

STATE ETHICS
COMMISSION MEETING

December 15, 2023

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. Celia Castillo, Member
Hon. Dr. Terry McMillan, Member
Ronald Solimon, Member
Dr. Judy Villanueva, Member

December 15, 2023, 11:00 a.m. to 12:30 p.m. (Mountain Time)

Executive Board Room
851 University Blvd SE, Park Center
2nd Floor, Room 201
Albuquerque, NM 87106

Meeting Link: [HERE](#)

Meeting ID: 889 7396 7432

Passcode: Ethics123

Commission Meeting

Chair Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of November 3, 2023 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|--|-----|
| 4. Advisory Opinion 2023-08
(Boyd) | Yes |
| 5. Advisory Opinion 2023-09
(Manierre) | Yes |
| 6. Annual Open Meetings Act Resolution
(Manierre) | Yes |

- 7. 2023 Annual Report (Farris) Yes
- 8. Public Comment (pre-closed session) No

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

- 9. Administrative Matters under Revised Uniform Law on Notarial Acts:
(Branch)
 - a. 2023-03 *In re commission of Marsh* Request for Approval of Settlement Agreement
- 10. Discussion regarding administrative matters under State Ethics Commission Act:
(Farris)
 - a. Administrative Complaint No. 2023-020
 - b. Administrative Complaint No. 2023-023
- 11. Executive Director 2023 evaluation and salary
(Lang) No

Upon applicable motion, Commission returns from executive session.

- 12. Administrative matters under the Revised Uniform Law on Notarial Acts:
(Branch) Yes
 - a. 2023-03 *In re commission of Marsh* Request for Approval of Settlement Agreement
- 13. Administrative Matters under State Ethics Commission Act:
(Farris) Yes

Dismissals of claims in administrative matters that are outside of the Commission’s jurisdiction:

 - a. Administrative Complaint No. 2023-020

Dismissals of administrative complaints:

 - a. Administrative Complaint No. 2023-023
- 14. Discussion of next meeting:
(Lang) No
- 15. Public Comment No

16. Adjournment

For inquiries or special assistance, please contact Ethics.Commission@sec.nm.gov

SEC Office
800 Bradbury Dr. SE,
Suite 215
Albuquerque, NM 87106



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STATE ETHICS COMMISSION

Commission Meeting Minutes of November 3, 2023 | 9:00AM-2:00PM [Subject to Ratification by Commission]

Call to Order

Chairman Lang called the meeting to Order at 9:06 AM.

1. Roll Call

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner
Stuart M. Bluestone, Commissioner
Hon. Celia Castillo, Commissioner
Hon. Dr. Terry McMillan, Commissioner
Ronald Solimon, Commissioner
Dr. Judy Villanueva, Commissioner
Hon. William Lang, Chair

2. Welcome Dr. Terry McMillan to Commission

Dr. Terry McMillan introduced himself to the Commission.

3. Approval of Agenda

Director Farris asked for a motion to amend the agenda as follows: Remove item 13b and its corresponding item 17b. Remove item 15b and its corresponding item 19b. Add item 18d (Administrative Complaint No. 2023-035) to action on administrative complaints subject to settlement approval and include Ms. Randall's name for presentation of the settlement. Commissioner Bluestone moved to approve the agenda. Commissioner Villanueva seconded. Hearing no discussion Chair Lang conducted a roll call vote, the Chair and all Commissioners voted affirmative, and the agenda was approved unanimously.

4. Approval of August 4, 2023, Commission Meeting Minutes

Chair Lang moved to approve the August 4, 2023 Commission Meeting Minutes. Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted affirmative, and the August 4th meeting minutes were approved unanimously.

Commission Meeting Items

5. Advisory Opinion 2023-07

Director Farris provided an overview of the advisory opinion which addressed the question:

“Several public bodies, including state agencies and state institutions, have adopted the practice of merely issuing a contract for legal services without compliance with the provisions of the Procurement Code when the legal firm is to be paid through contingency fees only in the event there is recovery of funds by the public body for the issue giving rise to the contract. The philosophy appears to be that since no money is being paid out by the public body and since there is no compensation unless the attorney succeeds in recovering funds for the public body for which the attorney is paid on a contingency basis only, that the Procurement Code does not apply.

Does the Procurement Code apply to [the procurement of contracts for] legal services provided to a public body when the attorney is not guaranteed any payment and is paid exclusively through contingency fees?”

Chair Lang sought a motion to adopt Advisory Opinion 2023-07. Commissioner Baker moved to adopt the opinion; Commissioner Villanueva seconded. The Commissioners discussed Advisory Opinion 2023-07. Hearing no further discussion, Chair Lang conducted a roll call vote. All Commissioners voted affirmative and issued Advisory Opinion 2023-07 unanimously.

6. Resolution 2023-05: Commissioner Media Policy

Tom Garrity presented the Commissioner Media Policy. Chair Lang sought a motion to adopt. Commissioner Baker moved to adopt the policy. Commissioner Villanueva seconded. Commissioners discussed the Media Policy. Commissioner Bluestone recommended amending the Media Policy to clarify certain items and language. Commissioner Castillo also recommended clarifying the language, especially in relation to the conflict-of-interest disclosure.

Chair Lang recommended creating a sub-committee to work on the media policy for the next meeting. The resolution was tabled for the next meeting pending further edits, clarifications, and creation of sub-committee as discussed.

7. Letter to the editor regarding the Procurement Code

Commissioner Bluestone discussed his letter to the editor and reasons for delaying submission to the Commission until the development and adoption of the Commissioner Media Policy.

8. Commissioner Recusal Procedure

Commissioner Baker discussed the need to develop a more exigent recusal process, requesting that the recusing Commissioner be required to specify their reason for recusal to the public. Commissioner Bluestone asked Director Farris to provide insight and discussion on the recusal procedure as it stands, and Director Farris provided the Commission with a review of 1.8.2.8 NMAC.

Commissioner Baker sought a motion to adopt. Commissioner Solimon seconded.

Hearing no further discussion, Chair Lang conducted a roll call vote. Commissioner Baker and Commissioner Bluestone voted affirmative. Commissioner Castillo, Commissioner McMillan, Commissioner Solimon, Commissioner Villanueva, and Chair Lang voted negative. The motion failed on a vote of 2 in favor, 5 against.

9. Update on 2023 Financial Disclosure Act Compliance

Special Counsel Caroline Manierre presented an update on the staff's work to enforce compliance with the Financial Disclosure Act. The Secretary of State referred 118 individuals to the Commission who had not yet filed. On June 2, 2023, the Commission authorized staff to enter into prelitigation discussions with these individuals and, if necessary, to file civil enforcement action in state court. The Commission targeted all state agency heads and members of boards and commissions who were deemed the most significant as it relates to financial disclosures. The Commission achieved compliance for all state agency heads, and members of the State Investment Council, Office of the State Engineer, State Board of Finance, the Military Base Planning Commission and State Racing Commission. Director Farris noted the Commission's press release regarding the results of this project.

10. FY25 Budget Request and Strategic Plan

Director Farris presented the FY25 Budget Request and submitted it for the Commission's approval. The bulk of requested expansion will allow for the hiring of an entry level attorney position. Director Farris also explained that the request includes an appropriation for other state funds to budget revenue received from NMEDGE, pursuant to an agreement with NMEDGE to provide ethics trainings. As part of the FY25 Budget Request, Director Farris also presented the Strategic Plan and submitted it for the Commission's approval. He highlighted the staff's ongoing development of an informal complaint process and the creation of model ethics ordinances for local governments. Commissioner Bluestone noted his preference that the Strategic Plan include a minimum number of op-eds per year or per quarter. Director Farris did

not commit the staff to a minimum target of op-eds in FY25, expressing a continuing preference that the Commission focus on its legal work and earned media based on that work.

Commissioner Castillo moved to approve FY25 Budget Request and Strategic plan; Commissioner Bluestone seconded. Hearing no further discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the FY25 Budget Request and corresponding Strategic Plan unanimously.

11. **Public Comment (pre-closed session)**

Commissioner Bluestone read a public comment that Melanie Majors, Executive Director of New Mexico Foundation for Open Government sent to Commissioner Bluestone personally about the proposed Commissioner's Media Policy.

