side of caution: a state contract in which a Member has an interest should be awarded pursuant to sealed, competitive process and cannot have been authorized by a law enacted during the Member’s term.



**ETHICS LAW FOR
MEMBERS: (3)**
representations
before state agencies;

Representations before state agencies

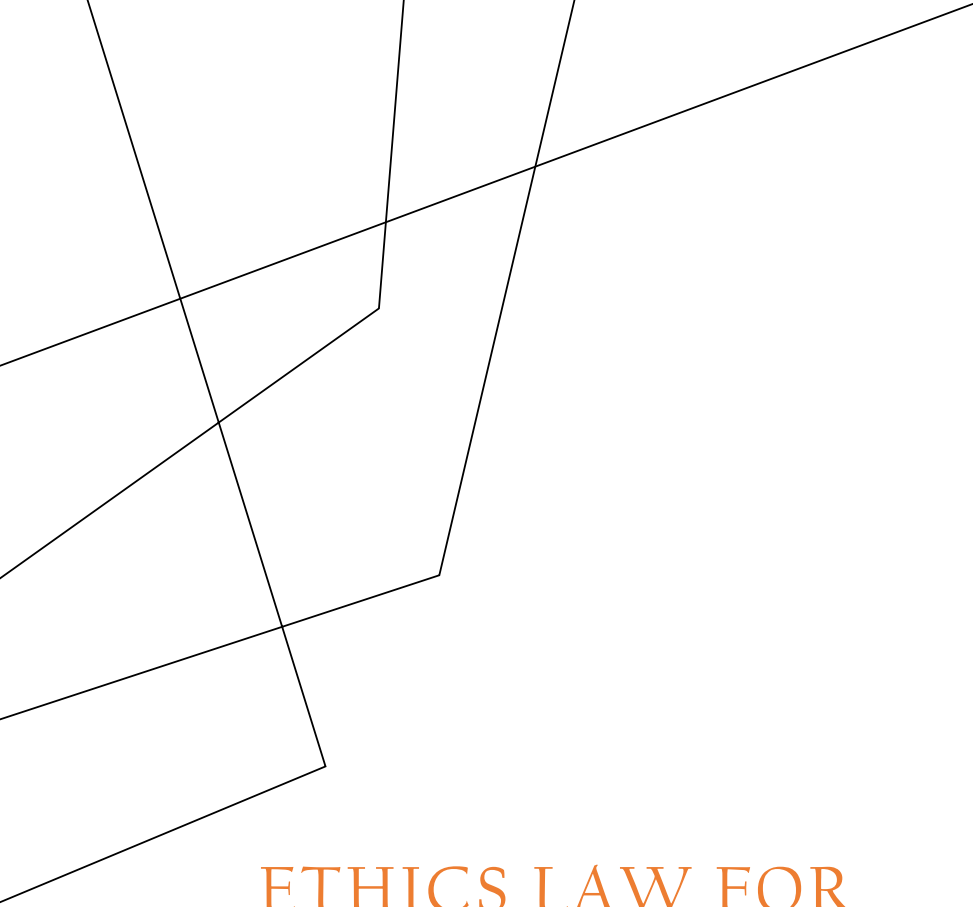
A legislator shall not appear for, represent or assist another person in a matter before a state agency unless:

- [1] without compensation, or
- [2] for the benefit of a constituent,
- [3] except for legislators who are attorneys or other professional persons engaged in the conduct of their professions . . .

[I]n those instances, the legislator shall refrain:

- [1] from references to the legislator's legislative capacity except as to matters of scheduling,
- [2] from communications on legislative stationary, and
- [3] from threats or implications relating to legislative actions.”

§ 10-16-9(B).



ETHICS LAW FOR MEMBERS: (4) accepting civil offices; (5) abuse of office in public service.

Caution with accepting civil offices

“No member of the legislature shall, during the term for which he [or she] was elected, be appointed to any civil office in the state, nor shall he [or she] within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term”

N.M. Const., Art. IV, § 28 (emphasis added)

Abuse of office

“At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.”

§ 10-16-3(C).

“Abuse of office in public service” is an old idea in American common law (*i.e.*, judge-made law) that prohibits an official from using their powers of government office to violate the law or pursue their own private gain.



ETHICS LAW FOR MEMBERS: (6) accepting gifts

Basic gift rule and its exceptions

[1] A Member may not accept a gift valued at more than \$250 from a “restricted donor.”

