

STATE ETHICS  
COMMISSION MEETING

May 24, 2024

**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

May 24, 2024, 9:00 a.m. to 12:00 p.m. (Mountain Time)

Meeting Link: [HERE](#)

Meeting ID: 873 4393 4614

Passcode: Ethics321

### Commission Meeting

Chair Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of April 5, 2024 Commission Meeting

#### Commission Meeting Items

#### Action Required

- |  |     |
|--|-----|
| 4. Open Meetings Act best practices refresher<br>( <i>Manierre</i> ) | No  |
| 5. Update on Commissioner appointments<br>( <i>Farris</i> )          | No  |
| 6. FY25 Operating Budget<br>( <i>Farris, George</i> )                | Yes |
| 7. Advisory Opinion 2024-03<br>( <i>Manierre</i> )                   | Yes |

8. Pre-executive session public comment  
(*Tabet-Kirkpatrick*) Yes

**Upon applicable motion, Commission goes into 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).**

9. Discussion regarding current and potential litigation:  
(*Farris*)
- a. Proposed pre-litigation settlement with local government official for violation of the Governmental Conduct Act  
(*Farris*)
  - b. Authorization of civil action against persons subject to the Campaign Reporting Act for violations of that statute  
(*Farris*)
  - c. Authorization of civil action against local government officials and domestic LLC for violations of the Procurement Code  
(*Farris*)
  - d. Campaign Reporting Act violations as identified in 2023 and 2024 expenditure filings  
(*Farris*)
10. Discussion regarding administrative matters under State Ethics Commission Act:  
(*Farris*)
- a. Administrative Complaint No. 2024-04
  - b. Administrative Complaint No. 2024-07
  - c. Administrative Complaint No. 2024-09
  - d. Administrative Complaint No. 2024-11
  - e. Administrative Complaint No. 2024-12
  - f. Administrative Complaint No. 2024-13
  - g. Administrative Complaint No. 2024-14

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

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11. Authorization of Civil Action: Yes  
(*Farris*)
- a. Proposed pre-litigation settlement with local government official for violation of the Governmental Conduct Act  
(*Farris*)

- b. Authorization of civil action against entity for violations of the Campaign Reporting Act  
(*Farris*)
  - c. Authorization of civil action against local government officials and domestic LLC for violations of the Procurement Code  
(*Farris*)
12. Administrative Matters under State Ethics Commission Act:  
(*Farris*) Yes
- a. Administrative Complaint No. 2024-04
  - b. Administrative Complaint No. 2024-07 Yes
  - c. Administrative Complaint No. 2024-11
  - d. Administrative Complaint No. 2024-12
  - e. Administrative Complaint No. 2024-13
  - f. Administrative Complaint No. 2024-14
13. Discussion of next meeting:  
(*Lang*) No
14. Public Comment No
15. Adjournment No

*For inquiries or special assistance, please contact [Ethics.Commission@sec.nm.gov](mailto:Ethics.Commission@sec.nm.gov)*



## STATE ETHICS COMMISSION

### **Commission Meeting Minutes of April 5, 2024, | 9:00AM- 11:00AM** **[Subject to Ratification by Commission]**

#### **Call to Order**

Chair Lang called the meeting to Order at 9:00 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 F. Lang, Chair

#### **2. Approval of Agenda**

Executive Director Farris requested to strike Item 5, Advisory Opinion 2024-03. Commissioner Bluestone moved to approve the agenda as amended; Commissioner Castillo seconded. Hearing no opposition, the agenda was approved unanimously.

#### **3. Approval of February 2, 2024, Commission Meeting Minutes**

Chair Lang sought a motion for the approval of the minutes from the February 2<sup>nd</sup>, 2024, Commission meeting. Commissioner Baker moved to approve the minutes; Commissioner Bluestone seconded. Hearing no discussion or objections the minutes were approved unanimously.

#### **Commission Meeting Items**

#### **4. Advisory Opinion 2024-02:**

Deputy General Counsel Randall gave a brief overview of the advisory opinion which addressed the question:

*“May a legislator use campaign funds to pay for registration and travel to conferences and courses designed to make them a better legislator, including educational conferences and professional development courses?”*

## **ANSWER**

*Yes, the Campaign Reporting Act allows for the expenditure of campaign funds by a legislator that are reasonably related to performing the duties of the office held, which may include training and travel expenditures.”*

Chair Lang sought a motion to adopt Advisory Opinion 2024-02. Commissioner Solimon moved to adopt the opinion; Commissioner Villanueva seconded. After a roll call vote, the advisory opinion was approved unanimously.