Ms. Majors commented as follows:

Regarding number 2, most newspapers may require the title be included in the byline. The Commissioner could still make it clear that they are speaking as an individual. Regarding number 5, FOG understands the reasoning behind number 5, but does not endorse this. Reporters are under tight deadlines and many agencies use this as a way to delay responses. It also restricts Commissioners' freedom of speech; they believe this already covered in number 4. Regarding number 6, it makes sense for op-eds or letters to the media be looked at but requiring that every communication be vetted hinders the news gathering process and the public's right to information as well as limiting commissioners' free speech.

---Beginning of 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 Bluestone moved to enter executive session; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and entered executive session.

12. Discussion regarding current and potential litigation:

(Randall, Farris)

- a. Request for authorization to file a civil enforcement action against local elected official for violations of the Governmental Conduct Act.

13. Administrative Matters under Revised Uniform Law on Notarial Acts:

(Branch)

- a. 2022-NP-19 *In re commission of Valdez* (Default Order)

14. Discussion regarding administrative matter subject to settlement approval:

(Boyd, Randall)

- a. Administrative Complaint No. 2022-045
- b. Administrative Complaint No. 2023-031
- c. Administrative Complaint No. 2023-038
- d. Administrative Complaint No. 2023-035

15. Discussion regarding administrative matter under State Ethics Commission Act:

(Manierre, Farris)

- a. Administrative Complaint No. 2022-027
- c. Administrative Complaint No. 2023-025
- d. Administrative Complaint No. 2023-026
- e. Administrative Complaint No. 2023-027
- f. Administrative Complaint No. 2023-028
- g. Administrative Complaint No. 2023-033
- h. Administrative Complaint No. 2023-034
- i. Administrative Complaint No. 2023-036
- j. Administrative Complaint No. 2023-037
- k. Administrative Complaint No. 2023-040
- l. Administrative Complaint No. 2023-041
- m. Administrative Complaint No. 2023-042
- n. Administrative Complaint No. 2023-043
- o. Administrative Complaint No. 2023-044
- p. Administrative Complaint No. 2023-045
- q. Administrative Complaint No. 2023-046

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---

16. **Authorization of Civil Actions:**

(Farris)

- a. **Commission authorization of civil action regarding violations of the Governmental Conduct Act by a local public official:** Chair Lang moved as stated above. Commissioner Baker seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion unanimously.

17. **Action on Administrative matters under the Revised Uniform Law on Notarial Acts:**

- a. **Commission sought motion to issue a default order in 2022-NP-19 *in re commission of Valdez*:** Chair Lang moved as stated above; Commissioner Castillo seconded. Commissioner Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion unanimously.

18. **Action on Administrative matters subject to settlement approval Nos. 2022-045, 2023-031, 2023-038, and 2023-035:**

General Counsel, Walker Boyd, asked the commission for the following motions regarding actions on administrative matters subject to settlement approval:

- a. **Commission sought motion to approve settlement agreement in administrative complaint No. 2022-045:** Commissioner Baker moved as stated above; Commissioner Bluestone seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the settlement agreement unanimously.
- b. **Commission sought motion to approve settlement agreement in administrative complaint No. 2023-031:** Commissioner Castillo moved as stated above; Commissioner Villanueva seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the settlement agreement unanimously.
- c. **Commission sought motion to approve settlement agreement administrative complaint No. 2023-038:** Commissioner Castillo moved as stated above; Commissioner Bluestone seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the settlement agreement unanimously.
- d. **Commission sought motion to approve settlement administrative complaint No. 2023-035:** Commissioner Bluestone moved as stated above; Commissioner Baker seconded. Chair Lang conducted a roll call vote. Commissioner Solimon recused. All other Commissioners and the Chair voted affirmative and approved the settlement agreement.

19. **Action on Administrative Complaints Nos. 2022-027, 2023-025, 2023-026, 2023-027, 2023-028, 2023-033, 2023-034, 2023-036, 2023-037, 2023-040, 2023-041, 2023-042, 2023-043, 2023-044, 2023-045, 2023-046**

Director Farris asked the Commission for the following motions regarding actions on Administrative Complaints:

- a. **Commission sought a motion for 90-day extension on Administrative Complaint No. 2022-027.** Commissioner Baker moved as stated above; Commissioner Bluestone seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the 90-day extension unanimously.
- c. **Commission sought a motion for 90-day extension Administrative Complaint No. 2023-025:** Commissioner Baker moved as stated above; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion unanimously.
- d. **Commission sought a motion to dismiss Administrative Complaint No. 2023-026 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- e. **Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-027:** Chair Lang moved as stated; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion for partial dismissal unanimously.
- f. **Commission sought a motion to dismiss Administrative Complaint No. 2023-028 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- g. **Commission sought a motion to dismiss Administrative Complaint No. 2023-033 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- h. **Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-034 for lack of jurisdiction:** Chair Lang moved as stated; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion for partial dismissal unanimously.
- i. **Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-036 for lack of jurisdiction:** Chair Lang moved as stated; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion for partial dismissal unanimously.

- j. Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-037 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll call vote. Chair Lang recused himself. All Commissioners voted affirmative and approved the motion for partial dismissal 6-0.
- k. Commission sought a motion to dismiss Administrative Complaint No. 2023-040 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- l. Commission sought a motion to dismiss Administrative Complaint No. 2023-041 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- m. Commission sought a motion to dismiss Administrative Complaint No. 2023-042 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- n. Commission sought a motion to dismiss Administrative Complaint No. 2023-043 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- o. Commission sought a motion to dismiss Administrative Complaint No. 2023-044 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- p. Commission sought a motion to dismiss Administrative Complaint No. 2023-045 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- q. Commission sought a motion to dismiss Administrative Complaint No. 2023-046 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All

Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.

20. **Discussion of Next Meeting**

Chair Lang confirmed that the next meeting would take place on December 15, 2023 to approve the annual report and handle other items and to hear oral arguments in the administrative case of *Eichenberg v. Montoya*. The next regularly scheduled meeting will be February 2, 2023.

21. **Public Comments**

No public comments were made.

22. **Adjournment**

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting was adjourned at 2:00 PM.

[Subject to Ratification by Commission]



STATE ETHICS COMMISSION

[DRAFT] ADVISORY OPINION NO. 2023-08

December 15, 2023¹

QUESTION PRESENTED²

Central New Mexico Community College (“CNM”) has obtained federal grant funds. The grant agreements between CNM and the federal government permit CNM to expend the federal funds it receives for the purchase of laptops and textbooks for student use. The question posed is whether CNM’s purchase of laptops and textbooks for use by its students nonetheless violates Article IX, Section 14 of the New Mexico State Constitution, commonly known as “the Anti-Donation Clause.”

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

² 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). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On October 13, 2023, the Commission received a request for an advisory letter that detailed the issues as presented herein. See 1.8.1.9(B) NMAC. While the request was not initially submitted by a “public employee” was the State Ethics Commission Act defines that term, *see* NMSA 1978, § 10-16G-2(J) & (K) (2021), Commissioner Jeff Baker made the same request for an advisory opinion. *See generally* 1.8.1.9(A)(5) NMAC.

ANSWER

The Anti-Donation Clause does not apply to CNM. To the extent it does, it likely permits the proposed expenditures.

ANALYSIS

The Anti-Donation Clause provides in relevant part:

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through H of this section.³

As explained below, the Anti-Donation Clause does not apply to CNM because CNM is not a “state . . . county, school district or municipality.” Furthermore, even if CNM were an entity subject to the Anti-Donation Clause, its expenditures on laptops and textbooks for student use likely would not violate the Anti-Donation Clause.

I. CNM is not subject to the Anti-Donation Clause.

The Anti-Donation Clause applies only to those public bodies that are the State (or an agency or instrumentality thereof), a county, a municipality, or a school district. CNM is a community college, defined by the Community College Act, NMSA 1978, Sections 21-13-1 to 27 (1963, as amended through 2019), to mean “a public educational institution that provides not to exceed two years of training in the arts, sciences and humanities beyond the twelfth grade of the public high school curriculum, . . . [or] vocational and technical curriculum and appropriate courses of study for persons who may or may not have completed the twelfth grade of public high school[.]”⁴

³ N.M. Const. art. IX, § 14.

⁴ See NMSA 1978, § 21-13-2 (1998).