- A restricted donor includes: a lobbyist (or the lobbyist’s client); anyone who may be substantially affected financially by the Member’s actions

There are many exceptions to the definition of “gift,” e.g.:

- Reasonable expenses for a bona fide educational program related to official duties;
- Any transfers authorized by the Campaign Reporting Act or the Federal Election Campaign Act;
- Compensation for services rendered; commercial loans; anything for which fair market value paid

Other gift rules

[1] \$1000 aggregate limit for lobbyists, lobbyists’ clients, and government contractors shall not give gifts of an aggregate value of greater than \$1000 in a calendar year to any state officer or candidate

[2] No Member may request or receive an honorarium (> \$100) for a speech or service related to duties as a legislator



State Ethics Commission: Overview of Administrative Complaint Process (1)

1. Jurisdictional determination (ED)

- Anyone with actual knowledge of violation can file an administrative complaint
- Executive Director determines jurisdiction, sends appropriate notices to parties
- Members who are named as respondents are entitled to defense counsel provided by Risk Management Division
- Claim routing through Secretary of State for alleged CRA and LRA violations for voluntary compliance only

2. Investigation and probable cause determination (GC)

- General Counsel conducts investigation, which concludes in a determination whether probable cause supports the claims in an administrative complaint
- Subpoenas are available if ED gets Commission's approval and are also pre-cleared by subpoena judge (currently Judge Hunter, Fifth Judicial District), who can also enforce the subpoenas

3. Evidentiary hearing (Hearing Officer)

- If GC finds probable cause, then the ED: (i) refers matter to hearing officer; (ii) notifies parties of a public hearing; (iii) provides respondent with an opportunity to correct unintentional and continuing violations of the GCA or FDA, and (iv) makes the matter public thirty days after the notice letter.
- Rules of evidence apply at a hearing

4. Appeal (State Ethics Commission)

- State Ethics Commissioners hear appeals from hearing officer's orders, findings of fact, and conclusions of law
- Whole record review, and, after final agency action, parties may petition for certiorari review under Rule 1-075 NMRA from state district court



State Ethics Commission: Overview of Administrative Complaint Process (2)

Special jurisdictional rules relevant to Members

Speech or debate protection. No jurisdiction for claims predicated on “legislative acts.” See N.M. Const, art. IV, § 11; [State Ethics Comm’n Adv. Op. 2021-12 \(Dec. 3, 2021\)](#).

Blackout period: If a person files an administrative complaint alleging violations of laws other than the Campaign Reporting Act or the Voter Action Act less than 60 days before an election, there can be no public hearing on the complaint, but the complaint can be dismissed for lack of jurisdiction or no probable cause.

Two statutes of limitations. No jurisdiction for any claim predicated on an event that (1) occurred before July 1, 2019; or two; or (2) occurred, or could have reasonably been discovered, two years before the filing of the complaint.

Rules about public disclosure of administrative cases

For parties. A complainant or respondent may release any information related to an administrative complaint at any time.

For Commissioners and Commission staff and contractors. Cannot disclose records related to an administrative complaint unless (i) the General Counsel has determined probable cause supports a claim; (ii) the Executive Director has notified the parties that a public hearing will be set; and (iii) thirty days have passed after the ED’s notification.

ADVISORY OPINIONS

Advisory Opinions. § 10-16G-8. May only be requested by persons subject to the Commission's personal jurisdiction.

Advisory Letters. 1.8.1.9(B) NMAC. May be requested by persons subject to the Commission's personal jurisdiction and any person subject to the Governmental Conduct Act.

- Must be requested in writing:
ethics.commission@state.nm.us (soon to be ethics.commission@sec.nm.gov)
- Requests for advisory opinions are confidential by law

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The main content area is divided into three sections:

- Search All Databases:** A search bar with the placeholder text "Search" and a magnifying glass icon. Below the search bar is a link for "Advanced Search".
- Browse New Mexico Appellate Reports™:** A list of links including "Supreme Court of New Mexico", "Court of Appeals of New Mexico", and "Official Citations Tables".
- Browse New Mexico Laws and Court Rules:** A list of links including "Current New Mexico Statutes Annotated 1978", "Historical New Mexico Statutes Annotated 1978", "New Mexico Territorial Laws and Treaties", "Constitutions", "Historical New Mexico Constitutions", "New Mexico Session Laws", "Tables and Indexes", "Current New Mexico Rules Annotated", "Historical New Mexico Rules Annotated", "Attorney General Opinions and Advisory Letters", "State Ethics Commission Advisory Opinions", "New Mexico Administrative Code", and "New Mexico Forms Library". An orange arrow points to the "State Ethics Commission Advisory Opinions" link.