### **5. ~~Advisory Opinion 2024-03~~**

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### **6. Annual Open Meetings Act Resolution 2024-01**

Chief Compliance Counsel Manierre gave an overview of the updates to the Annual Open Meetings Act Resolution 2024-01.

Chair Lang sought a motion to adopt resolution 2024-01. Commissioner Solimon moved to adopt the opinion; Commissioner Baker seconded. Commissioner Villanueva asked for clarification on the immediacy in article 4 of the resolution. After some brief discussion, the resolution was approved unanimously.

### **7. Resolution 2024-03**

Executive Director Farris gave an overview of Resolution 2024-03. Chair Lang sought a motion to adopt resolution 2024-03. Commissioner Baker moved to adopt the opinion; Commissioner Castillo seconded. Commissioner Bluestone provided editorial amendments. The resolution as amended was approved unanimously.

### **8. Administrative Case No. 2022-27, *Kokinadis v. Bedonie*: authorization to seek hearing subpoenas from district court**

Executive Director Farris requested that the Commission authorize him to petition the district court for a subpoena to compel the presence of witnesses for the hearing in the above-referenced administrative case. Chair Lang sought a motion to adopt the authorization. Commissioner Castillo moved to adopt the opinion; Commissioner Baker seconded. The authorization was approved unanimously.

### **9. Commissioner Bluestone op-ed on Procurement Code**

Commissioner Bluestone presented to the Commission his opinion editorial on the Procurement Code and requested the Commission’s approval to submit the piece as opinion of the Commission. After discussion and debate the Chair held a roll call vote:

Commissioner Baker: No  
Commissioner Bluestone: Yes  
Commissioner Castillo: Yes  
Commissioner McMillan: No  
Commissioner Solimon: No  
Commissioner Villanueva: No  
Chair Lang: No

The motion fails with a vote of 2 in the affirmative and 5 in the negative.

#### 10. **Public Comment (pre-closed session)**

Nat Dean thanked the Commission and their ability to provide accurate closed captioning for the meeting. They emphasized that this allows for a variety of members of the public to fully participate in public government meetings.

#### **---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 Baker moved to enter executive session; Commissioner Castillo seconded. Hearing no discussion, the Commission entered executive session.

#### 11. Discussion regarding current and potential litigation:

(Boyd)

- a. Resolution approving proposed pre-litigation settlement with local government employee.

#### 12. Administrative Matters under Revised Uniform Law on Notarial Acts:

(Branch)

- a. 2023-NP-07 *In re commission of McNellis* Approval of Settlement Agreement.
- b. 2023-NP-08 *In re commission of Garza* Default Order
- c. 2024-NP-01 *In re commission of Terrazas* Order of Dismissal and Warning Letter

#### 13. Discussion regarding administrative matters under State Ethics Commission Act:

(Farris)

##### Dismissals of administrative complaints:

- a. Administrative Complaint No. 2024-03

*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---**

#### 14. **Authorization approving pre-litigation settlement with local government employee:**

Commissioner Bluestone moved as stated above, Commissioner Baker seconded. All



Commissioners and the Chair voted in the affirmative, and the pre-litigation settlement was unanimously approved.

**15. Actions on Administrative matters under the Revised Uniform Law on Notarial Acts:**

*(Branch)*

- a. **Commission staff sought motion to approve Settlement Agreement 2023-NP-07 *In re commission of McNellis*:** Commissioner Catillo moved as stated above, Commissioner Bluestone seconded. All Commissioners and the Chair voted in the affirmative and approved the settlement agreement.
- b. **Commission staff sought motion to approve Default Order 2023-08 *In re commission of Garza*:** Commissioner Baker moved as stated above, Commissioner Castillo seconded. All Commissioners and the Chair voted in the affirmative and approved the default order.
- c. **Commission staff sought motion to approve Order of Dismissal and Warning Letter 2024-NP-01 *In re commission of Terrazas*:** Commissioner Bluestone moved as stated above, Commissioner Baker seconded. All Commissioners and the Chair voted in the affirmative and approved the order of dismissal.