Being a “public educational institution,” however, does not automatically subject CNM to the Anti-Donation Clause as an arm, instrumentality, or alter ego of the State.⁵ CNM is subject to the control of an elected college board whose members represent particular districts, indicating that CNM is a political subdivision serving local political purposes subject to local political control, not an “alter ego” of the State.⁶ For this reason, CNM is not subject to the Anti-Donation Clause.

This conclusion is supported by the text of the New Mexico Constitution and previous guidance issued by the New Mexico Attorney General’s Office.

Begin with the text of Anti-Donation Clause, which specifies that “the state [] or any county, school district or municipality” is prohibited from making donations or pledging its credit in support of a private enterprise. As with statutes, the meaning of any given provision of the Constitution is determined by reading it *in pari materia*, i.e., in context with other provisions touching on the same subject.⁷ And other provisions of the Constitution adopted at the same time as the Anti-Donation Clause apply more broadly, supporting a narrow interpretation of the Anti-Donation Clause. For example, as originally drafted, Article VIII, Section 6 referenced “any county, city, town, school district, or other municipal corporation *or subdivision of the state.*”⁸ In other words, the framers of the state

⁵ *Cf. Leach v. New Mexico Junior College*, 2002-NMCA-039, ¶ 14, 132 N.M. 106 (concluding that a junior college was not a “state educational institution” given its “absence from the constitutional listing of state educational institutions”); *see also Santa Fe Cmty. Coll. v. Ztark Broadband, LLC*, Civ. No. 20-1151 SCY/KK, 2022 WL 298675, at *3-*7 (D.N.M. Feb. 1, 2022) (holding that community college established as a political subdivision of the state is not subject to the Anti-Donation Clause).

⁶ *Cf. Sturdevant v. Paulsen*, 218 F.3d 1160, 1170 (10th Cir. 2000) (noting that a “fundamental characteristic of a political subdivision” is “political control by some community other than the state as a whole”); NMSA 1978, § 21-13-8 (2018) (setting out governance structure for community colleges).

⁷ *City of Albuquerque v. New Mexico State Corp. Comm’n*, 1979-NMSC-095, ¶ 5, 93 N.M. 719.

⁸ N.M. Const. art. VIII, § 6 (1912), *reprinted in* Charles Kettleborough, *State Constitutions and the Federal Constitution and Organic Laws of the Territories and Other Colonial Dependencies of the United States of America* (1918) (emphasis added). The full provision states: “The legislature shall have no power to release or discharge any county, city, town, school district or

constitution knew how to draft a constitutional clause that applied to the State and all its subdivisions. That they did not do so when they drafted the Anti-Donation Clause supports an interpretation that excludes unlisted political subdivisions, like community colleges, from its scope.

The Attorney General’s Office has issued written opinions tending to support the view that a community college is not an entity subject to the Anti-Donation Clause. In 2008, the Attorney General noted a Court of Appeals case holding that an educational institution not expressly set forth in Article XII, Section 11 of the New Mexico Constitution is not an “arm of the state” for purposes of Eleventh Amendment sovereign immunity, and is instead considered a “local governing body” subject to suit.⁹ The Attorney General’s Office reasoned that if a community college is not “the state” for one purpose (sovereign immunity under the Eleventh Amendment), it is also not “the state” for purposes of the Anti-Donation Clause.¹⁰ Although the opinions of the Attorney General’s Office are not binding on the State Ethics Commission, this opinion supports the view, ultimately grounded in the text of the State Constitution itself, that community colleges fall outside the scope of the Anti-Donation Clause.¹¹

other municipal corporation or subdivision of the state, from its proportionate share of taxes levied for any purpose.”

⁹ N.M. Att’y Gen. Adv. Ltr., 2008 WL 660267 (Feb. 29, 2008) (discussing *Leach v. New Mexico Junior College*, 2002-NMCA-039, 132 N.M. 106).

¹⁰ This line of reasoning (at least as far as the Anti-Donation Clause is concerned) stems from a statement by the Court of Appeals that “[w]hen the constitution either grants or prohibits certain powers, the affected subdivisions are specifically enumerated.” *State ex rel. Stratton v. Roswell Indep. Schools*, 1991-NMCA-013, ¶ 23, 111 N.M. 495; *see also* N.M. Att’y Gen. (Feb. 4, 1993) (citing *Albuquerque Metro. Arroyo Flood Control Auth. v. Swinburne*, 74 N.M. 487, 394 P.2d 998 (1964), *State ex rel Gomez v. Campbell*, 75 N.M. 86, 400 P.2d 956 (1965), and *State ex rel. Stratton v. Roswell Indep. Schools* for the same proposition).

¹¹ With respect to case law, the United States District Court for the District of New Mexico has held that the Santa Fe Community College (which, like CNM, is a community college under the Community College Act) is not subject to the Anti-Donation Clause: because the Legislature “provided *separate* definitions for school districts and community college districts,” the court concluded that the latter is distinguishable from the former for purposes of determining the Anti-Donation Clause’s applicability. *Santa Fe Cmty. Coll. v. Ztark Broadband, LLC*, No. 20-CV-1151 SCY/KK, 2022 WL 298675 (D.N.M. Feb. 1, 2022).

For these reasons, CNM is not the state, a county, a municipality, or a school district subject to the Anti-Donation Clause. Accordingly, CNM’s proposed expenditures do not implicate the Anti-Donation Clause.

II. Even if CNM were subject to the Anti-Donation Clause, the proposed expenditures on laptops and textbooks likely do not violate the Anti-Donation Clause.

Even if CNM were subject to the Anti-Donation Clause, its expenditures on laptops and textbooks for student use likely would not violate the Anti-Donation Clause’s prohibition against donations to private enterprise. An expenditure only violates the Anti-Donation Clause if the expenditure (1) is a transfer, pledge of credit, or a donation to or in aid of a private person; and (2) an exception to the Anti-Donation Clause does not apply. Here, the expenditures by CNM for textbooks and laptops for use by its students likely would not be prohibited donations that violate the Anti-Donation Clause because they do not constitute a donation or a pledge of credit to a private person.

When a government entity receives something of value in exchange for money, there is no “donation” because the government’s property is exchanged for something of value.¹² Put differently, the Anti-Donation Clause is not implicated when the government procures items of tangible personal property for itself. It follows that the Anti-Donation Clause does not prohibit an educational institution from making expenditures (whether of its own or federal grant funds) to purchase laptops or textbooks, even if those expenditures incidentally provide some private benefit to the students who use that government property during their education.¹³ So long as CNM receives something of value in exchange for its proposed expenditures (i.e., it receives laptops or schoolbooks), its provision of what it

¹² Cf. *City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for real product. . . . The Court does not believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause, but merely check for adequate consideration.”).

¹³ See N.M. Const. art. XII, § 1 (requiring the state to establish and maintain a free public school system); see also NMSA 1978, § 21-16-2(A) (1999) (defining a “technical and vocational institute” as “a public educational institution . . . that provides not to exceed two years of vocational and technical curricula and, in addition, some appropriate courses and programs in the arts and sciences”).

receives to students to satisfy its educational mission does not violate the Anti-Donation Clause.

To the extent the question presented asks whether the Anti-Donation Clause permits CNM to lend the laptops and textbooks it has purchased to students for their use, the answer is that CNM may do so. First, as noted above, the Anti-Donation Clause likely does not apply to CNM at all. But even assuming the Clause does apply, there is no prohibition against CNM allowing students to borrow laptops and textbooks in furtherance of CNM’s statutory mandate to provide “training in the arts, sciences and humanities beyond the twelfth grade of the public high school curriculum”¹⁴ So long as CNM retains ownership of the textbooks or laptops purchased, the Anti-Donation Clause is not violated if CNM pursues its statutory goals under the Community College Act by lending students textbooks and laptops.¹⁵

CONCLUSION

For the foregoing reasons, CNM is not subject to the Anti-Donation Clause, and, even if it were, its purchases of textbooks and laptops for students likely do not violate the Clause.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner
RONALD SOLIMON, Commissioner
DR. JUDY VILLANUEVA, Commissioner

¹⁴ NMSA 1978, § 21-13-2(A) (1998).

