

STATE ETHICS
COMMISSION MEETING

October 10, 2025

PUBLIC MATERIALS



STATE ETHICS COMMISSION

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

October 10, 2025, 9:00 a.m. to 12:00 p.m. (Mountain Time)

A livestream of the meeting will be available on the day of the event at the following YouTube link: <https://www.youtube.com/@stateethicscommissionnm3535/streams>

Commission Meeting

Chair Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of September 9, 2025 Special Commission Meeting

Commission Meeting Items

Action Required

- | | |
|--|-----|
| 4. Update on the Commission's Inaugural Ethics Forum (<i>Bierle</i>) | No |
| 5. Approval of the Commission's FY27 Budget Request (<i>Farris, George</i>) | Yes |
| 6. Advisory Opinion 2025-05 – Legislator Conflicts of Interest in Public Contracts (<i>Chato</i>) | Yes |
| 7. Advisory Opinion 2025-06 – Legislative Staff Conflicts of Interest in Public Contracts (<i>Chato</i>) | Yes |
| 8. Advisory Opinion 2025-07 – Lobbyist Employer Requirements for Legislative Reception (<i>Branch</i>) | Yes |

9. Advisory Opinion 2025-08 – Campaign Expenditures for Security Expenses (*Chato*) Yes

Beginning of Public Rule Hearing

NMSA 1978, § 14-4-5.3 & 1.24.25.13 NMAC

10. Presentation of any written public comments received regarding proposed amendments to rules governing general provisions (1.8.1 NMAC), administrative hearings (1.8.3 NMAC) and notary cases (1.8.5 NMAC); and (ii) any Commission staff recommended amendments to proposed rules No

Public comment on proposed amendments to rules governing general Provisions (1.8.1 NMAC), administrative hearings (1.8.3 NMAC) and notary cases (1.8.5 NMAC) No

End of Public Rule Hearing & Continuation of Commission Open Meeting for Actions on Rules and Other Matters. 1.24.25.14(D) NMAC.

11. Adoption of amendments to rules: Yes
- I. Adoption of amendments to 1.8.1 NMAC
 - II. Adoption of amendments to 1.8.3 NMAC
 - III. Adoption of amendments to 1.8.5 NMAC

12. Public Comment No

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).

13. Discussion regarding administrative matters under RULONA:
(*Branch, Goodrich*)

- I. 2024-NP-06
- II. 2025-NP-09
- III. 2025-NP-11
- IV. 2025-NP-13

14. Discussion regarding administrative matters under State Ethics Commission Act:
(*Goodrich*)

- I. Administrative Complaint No. 2025-24
- II. Administrative Complaint No. 2025-25
- III. Administrative Complaint No. 2025-26
- IV. Administrative Complaint No. 2025-27

- V. Administrative Complaint No. 2025-28
- VI. Administrative Complaint No. 2025-29

15. Discussion regarding current and potential litigation:
(*Farris*)

- I. *State Ethics Commission v. Tafoya Lucero*, D-101-CV-2025-02343 (N.M. 1st Jud. D. Ct.)
- II. Authorization of amicus participation in *First Choice Women's Res. Centers, Inc. v. Platkin*, 24-781 (U.S.)

Upon applicable motion, Commission returns from executive session

16. Administrative Matters under RULONA: Yes
(*Branch, Goodrich*)

- I. 2024-NP-06
- II. 2025-NP-09
- III. 2025-NP-11
- IV. 2025-NP-13

17. Administrative Matters under State Ethics Commission Act: Yes
(*Goodrich*)

- I. Administrative Complaint No. 2025-24
- II. Administrative Complaint No. 2025-25
- III. Administrative Complaint No. 2025-26
- IV. Administrative Complaint No. 2025-27
- V. Administrative Complaint No. 2025-28
- VI. Administrative Complaint No. 2025-29

18. Authorizations related to pending litigation: Yes
(*Farris*)

- I. *State Ethics Commission v. Tafoya Lucero*, D-101-CV-2025-02343 (N.M. 1st Jud. D. Ct.)
- II. Authorization of amicus participation in *First Choice Women's Res. Centers, Inc. v. Platkin*, 24-781 (U.S.)

19. Discussion of next meeting No
(*Lang*)

20. Public Comment No

21. Adjournment

If you are an individual with a disability who needs an accommodation to attend or participate in the meeting, please contact the State Ethics Commission at Ethics.Commission@sec.nm.gov at least (1) week prior to the meeting.

The Commission will accept written public comment to Ethics.Commission@sec.nm.gov, with the subject line: “Public Comment: October 10, 2025”.

Individuals wishing to participate by providing oral comment should register and join using the following link https://us02web.zoom.us/join/9tJ6Wjt_zQTP2Rd7QrTMr7rQ Oral public comment will be heard during the public comment section of the meeting, must address an agenda item above, and will be limited to a maximum of five minutes per individual.



STATE ETHICS COMMISSION

Commission Meeting Minutes of September 9, 2025, 9:00AM [Subject to Ratification by Commission]

Call to Order

Chair Lang called the meeting to order at 9:00 AM.

1. Roll Call

Chair Lang called roll; the following Commissioners were present:

Hon. William F. Lang, Chair (attended virtually)
Jeffrey L. Baker (attended virtually)
Stuart M. Bluestone (attended virtually)
Hon. Celia Castillo (attended virtually)
Hon. Gary Clingman (attended virtually)
Hon. Dr. Terry McMillan (attended virtually)
Dr. Judy Villanueva (attended virtually)

2. Approval of Agenda

No motions were made to amend the agenda. Chair Lang sought a motion for approval of the agenda. Commissioner Castillo moved to approve the agenda; Commissioner Baker seconded. Hearing no discussion or objections the agenda was approved unanimously.

3. Approval of August 1, 2025, Commission Meeting Minutes

Chair Lang sought a motion for approval of the minutes of the August 1, 2025 meeting. Commissioner Baker moved to approve the minutes; Commissioner Villanueva seconded. Hearing no discussion or objections, the August 1, 2025 meeting minutes were approved unanimously.

4. Public Comment

Mr. Chris Mechels provided public comments about the Commission's public comment period

Commission Meeting Items

---Begin Executive Session---

Chair Lang sought a motion to enter executive session. Commissioner Baker moved to enter executive session under NMSA 1978, § 10-15-1(H)(7) (attorney client privilege pertaining to litigation). Commissioner Clingman seconded the motion. Hearing no discussion, Chair Lang conducted a roll call vote, Commissioners voted unanimously to enter executive session.

5. Discussion regarding current and potential litigation: *(Farris)*

- I. Commission authorization of a civil action to enforce the Nondisclosure of Sensitive Personal Information Act.

---End Executive Session---

Matters discussed in closed meeting were limited to those specified in motion to enter executive session. After concluding discussion of these matters, the Commission resumed public session upon an appropriate motion pursuant to NMSA 1978, § 10-15-1(J).

6. Action on Authorization of Civil Action

(Farris, Woods)

- I. The Executive Director sought the approval of the Commission to commence a declaratory judgment action against Alisha Tafoya Lucero, in her official capacity as Secretary of the New Mexico Corrections Department, in order to establish that, under federal law, the Commission may lawfully institute a civil action against Secretary Tafoya Lucero to prevent violations of the Nondisclosure of Sensitive Personal Information Act. Chair Lang sought a motion for approval. Commissioner Clingman so moved; Commissioner Castillo seconded. Hearing no discussion,

Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the motion.

7. Discussion of Next Meeting

Chair Lang confirmed the next regularly scheduled meeting will take place on October 10, 2025.

8. Public Comment

There was no additional public comment.

9. Adjournment

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting adjourned at 10:58 AM.

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

NEW MEXICO'S ETHICS FORUM



5 NOVEMBER 2025

8:00 - 11:00 AM

800 Bradbury Dr. SE
Albuquerque, NM 87106

HOSTED BY THE NEW MEXICO STATE ETHICS COMMISSION

[RSVP Here](#)
[View Detailed Agenda](#)

Questions? Ethics.Commission@sec.nm.gov | 505-554-7706

AGENDA

8:00 - 8:30 AM

Arrival & Refreshments

Light refreshments and an opportunity for informal networking before the program begins.

8:30 - 8:40 AM

Opening Remarks

A welcome from the State Ethics Commission and an overview of the day's objectives.

8:40 - 9:30 AM

Panel 1: Building a Statewide Ethics Network and Understanding the SEC

Discussion of statewide collaboration among ethics officials and the Commission's structure and jurisdiction.

9:40 - 10:30 AM

Panel 2: Strengthening Local Ethics Oversight

Discussion of the role of local ethics boards, their coordination with the Commission, and areas for reform.

10:40 - 11:00 AM

Open Discussion: Local Disclosure Ordinances

Discussion of whether local financial and campaign finance ordinances could be workable and enforceable.



STATE ETHICS COMMISSION

<http://sec.nm.gov>

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

BUDGET REQUEST Fiscal Year 2027 July 1, 2026 - June 30, 2027

STATE OF NEW MEXICO

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



STATE ETHICS COMMISSION

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Hon. William F. Lang (Chair)
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Celia Castillo
Hon. Gary Clingman
Hon. Dr. Terry McMillan
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

September 1, 2025

Dear Department of Finance & Administration and Legislative Finance Committee,

Please find enclosed the State Ethics Commission's FY27 appropriation request.

The State Ethics Commission is an independent, constitutional agency charged with promoting integrity in government through the interpretation and enforcement of New Mexico's campaign finance, lobbying, procurement, and governmental conduct laws.

For FY27, the Commission is requesting an appropriation of **\$2,049,700**, allocated as follows:

- **\$1,707,200** for personnel,
- **\$151,900** for contractual services, and
- **\$190,600** for other operating costs.

This funding will:

1. Fully support the Commission's existing 10 staff positions;
2. Provide for one additional attorney FTE to manage the growing volume of RULONA (Revised Uniform Law on Notarial Acts) cases; and
3. Ensure the Commission can meet recurring obligations such as building and equipment leases, legal IT software and subscriptions, liability insurance, DoIT service fees, and required audit and financial reporting costs.

Justification for 400 Category Increase

The Commission is requesting a significant increase in the 400-expense category due to several essential and unavoidable cost increases:

- **Lease costs** are expected to rise due to both scheduled contractual increases for our current office space and the addition of new leased space within the UNM Science and Technology Park.
- **Equipment rental expenses** will increase due to contractual escalations for our Canon printers and postage machine.
- **Westlaw subscription costs** from Thomson Reuters are anticipated to rise substantially due to the integration of advanced AI features. Westlaw remains an indispensable research tool for the Commission's legal team.
- **Travel costs** will increase following statutory changes to the per-diem structure, which now provides a fixed meal reimbursement rate higher than the Commission's historical average.

These increases are fixed, necessary, and critical to maintaining our operational capacity in FY27.

Personnel Request and Operational Impact

Should the Commission not receive full funding for its personnel base budget—including continued support for its current 10 FTEs and the addition of 1 attorney FTE—the impact on our core mission will be significant and detrimental. The current volume of RULONA complaints has outpaced staff capacity, resulting in case backlogs that risk undermining public trust. Without the additional attorney, the Commission will be unable to review and adjudicate these cases in a timely manner.

The Commission has experienced minimal vacancy savings in recent years and does not anticipate any such savings in FY27. Every staff member has a defined, mission-critical role—whether in administration, compliance (including advisory opinions, ethics training, and oversight of notaries public), or enforcement (including litigation and investigations). A vacancy in any of these areas would severely affect the Commission’s ability to fulfill its constitutional and statutory responsibilities.

If funding is not provided for our full personnel request, the Commission may be forced to seek supplemental appropriation during the following session.

Program Structure

The Commission does not propose any changes to its current program structure. Our agency is built to function and grow within three core pillars:

1. **Compliance** – Training, advisory opinions, and guides related to New Mexico’s ethics and disclosure laws.
2. **Enforcement** – Investigation, litigation, and adjudication of administrative cases.
3. **Administrative Services** – Oversight of financial, HR, and operational functions that support the Commission’s work.

Continued Support and Institutional Growth

I respectfully request your continued support for the Commission’s FY27 appropriation. Since its inception, the Commission has grown in a fiscally responsible manner, building a talented and stable team to meet its broad constitutional and statutory mandates.

Over the past year, the Commission has achieved several high-profile enforcement successes, including:

- Securing transparency from dark-money organizations such as **The New Mexico Project** (backed by Chevron) and **New Mexico Safety Over Profit** (backed by the New Mexico Trial Lawyers Association);
- Enforcing ethics laws involving public officials at the **County Livestock Loss Association, Lake Arthur Fire Department, Village of Cuba, Luna County, and Town of Kirtland**; and
- Upholding the **Procurement Code** in litigation involving advertising-related services against the **Mayor of the Village of Angel Fire**.

These successes exemplify the public mandate that established the Commission via an overwhelming vote in 2018. Our growth and effectiveness as an institution have only been possible because of the Legislature’s ongoing support and the incremental increases in our

State Ethics Commission

August 28, 2025

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annual appropriations. We respectfully ask that you continue that support so the Commission may continue to serve the people of New Mexico with integrity and accountability.

If you have any questions regarding the FY27 request, please do not hesitate to contact me or Wendy George, the Commission's CFO and Director of Finance and Administration.