**16. Action on Administrative Complaint No. 2024-03**

*(Farris)*

The Commission considered the following motions regarding actions on Administrative Complaints:

- a. **Commission staff sought motion of dismissal of Administrative Case No. 2024-03:** Commissioner Baker moved as stated above, Commissioner Solimon seconded. All Commissioners and the Chair voted in the affirmative and the case was dismissed.

**17. Discussion of Next Meeting**

Chair Lang confirmed that the next regularly scheduled meeting will take place virtually, May 24<sup>th</sup> at 9:00 AM.

**18. Public Comment**

No public comments were made.

**19. Adjournment**

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting was adjourned at 11:00 AM.

*For inquiries or special assistance, please contact [Ethics.Commission@sec.nm.gov](mailto:Ethics.Commission@sec.nm.gov)*



# STATE ETHICS COMMISSION

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

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

## OPERATING BUDGET Fiscal Year 2025

July 1, 2024 - June 30, 2025

## STATE OF NEW MEXICO

Prepared By:  
Jeremy D. Farris, Executive Director and  
Wendy George, Finance & Administration Director

**SEC 8**

**FORM S-1**  
**CERTIFICATION**  
**FY25 OPERATING BUDGET CERTIFICATION**

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Agency Name: State Ethics Commission

Business Unit: 41000

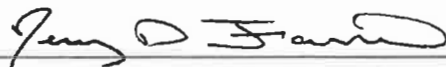
*I hereby certify that the accompanying summary and detailed statements are true and correct to the best of my knowledge and belief and that the arithmetic accuracy of all numeric information has been verified.*

☐

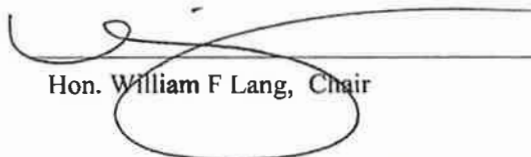
Yes, department level budgets will be used this fiscal year

☒

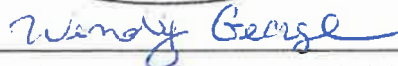
No, department level budgets will not be used this fiscal year



Jeremy Farris, Executive Director



Hon. William F Lang, Chair



Wendy George, Finance and Administration Director, CFO

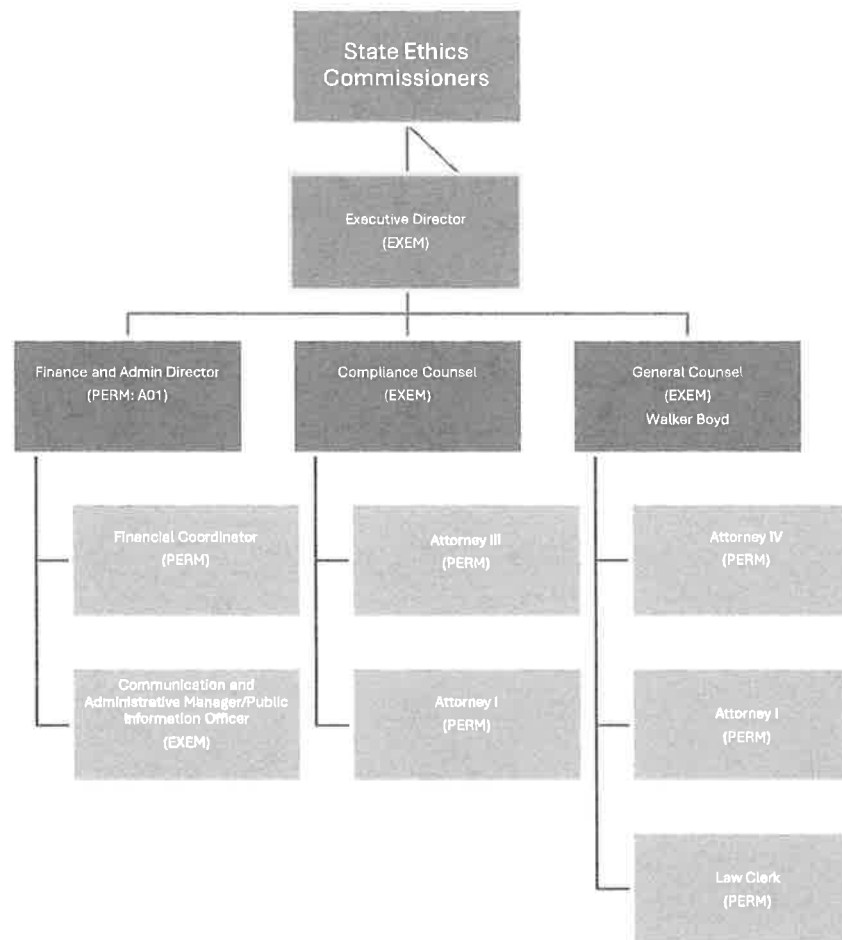
800 Bradbury Dr. SE, STE  
215  
Albuquerque NM 87106

