



State Ethics Commission

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ANNUAL REPORT 2023



To:
The New Mexico
Legislature & Governor
Michelle Lujan Grisham

TABLE OF CONTENTS

OPENING MESSAGE.....	1
COMMISSION MEMBERS	2
HISTORY OF THE STATE ETHICS COMMISSION	3
ORGANIZATION	4
Commissioners.....	4
Commission Staff	4
FISCAL REPORT	7
OPERATIONS.....	8
Administrative Complaints.....	8
Advisory Opinions.....	10
Civil Enforcement & Litigated Matters.....	14
Trainings	19
LEGISLATIVE RECOMMENDATIONS.....	20

OPENING MESSAGE

December 21, 2023

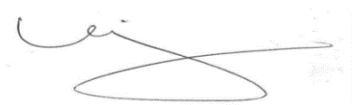
On behalf of the State Ethics Commission, I am pleased to offer an annual report of the Commission's activities. By stipulation of statute, the State Ethics Commission shall "submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers 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, thanking him for his service, and welcomed Dr. Terry McMillan to the Commission;
- handled 59 administrative complaints newly filed in 2023, in addition to 16 administrative complaints that were rolled over from 2022;
- issued 9 formal advisory opinions and 33 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 New Mexico; and
- conducted a rulemaking, amending the Commission's administrative rules to align those rules with amendments to the State Ethics Commission Act that the Legislature 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. The Commission has been operating since.

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 Teresa 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 fund balance for the fiscal year ending June 30, 2023.

NEW MEXICO STATE ETHICS COMMISSION STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE – BUDGET AND ACTUAL YEAR ENDED JUNE 30, 2023

	General Fund			
	Original Approved Budget	Final Approved Budget	Actual	Variance with Final Budget Favorable (Unfavorable)
REVENUES				
State General Fund Appropriation	\$ 1,193,500	\$ 1,193,500	\$ 1,193,500	\$ -
Other State Funds	-	24,750	24,750	-
Transfers In from Other State Agencies	42,800	42,800	42,800	-
Total Revenues	1,236,300	1,261,050	1,261,050	-
EXPENDITURES				
Current:				
Personal Services and Fringe Benefits	924,500	924,500	911,637	12,863
Contractual Services	200,000	200,000	118,466	81,534
Other Costs	111,800	136,550	133,816	2,734
Total Expenditures	1,236,300	1,261,050	1,163,919	97,131
Excess of Revenue Over (Under) Expenditures	\$ -	\$ -	97,131	\$ (97,131)
Fund Reversions - 2023			(97,131)	
NET CHANGE IN FUND BALANCE			\$ -	

In accordance with the Government Auditing Standards, CliftonLarsonAllen LLP (CLA), has completed an audit of the State Ethics Commission's financial statements ending June 30, 2023. Following approval by the Office of the State Auditor, CLA's financial statement includes an **unmodified** auditor's report confirming no material weakness(es), significant deficiency(ies), nor noncompliance material to the financial statements. In CLA's opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities and the major general fund as of June 30, 2023, the respective changes in financial position and budgetary comparison of the general fund for the year then ended in accordance with accounting principles generally accepted in the United States. The full report on the State Ethics Commission's Financial Statements and Supplementary Information for fiscal year ended June 30, 2023 can be found [here](#).

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 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.

Q1 (January – March) Rolled Over From 2022-Q4: 16 New Filed in 2023-Q1: 7 Closed in 2023-Q1: 11	<u>Complaints filed in Q1</u> Governmental Conduct Act: 3 Other: 4
Q2 (April – June) Rolled Over From 2023-Q1: 12 New Filed in 2023-Q2: 17 Closed in 2023-Q2: 13	<u>Complaints filed in Q2</u> Governmental Conduct Act: 12 State Ethics Commission Act: 3 Other: 2
Q3 (July – September) Rolled Over from 2023-Q2: 16 New Filed in 2023-Q3: 18 Closed in 2023-Q3: 9	<u>Complaints filed in Q3</u> Governmental Conduct Act: 6 Campaign Reporting Act: 12
Q4 (October – December 20) Rolled Over from 2023-Q3: 16 New Filed in 2023-Q4: 17 Closed in 2023-Q4: 6	<u>Complaints filed in Q4</u> Governmental Conduct Act: 10 State Ethics Commission Act: 3 Procurement Code: 1 Other: 3
<u>2023 Cumulative Case Data</u> Total Rolled Over from 2022: 16 Total New Filed in 2023: 59 Total Closed in 2023: 39 Total Pending on December 21, 2023 (date of submission): 21	<u>2023 Complaints</u> Governmental Conduct Act: 31 Campaign Reporting Act: 12 State Ethics Commission Act: 6 Other: 9

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.

Complaints rolled over from 2022: 12
Complaints filed in 2023: 7
Cases closed in 2023: 13
Cases rolled over to 2024: 6

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. In 2023, Commission staff provided 33 informal advisory letters to state and local governmental employees around New Mexico.

The New Mexico Compilation Commission publishes all of the Commission’s advisory opinions on [NMOneSource.com](https://nmonesource.com), the free, online public access to the master database of official state laws.

Below is a profile of the advisory opinions the Commission issued in 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)

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

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. [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.

On December 11, 2023, the Commission entered into a settlement with Ms. Otero. In exchange for the Commission's dismissal of claims, Ms. Otero admitted to two violations of Subsection 10-16-3(A), one violation of Subsection 10-16-3(C), and one violation of Subsection 10-16-3.1(C) of the Governmental Conduct Act by: (i) using her position as County Clerk to solicit prescription medications from an employee on at least one occasion; (ii) discharging a taser beside the head of her subordinate employee; (iii) breaching the legal duties as County Clerk by pre-signing blank verification forms of vote tabulating machines; and (iv) by allowing Torrance County property to be used for other than an authorized purpose. Ms. Otero agreed to pay the corresponding civil penalty of \$1,000 for four violations of the Governmental Conduct Act.

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](#); (3) [the settlement agreement in this matter](#); and (4) [the Commission's press release related to the settlement](#).

(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.

The Commission and Ms. Greene settled shortly after the Commission filed suit. 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 Values 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 may 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. 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)
- **December 15, 2023** – Ethics of Revolving Door Statutes and Practicing before the State Ethics Commission, State Bar of New Mexico Natural Resources, Energy and Environmental Law Section Annual Institute, 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 has 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.

During the First Session of the Fifty-Sixth Legislature (2023), Senator Tallman, Representative Garratt, and Representative Sariñana sponsored Senate Bill 125, the Disclosure Act. The bill did not receive a committee hearing.

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.