¹⁵ *See Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 51 (“In this case, the textbook loan program does not involve any donation or gift The Department merely loans textbooks to students for use while attending school. The Department retains ownership and control over the textbooks and the fund used to purchase them. We hold that loaning textbooks to students . . . does not involve a donation to any person or entity as prohibited by [the Anti-Donation Clause].”) (citations omitted); *see also* N.M. Att’y Gen. Op. 97-02 (Jan. 7, 1997) (opining that expenditures by the Albuquerque Technical-Vocational Institute (n/k/a CNM) would only violate the Anti-Donation Clause if the expenditures amounted to “the assumption of students’ private obligations”).



STATE ETHICS COMMISSION

[DRAFT] ADVISORY OPINION NO. 2023-09

December 15, 2023¹

QUESTION PRESENTED²

1. May a candidate enter into a contract with a direct family member for goods or services to the candidate's campaign and pay the family member with campaign funds?
2. If a candidate uses personal funds to pay a family member for goods or services to the candidate's campaign, may the candidate report the expenditure as a loan to the campaign and be reimbursed by the campaign?

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

² 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). "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On November 13, 2023, the Commission received a request for an advisory opinion that detailed the issues as presented herein. While the request specifically referred to a legislator's candidacy, the legal analysis contained in this opinion applies equally to all candidates subject to the Campaign Reporting Act. *See* NMSA 1978, § 1-19-26(G) (2019) (defining "candidate" under the Act).

ANSWER

1. Yes. A candidate may contract with a direct family member for goods or services to the candidate's campaign and pay the family member with campaign funds, so long as the family member is charging market rates for bona fide services to the campaign.
2. Yes. A candidate must report expenditures made from the candidate's personal funds for a campaign expenditure, including expenditures paid to a family member under a contract with fair market rates, either as a contribution or as a loan to the campaign committee. If the expenditures constitute a campaign loan, the campaign may reimburse the candidate.

ANALYSIS

The Campaign Reporting Act³ regulates how a candidate or a candidate's campaign may expend campaign funds. We are asked to determine whether a candidate or candidate's campaign may expend campaign funds to procure goods or services for the campaign from a family member of the candidate, and if the candidate expends personal funds in making such expenditures, whether the campaign may reimburse the candidate. Under the Campaign Reporting Act and the regulations the Secretary of State promulgated thereunder, the answer to both of these questions is yes: a candidate may procure campaign services through a family member if the expenditure is for bona fide services not costing more than market value; and a candidate must report personal funds expended for campaign services, but may do so either as a contribution to the campaign or as a loan.

I. A candidate's campaign may pay a family member of the campaign for campaign work, so long as the family member is providing a bona fide service and charging market rates.

Section 1-19-29.1(A) of the Campaign Reporting Act provides that a candidate or a candidate's agent may make an "expenditure of contributions" for

³ NMSA 1978, §§ 1-19-25 to -37 (1979, as amended through 2021).

“expenditures of the campaign[.]”⁴ The Secretary of State has promulgated a regulation implementing this provision of the Campaign Reporting Act which provides that:

Expenditures that are reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate’s campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.⁵

The regulation “list[s] items considered to be per se personal use, and are, therefore, not allowable expenditures[.]” which include “payments to candidate’s family[.]”⁶ The regulation excepts from this prohibition, however, situations where “the family member is *providing a bona fide service* to the campaign.”⁷ The regulation further specifies that “[i]f a family member provides bona fide services to the campaign, any salary payment *in excess of the fair market value* of the services provided is personal use[.]”⁸ Taken together, a candidate or a candidate’s campaign may make payments to a member of the candidate’s family, so long as the family member provides bona fide goods or services to the campaign, and is not being paid in excess of the fair market value for those goods or services.

What constitutes “bona fide services” and “fair market value” will depend on the specific nature of the expense. A “bona fide service” would be a service that

⁴ NMSA 1978, § 1-19-29.1(A) (2009).

⁵ 1.10.13.25(B)(2) NMAC (2022).

⁶ 1.10.13.25(B)(2)(h).

⁷ 1.10.13.25(B), (B)(2)(h) (emphasis added).

⁸ *Id.* (emphasis added).

is a good faith expenditure of the campaign.⁹ Whether a family member is providing “bona fide services” to the campaign depends on whether the expenditure is “reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses[.]”¹⁰ As to whether a family member is providing services to the candidate’s campaign at fair market rates, a candidate should consider obtaining quotes from other service providers or otherwise researching rates charged by other service providers offering the same or similar services.¹¹ It is also prudent for the candidate to obtain invoices or other records of the services rendered. This documentation likely enables a candidate to demonstrate compliance with the Campaign Reporting Act and the regulations promulgated thereunder: invoices tend to establish that a family member provided bona fide goods or services to the campaign, and quotes from other providers tend to establish that the campaign paid fair market value to a candidate’s family member for the goods or services provided.

II. A candidate must report the expenditure of personal funds for campaign expenditures, and may be reimbursed for those expenditures if they are a loan to the campaign.

If a candidate expends personal funds on goods or services for the candidate’s campaign, the expenditure must be reported, either as a contribution or as a loan. If the expenditure is a loan, the candidate may be reimbursed for the expenditure so long as the campaign committee properly itemizes and reports the expenditures. Indeed, 1.10.13.25(A) NMAC requires candidates to report the use of personal funds for campaign expenditures:

⁹ Black’s Law Dictionary, *bona fide* (11th ed. 2019) (defining “bona fide” to mean: “1. Made in good faith; without fraud or deceit. 2. Sincere; genuine”).

¹⁰ 1.10.13.25(B)(2) NMAC; *see* § 1-19-29.1(A)(1).

¹¹ *See* 11 C.F.R. § 100.52 (defining “usual and normal charge for any services” for purposes of in-kind contributions to “mean[] the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered”); *cf.* N.M. Att’y Gen. Adv. Ltr (Oct. 1, 2008) (concluding under the Gift Act, NMSA 1978, §§ 10-16B-1 to -5, that “the market value of a ticket to a charitable event is whatever the legislator would have otherwise paid to purchase the ticket”).

Candidates who use the candidate's own personal funds for expenditures of the campaign committee *must report* the funds as either contributions to the campaign committee, which cannot be repaid to the candidate, or as loans to the campaign committee, which can be repaid from other campaign contributions received by the campaign committee.¹²

The regulation specifically allows that “[a] candidate may also pay for expenditures of the campaign committee out of personal funds *and obtain reimbursement from the campaign committee.*”¹³ In which case, “the campaign committee must itemize the expenditures reimbursed and otherwise comply with the disclosure requirements of Section 1-19-31 NMSA 1978 including disclosure of the original payee.”¹⁴

CONCLUSION

A candidate may pay a family member for services to the candidate's campaign so long as the family member is providing bona fide services and does not charge in excess of market value for those services. Should a candidate make such payments from personal funds, the candidate must report the expenditures as either a contribution or a loan to the campaign committee as set forth in the Campaign Reporting Act and the Secretary of State's regulations.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner

¹² 1.10.13.25(A) NMAC (emphasis added); *see also* 1.10.13.20(F) NMAC (identifying assets constituting “personal funds of a candidate”).

¹³ 1.10.13.25(A) NMAC (emphasis added).

¹⁴ *Id.*

RONALD SOLIMON, Commissioner
DR. JUDY VILLANUEVA, Commissioner



STATE ETHICS COMMISSION

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

RESOLUTION NO. 2023-07: State Ethics Commission Annual Open Meetings Resolution

WHEREAS, THE STATE ETHICS COMMISSION met in regular session, as required by law, on Friday, December 15, 2023, at 11:00 a.m. at 851 University Blvd. SE, Room 201;

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, 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;

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; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the State Ethics Commission to determine annually what notice for a public meeting is reasonable.

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 available to the public and on the State Ethics Commission's website at <https://www.sec.nm.gov/>.

3. Notice of regular meetings other than those described in Paragraph 2 will be given ten days in advance of the meeting date. Notice requirements for such meetings are met if notice of the date, time, and place is available to the public and posted 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. 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 to the public at least seventy-two hours before the meeting and posted on the State Ethics Commission'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. Notice requirements for such meetings are met if notice of the date, time, and place is available to the public and posted on the website of the State Ethics Commission. 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. 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. In addition to the information specified above, all notices shall continue to comply with the Americans with Disabilities Act concerning individuals seeking accommodations to attend or participate in Commission meetings.