505-554-7608

wendyj.george@sec.nm.gov

*Note: Operating Budgets of agencies headed by a board or commission must be approved by the board or commission by official action and signed by the chairperson. Operating Budgets of other agencies must be signed by the director or secretary. Operating Budgets not properly signed will be returned.*

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Business Unit (Agency)	Class Code
41000	10000
Date	Budget Reference
7/1/2024	125

State of New Mexico  
Operating Budget Input Report  
OPBUD-3

Agency Name    State Ethics Commission

Fund	BU	PCode/Dept	Account	Source of Funds or Expenditure Category	Amounts
REVENUE ( Budgeted Sources)					
General Fund Transfers					
SHARE Revenue Budget Journal				41025OPR01	
20780	41000	P410	499105	General Fd. Appropriation	1,676,400
Subtotal of General Fund Transfers					1,676,400
Other Transfers					
SHARE Revenue Budget Journal				41025OPR01	
20780	41000	P410	499905	Other Financing Sources	36,500
Subtotal of Other Transfers					36,500
Other Revenues					
SHARE Revenue Budget Journal				41025OPR01	
20780	41000	P410	425906	Other Services - CU	5,000
Subtotal of Other Revenues					5,000
TOTAL REVENUE					1,717,900
APPROPRIATION ( Budgeted Expenditures)					
SHARE Appropriation Budget Journal				41025OPA01	
20780	41000	P410	200	Personal Services and Employee Benefits	1,351,000
20780	41000	P410	300	Contractual services	211,900
20780	41000	P410	400	Other	155,000
TOTAL APPROPRIATIONS					1,717,900

For DFA Use Only	
Control Number	
SBD Analyst	
SBD Director	
Posted	

Signature: Wendy George      7/1/2024  
Chief Financial Officer

## S-8 OPBUD by Fund Level

(Dollars in Thousands)

BU PCode Department  
 41000 0000 0000000000

		FY24 OPBUD	FY25 PCF Projection	FY25 GAA OPBUD with Transfers	FY25 Comp Package	FY25 Other Adjustments	FY25 OPBUD-3	FY25 Other Recurring	Final FY25 OPBUD
111	General Fund Transfers	1,510.2	0.0	1,676.4	0.0	0.0	1,676.4	0.0	1,676.4
112	Other Transfers	0.0	0.0	0.0	36.5	0.0	36.5	0.0	36.5
130	Other Revenues	0.0	0.0	5.0	0.0	0.0	5.0	0.0	5.0
		1,510.2	0.0	1,681.4	36.5	0.0	1,717.9	0.0	1,717.9
REVENUE		1,510.2	0.0	1,681.4	36.5	0.0	1,717.9	0.0	1,717.9
EXPENSE									
200	Personal Services and Employee Benefit	1,172.7	1,257.1	1,314.5	36.5	0.0	1,351.0	0.0	1,351.0
300	Contractual services	200.0	0.0	211.9	0.0	0.0	211.9	0.0	211.9
400	Other	137.5	0.0	155.0	0.0	0.0	155.0	0.0	155.0
	EXPENDITURES	1,510.2	1,257.1	1,681.4	36.5	0.0	1,717.9	0.0	1,717.9
	EXPENSE	1,510.2	1,257.1	1,681.4	36.5	0.0	1,717.9	0.0	1,717.9
FTE POSITIONS									
810	Permanent	8.00	9.00	10.00	0.00	0.00	10.00	0.00	10.00
	FTE POSITIONS	8.00	9.00	10.00	0.00	0.00	10.00	0.00	10.00