Sincerely,

/s/ *Jeremy Farris*
Jeremy Farris
Executive Director
State Ethics Commission

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.



Jeremy Farris, Executive Director



Hon. William F. Lang, Chair



Wendy George, Director of Finance and Administration, CFO

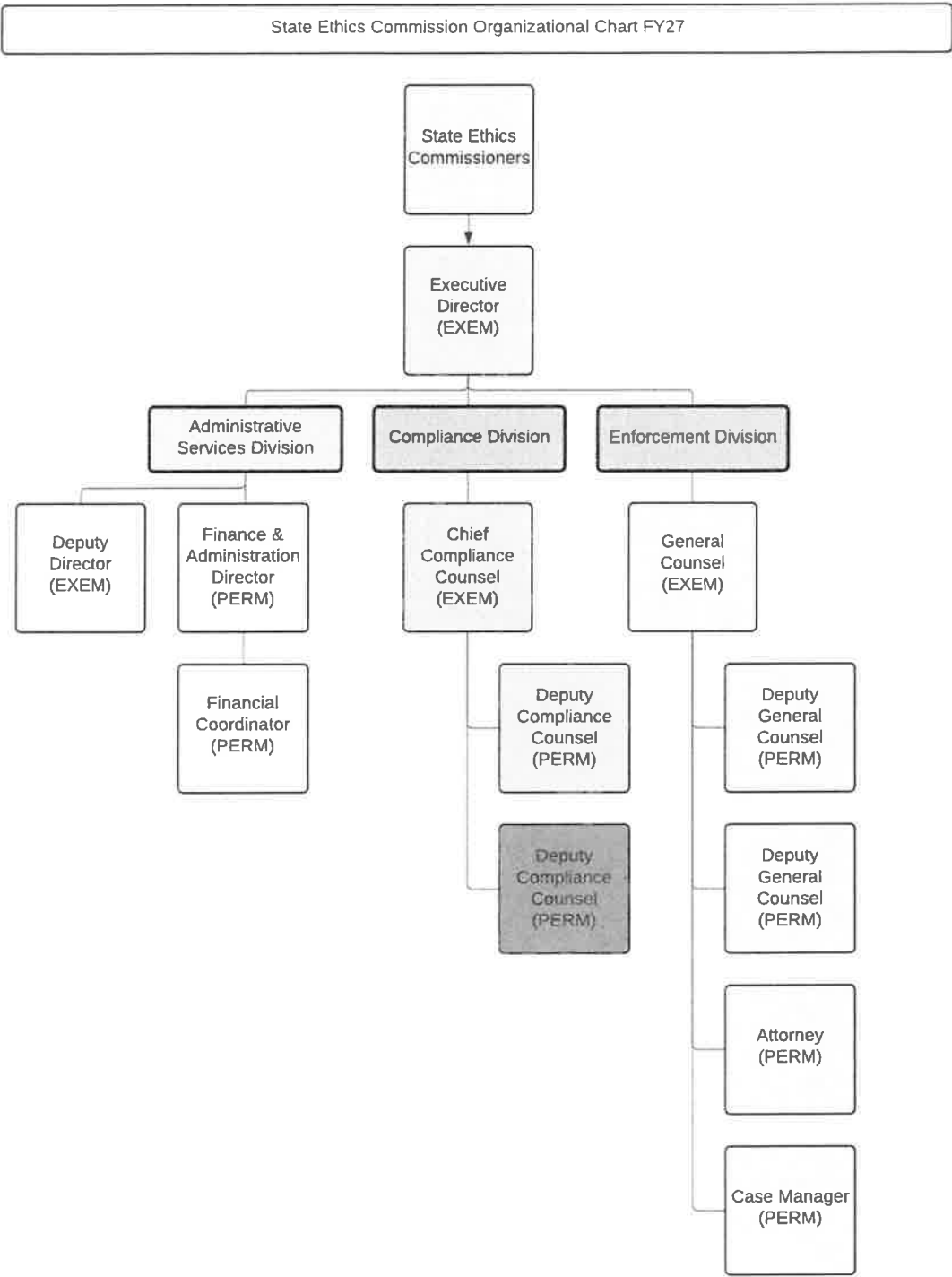
800 Bradbury Dr SE
STE 215
Albuquerque NM 87106

505-554-7608

wendyj.george@sec.nm.gov

Note: Appropriation Requests for 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. Appropriation Requests not properly signed will be returned.

State Agency Organizational Chart (FY27):



*The position in orange in the above chart reflects the additional position that the Commission seeks as part of its FY27 budget request.

State Ethics Commission

State of New Mexico

S-8 Financial Summary

(Dollars in Thousands)

BU PCode Department
41000 P410 000000

		2024-25 Opbud	2024-25 Actuals	2025-26 Opbud	2026-27 PCF Proj	Base	----- FY 2027 Agency Request ----- Expansion	Total
REVENUE								
111	General Fund Transfers	1,712.9	1,676.4	1,867.2	0.0	2,044.7	0.0	2,044.7
112	Other Transfers	0.0	36.5	0.0	0.0	0.0	0.0	0.0
130	Other Revenues	5.0	4.9	5.0	0.0	5.0	0.0	5.0
REVENUE, TRANSFERS		1,717.9	1,717.8	1,872.2	0.0	2,049.7	0.0	2,049.7
REVENUE		1,717.9	1,717.8	1,872.2	0.0	2,049.7	0.0	2,049.7
EXPENSE								
200	Personal services and employee benefits	1,351.0	1,388.8	1,575.9	1,553.0	1,707.2	0.0	1,707.2
300	Contractual services	211.9	111.4	151.9	0.0	151.9	0.0	151.9
400	Other	155.0	183.4	144.4	0.0	190.6	0.0	190.6
EXPENDITURES		1,717.9	1,683.6	1,872.2	1,552.98	2,049.7	0.0	2,049.7
EXPENSE		1,717.9	1,683.6	1,872.2	1,552.98	2,049.7	0.0	2,049.7
FTE POSITIONS								
810	Permanent	10.00	0.00	10.00	10.00	11.00	0.00	11.00
FTEs		10.00	0.00	10.00	10.00	11.00	0.00	11.00
FTE POSITIONS		10.00	0.00	10.00	10.00	11.00	0.00	11.00

State Ethics Commission

State of New Mexico

BU PCode Department
41000 P410 000000

S-9 Account Code Expenditure Summary
(Dollars in Thousands)

		2024-25 Opbud	2024-25 Actuals	2025-26 Opbud	2026-27 PCF Proj	----- FY 2027 Agency Request -----		
						Base	Expansion	Total
520100	Exempt Perm Positions P/T&F/T	484.9	506.4	568.7	579.1	579.0	0.0	579.0
520300	Classified Perm Positions F/T	521.8	521.4	604.8	575.2	681.0	0.0	681.0
520700	Overtime & Other Premium Pay	0.0	0.0	0.0	0.0	0.0	0.0	0.0
520800	Ann! & Comp Paid At Separation	0.0	5.6	0.0	0.0	0.0	0.0	0.0
521100	Group Insurance Premium	44.8	43.8	51.8	84.3	90.1	0.0	90.1
521200	Retirement Contributions	187.5	197.7	218.6	220.4	239.5	0.0	239.5
521300	F I C A	74.5	76.7	91.7	71.0	77.3	0.0	77.3
521400	Workers' Comp Assessment Fee	0.1	0.1	0.1	0.0	0.0	0.0	0.0
521410	GSD Work Comp Insur Premium	1.7	1.7	1.2	0.0	1.1	0.0	1.1
521500	Unemployment Comp Premium	13.2	13.2	0.0	0.0	0.0	0.0	0.0
521600	Employee Liability Ins Premium	1.6	1.6	9.0	0.0	13.7	0.0	13.7
521700	RHC Act Contributions	20.9	20.6	30.0	22.9	25.5	0.0	25.5
200	Personal services and employe	1,351.0	1,388.8	1,575.9	1,553.0	1,707.2	0.0	1,707.2
535200	Professional Services	143.0	48.0	71.4	0.0	80.0	0.0	80.0
535209	Professional Svcs - Interagenc	6.0	5.4	7.0	0.0	8.0	0.0	8.0
535300	Other Services	0.0	0.9	1.0	0.0	1.8	0.0	1.8
535400	Audit Services	24.2	23.1	27.0	0.0	30.1	0.0	30.1
535500	Attorney Services	8.2	9.5	15.0	0.0	0.0	0.0	0.0
535600	IT Services	30.5	24.5	30.5	0.0	32.0	0.0	32.0
300	Contractual services	211.9	111.4	151.9	0.0	151.9	0.0	151.9
542100	Employee I/S Mileage & Fares	8.1	3.7	4.0	0.0	4.0	0.0	4.0
542200	Employee I/S Meals & Lodging	1.5	0.0	1.5	0.0	1.0	0.0	1.0
542300	Brd & Comm Mbr Meals & Lodgin	1.2	0.0	0.3	0.0	1.0	0.0	1.0
542310	Brd & Comm Mbr Mileage & Fares	1.5	0.4	0.5	0.0	1.0	0.0	1.0
543200	Maint - Furn, Fixt, Equipment	0.0	0.1	0.0	0.0	0.0	0.0	0.0
543300	Maint - Buildings & Structures	0.0	15.3	0.0	0.0	0.0	0.0	0.0
543400	Maint - Property Insurance	0.2	0.0	0.1	0.0	0.0	0.0	0.0
543820	Maintenance IT	0.0	0.1	0.0	0.0	0.0	0.0	0.0
543830	IT HW/SW Agreements	0.0	0.0	0.0	0.0	27.5	0.0	27.5
544000	Supply Inventory IT	4.0	10.9	2.0	0.0	2.0	0.0	2.0
544100	Supplies-Office Supplies	2.0	1.3	2.0	0.0	1.0	0.0	1.0
544500	Supplies-Food	0.0	0.0	0.0	0.0	0.0	0.0	0.0
544900	Supplies-Inventory Exempt	1.5	11.7	1.0	0.0	0.0	0.0	0.0

State Ethics Commission

State of New Mexico

BU PCode Department
41000 P410 000000

S-9 Account Code Expenditure Summary
(Dollars in Thousands)

	2024-25 Opbud	2024-25 Actuals	2025-26 Opbud	2026-27 PCF Proj	----- FY 2027 Agency Request ----- Base Expansion Total
545600 Reporting & Recording	1.0	0.0	1.0	0.0	0.0 0.0 0.0
545700 ISD Services	7.9	10.2	9.7	0.0	15.1 0.0 15.1
545710 DOIT HCM Assessment Fees	3.2	3.3	3.5	0.0	3.8 0.0 3.8
545900 Printing & Photo Services	1.0	0.6	0.5	0.0	1.0 0.0 1.0
546100 Postage & Mail Services	1.0	1.0	1.0	0.0	1.0 0.0 1.0
546400 Rent Of Land & Buildings	63.0	63.0	64.3	0.0	82.2 0.0 82.2
546500 Rent Of Equipment	4.1	3.8	4.4	0.0	7.6 0.0 7.6
546610 DOIT Telecommunications	13.8	15.5	14.5	0.0	16.3 0.0 16.3
546700 Subscriptions/Dues/License Fee	25.5	29.9	25.5	0.0	11.5 0.0 11.5
546800 Employee Training & Education	3.5	3.1	3.5	0.0	4.0 0.0 4.0
546900 Advertising	3.0	0.6	1.5	0.0	5.0 0.0 5.0
547000 Legal Settlements	0.0	2.7	0.0	0.0	0.0 0.0 0.0
547900 Miscellaneous Expense	0.0	0.7	0.0	0.0	0.0 0.0 0.0
547999 Request to Pay Prior Year	0.0	0.4	0.0	0.0	0.0 0.0 0.0
548900 Buildings & Structures	5.0	0.0	0.0	0.0	0.0 0.0 0.0
549600 Employee O/S Mileage & Fares	1.5	1.6	1.6	0.0	2.0 0.0 2.0
549700 Employee O/S Meals & Lodging	1.5	3.6	2.0	0.0	3.6 0.0 3.6
400 Other	155.0	183.4	144.4	0.0	190.6 0.0 190.6
TOTAL EXPENSE	1,717.9	1,683.6	1,872.2	1,552.98	2,049.7 0.0 2,049.7

REV EXP COMPARISON

(Dollars in Thousands)

41000 - State Ethics Commission

	General Fund	Other Funds	Other Transfers	Federal Funds	Total
SOURCES	2,044.7	5.0	0.0	0.0	2,049.7
Personal services and employee benefits	1,707.2	0.0	0.0	0.0	1,707.2
Contractual services	151.9	0.0	0.0	0.0	151.9
Other	185.6	5.0	0.0	0.0	190.6
USES Total:	2,044.7	5.0	0.0	0.0	2,049.7
 Net:	 0.0	 0.0	 0.0	 0.0	 0.0

Performance Measures Summary

P410 State Ethics Commission

Purpose: The purpose of the state ethics commission program is to receive, investigate and adjudicate complaints against public officials, public employees, candidates, those subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers and to ensure that public ethics laws are clear, comprehensive and effective.

