



NEW MEXICO STATE ETHICS COMMISSION

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

RESOLUTION NO. 2024-04 Authorizing a demand and civil action to enforce the Governmental Conduct Act

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION (“Commission”) met virtually on April 5, 2024, at 9:00 a.m.;

WHEREAS, the Commission has the power to investigate violations and bring a civil action to enforce the Governmental Conduct Act;

WHEREAS, the Commission has reason to believe that Ron Sena violated NMSA 1978, Subsections 10-16-3.1 of the Governmental Conduct Act;

WHEREAS, Mr. Sena is the manager of the Village of Ruidoso;

WHEREAS, Mr. Sena and the Commission’s General Counsel have proposed a pre-litigation settlement agreement with Mr. Sena, attached hereto as Exhibit 1;

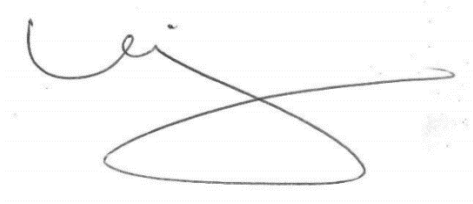
WHEREAS, the Commission has reviewed the proposed settlement agreement, and believes that the proposed settlement agreement is in the best interests of the Commission; and

WHEREAS, in the absence of a pre-litigation settlement agreement, the Executive Director would have sought the approval of the commission to initiate a civil action under NMSA 1978, Sections 10-16-14(E), 10-16-18(B), and 10-16G-9(F) against Mr. Sena;

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

1. The pre-litigation settlement agreement proposed by the General Counsel and Mr. Sena, attached to this resolution as Exhibit 1, is approved.
2. Commission staff are instructed to provide updates to the Commission on Mr. Sena's compliance with the settlement agreement at the Commission's next-scheduled meeting.

Adopted by the New Mexico State Ethics Commission this 5th day of April, 2024.

A handwritten signature in black ink on a white background with faint horizontal lines. The signature is stylized, starting with a large 'W' and 'F' that are connected, followed by a long horizontal stroke that loops back under itself.

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



STATE ETHICS COMMISSION

Walker Boyd, General Counsel
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Hon. William F. Lang (Chair)
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Celia Castillo
Hon. Dr. Terry McMillan
Ronald Solimon
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

March 22, 2024

Ron Sena
c/o Zach Cook
1202 Sudderth # 425
Ruidoso, New Mexico 88345

Via email only

Dear Mr. Sena:

On March 18, 2024, you disclosed probable violations of the Governmental Conduct Act to the Commission through your attorney. I have reviewed your attorney's proffer and agree that your self-reported conduct likely amounts to two violations Section 10-16-3.1(C) of the Governmental Conduct Act. I am writing to summarize my understanding of the facts and to offer a proposed settlement agreement in lieu of a demand for civil penalty.

Factual background

According to your attorney's proffer, you are the manager of the Village of Ruidoso, and are therefore a "public employee" subject to the Governmental Conduct Act. *See* NMSA 1978, § 10-16-2(I) (2011). between March 8 and March 12, 2024, you sent text messages to seven subordinate employees of the Village of Ruidoso. The text messages advised the recipients that the Mayor of Ruidoso was a candidate for the State Senate and was seeking nominating petition signatures. The text messages contain a campaign advertisement and a link to the mayor's nominating petition. Separately, you used a vehicle owned by the Village of Ruidoso to deliver paper copies of nominating petition signature pages to the Village's senior citizen center and a local business.

The Commission's claims

The facts set out in your attorney's proffer show that you likely committed two violations of Section 10-16-3.1 of the Governmental Conduct Act, which provides:

10-16-3.1. Prohibited political activities.

A public officer or employee is prohibited from:

- A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
- B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate

employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

NMSA 1978, § 10-16-3.1 (2011).

Section 10-16-3.1(A) prohibits a public official or employee from "directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to . . . [a] person for a political purpose."

Your text messages to subordinate employees likely violated subsections (A) and (B) of Section 10-16-3.1. Section 10-16-3.1(A) prohibits indirect acts of coercion. I understand that you did not threaten the recipients or otherwise demand that they sign the nominating petition, but the mere act of sending a text message from your Village-issued phone to subordinate employees likely would lead a reasonable employee to infer that their decision not to sign the nominating petition would affect their supervisor's opinion of their performance as an employee. Moreover, Subsection (B) prohibits a public officer or employee from "advising an employee to take part in political activity or similar activities," and the text messages can reasonably be interpreted as advice to the employees to participate in a quintessential political activity: signing a nominating petition in support of a candidate for elected office.

Section 10-16-3.1(C) prohibits a local government official from using property belonging to the local government entity "for other than authorized purposes." This provision applies to prohibit a government official, acting in his official capacity, from using government property to provide a benefit to a candidate for elected office. Your use of a Village-owned vehicle to deliver nominating petitions to a local business and senior center likely violates Section 10-16-3.1(C).

Settlement offer

Under the Governmental Conduct Act, the State Ethics Commission may institute a civil action "to prevent a violation of any provision of the Governmental Conduct Act." *See* NMSA 1978, § 10-16-18(B) (2019). "Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order . . ." *Id.* Further, the Governmental Conduct Act allows for civil penalties in the amount of two-hundred-fifty dollars (\$250.00) for each violation of the statute, not to exceed five-thousand dollars (\$5,000). *See id.*

If the Commission's attorneys had received a complaint describing the conduct set out in your attorney's proffer and was able to substantiate the alleged violations through its own investigation, the attorneys would have sought leave from the Commission to institute a civil action seeking a \$250 civil penalty for each violation. However, your decision to self-report your violations supports waiving any applicable civil penalty, for two reasons.