BU PCode Department  
41000 0000 000000

## S-9 Account Code Revenue/Expenditure Summary

(Dollars in Thousands)

		FY24 OPBUD	FY25 PCF Projection	FY25 GAA OPBUD	FY25 Comp Package	FY25 Other Adjustments	FY25 OPBUD-3	FY25 Recurring	Final FY25 OPBUD
520100	Exempt Perm Positions P/T&F/T	472.5	503.1	472.0	12.9	0.0	484.9	0.0	484.9
520300	Classified Perm Positions F/T	409.8	443.6	502.8	19.0	0.0	521.8	0.0	521.8
521100	Group Insurance Premium	41.1	36.4	40.2	4.6	0.0	44.8	0.0	44.8
521200	Retirement Contributions	166.2	182.2	187.5	0.0	0.0	187.5	0.0	187.5
521300	F I C A	61.0	72.4	74.5	0.0	0.0	74.5	0.0	74.5
521400	Workers' Comp Assessment Fee	0.3	0.0	0.1	0.0	0.0	0.1	0.0	0.1
521410	GSD Work Comp Insur Premium	1.3	0.0	1.7	0.0	0.0	1.7	0.0	1.7
521500	Unemployment Comp Premium	0.0	0.0	13.2	0.0	0.0	13.2	0.0	13.2
521600	Employee Liability Ins Premium	2.2	0.0	1.6	0.0	0.0	1.6	0.0	1.6
521700	RHC Act Contributions	18.3	19.3	20.9	0.0	0.0	20.9	0.0	20.9
523200	COVID Related Time Worked	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>200</b>	<b>Personal Services and Employee Bene</b>	<b>1,172.7</b>	<b>1,257.1</b>	<b>1,314.5</b>	<b>36.5</b>	<b>0.0</b>	<b>1,351.0</b>	<b>0.0</b>	<b>1,351.0</b>
535200	Professional Services	143.0	0.0	143.0	0.0	0.0	143.0	0.0	143.0
535209	Professional Svcs - Interagenc	6.0	0.0	6.0	0.0	0.0	6.0	0.0	6.0
535400	Audit Services	12.3	0.0	24.2	0.0	0.0	24.2	0.0	24.2
535500	Attorney Services	5.2	0.0	8.2	0.0	0.0	8.2	0.0	8.2
535600	IT Services	33.5	0.0	30.5	0.0	0.0	30.5	0.0	30.5
<b>300</b>	<b>Contractual services</b>	<b>200.0</b>	<b>0.0</b>	<b>211.9</b>	<b>0.0</b>	<b>0.0</b>	<b>211.9</b>	<b>0.0</b>	<b>211.9</b>
542100	Employee I/S Mileage & Fares	2.0	0.0	8.1	0.0	0.0	8.1	0.0	8.1
542200	Employee I/S Meals & Lodging	1.5	0.0	1.5	0.0	0.0	1.5	0.0	1.5
542300	Brd & Comm Mbr Meals & Lodging	8.0	0.0	1.2	0.0	0.0	1.2	0.0	1.2
542310	Brd & Comm Mbr Mileage & Fares	0.0	0.0	1.5	0.0	0.0	1.5	0.0	1.5
543400	Maint - Property Insurance	0.1	0.0	0.2	0.0	0.0	0.2	0.0	0.2
544000	Supply Inventory IT	5.2	0.0	4.0	0.0	0.0	4.0	0.0	4.0
544100	Supplies-Office Supplies	2.3	0.0	2.0	0.0	0.0	2.0	0.0	2.0
544400	Supplies-Field Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
544900	Supplies-Inventory Exempt	1.5	0.0	1.5	0.0	0.0	1.5	0.0	1.5
545600	Reporting & Recording	1.0	0.0	1.0	0.0	0.0	1.0	0.0	1.0
545700	ISD Services	6.3	0.0	7.9	0.0	0.0	7.9	0.0	7.9
545710	DOIT HCM Assessment Fees	3.3	0.0	3.2	0.0	0.0	3.2	0.0	3.2
545900	Printing & Photo Services	1.0	0.0	1.0	0.0	0.0	1.0	0.0	1.0
546100	Postage & Mail Services	1.0	0.0	1.0	0.0	0.0	1.0	0.0	1.0
546400	Rent Of Land & Buildings	61.8	0.0	63.0	0.0	0.0	63.0	0.0	63.0