Performance Measures:		2023-24 Actual	2024-25 Actual	2025-26 Budget	2026-27 Request	2026-27 Recomm
Output	Percent of advisory opinions issued within sixty days of receipt	100%	100%	93%	90%	
Explanatory	Percent of ethics complaints within the agency's jurisdiction that are either disposed or set for public hearing within one hundred and eighty days after a complaint is received	79%	98%	N/A	N/A	

A Message from the Executive Director

I am pleased to present the *Strategic Plan* for the State Ethics Commission for fiscal year 2027—the Commission’s eighth year. The Commission is an independent, constitutional state agency that promotes the integrity of government through the interpretation, enforcement and improvement of New Mexico’s campaign finance, lobbying, procurement, and governmental conduct laws. In addition to these responsibilities, the Commission now has statutory authority to enforce the Nondisclosure of Sensitive Personal Information Act and provisions of the Revised Uniform Law on Notarial Acts, further broadening its role in protecting transparency, accountability, and the privacy rights of New Mexicans. The Commission maintains very low staff turnover, with no staff vacancies during FY25, and continues to encounter increasing demands in fulfilling its constitutional and statutory mandates to oversee governmental conduct, procurement, and disclosure laws. The Commission remains focused on hiring and achieving full funding for key personnel that are necessary for the Commission to minimally meet its significant mandates. This strategic plan is targeted to those needs.

Sincerely,

Jeremy Farris
Executive Director
State Ethics Commission

September 1, 2025



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Mission Statement

The State Ethics Commission is an independent, constitutional agency committed to preventing and remedying public corruption and building trust in state government. The Commission promotes the integrity of government through the interpretation, enforcement, and improvement of New Mexico's governmental conduct, procurement, campaign finance reporting, and financial disclosure laws.

Agency Overview

Legal Foundation and Creation

The State Ethics Commission is an independent state agency created by Article V, Section 17 of the New Mexico Constitution and enabled by the State Ethics Commission Act. The Commission's initial Commissioners were appointed on July 1, 2019. The Commission's jurisdiction and enforcement authority began on January 1, 2020.

Structure

The Commission is comprised of seven Commissioners and chaired by a retired judge. The State Ethics Commission Act sets forth both the qualifications to serve as a Commissioner and a procedure for appointing Commissioners that ensures an independent commission: The Governor appoints the Chair, who must be a retired judge. The Speaker of the House, the House Minority Floor Leader, the President Pro Tempore of the Senate, and the Senate Minority leader each appoint a Commissioner. The legislatively appointed Commissioners appoint two other Commissioners.

No more than three Commissioners may be members of the same political party. Except for the initial Commissioners, the Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms. Commissioners are removable for cause only, following a removal proceeding before the New Mexico Supreme Court. The seven current Commissioners are listed at Appendix I, *infra*.

The Commission hires an Executive Director, who in turn hires the staff, including the Commission's General Counsel. Both the Executive Director and the General Counsel are term-limited positions established by statute. The current and founding Executive Director is Jeremy Farris. The founding General Counsel, Walker Boyd, concluded his term in FY25 and was succeeded by Zachary Goodrich, former Executive Director of the Iowa State Ethics Commission.

Agency Powers

The Commission has six core responsibilities:

- (1) to investigate and adjudicate administrative complaints alleging violations of New Mexico's ethics laws;
- (2) to investigate and prosecute violations of the ethics laws through civil enforcement actions in state court;
- (3) to provide guidance to public officers, employees, and the public about New Mexico's governmental conduct, procurement and disclosure laws;
- (4) to investigate and prosecute in administrative proceedings violations of New Mexico's Revised Uniform Law on Notarial Acts;
- (5) to investigate and prosecute violations of the Nondisclosure of Sensitive Personal Information Act; and
- (6) to make annual recommendations to the Governor and the Legislature regarding amendments to New Mexico's ethics laws.

First, the Commission may investigate and adjudicate administrative complaints against state government officials, employees, candidates, lobbyists and contractors. These administrative complaints must allege violations of the Campaign Reporting Act, the Financial Disclosure Act, the Gift Act, the Lobbyist Regulation Act, the Voter Action Act, the Governmental Conduct Act, the Procurement Code, the State Ethics Commission Act, or Article IX, Section 14 of the New Mexico Constitution, commonly known as the "Anti-Donation Clause." The Commission may also issue advisory opinions upon appropriate request, opinions which may bind the Commission's decisions in future administrative adjudications.

Second, under its discretionary, executive power, the Commission may investigate and initiate enforcement actions in state court to remedy violations of New Mexico's ethics laws, including the Governmental Conduct Act, the Procurement Code, the Financial Disclosure Act, and the Campaign Reporting Act. The Commission may also initiate administrative proceedings and petition state district courts to issue subpoenas related to investigations.

Third, the Commission provides guidance to government officers and employees and members of the public about New Mexico's ethics and disclosure laws. The Commission fulfills this responsibility by answering requests for advice through either advisory opinions or informal advisory letters and by offering trainings and guidance materials for public officials and employees. The Commission also provides trainings and presentations to associations that support public officials and employees, including the Municipal League, New Mexico Counties, the New Mexico Public Procurement Association, the New Mexico Society of Certified Public Accountants, and members of the New Mexico State Bar. The Commission's advisory opinions are

published by the New Mexico Compilation Commission and are publicly available on www.NMOneSource.com. The Commission has also issued a model code of ethics at 1.8.4 NMAC, which is available for state agencies to adopt in whole or in part.

Fourth, under the Revised Uniform Law on Notarial Acts ("RULONA"), the State Ethics Commission has authority to "deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public . . ." NMSA 1978, § 14-14A-22(A) (2021). Under this authority, the Commission investigates and adjudicates complaints against notaries public. These administrative cases are handled separately from the Commission's ethics docket, and they reflect a growing and significant part of the Commission's work.

Fifth, under the Nondisclosure of Sensitive Personal Information Act, the State Ethics Commission has authority to institute civil actions in district court to address or prevent the unlawful disclosure of sensitive personal information by state agency employees. "Sensitive personal information" includes, among other categories, an individual's status as a recipient of public assistance or as a crime victim; sexual orientation, gender identity, disability, medical condition, immigration status, national origin, or religion; and social security number or individual tax identification number. The Act prohibits intentional disclosures outside the agency except in limited, enumerated circumstances.

Sixth, the Commission is tasked to make an annual report to the Governor and the Legislature for amendments to statutes relating to the Commission's jurisdiction and New Mexico's ethics laws, including New Mexico's governmental conduct, procurement, campaign finance reporting, and financial disclosure statutes.

The Commission also has several responsibilities that flow from the core functions described above. The Commission periodically issues and amends administrative rules governing the issuance of advisory opinions (1.8.1 NMAC), commissioner recusals (1.8.2 NMAC), and administrative hearing procedures (1.8.3 NMAC). The Commission also provides the Legislature and the Governor with annual reports on its activities and potential amendments to the laws under the Commission's jurisdiction. Additionally, to foster a community of attorneys in New Mexico that are familiar with the Commission and the state's ethics laws, the Commission annually recruits law students at both the University of New Mexico School of Law and out-of-state law schools for paid summer associate positions with the Commission.

Major Events and Accomplishments (FY25)

Civil Enforcement Actions and Pre-Litigation Settlements:

- On September 23, 2024, the State Ethics Commission announced a court-approved settlement with The New Mexico Project (TNMP), a political committee that had failed to register and disclose its campaign finance activity. The Commission alleged that TNMP violated the Campaign Reporting Act by failing to register as a political committee and by omitting required disclosures regarding its campaign expenditures and targeted candidates. Without admitting wrongdoing, TNMP agreed to register with the Secretary of State, submit all required campaign finance reports, and pay \$4,000 in penalties and attorneys' fees to resolve the matter.
- On December 11, 2024, the State Ethics Commission announced settlement agreements with three members of the County Livestock Loss Association (CLLA)—Tom Paterson, Nelson Shirley, and Audrey McQueen—who were, and remain, cattle ranchers serving on the CLLA board. The Commission alleged that the members stood to benefit financially from decisions they made on how to allocate public compensation for livestock losses due to Mexican grey wolves. In lieu of litigation under the Governmental Conduct Act, each member agreed to abstain from voting on any compensation decisions that could directly benefit themselves or their ranches. The agreements aimed to preserve the integrity of the decision-making process and prevent self-dealing.
- On March 21, 2025, the State Ethics Commission announced settlement agreements with Luna County officials Chris Brice (County Manager) and Joanne Hethcox (Chief Procurement Officer), as well as former county employee Christie Ann Harvey and her contractor organization, The Greater Luna County Economic Opportunity Council, Inc. The Commission alleged that Harvey violated the Governmental Conduct Act by representing the contractor before the County within a year of leaving her public role and improperly participating in the procurement process while still employed. County officials were also alleged to have awarded over \$400,000 in contracts without using the required competitive RFP process. The parties agreed to monetary penalties, contract cancellation, procurement training, and future compliance measures.
- On April 1, 2025, the New Mexico Court of Appeals reversed a district court ruling that had dismissed administrative complaint no. 2022-11, Castellano v. New Mexico Families Forward (NMFF), for lack of jurisdiction. The case

originated when NMFF sought to have the Commission's hearing officer dismiss the complaint, a request that was denied, prompting NMFF to file a petition for a writ of mandamus in district court. In December 2022, the district court ruled in NMFF's favor, finding the Commission lacked jurisdiction. The Commission appealed, and the Court of Appeals remanded the matter for adjudication. NMFF petitioned the New Mexico Supreme Court for review on May 1, 2025, and the Commission filed a response and conditional cross-petition on May 14, 2025. On June 4, 2025, the Supreme Court denied NMFF's petition, allowing the Court of Appeals' decision to stand and clearing the way for the underlying administrative case to return to the Commission for further proceedings.

- On May 5, 2025, the State Ethics Commission entered into a settlement agreement with former Lake Arthur Fire Department official Ysidro Salazar. The Commission alleged that Salazar violated the Governmental Conduct Act by using public funds allocated to the department to purchase fuel for his personal vehicle on at least twenty occasions, totaling approximately \$1,288. Although Salazar resigned from his public positions and reimbursed the Town of Lake Arthur following an audit finding, the Commission determined that a civil penalty was still warranted. Under the agreement, Salazar admitted to the violations and agreed to pay a \$500 civil penalty to the State of New Mexico, an amount corresponding to two violations of the Act. In return, the Commission agreed to forego filing a civil action.
- On May 9, 2025, the State Ethics Commission announced a settlement with Daniel Flack, the owner of DTF Engineering and D&G Construction, resolving alleged violations of the Procurement Code and Governmental Conduct Act. Flack was accused of improperly participating in governmental decisions that financially benefited his businesses and including a contract provision with the Town of Kirtland that allowed a 15% markup on third-party services and materials—allegedly violating procurement rules. To settle the matter, Flack and his businesses agreed to remit \$6,000, remove the problematic contract provision, and restrict Flack's future involvement in procurement and governmental activities for the duration of the contract.
- On May 28, 2025, the State Ethics Commission announced a settlement with Denny Herrera, Mayor of the Village of Cuba, and his business, DDH, Inc. Fuel Service Station. The Commission alleged that Herrera violated the Governmental Conduct Act by directing Village employees to exclusively refuel government vehicles at his private gas station, creating a financial benefit through his public office. To resolve the matter, Herrera agreed to pay \$3,500 in penalties, disclose his ownership interest in DDH, Inc., and clarify that

Village employees are free to refuel at any station, thereby restoring compliance with procurement laws.

- On June 30, 2025, the State Ethics Commission announced that the Eighth Judicial District Court granted partial summary judgment in *State Ethics Commission ex rel. Village of Angel Fire v. Lindsey, et al.*, ruling that the Procurement Code applied to a \$1 million contract awarded by the Village of Angel Fire to Carristo Creative Consulting LLC. The Commission alleged that Mayor Barry Lindsey, who had a prior business relationship with Carristo Creative, approved the no-bid contract without issuing a request for proposals, in violation of procurement laws. The court found that the contract's wide-ranging scope—including branding, design, marketing, and consulting services—was not exempt under the Code's limited advertising exception. The ruling affirms that public contracts for such services must follow competitive procurement requirements. The Commission previously reached a settlement with Carristo Creative, which included repayment of funds unlawfully received in prepayment. The case against Mayor Lindsey will proceed to trial in September 2025 on the remaining claim that he knowingly violated the Procurement Code.
- On July 21, 2025, the State Ethics Commission announced a settlement agreement with New Mexico Safety Over Profit (NMSOP), a political organization that opposed medical malpractice reform legislation during the 2024 legislative session. The Commission alleged that NMSOP failed to comply with the Lobbyist Regulation Act by neglecting to register as a lobbying organization and by failing to disclose expenditures for a months-long advertising campaign that included newspaper and digital ads. To resolve the allegations, NMSOP provided full disclosure of contributions and expenditures, registered with the Secretary of State, and paid a \$5,000 civil penalty, reinforcing transparency and compliance with state lobbying laws.