6. 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 majority 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 15th day of December, 2023.

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



State Ethics Commission

<http://sec.nm.gov>

800 Bradbury Dr. SE
Suite 215
Albuquerque, NM 87106
(505) 554-7706

ANNUAL REPORT 2023



**To:
The New Mexico
Legislature & Governor
Michelle Lujan Grisham**

SEC 28

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OPENING MESSAGE

December 15, 2023

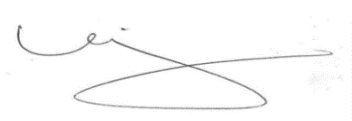
On behalf of the State Ethics Commission, I am pleased to offer an annual report of the Commission's activities. By stipulation of statute, the State Ethics Commission shall "submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers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

In the year 2023, the Commission made significant strides in fulfilling its broad constitutional and statutory obligations. The Commission:

- said farewell to Governor Garrey Carruthers and thanked him for his service and welcomed Dr. Terry McMillan to the Commission;
- handled 42 administrative complaints newly filed in 2023;
- issued 9 formal advisory opinions and 29 informal letter opinions;
- enforced the Governmental Conduct Act, Campaign Reporting Act, and the Procurement Code in several instances;
- enforced the Financial Disclosure Act for important agency heads and boards and commissions in the state;
- provided continuing legal education and ethics training to audiences around the state; and
- conducted a rulemaking, amending the Commission's administrative rules to align the rules with amendments to the State Ethics Commission Act enacted during the 2023 legislative session, and promulgating rules to govern administrative matters under the Revised Uniform Law on Notarial Acts.

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 eroded. 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. Celia Castillo (Ret.), Hon. Dr. Terry McMillan, Ronald Solimon, and Dr. 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, Javier Martínez

Term expires: June 30, 2027

Hon. Dr. Terry McMillan, Member

Appointing authority: Minority Floor Leader of the Senate, Gregory A. Baca

Term expires: June 30, 2027

Hon. Celia 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 (66-0), 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 Manierre 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 was also 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 the 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’s 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 of Science in Business Management from Cardinal Stritch University.

Financial Coordinator | Sharon Garcia

Sharon Garcia serves as the State Ethics Commission’s Financial Coordinator. She previously served as a Human Resources Generalist to New Mexico Department of Health. She has many years of financial experience and compliance working for Bank of America. She holds an Associate of Applied Science in Administration from Central New Mexico Community College.

Communications and Administrative Manager | Jane Tabet-Kirkpatrick

Jane Tabet-Kirkpatrick serves as the State Ethics Commission’s Communications and Administrative Manager and is the Custodian of Public Records. A recent graduate, she was previously an intern for Senator Martin Heinrich and Representative Theresa Leger Fernandez. Later, she was awarded a Fulbright 2022-2023 grantee in Canary Islands, Spain teaching English at the University of La Laguna. She holds a Bachelor of Arts in Political Science and

Spanish from the University of New Mexico.

Paralegal | Shariesse McCannon

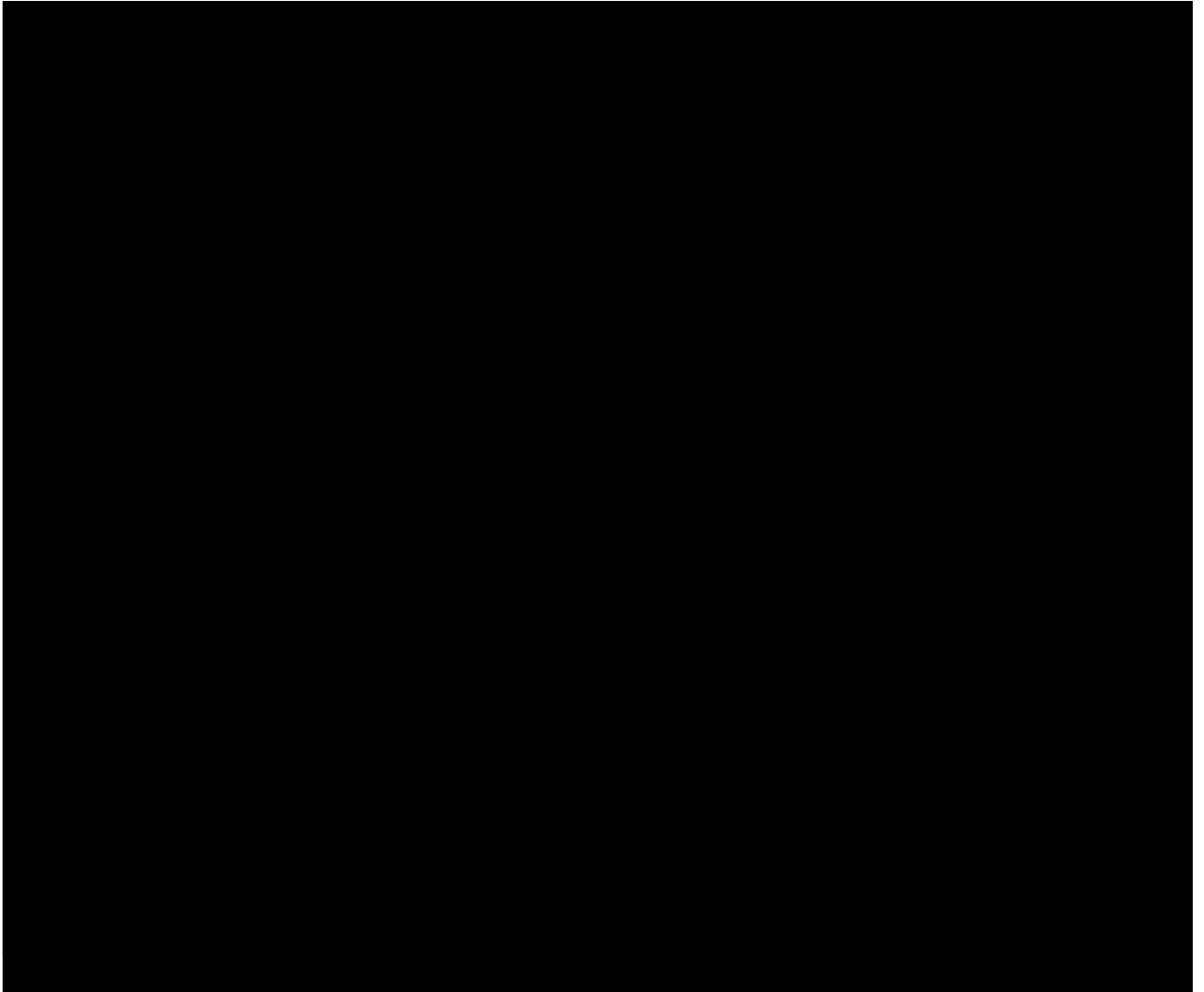
Shariesse McCannon is the Commission’s contract paralegal, supporting the litigation and investigatory work of the Commission’s attorney staff. Before working with the Commission, Shariesse served as a paralegal with the Judicial Standards Commission and the Branch Law Firm.

Legal Summer Clerks | Connor Woods, Andrew Gray & CK Elwood

During the summer of 2023, the Commission invited three law students to participate in the Commission’s work. Connor Woods (a current 3L at the University of New Mexico School of Law), Andrew Gray (a current 2L at the University of Illinois College of Law), and CK Ellwood (a current 2L at the University of New Mexico School of Law) performed various legal research and drafting projects. They attended court hearings and Commission meetings. The Commission is committed to working with the University of New Mexico School of Law to introduce successive classes of law students to the Commission’s legal work through summer clerkships.

FISCAL REPORT

The following chart reflects revenues, expenditures, and changes in net position for the fiscal year ending June 30, 2023.



- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

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 the year 2023 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 their designee) determines jurisdiction. The General Counsel (or their designee) determines whether the allegations of a complaint are supported by probable cause, in which case a hearing officer must confirm that finding. In administrative matters where both the General Counsel and a hearing officer determines a complaint is supported by probable cause, a separate hearing officer then conducts 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 through 2023), and the Commission's rules of procedure for administrative cases, promulgated at 1.8.3 NMAC. In 2023, the Commission amended its rules of procedure for administrative cases. These rule amendments became effective on July 1, 2023, and align the Commission's rules of procedure with legislative amendments to the State Ethics Commission Act during the 2023 legislative session. 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](#).