BU PCode Department  
41000 0000 000000

## S-9 Account Code Revenue/Expenditure Summary

(Dollars in Thousands)

		FY24 OPBUD	FY25 PCF Projection	FY25 GAA OPBUD	FY25 Comp Package	FY25 Other Adjustments	FY25 OPBUD-3	FY25 Recurring	Final FY25 OPBUD
546500	Rent Of Equipment	4.1	0.0	4.1	0.0	0.0	4.1	0.0	4.1
546610	DOIT Telecommunications	13.9	0.0	13.8	0.0	0.0	13.8	0.0	13.8
546700	Subscriptions/Dues/License Fee	15.0	0.0	25.5	0.0	0.0	25.5	0.0	25.5
546800	Employee Training & Education	3.5	0.0	3.5	0.0	0.0	3.5	0.0	3.5
546900	Advertising	3.0	0.0	3.0	0.0	0.0	3.0	0.0	3.0
547900	Miscellaneous Expense	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
547999	Request to Pay Prior Year	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
548900	Buildings & Structures	0.0	0.0	5.0	0.0	0.0	5.0	0.0	5.0
549600	Employee O/S Mileage & Fares	1.5	0.0	1.5	0.0	0.0	1.5	0.0	1.5
549700	Employee O/S Meals & Lodging	1.5	0.0	1.5	0.0	0.0	1.5	0.0	1.5
400	Other	137.5	0.0	155.0	0.0	0.0	155.0	0.0	155.0
<b>TOTAL EXPENSE</b>		<b>1,510.2</b>	<b>1,257.1</b>	<b>1,681.4</b>	<b>36.5</b>	<b>0.0</b>	<b>1,717.9</b>	<b>0.0</b>	<b>1,717.9</b>
499105	General Fd. Appropriation	1,510.2	0.0	1,676.4	0.0	0.0	1,676.4	0.0	1,676.4
111	General Fund Transfers	1,510.2	0.0	1,676.4	0.0	0.0	1,676.4	0.0	1,676.4
499905	Other Financing Sources	0.0	0.0	0.0	36.5	0.0	36.5	0.0	36.5
112	Other Transfers	0.0	0.0	0.0	36.5	0.0	36.5	0.0	36.5
425902	Other Services	0.0	0.0	5.0	0.0	0.0	0.0	0.0	0.0
425906	Other Services - CU	0.0	0.0	0.0	0.0	0.0	5.0	0.0	5.0
462000	Legal Settlements	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
130	Other Revenues	0.0	0.0	5.0	0.0	0.0	5.0	0.0	5.0
<b>TOTAL REVENUE</b>		<b>1,510.2</b>	<b>0.0</b>	<b>1,681.4</b>	<b>36.5</b>	<b>0.0</b>	<b>1,717.9</b>	<b>0.0</b>	<b>1,717.9</b>
810	Permanent	8.00	9.00	10.00	0.00	0.00	10.00	0.00	10.00
810	Permanent	8.00	9.00	10.00	0.00	0.00	10.00	0.00	10.00
<b>TOTAL FTE POSITIONS</b>		<b>8.00</b>	<b>9.00</b>	<b>10.00</b>	<b>0.00</b>	<b>0.00</b>	<b>10.00</b>	<b>0.00</b>	<b>10.00</b>



Fund	Account	Account Name	2023-24 Opbud FTE	2024-25 PCF Projection	Final FY25 OPBUD	Justification
00000	810	Permanent	0.00	1.00	0.00	all employees should be under fund 20780.
00000 Total:			0.00	1.00	0.00	
20780	810	Permanent	9.00	8.00	10.00	Attorney I position for FY25.
20780 Total:			9.00	8.00	10.00	
Total FTEs			9.00	9.00	10.00	



## STATE ETHICS COMMISSION

### **[DRAFT] ADVISORY OPINION NO. 2024-03**

May 24, 2024<sup>1</sup>

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

A legislator is a key organizer in a nonpartisan conference coordinated by a 501(c)(3) non-profit organization. The legislator helps to organize this event for what the legislator believes is an important responsibility of being a legislator – bringing education to colleagues and the public on an important issue to the forefront in a nonpartisan manner. The legislator often emails contacts about the event, including speakers and sponsors, and wants to know whether the legislator is allowed to send those emails using the official legislative email address (nmlegis.gov).