Investigation and Adjudication of Administrative Complaints:

- In FY25, the Commission received, investigated and adjudicated 73 administrative complaints alleging violations of New Mexico's ethics and disclosure laws. At present, none of the 73 administrative matters filed during FY25 are still pending.
- On June 23, 2025, the Commission announced probable cause in *Vargas v. Kuester* (SEC No. 2025-011), involving allegations that Respondent, Joshua Kuester, a Home Services Practitioner for CYFD while in a divorce proceeding and child custody dispute, violated the Governmental Conduct Act by using the powers and resources of his employment with CYFD to influence the

outcome of an investigation concerning the well-being of the shared-custody children. Hearing Officer David Buchanan subsequently found no evidence to support that the information provided during the proceedings was confidential or that Kuester otherwise obtained confidential information through his employment with CYFD and that there was no evidence to show that the respondent used or disclosed that information, much less for private gain. Therefore, the matter was dismissed for lack of probable cause.

Advisory Opinions, Education and Trainings, Compliance, and RULONA:

- In FY25, the Commission issued 6 advisory opinions, available on www.NMOneSource.com, and 29 advisory letters. The advisory opinions covered several of the laws under the Commission's authority:
 - In Commission Advisory Opinion 2024-05, the Commission opined that a district legislative aide (DLA) may participate in nonpartisan activities related to a get-out-the-vote campaign—such as providing support for mailers, and organizing or attending nonpartisan town halls and rallies—so long as the campaign does not constitute electioneering, any use of state property is authorized, and the DLA uses the powers and resources of office only to advance the public interest.
 - In Commission Advisory Opinion 2024-06, the Commission opined that the Indian Affairs Department would not violate the Anti-Donation Clause by providing funds to non-profit Indigenous Centers through a professional services contract or memorandum of understanding, so long as the Department receives consideration under the agreement or the agreement falls within an exception to the Clause, such as providing services for the care and maintenance of sick or indigent persons.
 - In Commission Advisory Opinion 2025-01, the Commission opined that a legislator or candidate for legislative office may use campaign funds to pay for childcare expenses only when those expenses are incurred as a direct result of the duties of legislative office or campaign activities, are reasonably related to those duties or activities, and would not exist but for the legislator's office or the candidate's campaign.
 - In Commission Advisory Opinion 2025-02, the Commission opined that the Governmental Conduct Act does not prohibit a public employee from holding a second paying job, provided the employee discloses the job to their employer, is not compensated for work already performed as part of their public duties, and there is no conflict or incompatibility between the positions.

- In Commission Advisory Opinion 2025-03, the Commission opined that a district legislative aide (DLA) may hold full-time employment with another state agency if the positions are not physically or functionally incompatible, the DLA discloses each position in writing to their respective supervisors, and the DLA recuses from any official acts in one position that would affect the other.
 - In Commission Advisory Opinion 2025-04, the Commission opined that a legislator may serve on the board of a private, nonprofit organization that receives state grant funding, provided the legislator does not use their legislative position to secure additional funding for the organization, recuses from any legislative actions that would affect the organization, and otherwise complies with the Governmental Conduct Act and other applicable laws.
- In FY25, delivered 22 separate trainings to legislators, legislative committees and staff, state agencies, state boards and commissions, local governments, universities, affiliate and professional organizations, and bar associations around New Mexico.
- On December 6, 2024, the State Ethics Commission announced that it successfully obtained financial disclosure filings from several state agency heads and members of significant boards and commissions, following referrals from the Secretary of State. These individuals, required by the Financial Disclosure Act to file annual disclosures, included those from the Office of the State Engineer, the Military Base Planning Commission, the State Board of Finance, the State Investment Council, and the State Racing Commission. The Commission's efforts ensure compliance with the law, which applies to approximately 675 officials statewide.
- Since January 1, 2022, when the Commission was assigned jurisdiction for notaries public the Commission has received, investigated, or prosecuted over 70 separate administrative matters involving a potential remedial action against a notary public's commission under RULONA. In FY25, the Commission received 18 administrative matters related to notaries public.

Capacity-Building Accomplishments:

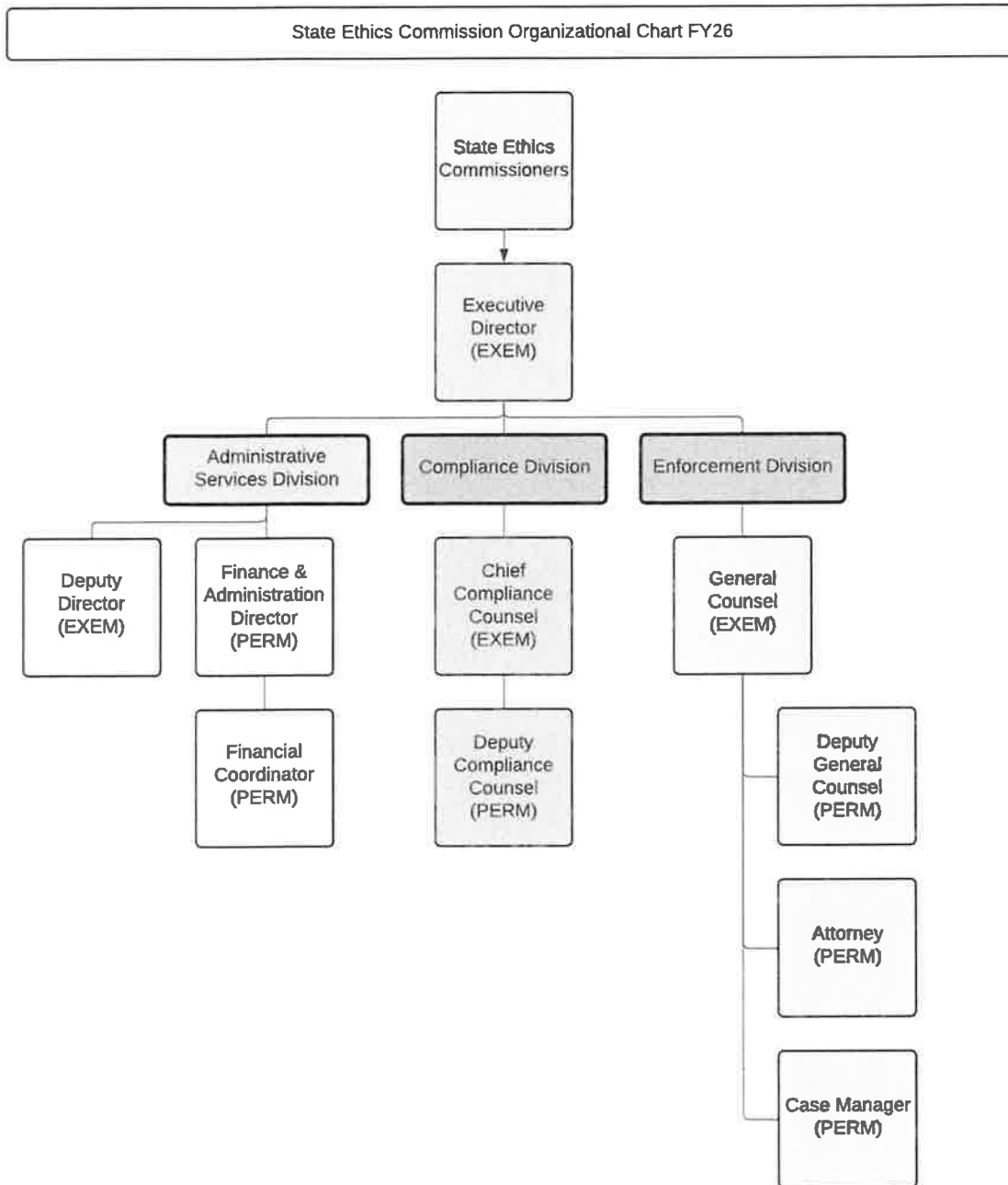
- In FY24, the Commission organized its staff into three separate functions—enforcement, compliance, and administrative services—to balance workload. In FY25, the enforcement function was expanded to include three attorneys who report to the General Counsel and are responsible for litigation and administrative adjudications, including matters arising under the Revised

Uniform Law on Notarial Acts (RULONA). The compliance function remains responsible for advisory opinions, education, efforts at voluntary compliance under the statutes the Commission administers, and compliance with regulatory statutes applicable to the Commission's operations, including the Inspection of Public Records Act and the Open Meetings Act. Administrative services continue to oversee budget, audit, financial transactions, and human resources.

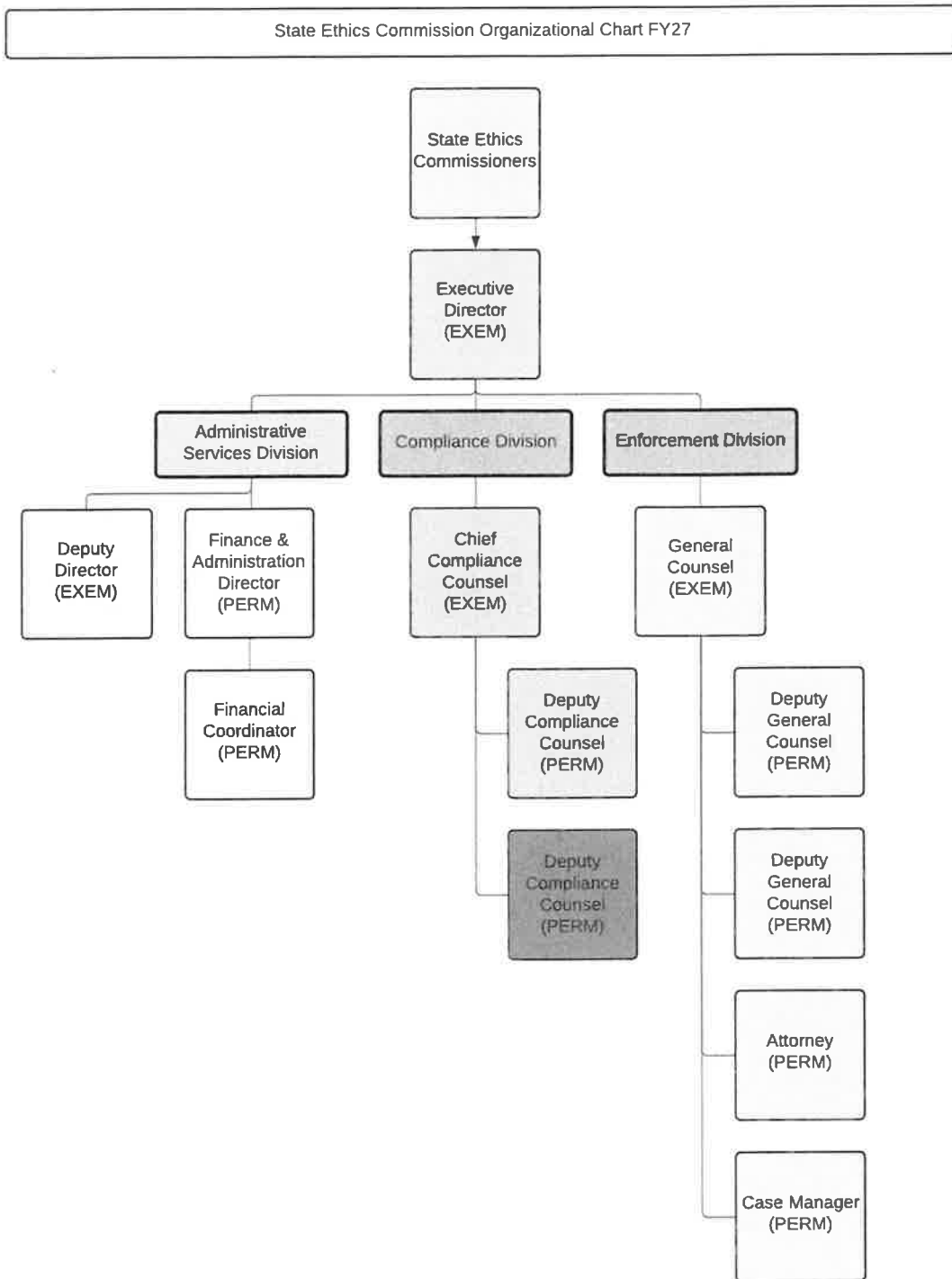
- The Commission's founding General Counsel, Walker Boyd, concluded his term in FY25. The agency appointed his successor, Zachary Goodrich, former Executive Director of the Iowa State Ethics Commission.
- In FY25, the Commission expanded its leadership and legal capacity by hiring a Deputy Director and adding another Attorney to its staff.
- In FY25, the Commission hosted its sixth class of law student summer associates—two students from the University of New Mexico School of Law.
- In FY25, the Commission hosted its first research intern from the University of New Mexico's Political Science Department.

Organizational Structure

State Agency Organizational Chart (FY26):



State Agency Organizational Chart (FY27):



*The position in orange in the above chart reflects the additional position that the Commission seeks as part of its FY27 budget request.

FY27 Objectives and Strategic Actions

Through FY27, the Commission will retain the same basic objectives as in previous fiscal years: investigation and adjudication of administrative complaints; enforcement of New Mexico's governmental conduct, procurement and disclosure laws; guidance and education; and building the agency's capacity and visibility. Looking forward to FY27, the Commission proposes the following strategic actions.