Also, in 2023, the Commission also promulgated rules of procedure for the adjudication of administrative complaints alleging violations of the Revised Uniform Law on Notarial Acts (RULONA), which the State Records and Archives Center published at 1.8.5 NMAC ("Complaints against Notaries"). The Commission promulgated these rules pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978, and Laws 2023 Chapter 110 (being SB 246, Section 23(C)). The rules became effective on July 1, 2023, and govern the Commission's receipt, investigation, and adjudication of complaints alleging violations of RULONA. To review the regulations governing complaints against notaries please click [here](#).

The Commission’s administrative ethics caseload

Below is a profile of the Commission’s caseload for administrative complaints alleging ethics violations in 2023, presented by quarter.

<p>Q1 (January – March) Rolled Over From 2022-Q4: 16 New Filed in 2023-Q1: 7 Closed in 2023-Q1: 11</p>	<p><u>Complaints filed in Q1</u> Governmental Conduct Act: 3 Other: 4</p>
<p>Q2 (April – June) Rolled Over From 2023-Q1: 12 New Filed in 2023-Q2: 17 Closed in 2023-Q2: 13</p>	<p><u>Complaints filed in Q2</u> Governmental Conduct Act: 12 State Ethics Commission Act: 3 Other: 2</p>
<p>Q3 (July – September) Rolled Over from 2023-Q2: 16 New Filed in 2023-Q3: 18 Closed in 2023-Q3: 9</p>	<p><u>Complaints filed in Q3</u> Governmental Conduct Act: 6 Campaign Reporting Act: 12</p>
<p>Q4 (October – December 20) Rolled Over from 2023-Q3: 16 New Filed in 2023-Q4: Closed in 2023-Q4:</p>	<p><u>Complaints filed in Q4</u> Governmental Conduct Act: 4</p>
<p><u>2023 Cumulative Case Data</u> Total Rolled Over from 2022: 16 Total New Filed in 2023: Total Closed in 2023: Total Pending on [DATE of Submission]:</p>	<p><u>2023 Complaints</u> Governmental Conduct Act: Campaign Reporting Act: State Ethics Commission Act: Other:</p>

The Commission’s RULONA caseload

Below is a profile of the Commission’s caseload for administrative complaints filed against notaries public in 2023, presented annually.

<p>Complaints rolled over from 2022: 12 Complaints filed in 2023: 7 Cases closed in 2023: 13 Cases rolled over to 2024: 6</p>
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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 Commission’s staff. 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 informal advisory opinion or 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 NMSA.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 2023.

GOVERNMENTAL CONDUCT ACT

Advisory Opinion 2023-01 (Feb. 3, 2023)

Question: A legislator owns and was, until elected to the legislature, the chief executive officer (CEO) of a corporation that provides services to the state pursuant to contracts and grant agreements. The legislator has resigned as CEO but continues to hold an ownership interest in the corporation. The legislator asks what the law requires with respect to any legislative matters or duties that may affect the legislator’s interest in the corporation or otherwise present a conflict of interest.

Conclusion: The Emoluments Clause does not prohibit a legislator from having direct and indirect interests in contracts between a corporation owned by the legislator and a state agency, so long as the legislation authorizing the contract became law before the requester’s current term of office. The Governmental Conduct Act does not require the legislator to recuse from matters affecting the corporation, and the disclosure of the requester’s employment and ownership of the corporation on the requester’s annual Financial Disclosure Statement is sufficient to fulfill the disclosure obligations for potential conflicts of interest under the Governmental Conduct Act. Section 10-16-9 of the Governmental Conduct Act operates to prohibit a state agency from entering into a contract with the corporation unless the contract is made in accordance with the Procurement Code and is not a small purchase or sole source contract. Section 10-16-9 of the Governmental Conduct Act also likely prohibits the requester from appearing for, representing, or assisting the corporation in a matter before a state agency. [Read the full opinion.](#)

Advisory Opinion 2023-02 (Feb. 3, 2023)

Question: A legislator’s children own and operate a company that has contracts with state agencies to provide those state agencies with services. The contracts are awarded through a competitive process, i.e., by submitting bids or proposals in response to an invitation to bid (ITB) or request for proposals (RFP). The company rents storage space from the legislator, and the legislator has no other financial interest in the corporation. The legislator asks what conduct and disclosure requirements apply to him because of his relationship with his children’s business.

Conclusion: Section 10-16-9 of the Governmental Conduct Act is the main statutory provision that governs a legislator’s conduct with respect to a business in which the legislator’s family has a substantial interest. Subsection A provides the conditions under which a state agency may contract with such a business, and Subsection B provides rules regarding the legislator’s representation of or assistance with the business before a state agency. [Read the full opinion.](#)

Advisory Opinion 2023-06 (Aug. 4, 2023)

Question: In October 2021, a City entered into a collective bargaining agreement with the Police Officers Association (“the POA”). On March 3, 2023, the POA requested to reopen collective bargaining negotiations per its October 2021 agreement. A former mayor of the City is currently serving as a negotiator on behalf of the POA in its negotiations with the City. As mayor, he was briefed on negotiations regarding the collective bargaining agreement with the POA, “gave direction to the negotiation team, along with the City Council, about acceptable concessions and changes[,]” was “the presiding officer of the City’s governing body” when the City entered into the October 2021 collective bargaining agreement, and appointed the manager and interim city manager who also had a role in entering the agreement on the City’s behalf. Considering these facts and Section 10-16-8(C)(2) of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023), may the City enter into a new collective bargaining agreement with the POA?

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

ANTI-DONATION CLAUSE

Advisory Opinion 2023-03 (Apr. 14, 2023)

Question: A District Court provides alcohol-and-drug-treatment services and supplies—including life skills training, alternative therapeutic training, exercise classes, fitness memberships, personal hygiene supplies, cleaning supplies, gardening supplies, and gift cards—to individuals participating in treatment court. Does the District Court’s provision of these services and supplies violate Article 9, Section 14 of the New Mexico Constitution?

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

Advisory Opinion 2023-05 (Aug. 4, 2023)

Question: A Village has a recreational vehicle (“RV”) park located within it. Adjacent to the RV park is a small triangular piece of property which is owned by the Village. For many years, the RV park used that parcel of Village property as an extension of the RV park, accommodating three to four recreational vehicles. Consequently, at some point, the Village lost institutional memory of its ownership of the parcel. In 2019, an individual acquired the RV park, but did

not purchase the small triangular piece of Village property. In 2020, that same individual was elected as a Village Trustee. In 2022, the Village discovered that the RV park was using the Village's property. The Trustee has conceded the Village's ownership of the parcel, requested that the Village vacate the parcel, and has expressed interest in purchasing the parcel, which has been appraised at \$5,250.00. Based on these facts: (1) What obligations does the Village have in any transaction between the Village and the Trustee regarding the parcel, including whether the Village has an obligation to recoup funds from the Trustee for her use of the parcel since 2019, such that the Village should seek compensation beyond the appraised value? (2) Does the use of the RV park violate the Anti-Donation Clause?

Conclusion: In any sale or lease of the Village property to the RV park (or the Trustee), the Village must provide notice of the Trustee's interest and must follow a competitive process before entering such a transaction. The RV park's use of the Village's property without compensation likely violates the Anti-Donation Clause; the Village should remedy that constitutional violation and has several means to do so. [Read the full opinion.](#)

Advisory Opinion 2023-08 (Dec. 15, 2023) (pending)

Question: Central New Mexico Community College ("CNM") has obtained federal grant funds. The grant agreements between CNM and the federal government permit CNM to expend the federal funds it receives for the purchase of laptops and textbooks for student use. The question posed is whether CNM's purchase of laptops and textbooks for use by its students nonetheless violates Article IX, Section 14 of the New Mexico State Constitution, commonly known as "the Anti-Donation Clause."