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<sup>1</sup> 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).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). “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 March 28, 2024, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commissioners Baker and Bluestone requested that the advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1) (2019); 1.8.1.9(A)(1) NMAC.

## ANSWER

Legislators are permitted to use an official legislative email address to email contacts about an event, including speakers and sponsors, to address general administration and logistics of the event. But the use of a legislative email address to contact sponsors for the purpose of soliciting donations to a charity is likely prohibited by the Gift Act.<sup>3</sup>

## ANALYSIS

The request indicates that the legislator helps organize the event and often emails contacts, including speakers and sponsors. These categories of emails potentially have different implications under the law. The request states that the legislator's work with the event is an important responsibility of being a legislator, that is, educating other legislators and the public on an important issue in a nonpartisan manner. Given the connection between the conference and the requester's role as a legislator, using a legislative email address for organization of the event would be reasonably related to the legislative office, and therefore the use of a legislative email address to coordinate logistics and administration of the event is likely permitted. This would include emails from a legislator using a legislative email address to contact sponsors concerning the logistics or administration in organizing the event. Where, however, emails to sponsors are used to solicit donations, the Gift Act likely prohibits a legislator from using a legislative email address to do so.

The Gift Act addresses restrictions on a legislator's solicitation of donations for a charity. In relevant part, Section 10-16B-3(C) provides:

A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner *that it appears* that the purpose of the donor

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<sup>3</sup> NMSA 1978, §§ 10-16B-1 to -5 (2007, as amended through 2019).

in making the gift is to influence the state officer or employee *in the performance of an official duty*.<sup>4</sup>

The use of a legislative email address to contact sponsors for the purpose of soliciting donations raises the appearance of impropriety that is prohibited by Section 10-16B-3(C). That is because the recipient of the email may reasonably conclude that the legislator is making that request in connection with legislative duties, or in a way that might affect the legislator's performance of legislative duties. Given the restriction in the Gift Act, a legislator is likely prohibited from using a legislative email address to solicit donations for a charity. The Interim Legislative Ethics Committee has previously determined "The legislative email system (as denoted by the 'nmlegis.gov' domain) is a state resource made available to members of the legislature for official business."<sup>5</sup> That committee determined that "As such, and similar to [the] committee's opinion in 1996 concerning the use of legislative stationery, its use 'should be limited to matters that relate to the conduct of legislative business.'"<sup>6</sup>

It does not matter whether a legislator *intends* the use of a legislative email address to suggest a connection between the legislator's official duties and the legislator's work organizing a conference. Under the Gift Act, it is an *appearance* of a connection between the legislative office and charitable fundraising activities that matters.<sup>7</sup> Nor could the problem be cured, for example, with the use of a

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<sup>4</sup> NMSA 1978, § 10-16B-3(C) (2007) (emphasis added). The Gift Act includes a legislator in its definition of "state officer" which means "any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage." NMSA 1978, § 10-16B-2(E) (2007).

<sup>5</sup> Interim Legislative Ethics Comm. Adv. Op. 08-02 (Jan. 9, 2009) (available at [https://nmlegis.gov/Sessions/InterimCommittees/LEC/Advisory\\_Opinions\\_And\\_Letters/ILEC-08-02,%20Inclusion%20of%20personal%20web%20address%20in%20legislative%20email.pdf](https://nmlegis.gov/Sessions/InterimCommittees/LEC/Advisory_Opinions_And_Letters/ILEC-08-02,%20Inclusion%20of%20personal%20web%20address%20in%20legislative%20email.pdf)).

<sup>6</sup> *Id.* (quoting Interim Legislative Ethics Comm. Adv. Op. No. 96-1).