ADMINISTRATIVE ADJUDICATION

The Commission's primary function is the investigation and adjudication of administrative complaints filed either by members of the public or referred by other state agencies. In FY27, the Commission intends to take the following strategic actions to improve its administrative adjudications:

Strategic Actions

- Assign and delegate dedicated attorney staff to issue initial notices, jurisdictional determinations, referrals to other agencies, investigations, and findings of probable cause for administrative cases filed in the Commission subject to the State Ethics Commission Act.
- Continue contracting for hearing-officer services with a retired state judge or retired federal magistrate or bankruptcy judge and with the Administrative Hearings Office.
- Improve the efficiency of complaint filings and other submissions to the Commission by developing an online assessment to determine if an issue falls within the Commission's jurisdiction or implicates the Commission's enforcement authority and the appropriate type of complaint to file.

ENFORCEMENT

The Commission may pursue civil enforcement actions in state court to prevent or remedy violations of the laws provided for in Section 10-16G-9(A) of the State Ethics Commission Act, including the Governmental Conduct Act, the Procurement Code, and the Campaign Reporting Act. This discretionary authority is the Commission's greatest tool to directly vindicate New Mexico's ethics laws. In FY27, the Commission intends to take the following strategic actions to enable and effectuate its enforcement authority:

Strategic Actions

- Enter into and operate under an interagency agreement with the New Mexico Department of Justice regarding referrals, information sharing, parallel enforcement, and training.
- Contract for paralegal services to support the Commission's attorneys in the investigation and prosecution of civil enforcement actions and special statutory proceedings.

- File and litigate enforcement actions in state court as necessary and participate as *amicus curiae* on appellate cases implicating New Mexico's ethics laws.
- Review databases of filings under the Campaign Reporting Act, the Lobbyist Regulation Act, and the Financial Disclosure Act.

GUIDANCE AND EDUCATION

The Commission has the responsibility to provide guidance on the Governmental Conduct Act, the Procurement Code and other of the state's ethics and disclosure laws to officials and employees across New Mexico's state and local governments. In FY27, the Commission intends to take the following strategic actions to continue and increase its guidance function:

Strategic Actions

- Subject to requested appropriations, fully fund one additional attorney position. This position would be dedicated to compliance and advisory work, enabling the Commission to issue more timely and legally sound advisory opinions and advisory letters, and to expand its education and outreach efforts.
- Research and prepare recommended amendments to the state ethics laws for consideration by members of the legislature during future legislative sessions.
- Develop and offer trainings, opinion and editorial pieces, and continuing legal education courses (and related materials) on the Governmental Conduct Act, the Procurement Code, and other laws within the Commission's authority; provide those trainings to both state agencies, local public bodies, and affiliate organizations.
- Expand ethics training through NMEdge, the State of New Mexico Enterprise Learning Management (ELM), and online platforms by developing modules and programs that provide accessible education on ethics laws for state and local government officials and employees.
- Issue advisory opinions and advisory letters upon proper request.
- Work with the New Mexico Compilation Commission to ensure that State Ethics Commission advisory opinions are published on www.NMOneSource.com and New Mexico's statutes are annotated with the growing body of State Ethics Commission advisory opinions.
- Improve the Commission's guidance function by exploring the development of an online application to provide answers to ethics questions based on the Commission's advisory opinions and advisory letters.

CAPACITY BUILDING

FY27 will be the Commission's eighth year. The Commission remains a young state agency, still largely staffed by its original personnel. Notably, in FY27 the Commission will be served by its second General Counsel, following the conclusion of the first General Counsel's term. To further build capacity to perform its basic constitutional

and statutory mandates, in FY27, the Commission intends to take the following strategic actions:

Strategic Actions

- Conduct a summer associate program for law students to develop a pipeline of New Mexico lawyers familiar with and concerned about New Mexico's ethics and disclosure laws and the Commission's work enforcing those laws.
- Relatedly, pending approval of the Commission's FY27 request, the Commission seeks to add one additional attorney position. This position would expand capacity by allowing the current compliance attorney, who now splits time between compliance (60%) and enforcement (40%), to focus exclusively on compliance, while dedicating the new position to enforcement responsibilities.

IMPROVED ENGAGEMENT WITH LOCAL GOVERNMENTS

While the Commission lacks jurisdiction for administrative complaints filed against local government officials and employees, many of New Mexico's ethics laws apply to these individuals. The Commission interacts with New Mexico local governments in two main ways: First, the Commission provides advisory letters and trainings to local government officials and employees. Second, the Commission has the discretionary authority to commence civil actions in district court to enforce violations of those ethics laws that apply to local government officials and employees. Beyond its enforcement duties and its responsibilities to provide advisory services and trainings, the Commission can more deeply engage with local governments to better ensure compliance with New Mexico's ethics and disclosure laws. To that end, in FY27, the Commission intends to take the following strategic actions:

Strategic Actions

- Host an Annual Statewide Ethics Conference to connect local ethics boards across the state, offering networking opportunities, workshops, and discussions on topics such as ethics enforcement, public trust, transparency, and the latest developments in ethics laws.
- Develop a toolkit of resources that local governments can consult to enact local ethics and disclosure ordinances and local ordinances creating local ethics boards to adjudicate local ethics complaints.
- Participate in conferences hosted by the Municipal League, the New Mexico Association of Counties, and the New Mexico Public Procurement Association to discuss best practices and to publicize the Commission's work and resources available to local governments.

REVISED UNIFORM LAW ON NOTARIAL ACTS (RULONA)

The Commission may "deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public" § 14-14A-22(A). Under this authority, the Commission investigates and

adjudicates complaints against notaries public. These RULONA administrative cases are handled separately from the Commission's ethics docket, and they reflect a growing and significant part of the Commission's work.

Strategic Actions

- Subject to requested appropriations, fully fund one additional attorney position. Adding this position would allow the current attorney who divides time between compliance (60%) and enforcement (40%) to shift fully to RULONA enforcement, dedicating resources to this growing docket while strengthening the Commission's overall enforcement capacity.
- Contract for paralegal services to assist Commission staff attorneys in the management of the RULONA administrative docket.
- Continue to work with the Business Services Division of the Office of the Secretary of State to ensure that Commission adverse actions on notary public commissions are reflected and made available to the public.

NONDISCLOSURE OF SENSITIVE PERSONAL INFORMATION (ARTICLE 16I)

The Commission is authorized to enforce the *Nondisclosure of Sensitive Personal Information Act*, NMSA 1978, §§ 10-16I-1 to 10-16I-4. Under this law, state agency employees are prohibited from intentionally disclosing "sensitive personal information" acquired by virtue of their position, except in narrowly defined circumstances. Sensitive personal information includes, among other things, an individual's status as a recipient of public assistance or a crime victim, sexual orientation, gender identity, disability, medical condition, immigration status, national origin, religion, or social security number. Violations may result in civil penalties of two hundred fifty dollars (\$250) per violation, up to a maximum of five thousand dollars (\$5,000). The Commission shares enforcement authority with the Attorney General and district attorneys and may bring civil actions in district court to prevent or penalize violations.

Strategic Actions

- Contract for paralegal services to support the Commission's attorneys in the investigation and prosecution of civil enforcement actions and special statutory proceedings.
- File and litigate enforcement actions in state court as necessary and participate as *amicus curiae* on appellate cases implicating New Mexico's ethics laws.
- Coordinate with state agencies to raise awareness of employees' obligations under the Act and provide technical assistance to ensure compliance.
- Track enforcement activity under the Act to evaluate trends, inform policy recommendations, and support transparency in the protection of sensitive personal information.

Performance Measures

Under the Accountability in Government Act, NMSA 1978, §§ 6-3A-1 to -10 (1999, as amended 2019), each state agency submits performance measures and outcomes under those measures to the State Budget Division of the Department of Finance and Administration and the Legislative Finance Committee. The Commission's performance measures were recently amended to better reflect agency performance. These amendments were made in consultation with staff of the Legislative Finance Committee and the Department of Finance and Administration. The Commission's current performance measures and outcomes are:

Existing Measure	FY25 Actual	FY27 Target
Percent of advisory opinions issued within sixty days of receipt of request.	100%	90%
Percent of ethics complaints within the agency's jurisdiction that are either disposed of or set for public hearing within 180 days after a complaint is received.	98%*	90%

* There are several reasons why the Commission sometimes requires more than 180 days to resolve an administrative complaint. There are substantial delays that can occur before a probable cause determination and a hearing. Under applicable regulations (1.8.3 NMAC), the parties to administrative cases may request extensions to deadlines. These requests are routinely made and granted. Further, the Risk Management Division of the General Services Department is required to hire and pay attorneys to represent respondents who are officers or employees of the state. Risk Management Division counsel often request extensions of time to become familiar with the case. Further, parties often elect to challenge Commission subpoenas. Litigating novel and complex issues in front of district courts and the courts of appeal is common, and these proceedings can take longer than 180 days to resolve. Last, it can also take time for the Commission's general counsel and other Commission attorneys to schedule interviews and depositions, working with the schedules of parties and witnesses.

Considerations

Two considerations are relevant to the Commission's strategic plan for FY27:

1. Since the Commission's creation on July 1, 2019, the Commission has grown in an incremental and fiscally responsible manner. With 10 funded staff positions, the Commission remains very lean in comparison to its constitutional and statutory mandate to ensure compliance with New Mexico's governmental ethics, procurement, and disclosure laws.
2. Under Section 10-16G-10(K) of the State Ethics Commission Act, a public official or state employee who is a respondent to an administrative complaint alleging an ethics violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department. After consulting with other state ethics commissions, this provision stands as an aberration among other state ethics regimes. As a result of Section 10-16G-10(K) and considering the incentives of private attorneys providing legal defenses to their clients, administrative matters where respondents are represented by risk counsel tend to generate significant expense for the State and significant work for the Commission's attorney staff. So long as Section 10-16G-10(K) remains the law, the Commission will maintain a concern whether it has adequate attorney staff to investigate and adjudicate administrative ethics cases.

Appendix I: Current Commissioners

The current Commissioners are:

Hon. William F. Lang, Chair

Appointing authority: Governor Michelle Lujan Grisham

Term expires: June 30, 2026

Jeffrey Baker, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: July 26, 2028

Stuart M. Bluestone, Member

Appointing authority: Speaker of the House, Javier Martínez

Term expires: June 30, 2027

Hon. Celia Castillo, Member

Appointing authority: President Pro Tem of the Senate, Mimi Stewart

Term expires: June 30, 2029

Hon. Gary L. Clingman, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: July 26, 2028

Hon. Dr. Terry MacMillan

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

Term expires: June 30, 2027

Dr. Judy Villanueva, Member

Appointing authority: Minority Floor Leader of the House, Gail Armstrong

Term expires: July 1, 2029

Appendix II: The Commission's Legal Authority

Article V, Section 17 of the New Mexico Constitution

A. The "state ethics commission" is established as an independent state agency under the direction of seven commissioners, no more than three of whom may be members of the same political party, whose terms and qualifications shall be as provided by law. The governor shall appoint one commissioner. One commissioner each shall be appointed by the president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives, all as certified by the chief clerks of the respective chambers. Two commissioners, who shall not be members of the same political party, shall be appointed by the four legislatively appointed commissioners.

B. The state ethics commission may initiate, receive, investigate and adjudicate complaints alleging violations of, and issue advisory opinions concerning, standards of ethical conduct and other standards of conduct and reporting requirements, as may be provided by law, 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 have such other jurisdiction as provided by law.

C. The state ethics commission may require the attendance of witnesses or the production of records and other evidence relevant to an investigation by subpoena as provided by law and shall have such other powers and duties and administer or enforce such other acts as further provided by law. (As added November 6, 2018.)

NMSA 1978, § 1-19-34.6 (2021) (Campaign Reporting Act)

A. If the secretary of state exhausts efforts in seeking voluntary compliance and reasonably

believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the state ethics commission for enforcement; provided, however, that if the secretary of state waives the imposition of a fine pursuant to Subsection D of Section 1-19-35 NMSA 1978, the matter shall not be referred.

B. With or without a referral from the secretary of state, the state ethics commission may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

C. With or without a referral from the secretary of state, the state ethics commission may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000).

NMSA 1978, § 1-19-34.8 (2021) (Campaign Reporting Act)

A. The state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a

provision of the Campaign Reporting Act in accordance with the provisions of that act.

B. The secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the provisions of the Campaign Reporting Act and a formalized agreement.

NMSA 1978, § 1-19A-15.1 (2021) (Voter Action Act)

A. The state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of the State Ethics Commission Act [10-16G-1 to 10-16G-16 NMSA 1978].

B. The secretary of state shall forward complaints it receives alleging violations of the Voter Action Act to the state ethics commission in accordance with a formalized agreement.

NMSA 1978, § 2-11-8.2 (2021) (Lobbyist Regulation Act)

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The state ethics commission, in consultation with the secretary of state, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act.