First, under the Governmental Conduct Act, “[t]he state ethics commission shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days’ notice to correct the matter.” NMSA 1978, § 10-16-13.1(B) (2019). It is unclear whether it is possible to correct your admitted violations of the Governmental Conduct Act. Nonetheless, your decision to self-report tends to show that your violations were unintentional, which counsels in favor of a decision to waive applicable civil penalties.

Second, the Commission has limited enforcement resources. Most of the Commission’s enforcement activity results from third parties submitting complaints to the Commission, and the Commission often does not have the resources needed to undertake proactive investigations into potential violations. As a result, many violations of the Governmental Conduct Act likely go unremedied, simply because they are not reported. It is therefore in the Commission’s interest to communicate to regulated parties that they will obtain a better result from self-reporting than from remaining silent and hoping that their violations go unnoticed.

For these reasons, I will propose the Commission approve a settlement agreement with you based on the following terms:

1. By your signature below, you agree that your conduct as described above was a violation of Section 10-16-3.1(A)-(C) of the Governmental Conduct Act; and
2. Within 15 days of the date of this correspondence, you send a written apology to each employee who received the text messages described in your attorney’s proffer. You are free to choose the words of your written apology, but it should communicate to the affected employees that: (i) as their supervisor you should not have encouraged them to support the Ruidoso mayor’s candidacy for state senate; (ii) that the law prohibits public officers and employees from using state resources to provide support to a candidate seeking elected office; and (iii) that their decision to participate (or not participate) in political activities while on their own time is theirs alone to make.

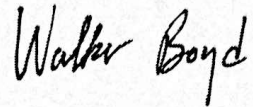
In exchange for your signature below, and upon a vote by the Commission to approve this proposed settlement agreement, the Commission will agree not to file a civil action seeking civil penalties, equitable relief, or other relief for the violations described in this agreement. The Commission will further agree that your violations were not willful, and will state in any press release concerning this agreement that it appreciates, and agreed not to seek a civil penalty as a result of, your decision to self-report.

Please be aware that any settlement agreement will be a public record. Please also note that this proposed settlement agreement must first be reviewed and approved by the State Ethics Commission to become effective. Finally, please note that this settlement agreement is limited to the acts described in your attorney’s proffer, dated March 18, 2024. If there are additional facts

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that you feel the Commission should be aware of regarding this proposed settlement, please have your attorney communicate those facts to the Commission before signing below.

Very truly yours,

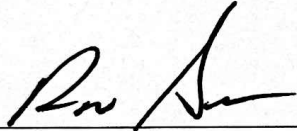


Walker Boyd

cc: Jeremy Farris, Executive Director

Attachments: Email from Z. Cook dated March 18, 2024.

I AGREE:



Ron Sena

Boyd, Walker, SEC

From: Zach Cook <zach@zachcook.com>
Sent: Monday, March 18, 2024 4:43 PM
To: Farris, Jeremy, SEC; Boyd, Walker, SEC
Subject: [EXTERNAL] Report of probable violation of Governmental Conduct Act
Attachments: IMG_5519.heic

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Mr. Farris and Mr. Boyd:

On Tuesday, March 8, 2024, news that State Senator Bill Burt would not seek re-election during the current election cycle reached Ruidoso. Following that news, the mayor of the Village of Ruidoso decided that he would seek election to Senator Burt's seat, with nominating petitions due the following Tuesday, March 12, 2024.

With the best interests of the Village of Ruidoso in mind, the village manager, Ron Sena, sent text messages to 7 subordinate village employees advising them of the mayor's decision to run for the senate seat. The messages were sent from a village-issued cell phone, and included the attached campaign logo and the following link to sign the mayor's nominating petition:

<https://www.electronicpetitions.elections.sos.nm.gov/>

No text or comments written by Mr. Sena were included in the messages, only the logo and the link.

Mr. Sena has advised me that he also used a village vehicle to deliver hard copies of nominating petitions to a local business and to the Village's senior citizen center. While no signatures were collected at those locations, the fact remains that he used a village vehicle to deliver the petitions.

I am writing today to advise you that Mr. Sena acknowledges that he likely violated NMSA 1978 Section 10-16-3.1 (A) and (C), and he desires to self-report the violation and accept any consequences from the Commission that may result from the violations.

Mr. Boyd and I spoke on the phone earlier this afternoon and discussed a possible resolution to this violation without the need for litigation or other unnecessary expenditures of your agency's resources. Such resolution would most likely include an apology from Mr. Sena to the 7 recipients of the text messages, as well as a possible civil fine. Those were only mentioned on our phone conversation, and I understand that the two of you would have to discuss the matter further and bring it to the Commission for final determination of resolution.

Please let me know if you need any additional information from me or Mr. Sena. Mr. Sena has spent his entire career in public service and is truly repentant that he may have violated any law, much less the Governmental Conduct Act. He and I stand ready to cooperate with you through final resolution of the matter.

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Sincerely,

Zach Cook, Esq.

Zach Cook, LLC
1202 Sudderth # 425
Ruidoso, New Mexico 88345
(575) 937-7644
zach@zachcook.com

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