<sup>7</sup> This section of law extends beyond the prohibition contained in Section 10-16-3(D) of the Governmental Conduct Act which prohibits a legislator from *actually* "request[ing] or receiv[ing] . . . any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act." NMSA 1978, § 10-16-3(D) (2011). Section 10-16B-3(C) of the Gift Act goes further in the specific situation of soliciting donations for charity to prohibit even the *appearance* of influencing a state officer in the performance of an

disclaimer; further mention of legislative status, even if only to disclaim any connection between legislative office and private fundraising activities, only serves to emphasize the appearance of a connection between the legislative office and charitable fundraising activities that is prohibited by the Gift Act.

Reviewing the Gift Act in conjunction with the restrictions on the use of legislative email addresses contained in Subsection 10-16-9(C) of the Governmental Conduct Act<sup>8</sup> supports this conclusion.<sup>9</sup> While the prohibitions contained in Subsections 10-16-9(B) and (C)<sup>10</sup> do not apply directly to the situation because there is no indication the event or the organization are “a state agency,” Subsection 9(C) is instructive here as it relates to the use of legislative email. That Subsection provides that a legislator who is an attorney or other professional may appear for, represent, or assist an individual for pay in a matter before a state agency so long as the legislator does not “use legislative stationery, legislative

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official duty. There are no facts contained in the request suggesting Section 10-16-3(D) is implicated here.

<sup>8</sup> NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023).

<sup>9</sup> See *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15 (“In interpreting statutes, we should read the entire statute as a whole so that each provision may be considered in relation to every other part.” (internal quotation marks and citation omitted)); see also Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) (explaining that statutes in *pari materia* must be construed in reference to each other).

<sup>10</sup> NMSA 1978, § 10-16-9(B), (C) (2023). These Subsections provide:

B. Except as provided in Subsection C of this section, a legislator shall not appear for, represent or assist another person in a matter before a state agency, unless that appearance, representation or assistance is provided without compensation.

C. A legislator may appear for, represent or assist another person in a matter before a state agency when the legislator is an attorney or other professional who is making that appearance or providing that representation or assistance while engaged in the conduct of that legislator's profession. That legislator shall not:

- (1) make references to the legislator's legislative capacity except as to matters of scheduling; or
- (2) use legislative stationery, legislative email or any other indicia of the legislator's legislative capacity.

email or any other indicia of the legislator’s legislative capacity.”<sup>11</sup> Neither Subsection 9(C) of the Governmental Conduct Act nor 3(C) of the Gift Act outright prohibit legislators from serving private interests, whether in the form of representing clients in a professional capacity or soliciting charitable contributions. Both statutes, however, prohibit the appearance of impropriety created by the use of legislative stationery or email in connection with these efforts. As applied here, the Gift Act permits legislators to solicit donations for charity, but prohibits a legislator from doing so in a manner that suggests the request is made in an official capacity or is related to the performance of an official duty, which may be implied by the use of a legislative email address.

This analysis tracks the House Committee on Ethics for the U.S. House of Representative’s Ethics Manual on the solicitation of funds or other items of value by members of the U.S. House, which explains that legislative members are permitted to solicit on behalf of organizations qualified under § 170(c) of the Internal Revenue Code (which includes § 501(C)(3) charitable organizations), but that the legislative member may not use official resources in the solicitation and “No official endorsement by the House of Representatives may be implied. Thus, no letterhead or envelope used in a solicitation may bear the words ‘Congress of the United States,’ ‘House of Representatives,’ or ‘Official Business,’ nor may the letterhead or envelope bear the Seal of the United States, the Congress, or the House.”<sup>12</sup>

## **CONCLUSION**

Given the foregoing, a legislator is likely permitted to use his or her legislative email address to email contacts about a fundraising event, so long as the legislator does not use the email to solicit donations.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**  
**JEFFREY L. BAKER, Commissioner**

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<sup>11</sup> NMSA 1978, § 10-16-9 (C) (2023).

<sup>12</sup> House Committee on Ethics, House Ethics Manual at 355–56 (Dec. 2022) (available at <https://ethics.house.gov/sites/ethics.house.gov/files/documents/Dec%202022%20House%20Ethics%20Manual%20website%20version.pdf>).

**STUART M. BLUESTONE, Commissioner**  
**HON. CELIA CASTILLO, Commissioner**  
**HON. DR. TERRY MCMILLAN, Commissioner**  
**RONALD SOLIMON, Commissioner**  
**DR. JUDY VILLANUEVA, Commissioner**

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