B. The secretary of state may conduct examinations of reports and the state ethics commission may initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Any person who believes that a provision of the Lobbyist Regulation Act

has been violated may file a written complaint with the state ethics commission pursuant to the terms of the State Ethics Commission Act [10-16G-1 to 10-16G-16 NMSA 1978]. If the commission has jurisdiction for the complaint, the state ethics commission shall refer the complaint to the secretary of state. Upon referral, the secretary of state shall attempt to achieve voluntary compliance with the Lobbyist Regulation Act. Within twenty days after receiving the complaint from the state ethics commission, the secretary of state shall return the complaint to the state ethics commission and certify to the state ethics commission whether voluntary compliance was achieved. If the secretary of state certifies voluntary compliance, the state ethics commission shall dismiss the complaint or that part of the complaint alleging a violation of the Lobbyist Regulation Act. If the secretary of state does not certify voluntary compliance, the state ethics commission shall proceed with the complaint pursuant to the terms of the State Ethics Commission Act.

C. The secretary of state and the state ethics commission shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. Additionally, the state ethics commission shall give a person who violates that act unintentionally or for good cause ten days' notice to come into compliance before the commission takes any action on a complaint filed with or referred to the commission against that person.

D. Any person who fails to file or files a report after the deadline imposed by the Lobbyist Regulation Act shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

E. If the secretary of state determines that a reporting entity subject to the reporting provisions of the Lobbyist Regulation Act has failed to file or has filed a report after the deadline, the secretary of state shall by written notice set forth the violation and the fine that may be imposed and inform the reporting

individual that the individual has ten working days from the date of the letter to come into voluntary compliance and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the imposition of a fine, the secretary of state may by a written notice of final action partially or fully waive the imposition of a fine for any late report or statement of no activity. A written notice of final action shall be sent by certified mail. The secretary of state may file an appropriate court action to remit outstanding fines for good cause or refer unpaid fines for enforcement pursuant to Subsection F of this section.

F. The secretary of state may refer a matter to the state ethics commission for a civil injunctive or other appropriate order or enforcement.

NMSA 1978, § 2-11-8.3 (2021) (Lobbyist Regulation Act)

A. The state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Lobbyist Regulation Act in accordance with the provisions of that act.

B. The secretary of state shall forward complaints it receives alleging violations of the Lobbyist Regulation Act to the state ethics commission in accordance with the Lobbyist Regulation Act and a formalized agreement.

NMSA 1978, § 10-16-11 (2021) (Governmental Conduct Act)

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate

to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the state ethics commission and are open to public inspection.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director, biennially.

NMSA 1978, § 10-16-18 (2021) (Governmental Conduct Act)

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars

(\$250) for each violation not to exceed five thousand dollars (\$5,000).

NMSA 1978, § 10-16A-8 (2021) (Financial Disclosure Act)

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

NMSA 1978, § 10-16B-5 (2019) (Gift Act)

A. The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated. A person who believes that a violation of the Gift Act has occurred may file a complaint with the state ethics commission.

B. If the state ethics commission determines that a violation has occurred, the commission shall refer the matter to the attorney general for criminal prosecution.

NMSA 1978, § 13-1-196 (2019) (Procurement Code)

Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the

Procurement Code. The district attorney in the jurisdiction in which the violation occurs or the state ethics commission is empowered to bring a civil action for the enforcement of any provision of the Procurement Code; provided that the commission may refer a matter for enforcement to the attorney general or the district attorney in the jurisdiction in which the violation occurred. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

NMSA 1978, § 13-1-196.1 (2019) (Procurement Code)

The state ethics commission may investigate complaints against a contractor who has a contract with a state agency or a person who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a state agency. The state ethics commission may impose the civil penalties authorized in Sections 13-1-196 through 13-1-198 NMSA 1978 pursuant to the provisions of those sections.

NMSA 1978, § 10-16G-1 to -16 (2019, as amended through 2023) (State Ethics Commission Act)

§ 10-16G-1. Short Title

Sections 1 through 16 of this act may be cited as the "State Ethics Commission Act".

§ 10-16G-2. Definitions

As used in the State Ethics Commission Act:

A. "commission" means the state ethics commission;

B. "commissioner" means a member of the commission;

C. "complainant" means a person who files a verified complaint with the commission;

D. "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury that the information in the complaint, and any attachments provided with the complaint, are true and accurate;

E. "director" means the executive director of the commission;

F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a public agency;

G. "legislative body" means the house of representatives or the senate;

H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code [Chapter 1 NMSA 1978];

J. "public agency" means any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority;

K. "public employee" means an employee of a public agency;

L. "public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency; and

M. "respondent" means a person against whom a complaint has been filed with or by the commission.

§ 10-16G-3. State Ethics Commission Created; Membership; Terms; Removal

A. The "state ethics commission", as created in Article 5, Section 17 of the constitution of New Mexico, is composed of seven commissioners, appointed as follows:

(1) one commissioner appointed by the speaker of the house of representatives;

(2) one commissioner appointed by the minority floor leader of the house of representatives;

(3) one commissioner appointed by the president pro tempore of the senate;

(4) one commissioner appointed by the minority floor leader of the senate;

(5) two commissioners appointed by the four legislatively appointed commissioners; and

(6) one commissioner appointed by the governor, who shall be a retired judge and who shall chair the commission.

B. No more than three members of the commission may be members of the same political party.

C. The appointing authorities shall give due regard to the cultural diversity of the state and to achieving geographical representation from across the state. Each appointing authority shall file letters of appointment with the secretary of state.

D. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial commissioners appointed by the speaker of the house of representatives and senate minority floor leader shall serve an initial term of four years; members appointed by the president pro tempore of the senate and house minority floor leader shall serve an initial term of two years; members appointed by the legislatively appointed members shall serve an initial term of one year; and the member appointed by the governor shall serve an initial term of three years. Members shall serve until their successors are appointed and qualified.

E. A person shall not serve as a commissioner for more than two consecutive four-year terms.

F. When any member of the commission dies, resigns or no longer has the qualifications required for the commissioner's original selection, the commissioner's position on the commission becomes vacant. The director shall notify the original appointing authority of the vacant position. The original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy shall be filled by appointment by the original appointing authority no later than sixty days following notification of a vacancy for the remainder of the unexpired term. A vacancy on the commission shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

G. The commission shall meet as necessary to carry out its duties pursuant to the State Ethics Commission Act. Commissioners are

entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

H. Four commissioners consisting of two members of the largest political party in the state and two members of the second largest political party in the state constitute a quorum for the transaction of business. No action shall be taken by the commission unless at least four members, including at least two members of the largest political party in the state and two members of the second largest political party in the state, concur.

I. A commissioner may be removed only for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the attorney general upon the request of the commission. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed. The supreme court has original jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner is also liable to impeachment pursuant to Article 4, Section 36 of the constitution of New Mexico.

§ 10-16G-4. Commissioners; Qualifications; Limitations

A. To qualify for appointment to the commission, a person shall:

- (1) be a qualified elector of New Mexico;
- (2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;
- (3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in such a manner as to make the member ineligible to serve on the commission; and
- (4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:
 - (a) a public official;
 - (b) a public employee;
 - (c) a candidate;

- (d) a lobbyist;
- (e) a government contractor; or
- (f) an office holder in a political party at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico and, pursuant to the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978], file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the commissioner serves on the commission.

C. For a period of one calendar year following a commissioner's tenure or following the resignation or removal of a commissioner, the commissioner shall not:

- (1) represent a respondent, unless appearing on the commissioner's own behalf; or
- (2) accept employment or otherwise provide services to a respondent unless the commissioner accepted employment or provided services prior to the filing of a complaint against the respondent.

D. During a commissioner's tenure, a commissioner shall not hold another public office or be:

- (1) a public employee;
- (2) a candidate;
- (3) a lobbyist;
- (4) a government contractor; or
- (5) an office holder in a political party at the state or federal level.

E. A commissioner who changes political party affiliation in violation of the provisions of Subsection A of this section or who chooses to seek or hold an office in violation of Subsection D of this section shall resign from the commission or be deemed to have resigned.

§ 10-16G-5. Commission; Duties and Powers

A. The commission shall:

(1) employ an executive director, who shall be an attorney, upon approval of at least five commissioners;

(2) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act; and

(3) establish qualifications for hearing officers and rules for hearing procedures and appeals.

B. Beginning January 1, 2020, the commission shall:

(1) receive and investigate complaints alleging ethics violations against public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers;

(2) hold hearings in appropriate cases to determine whether there has been an ethics violation;

(3) compile, index, maintain and provide public access to all advisory opinions and reports required to be made public pursuant to the State Ethics Commission Act;

(4) draft a proposed code of ethics for public officials and public employees and submit the proposed code to each elected public official and public agency for adoption; and

(5) 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.

C. Beginning January 1, 2020, the commission may:

(1) by approval of at least five commissioners, initiate complaints alleging ethics violations against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) petition a district court to issue subpoenas under seal requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to an investigation;

(3) issue advisory opinions in accordance with the provisions of the State Ethics Commission Act;

(4) compile, adopt, publish and make available to all public officials, public employees, government contractors and lobbyists an ethics guide that clearly and plainly explains the ethics requirements set forth in state law, including those that relate to conducting business with the state and public agencies; and

(5) offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons.

§ 10-16G-6. Executive director; appointment; duties and powers

A. The commission shall appoint an executive director who shall be knowledgeable about state ethics laws and who shall be appointed without reference to party affiliation and solely on the grounds of fitness to perform the duties of the office. The director shall hold office from the date of appointment until such time as the director is removed by the commission.

B. The director shall:

(1) take the oath of office required by Article 20, Section 1 of the constitution of New Mexico;

(2) hire a general counsel who may serve for no more than five years, unless rehired for up to an additional five years;

(3) hire additional personnel as may be necessary to carry out the duties of the commission;

(4) prepare an annual budget for the commission and submit it to the commission for approval;

(5) make recommendations to the commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act;

(6) perform other duties as assigned by the commission; and

(7) be required to reapply for the position after six years of service and may serve as director for no more than twelve years.

C. The director may:

(1) enter into contracts and agreements on behalf of the commission; and

(2) have the general counsel administer oaths and take depositions subject to the Rules of Civil Procedure for the District Courts.

D. For a period of one calendar year immediately following termination of the director's employment with the commission, the director shall not:

(1) represent a respondent, unless appearing on the director's own behalf; or

(2) accept employment or otherwise provide services to a respondent, unless the director accepted employment or provided services prior to the filing of a complaint against the respondent.

§ 10-16G-7. Recusal and Disqualification of a Commissioner

A. A commissioner may recuse from a particular matter.

B. A commissioner shall recuse from any matter in which the commissioner is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the commissioner can make a fair and impartial decision, including:

(1) when the commissioner has a personal bias or prejudice concerning a party to the proceeding or has prejudged a disputed evidentiary fact involved in a proceeding prior to a hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

(2) when the commissioner has a pecuniary interest in the outcome of the matter; or

(3) when in previous employment the commissioner served as an attorney, adviser, consultant or witness in the matter in controversy.

C. A party to the proceeding may request the recusal of a commissioner and shall provide the commission with the grounds for the request. If the commissioner declines to recuse upon request of a party to the proceeding, the commissioner shall provide a full explanation in support of the refusal to recuse.

D. A party may appeal a commissioner's refusal to recuse, or if the propriety of a

commissioner's participation in a particular matter is otherwise questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and the commissioner shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

G. If two or more commissioners have recused themselves or are disqualified from participating in a proceeding, the remaining commissioners shall appoint temporary commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by a majority vote of the remaining commissioners in accordance with the political affiliation and geographical representation requirements and the qualifications set forth in the State Ethics Commission Act.

H. The commission shall promulgate rules for the recusal and disqualification of commissioners, for an appeal of a recusal decision and for the appointment of temporary commissioners.

§ 10-16G-8. Advisory Opinions

A. The commission may issue advisory opinions on matters related to ethics. Advisory opinions shall:

(1) be requested in writing by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) identify a specific set of circumstances involving an ethics issue;

(3) be issued within sixty days of receipt of the request unless the commission notifies the requester of a delay in issuance and continues to notify the requester every thirty days until the advisory opinion is issued; and

(4) be published after omitting the requester's name and identifying information.

B. A request for an advisory opinion shall be confidential and not subject to the

provisions of the Inspection of Public Records Act.

C. Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

§ 10-16G-9. Commission Jurisdiction; Compliance Provisions

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractors, lobbyists and lobbyists' employers of:

- (1) the Campaign Reporting Act;
- (2) the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978];
- (3) the Gift Act [10-16B-1 to 10-16B-4 NMSA 1978];
- (4) the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];
- (5) the Voter Action Act [1-19A-1 to 1-19A-17 NMSA 1978];
- (6) the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978];
- (7) the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];
- (8) the State Ethics Commission Act;
- (9) the Revised Uniform Law on Notarial Acts [Chapter 14, Article 14A NMSA 1978]; and
- (10) Article 9, Section 14 of the constitution of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act

on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section 10-16G-10 NMSA 1978.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the defendant resides.

§ 10-16G-10. Complaints; Investigations; Subpoenas

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act [Chapter 10, Article 16B NMSA] may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The

complaint form shall be signed under oath by the complainant.

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed, and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal.

F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If an independent hearing officer determines that there is probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding of probable cause involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint, specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent. The hearing officer chosen to

consider probable cause shall not participate in the adjudication of the complaint.

H. Notwithstanding the provisions of Subsections C and G of this section, the director may delay notifying a respondent and complainant and releasing to the public the complaint and related information required by Subsection G of this section if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the commission and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject

to a complaint alleging a violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department.