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

PROCUREMENT CODE

Advisory Opinion 2023-04 (Jun. 2, 2023)

Question: A municipality is considering purchasing a fire truck. The fire truck would be procured under statewide price agreement #10-00000-21-00101 AF, a National Association of State Procurement Officials ("NASPO") contract led by the State of Mississippi, which the State of New Mexico has followed that covers purchases of fire trucks and fire apparatuses. The cost of the truck is over \$2 million. The vendor offers a discount if the municipality prepays for the truck. The time of delivery of the truck does not significantly depend on whether the municipality pays in advance of delivery. (The estimated delivery following the order is approximately 24 months.) The vendor will provide the municipality a 100% performance bond following the receipt of any prepayment. Once the municipality places the order, the municipality's employees will meet with the manufacturer to ensure the fire truck is built to the municipality's desired specifications. The municipality will have the option of not accepting the truck if it does not meet specifications; however, it is unsaid whether in the event of non-acceptance, the municipality would be entitled to a refund (and in what amount) if the municipality had prepaid. May the municipality prepay for the fire truck?

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

Advisory Opinion 2023-07 (Nov. 3, 2023)

Question: Several public bodies, including state agencies and state institutions, have adopted the practice of merely issuing a contract for legal services without compliance with the provisions of the Procurement Code when the legal firm is to be paid through contingency fees

only in the event there is recovery of funds by the public body for the issue giving rise to the contract. The philosophy appears to be that since no money is being paid out by the public body and since there is no compensation unless the attorney succeeds in recovering funds for the public body for which the attorney is paid on a contingency basis only, that the Procurement Code does not apply. Does the Procurement Code apply to [the procurement of contracts for] legal services provided to a public body when the attorney is not guaranteed any payment and is paid exclusively through contingency fees?

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

CAMPAIGN REPORTING ACT

Advisory Opinion 2023-09 (Dec. 15, 2023) (pending)

Question: (1) May a candidate enter a contract with a direct family member for goods or services to the candidate's campaign and pay the family member with campaign funds? (2) If a candidate uses personal funds to pay a family member for goods or services to the candidate's campaign, may the candidate report the expenditure as a loan to the campaign and be reimbursed by the campaign?

Conclusion: Yes. A candidate may contract with a direct family member for goods or services to the candidate's campaign and pay the family member with campaign funds, so long as the family member is charging market rates for bona fide services to the campaign. Further, a candidate must report expenditures made from the candidate's personal funds for a campaign expenditure, including expenditures paid to a family member under a contract with fair market rates, either as a contribution or as a loan to the campaign committee. If the expenditures constitute a campaign loan, the campaign may reimburse the candidate. Read the full opinion.

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. The Commission receives referrals from other state agencies and allegations from other individuals or entities. The Commission reviews and assesses those matters to determine whether to proceed with a civil enforcement action. In 2023, in the exercise of its discretion, the Commission was involved in the following litigated or civil enforcement matters:

(1) Litigated matters

In the following matters, the Commission filed and litigated a civil enforcement action to remedy violations of New Mexico's ethics laws.

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

On February 13, 2023, the State Ethics Commission entered into a settlement agreement with Working Families Organization, Inc. (WFO). On November 2, 2022 the State Ethics Commission filed a lawsuit against 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. To settle the Commission's lawsuit, WFO filed an independent expenditure report, paid a civil penalty of \$11,0000, and agreed to comply with registration and reporting requirements in all future election cycles.

Read (1) [the Commission's press release related to this settlement](#); (2) [the settlement agreement](#); (3) [the Commission's complaint in *State Ethics Commission v. Working Families Organization, INC.* D-506-CV-2022-00942.](#)

(b) *State Ethics Commission v. Yvonne Otero*, D-722-CV-2023-00028.

On February 7, 2023, the Commission filed a civil complaint in the Seventh Judicial District Court against Yvonne Otero, the former Torrance County Clerk, to enforce the public trust provisions of the Governmental Conduct Act, Sections 10-16-3(A), 10-16-3(C), 10-16-3(D) and 10-16-3.1(C), NMSA 1978 (2011). The Commission alleged that Ms. Otero failed to treat her government office as a public trust by using her elected office as Torrance County Clerk and the public property of that office for her own personal benefit and to pursue personal interests, and further abused her office: by deleting absentee ballots cast electronically under the federal Uniformed and Overseas Citizens Absentee Voting Act; by failing to correctly process ballots she did not delete; by attempting to pre-certify ballot tabulators so she could go on vacation to Las Vegas, Nevada; by engaging in intimate encounters in her office during work hours; by making open references to illicit drug use; and by subjecting subordinate employees to danger and threats for both amusement and coercion.

The litigation is ongoing.

Read (1) [the Commission's press release related to this civil enforcement action](#); (2) [the Commission's complaint in *State Ethics Commission v. Otero*, D-722-CV-2023-00028](#).

(c) *State Ethics Commission v. Jay Christopher Stagg*, D-820-CV-2023-00368.

On October 6, 2023, the State Ethics Commission filed a civil complaint in the Eighth Judicial District against Jay Christopher Stagg to enforce Section 10-16-4(B) of the Governmental Conduct Act. The Commission's lawsuit alleged that Mr. Stagg—who was at all relevant times both a member of the Village of Taos Ski Valley's Planning and Zoning Commission and the Vice President of Taos Ski Valley, Inc ("TSVI")—refused to disqualify himself from participating in Planning and Zoning decisions related to TSVI's applications for a conditional use permit for the construction of a new hotel and a land transaction between the Village and TSVI for the construction of a gondola. As a member of the Planning and Zoning Commission, Mr. Stagg considered and voted on these items, despite also being the Vice President of TSVI. The Governmental Conduct Act requires that public officers treat their government positions as a public trust. Many public officers in New Mexico are also officers of private businesses and, thus, have fiduciary duties to those businesses. When those businesses seek official government action from those public officers, the public officers have conflicting loyalties—to the public and to their employer. In such circumstances, the Governmental Conduct Act requires that the public officer be disqualified and recuse from the matter. As a member of the Village of Taos Planning and Zoning Commission, Mr. Stagg repeatedly refused to do so. Accordingly, the Commission filed a civil enforcement action to enforce the Governmental Conduct Act.

The litigation is ongoing.

Read (1) [the Commission's press release related to this civil enforcement action](#); (2) [the Commission's complaint in *State Ethics Commission v. Stagg*](#).

(d) *State Ethics Commission v. Glenda Greene*, D-623-CV-2023-00049

On November 27, 2023, the State Ethics Commission filed a civil complaint in Sixth Judicial District Court against Glenda Greene, the current Mayor of Lordsburg, to enforce Section 10-16-3 of the Governmental Conduct Act. The complaint alleges that during a DWI traffic stop she used her authority as mayor to direct then-Chief of Police, who she immediately supervised, to attempt to stop the Lordsburg Police Department officers' investigation. The complaint further alleged that Ms. Greene then retaliated against the then-Chief of Police for not interfering with the investigation and ordering the preparation of a corresponding incident report. Finally, the complaint alleged that Ms. Greene used her authority not to reappoint the then-Chief of Police and to cause the then-Chief to apply for a demotion as Lieutenant, a position that Ms. Greene created. Accordingly, the Commission filed a civil enforcement action to enforce the Governmental Conduct Act.

In exchange for the dismissal of the Commission's claims, Ms. Greene agreed that

her conduct constituted three violations of the Section 10-16-3(A) of the Governmental Conduct Act, and paid the corresponding civil penalty of \$750.00.

Read (1) [the Commission's press release regarding the civil enforcement action](#); (2) [the Commission's complaint in *State Ethics Commission v. Greene*](#); (3) [the Commission's press release regarding settlement](#).

(2) Pre-litigation settlement agreements

In the following matters, the Commission authorized its attorney staff to file a civil enforcement action to remedy violations of New Mexico's ethics laws and entered into a settlement agreement without the need to file claims in state district court.

(a) *Bernadine Martin, Eleventh Judicial District Attorney.*

On February 3, 2023, in response to a demand letter, Eleventh Judicial District Attorney (Division II) Bernadine Martin and the Chief Procurement Officer for that office, Christina Esquibel, settled with the Commission to remedy alleged violations of the Procurement Code. The Commission alleged that the office violated the Procurement Code by entering into multiple contracts for legal services without using either a competitive proposal process or an applicable exception. Under the settlement, District Attorney Martin agreed to comply with the Procurement Code regarding contracts for legal services by issuing a request for proposals for the contracts and undergo a procurement training as authorized by the State Purchasing Division of the General Services Department.

Read [the Commission's press release related to this settlement](#).

(b) *Stephanie Stringer, former Chair and Commissioner for the Water Quality Control Commission (WQCC) and former employee of the New Mexico Environment Department.*

On February 3, 2023, in response to a demand letter, Stephanie Stringer, former Chair and Commissioner for the Water Quality Control Commission (WQCC), settled with the Commission to remedy alleged violations of the Governmental Conduct Act. The Commission alleged that Ms. Stringer applied for, interviewed for, and accepted employment with a federal agency, while also taking actions as Chair of the WQCC related to that agency. The Commission contended that Ms. Stringer violated Section 10-16-4(C) of the GCA by acquiring a financial interest (negotiations for prospective employment) when she reasonably should have believed that her official acts as a commissioner and Chair of the WQCC would directly affect that interest. To settle this matter, and without admitting any liability or wrongdoing, Ms. Stringer agreed to pay a \$250 civil penalty. This amount is the maximum fine currently available under the Governmental Conduct Act for one violation of that act.

Read [the Commission's press release related to this settlement](#).

(c) *New Mexico Value PAC.*

On or about June 29, 2023, in response to a demand letter, the New Mexico Values PAC settled with the Commission to remedy alleged violations of the Campaign Reporting Act. The Commission alleged that, in the run up to the June 7, 2022 Primary Election, New Mexico Values PAC made independent expenditures opposing the

election of Representative Susan Herrera but failed to timely disclose information about those expenditures and the sources of the contributions used to fund those expenditures. New Mexico Values PAC's failure to make timely and complete disclosures violated New Mexico's Campaign Reporting Act and deprived the electorate of lawfully required information regarding who sought to influence their votes. Accordingly, the Commission authorized a civil action to remedy violations of the Campaign Reporting Act. To settle this matter, New Mexico Values PAC agreed to register with the Office of the Secretary of State as an independent expenditure filer, to disclose all expenditures that New Mexico Values PAC made and contributions it received during the 2022 election cycle, and to pay a civil penalty of \$1,000.

Read (1) [the June 21st letter, 2023 letter from J. Farris, Executive Director, State Ethics Commission to New Mexico Values PAC](#); (2) [the settlement agreement](#).

(d) *Governor Michelle Lujan Grisham and the Human Services Department.*

On August 10, 2023, in response to a demand letter and following extended mediation with the Honorable Judith K. Nakamura (Ret.), Governor Michelle Lujan Grisham and the Human Services Department (HSD) settled with the Commission to remedy alleged violations of the Procurement Code. The Commission alleged that HSD issued the Request for Proposals for Managed Care Organization (MCO) Contractors for Turquoise Care RFP #23-630-8000-0001 (Sept. 30, 2022) (RFP) on September 30, 2022 and cancelled it on January 30, 2023. On April, 20, 2023 following an investigation into the cancellation of the RFP, the State Ethics Commission, as specially constituted, contended that the cancellation of the RFP violated the Procurement Code and authorized its Executive Director to file an appropriate civil enforcement action. (Following the recusals of Chair Lang and Commissioner Carruthers, the remaining Commissioners appointed the Honorable Richard Bosson (Ret.) as Chair *Pro Tem* and Mr. Matthew Holt as Commissioner *Pro Tem*.)

As a result of a demand letter and extended mediation, the Commission, Governor Lujan Grisham, and HSD concluded a settlement. Under the settlement agreement, in exchange for the release of the Commission's claims, the Governor and HSD agreed to rescind the cancellation of the RFP for MCO contractors and award contracts to the offerors that HSD employees had selected for contract awards before the cancellation. New Mexico spends roughly 8 billion dollars per year using state and federal funds on Medicaid, providing healthcare for nearly half of all New Mexicans. The settlement reached by the Commission, Governor Lujan Grisham, and HSD enabled the procurement of the managed-care Medicaid contracts to move forward in manner that was compliant with the Procurement Code.

Read (1) [the Commission's press release related to the settlement](#); (2) [the settlement agreement](#).

(e) *Compliance with the Financial Disclosure Act.*

On May 8, 2023, the Office of the Secretary of State, following its attempt to achieve voluntary compliance, referred 118 individuals who failed to file financial disclosure statements as required by the Financial Disclosure Act. At its June 2, 2023, the Commission authorized and instructed its staff to investigate the status of the filings for referred individuals, make a demand on those individuals or some subset thereof to file

a financial disclosure statement, and, if necessary, to prepare and file a civil enforcement action in a court of competent jurisdiction to enforce the civil compliance against those individuals or some subset thereof. Under this authority, the Commission achieved compliance filings from agency heads of the Office of the State Engineer and the Military Base Planning Commission, as well as from members of the State Board of Finance, the State Investment Council, the Water Trust Board, and State Racing Commission.

Read [the Commission's press release regarding compliance with the Financial Disclosure Act](#).

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 Conduct 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 2023, Commission staff have offered several trainings regarding the ethics laws, as detailed below. For more information on the Commission’s presentations and trainings, visit: <https://www.sec.nm.gov/education/>

- **April 20, 2023** – Ethics Law for Municipal Clerks (Director Farris)
- **April 20, 2023** – Ethics Presentation to the Southern Sandoval County Arroyo Flood Control Authority (Deputy General Counsel Branch)
- **April 21, 2023** – The Procurement Code as Governmental Ethics Law (Director Farris)
- **May 4, 2023** – Taxation, Public Trust, & New Mexico Constitutional Law (Director Farris)
- **May 9, 2023**— Ethics Presentation to the Luna Community College Board of Trustees (Deputy General Counsel Branch)
- **June 6, 2023** – Ethics in Elected Office to the Municipal Official Leadership Institute (General Counsel Boyd)
- **July 7, 2023** – Ethics Law for University Regent to the Eastern New Mexico Board of Regents (Director Farris and Deputy General Counsel Branch)
- **August 4, 2023** – Recent Development in Government Ethics to the New Mexico Self-Insurers Fund CLE (General Counsel Boyd)
- **October 12, 2023** – Favoritism Under Law, 2023 Procurement Code Institute (Director Farris)
- **October 27, 2023** – How to Cancel a Procurement to the New Mexico Public Procurement Association (Director Farris)
- **October 28, 2023** – Paradox of Trust to the New Mexico Press Association (Director Farris)
- **November 15, 2023** – Ethics Law for Local Governments to the Department of Finance and Administration, Local Government Division (Deputy General Counsel Branch and Deputy General Counsel Randall)
- **November 15, 2023** – Administrative Complaints Under the State Ethics Commission Act at the Cherry Hills Library (Deputy General Counsel Branch)
- **November 29, 2023** – Overview of State Ethics Commission for State Agency CFOs (Director Farris)
- **November 30, 2023** – The State Ethics Commission and the Procurement Code for Municipal Attorneys, New Mexico Municipal League Winter CLE (Director Farris)
- **November 30, 2023** – Ethics Law for Municipal Attorneys, New Mexico Municipal League Winter CLE (General Counsel Boyd)

LEGISLATIVE RECOMMENDATIONS

The Commission offers the following recommendations for the Second Session of the Fifty-Sixth Legislature, which the Commission also recommended 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 four 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.

In 2023, in the First Session of the Fifty-Sixth Legislature, Representative Cates, Representative Jaramillo, Representative Little, Representative Chávez, and Representative Szczepanski sponsored House Bill 5, which would have amended the Governmental Conduct Act along the foregoing lines. House Bill 5, as amended, unanimously passed the House of Representatives. Given that result, the Commission respectfully requests the Governor to give her message to a bill reflecting the version of House Bill 5 that the House of Representatives unanimously passed and requests the Legislature to pass the bill in the upcoming session.

Read (1) [House Bill 5 \(amendments in context, 2023 Regular Session\)](#); (2) [a discussion draft of a clean version of House Bill 5, as amended \(2023\)](#) ; (3) [The letter from J. Farris, Executive Director, State Ethics Commission, to Gov. Lujan Grisham, \(Dec. 1, 2023\), regarding amendments to the Governmental Conduct Act.](#)

(2) The Disclosure Act

The Commission recommends the “Disclosure Act” as a replacement for the Financial Disclosure Act. 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 four 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 (1) [the “Disclosure Act,” House Bill 149 \(55th Legis., 2nd Sess.\)](#); (2) [Read the “Disclosure Act,” Senate Bill 125 \(56th Legis., 1st Sess.\)](#).

(3) 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.