§ 10-16G-11. Status of Investigation; Reports to Commission

A. If a hearing has not been scheduled concerning the disposition of a complaint within ninety days after the complaint is received, the director shall report to the commission on the status of the investigation. The commission may dismiss the complaint or instruct the director to continue the investigation of the complaint. Unless the commission dismisses the complaint, the director shall report to the commission every ninety days thereafter on the status of the investigation.

B. Upon dismissal of a complaint or a decision to continue an investigation of a complaint, the commission shall notify the complainant and respondent in writing of its action. If the commission has not notified a respondent pursuant to the provisions of Subsection G of Section 10 of the State Ethics Commission Act, the commission shall vote on whether to notify the respondent. A decision whether to continue to delay notifying the respondent shall be taken by a majority vote of a quorum of the commission and shall be documented in writing with reasonable specificity.

§ 10-16G-12. Investigation Report; Commission Hearings; Decisions and Reasons Given; Disclosure of an Ethics Violation

A. Upon receipt of the general counsel's recommendation, the commission or hearing officer shall:

- (1) dismiss a complaint and notify the complainant and the respondent of the dismissal; or
- (2) set a public hearing, as soon as practicable.

B. At any time before or during a hearing provided for in Subsection A of this section, the hearing officer may, at a public meeting, approve a disposition of a complaint agreed to

by the general counsel and the respondent, as approved by the commission.

C. The hearing provided for in Subsection A of this section shall be pursuant to the rules of evidence that govern proceedings in the state's courts and procedures established by the commission. An audio recording shall be made of the hearing. The respondent may be represented by counsel. The parties may present evidence and testimony, request the director to compel the presence of witnesses and examine and cross-examine witnesses.

D. The hearing officer shall issue a written decision that shall include the reasons for the decision. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct constituted a violation, the decision may include recommendations for disciplinary action against the respondent, and the hearing officer may impose any fines provided for by law. A finding of fraudulent or willful misconduct shall require clear and convincing evidence.

E. The complainant or respondent may appeal a decision of the hearing officer within thirty days of the decision to the full commission, which shall hear the matter within sixty days of notice of the appeal and issue its decision within 180 days.

F. The commission shall publicly disclose a decision, including a dismissal following a finding of probable cause or the terms of a settlement, issued pursuant to this section. The commission shall provide the decision to the complainant, the respondent and the:

- (1) house of representatives if the respondent is a public official who is subject to impeachment;
- (2) appropriate legislative body if the respondent is a member of the legislature;
- (3) respondent's appointing authority if the respondent is an appointed public official;
- (4) appropriate public agency if the respondent is a public employee;
- (5) public agency with which the respondent has a government contract if the respondent is a government contractor; and
- (6) secretary of state and the respondent's employer, if any, if the respondent is a lobbyist.

G. The commission shall produce a quarterly report subject to public inspection containing the following information:

- (1) the number of complaints filed with and referred to the commission;
- (2) the disposition of the complaints; and
- (3) the type of violation alleged in the complaints.

§ 10-16G-13. Confidentiality of Records; Penalty

A. A decision that a respondent's conduct constituted a violation, and the terms of a settlement approved by the commission, are public records. Pleadings, motions, briefs and other documents or information related to the decision are public records, except for information that is confidential or protected pursuant to attorney-client privilege, provider-patient privilege or state or federal law.

B. If a complaint is determined to be frivolous, unsubstantiated or outside the jurisdiction of the commission, the complaint shall not be made public by the commission; provided that the commission shall not prohibit the complainant or respondent from releasing the commission's decision or other information concerning the complaint.

C. Except as otherwise provided in the acts listed in Section 9 of the State Ethics Commission Act, all complaints, reports, files, records and communications collected or generated by the commission, hearing officer, general counsel or director that pertain to alleged violations shall not be disclosed by the commission or any commissioner, agent or employee of the commission, unless:

- (1) disclosure is necessary to pursue an investigation by the commission;
- (2) disclosure is required pursuant to the provisions of the State Ethics Commission Act; or
- (3) they are offered into evidence by the commission, respondent or another party at a judicial, legislative or administrative proceeding, including a hearing before a hearing officer.

D. Information and reports containing information made confidential by law shall not be disclosed by the commission or its director, staff or contractors.

E. A commissioner, director, staff or contractor who knowingly discloses any confidential complaint, report, file, record or communication in violation of the State Ethics Commission Act is guilty of a petty misdemeanor.

§ 10-16G-14. Criminal Violations; Referral

If the commission finds at any time that a respondent's conduct amounts to a criminal violation, the director shall consult with the attorney general or an appropriate district attorney, and the commission may refer the matter to the attorney general or an appropriate district attorney. The commission may provide the attorney general or district attorney with all evidence collected during the commission's investigation. Nothing in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

§ 10-16G-15. Time Limitations on Jurisdiction

A. The commission shall not accept or consider a complaint unless the complaint is filed with the commission within the later of two years from the date:

- (1) on which the alleged conduct occurred; or
- (2) the alleged conduct could reasonably have been discovered.

B. The commission shall not adjudicate a complaint filed against a candidate, except pursuant to the Campaign Reporting Act or Voter Action Act, less than sixty days before a primary or general election. During that time period, the commission may dismiss complaints that are frivolous or unsubstantiated or refer complaints that are outside the jurisdiction of the commission.

C. A complainant shall be notified in writing of the provisions of this section and shall also be notified in writing that the complainant may refer allegations of criminal conduct to the attorney general or the appropriate district attorney.

D. When commission action on a complaint is suspended pursuant to the provisions of this section, the respondent shall promptly be

notified that a complaint has been filed and of the specific allegations in the complaint and the specific violations charged in the complaint.

§ 10-16G-16. Prohibited Actions

A. A person shall not take or threaten to take any retaliatory, disciplinary or other adverse action against another person who in good faith:

(1) files a verified complaint with the commission that alleges a violation; or

(2) provides testimony, records, documents or other information to the commission during an investigation or at a hearing.

B. A complainant and a respondent shall not communicate ex parte with any hearing officer, commissioner or other person involved in a determination of the complaint.

C. Nothing in the State Ethics Commission Act precludes civil or criminal actions for libel or slander or other civil or criminal actions against a person who files a false claim.

NMSA 1978, § 10-16I-4. (2025)

Enforcement; penalties. (Nondisclosure of Sensitive Personal Information)

The attorney general, a district attorney and the state ethics commission may institute a civil action in district court if a violation has occurred or to prevent a violation of the Nondisclosure of Sensitive Personal Information Act. Penalties for a violation of that act shall be a civil penalty of two hundred fifty dollars (\$250) for each violation, but not to exceed five thousand dollars (\$5,000).

NMSA 1978, § 14-14A-22 (2022) (Revised Uniform Law on Notarial Acts)

A. The state ethics commission may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including:

(1) failure to comply with the Revised Uniform Law on Notarial Acts;

(2) a fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the state ethics commission;

(3) a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit during the term of the notary public's commission or during the five years immediately preceding such term;

(4) a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;

(5) failure by the notary public to discharge any duty required of a notary public, whether by the provisions of the Revised Uniform Law on Notarial Acts, rules of the secretary of state or any federal or state law;

(6) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;

(7) violation by the notary public of a rule of the secretary of state regarding a notary public;

(8) denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;

(9) failure of the notary public to maintain an assurance as provided in Subsection D of Section 20 [14-14A-20 NMSA 1978] of the Revised Uniform Law on Notarial Acts; or

(10) if the individual ceases to be a resident of this state or ceases to be employed in this state.

§ 14-14A-24. Prohibited acts.

I. An individual who performs a purported notarial act with knowledge that the individual's commission as a notary public has expired or that the individual is otherwise disqualified from the office of notary public or as a notarial officer is guilty of a misdemeanor and upon conviction shall be punished by a fine of five hundred dollars (\$500) and shall be removed from office by the state ethics commission.





STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-05

October 10, 2025¹

Legislator Conflicts of Interest in Public Contracts

QUESTIONS PRESENTED²

The request seeks guidance on the application of the Governmental Conduct Act³ and all other relevant ethical statutes as they pertain to a legislator's potential activities as an individual holding a professional license regulated by the State of New Mexico.

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). On June 12, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commission staff issued an informal advisory opinion in response, and Commissioners Baker and Bluestone requested that this 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); 1.8.1.9(A)(1) NMAC. "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. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

³ NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023).

Specifically, the legislator requests clarification on the following issues:

1. **Bidding on State Contracts:** As a sitting legislator, am I legally and ethically permitted to directly bid on state contracts in my capacity as a person holding a professional license in New Mexico? If I am, are there any disclosures or actions needed on my part to comply with the law?
2. **Subcontracting on State Contracts:** If direct bidding is restricted, may I instead serve as a subcontractor under a primary contractor that has secured a state contract or is bidding a contract? Similarly, are there any disclosures or actions needed on my part or that of a primary contractor to comply with the law?
3. **Bidding on Local Government Contracts:** Do the same restrictions or considerations apply to contracts awarded by local governments (e.g., municipalities, counties, or school districts)? Are there different standards or thresholds for evaluating potential conflicts of interest in this context?
4. **Leasing Property to the State:** Would it be ethically permissible for me, as a legislator, to lease a commercial property I own to a state agency, and under what circumstances might this present a conflict of interest? How does this work with the procurement code, including emergency procurement and sole source?
5. **Appropriator Role and Conflicts of Interest:** As a member of the legislature who votes on appropriations, under what circumstances—either perceived or actual—would my involvement in bidding on or executing state or local contracts give rise to a conflict of interest or violation of the law? How might such conflicts be mitigated or avoided in compliance with ethical standards?

ANSWERS

1. **Bidding on State Contracts:** A legislator is permitted to bid on a state contract provided that the contract was not authorized by any law passed during the legislator's term or within the following year, the contract is awarded pursuant to the provisions of the Procurement Code, the contract is not issued through a sole-source procurement or a small-purchase procurement, and so long as the legislator's interest in the contract is disclosed. To the extent the legislator is negotiating on behalf of the legislator's business, rather than for a personal contract the legislator holds with a state agency, the legislator may only appear for, represent, or assist the legislator's business if the legislator does so without compensation or while engaged in the conduct of the legislator's profession.
2. **Subcontracting on State Contracts:** A legislator is permitted to subcontract with a primary contractor holding a state contract, except where the primary contract was authorized by any law passed during the legislator's term (or within the following year) *and* the legislator holds a direct or indirect interest in the primary contract.
3. **Bidding on Local Government Contracts:** While the restrictions contained in Section 10-16-9(A) do not apply to contracts between a legislator and a local government, a legislator is still prohibited from entering into a contract with a local government if the contract was authorized by any law passed during the legislator's term or within the following year.
4. **Leasing Property to the State:** Because a lease is a contract, the lease cannot have been authorized by any law passed during the legislator's term or within the following year, and the legislator's interest in the lease must be disclosed. The only difference is that because the Procurement Code does not apply to the lease of property, the requirements of Section 10-16-9(A) are met where a state agency complies with the required competitive process for leases, and so long as the lease is not issued as a sole-source or small-purchase contract.

5. **Appropriator Role and Conflicts of Interest:** To the extent a legislator has an actual or potential conflict of interest in the legislator's official duties, the legislator is subject to certain disclosure requirements under Section 10-16-9(A) and Section 10-16-3(C) of the Governmental Conduct Act, as well as under the Financial Disclosure Act. Legislators are also subject to Section 10-16-3(A) which prohibits a legislator from taking any votes for the purpose of directly enhancing the legislator's private interests. These statutes serve a complementary purpose of requiring a legislator take votes only to advance the public interest, while providing the public with information related to potential outside interests the legislator holds.

ANALYSIS

- I. A legislator is permitted to enter into a contract with a state agency provided the contract does not violate Article IV, Section 28, of the New Mexico Constitution and meets the requirements of Section 10-16-9(A) of the Governmental Conduct Act.**

There are two sources of law directly answering whether a legislator may enter into a contract with a state agency. First is Article IV, Section 28 of the New Mexico Constitution (known as "the Emoluments Clause"), which restricts legislators from entering into certain contracts with the state. Second is Section 10-16-9(A) of the Governmental Conduct Act, which restricts the contracts a legislator may be awarded and requires public notice of the legislator's interest in the contract.

- A. Article IV, Section 28 of the New Mexico Constitution prohibits legislators from having a direct or indirect interest in a contract with the state or any municipality which contract was authorized by any law passed during the legislator's term or within one year thereafter.**

Article IV, Section 28 of the New Mexico Constitution provides:

No member of the legislature shall, . . . during the term for which he was elected nor within one year thereafter, be interested directly or indirectly in any contract with the

state or any municipality thereof, which was authorized by any law passed during such term.

The analysis of whether a contract violates this provision turns on two questions: i) the contract must have been authorized by any law passed during a legislator's term or for the year following that term, and ii) the legislator must hold an interest, directly or indirectly, in the contract.

A legislator is prohibited by the Emoluments Clause from entering into a contract with a state agency only if the contract is awarded pursuant to authority granted to a state agency during the legislator's term of office and for one year after. For example, the Commission concluded in Advisory Opinion 2021-08 that the Small Business Recovery Act of 2020 (which created a small business recovery loan fund and authorized the New Mexico Finance Authority to issue loans to qualifying small businesses), "authorized" certain small business relief loan contracts for purposes of Article IV, Section 28, and therefore a legislator was prohibited from entering into one of those loans during that term or within the following year.⁴ The opinion further concluded that this restriction expanded to a business owned by the legislator's immediate family because the legislator likely held an "indirect" interest in those contracts.⁵

Importantly, "authorized by any law" does not extend to appropriations bills.⁶ This means that where the legislature simply appropriates funds for a

⁴ State Ethics Comm'n Adv. Op. 2021-08, at 7 (June 4, 2021), available at <https://nmonesource.com/nmos/secap/en/18161/1/document.do>.

⁵ *Id.*

⁶ See *State ex rel. Baca v. Otero*, 1928-NMSC-021, ¶ 11, 33 N.M. 310 (stating that an appropriation for a contract does not "authorize" the contract for purposes of determining whether the contract is a prohibited emolument; instead, whether the contract is "authorized" by a law passed during a legislator's term is based on the law authorizing the specific contract); see also *State ex rel. Stratton v. Roswell Indep. Schs.*, 1991-NMCA-013, ¶ 37, 111 N.M. 495 ("Otero held that an appropriations bill does not 'authorize' a contract of employment with the state within the meaning of this provision." (citing *Otero*, 1928-NMSC-021)); State Ethics Comm'n Adv. Op. 2021-02, at 4 (Feb. 5, 2021) (determining the Emoluments Clause does not automatically prohibit contract between state agency and nonprofit corporation that has a legislator on its board of directors); N.M. Att'y Gen. Op. 88-20 (Mar. 7, 1988) ("The test [for an Emoluments Clause violation] would be whether the contract could have been entered into by the

contract, the prohibition of Article IV, Section 28 would not apply to prohibit a legislator from holding an interest in that contract.

Accordingly, where a state agency contract was *not* authorized by a law passed during that term or for a year afterward, Article IV, Section 28, does not prohibit a legislator from holding a direct or indirect interest in that contract.

B. Section 10-16-9(A) of the Governmental Conduct Act prohibits a legislator from entering into a contract with a state agency unless the agency awards the contract pursuant to the provisions of the Procurement Code, the legislator’s interest in the contract is publicly disclosed, and the contract is not awarded as either a sole source contract or a small-purchase contract.

Section 10-16-9(A) of the Governmental Conduct Act governs state agency contracts with a legislator, the legislator’s family, or with a business in which the legislator or the legislator’s family has a substantial interest.⁷ A legislator is not eligible under Section 10-16-9(A) for a sole-source or small-purchase contract with a state agency. Otherwise, however, a legislator may be awarded a contract with a state agency where the legislator has provided public notice of the legislator’s interest in the contract, and the agency awards the contract pursuant to the provisions of the Procurement Code.

C. A legislator should be cognizant of the provisions of Subsections 10-16-9(B) through 10-16-9(D) when entering into discussions with a state agency.

Subsections 10-16-9(B) through (D) prohibit a legislator from “appear[ing] for, represent[ing] or assist[ing] *another person* in a matter before a state agency, unless that appearance, representation or assistance is provided without

state if the act in question had not been passed. If the answer is “yes,” the act had no bearing on the contract and did not authorize it. If the answer is “no,” the act made the formation of the contract possible. It permitted and therefore authorized the contract within the meaning of the provision.” (citing Note, Legislative bodies-conflict of interest, 7. N.M. L. Rev. 296 (1967))).

⁷ NMSA 1978, § 10-16-9(A) (2023). *See also* NMSA 1978, § 10-16-2(L) (defining “substantial interest” to mean an ownership interest that is greater than twenty percent).

compensation.”⁸ The request is not clear as to whether the legislator intends to enter into the contract personally or through a business in which the legislator holds a substantial interest. If the legislator is representing the legislator’s personal interests before the state agency, for example, in contract negotiations or proposal submissions, the legislator does not act as an agent or otherwise assist “another person” and, therefore, Subsections 10-16-9(B) and (C) would not apply to prohibit the legislator’s actions. If, however, the “person” contracting with a state agency is actually a business in which the legislator holds a substantial interest (at least twenty percent) or for which the legislator is employed, the legislator must meet one of the exceptions set forth in those subsections in order to appear for, represent, or assist the business in its negotiations with a state agency concerning a contract.⁹

Under the facts of the request here, the first exception to the prohibition in Subsection 10-16-9(B) likely does not apply because it states that a legislator may represent another person in a matter before a state agency if the legislator *is not compensated* for that representation or assistance. In a situation where a legislator either has an interest in the business or is employed by the business, any assistance or representation for the business likely would be compensated, whether in the form of profits or wages, in which case, for the representation to be permissible another exception must apply.

Subsection 10-16-9(C) permits a legislator to represent another person (including the legislator’s business) 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*

⁸ NMSA 1978, § 10-16-9(B) (emphasis added). While the Commission has previously opined on NMSA 1978, § 10-16-9(B) (2007), the analysis interprets the prior version of the statute. *See* State Ethics Comm’n Adv. Op. 2023-01 (Feb. 3, 2023) (available at <https://nmonesource.com/nmos/secap/en/18772/1/document.do>).

⁹ The Governmental Conduct Act does not define “person” but where a statute does not define a word, the Uniform Statute and Rule Construction Act applies. *See* NMSA 1978, § 12-2A-1(B) (1997). Applying that statute, “‘person’ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity[.]” NMSA 1978, § 12-2A-3(E) (1997).

legislator's profession."¹⁰ The text of Subsection 10-16-9(C), its relationship with other ethics statutes, and legislative history, establish that a legislator must be licensed and regulated by the state to qualify for Subsection 10-16-9(C)'s narrow "engaged in the conduct of that legislator's profession" exception. The facts set out in the request indicate that the requestor holds a professional license regulated by the State. As such, when the legislator is engaged in the conduct of that profession, the legislator is permitted to represent the legislator's business, so long as the legislator does not "make references to the legislator's legislative capacity except as to matters of scheduling" and does not "use legislative stationery, legislative email or any other indicia of the legislator's legislative capacity."¹¹

Finally, when a legislator is permitted to appear for, represent, or assist another person in a matter before a state agency, whether because they are doing so without compensation or because they are engaged in the conduct of their profession, "[a] legislator shall not make direct or indirect threats related to legislative actions in any instance[.]"¹²

D. A legislator may enter into a subcontract for a primary contract with a state agency.

A legislator is also permitted to hold a subcontract under a primary contractor that has secured a contract with a state agency, with the caveat that a legislator may not use a subcontract to otherwise sidestep the provisions of Article IV, Section 28, or Section 10-16-9(A). Under Article IV, Section 28, the question is whether the primary contract was authorized by any law passed during the legislator's term or within the year after, and if so, whether the legislator holds either a direct *or indirect* interest in that contract. In an opinion by the New

¹⁰ § 10-16-9(C). *See also* Rep. H. John Underwood & James B. Mulcock, *Governmental Ethics Task Force, Final Report—Findings and Recommendations* 20, N.M. Legislative Council Service Info. Memo. No. 202.90785 (Jan. 27, 1993) (explaining "[d]isclosure of lawyer-legislators' interests under the Campaign Reporting Act and the proposed Financial Disclosure Act, when coupled with the provisions of the house and senate rules, as well as the rules of professional responsibility governing lawyers . . . strikes the appropriate balance" between an outright ban on representation and no restrictions at all).

¹¹ § 10-16-9(C).

¹² § 10-16-9(D).

Mexico Attorney General, the Attorney General laid out two factual considerations to determine whether, as a subcontractor, a legislator has a sufficient interest in a contract to give rise to a conflict.¹³ First, whether “the bid or agreement to provide materials and services to the contractor is entered into before or at the same time the contractor’s agreement with the state is executed.”¹⁴ Second, whether “payment to the legislator’s business is contingent on the state making payment to the contractor in situations where the legislator potentially is in a position to influence decisions about whether to pay the contractor.”¹⁵ The Attorney General concluded that “if, on the other hand, a legislator’s business simply supplies materials or services to the contractor after the prime contract is executed and is paid in the ordinary course of business, there is no conflict under the Constitution.”¹⁶ Accordingly, a legislator would not be prohibited by Article IV, Section 28 from entering into a subcontract with a primary contractor holding a contract with a state agency so long as the primary contract was not authorized by a law passed during the legislator’s term (or during the following year) or, if it was so authorized, as long as the legislator does not hold a direct or indirect interest in that contract.

As to Section 10-16-9(A), the Governmental Conduct Act defines “contract” to “mean[] an agreement or transaction having a value of more than one thousand dollars (\$1,000) *with a state or local government agency . . .*.”¹⁷ Where a legislator instead holds a subcontract, the contract is with the entity contracting with the state

¹³ See N.M. Att’y Gen., No. 89-34, at 3–5 (Dec. 8, 1989). The State Ethics Commission considers the Advisory Opinions and Advisory Letters issued by the New Mexico Attorney General as persuasive authority. The Attorney General’s opinions and letters, however, do not necessarily dictate the advisory opinions that the Commission may issue. See NMSA 1978, §§ 8-5-2(D) (requiring the Attorney General to issue opinions in writing upon questions of law submitted by state officials); 10-16G-8 (authorizing the Commission to issue advisory opinions on matters related to ethics upon request); *First Thrift & Loan Ass’n v. State ex rel. Robinson*, 1956-NMSC-099, ¶ 28, 62 N.M. 61, 304 P.2d 582 (“We are not bound by [opinions of the Attorney General’s office] in any event, giving them such weight only as we deem they merit and no more. If we think them right, we follow and approve, and if convinced they are wrong . . . we reject and decline to feel ourselves bound.”).

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See NMSA 1978, § 10-16-2(C) (2011) (emphasis added).

or local government entity. But the question of whether a legislator is entering into a direct contract with a state or local government agency (as opposed to a subsequent subcontract with a prime contractor) may not in itself be dispositive as to whether the Governmental Conduct Act prohibits such an arrangement. Simply removing a legislator from being the direct contractor with a state agency does not necessarily mean a subcontract is therefore permissible. Where a legislator still holds an indirect interest in the prime contract, the legislator should not be able to intentionally avoid the requirements of Section 10-16-9(A) by entering instead into a subcontract. Furthermore, if a legislator enters into such an arrangement in order to skirt the requirements of Section 10-16-9(A), such conduct potentially violates Sections 10-16-3(A) or 10-16-3(C) of the Governmental Conduct Act. The purpose of Section 10-16-9(A) is to safeguard against legislators using the powers and resources or influence of their offices to sway the award of a contract in favor of themselves and to ensure that contracts between public agencies and legislators are entered into after full disclosure and a merits-based process. In the circumstance where a legislator intentionally circumvents the requirements of Section 10-16-9(A) by entering into a sham subcontract, a legislator violates the public trust and potentially abuses the legislative office by breaching the legislator's duties of care and loyalty to the public. Therefore, provided that a prime contract is awarded following the appropriate competitive process, and there is no agreement between the legislator and the contractor concerning the prime contract with the intention of the legislator always being a subcontractor under that contract, a subcontract would not be a "contract" subject to the requirements of Section 10-16-9(A).¹⁸

A legislator may hold a subcontract on a contract with a state agency provided it does not run afoul of one of these provisions of law.

E. While Article IV, Section 28 applies to a legislator's contracts with a local government agency, Section 10-16-9(A) does not.

In determining whether a legislator is permitted to enter into a contract with a local government agency, the analysis outlined above related to Article IV,

¹⁸ See also N.M. Att'y Gen., No. 89-34, at 3-5 (Dec. 8, 1989) ("If, however, the business only contracts with the general contractor and does not enter into any contract with the state, then the restrictions of Section 10-16-9 of the Conflict of Interest Act no longer control." (opining on the Governmental Conduct Act's predecessor, the New Mexico Conflict of Interest Act)).

Section 28, will apply. That is, if the contract with a local government was authorized during the legislator's term or for the following year, the legislator is prohibited from holding a direct or indirect interest in that contract. Otherwise, a legislator is permitted to enter into a contract with a local government agency.

Notably, Section 10-16-9(A) applies only to contracts between a "state agency" and a legislator, not a "local government agency."¹⁹ By the terms of the statute, then, the requirements of Subsection 10-16-9(A) do not apply to a contract between a legislator and a local government, such as counties, school districts, or other local governments.²⁰

F. Legislators may lease commercial property to a state agency, provided they do not violate Article IV, Section 28 and the agency meets the requirements of Section 10-16-9(A).

A lease is a contract and is therefore subject to the prohibitions of Article IV, Section 28, and Section 10-16-9. The Governmental Conduct Act defines "contract" to mean "an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for: . . . (4) *the acquisition, sale or lease of any land or building*["]."²¹ If a proposed lease has a value of more than one thousand dollars and is for the lease of any land or building, the agreement would be a "contract" for purposes of the Governmental Conduct Act. As with other contracts, in order for a legislator to enter into a lease with a state agency, Section 10-16-9(A) requires the legislator disclose the legislator's interest in the lease and the contract must be "awarded in accordance

¹⁹ See NMSA 1978, § 10-16-9(A) ("*A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code . . .*" (emphasis added)).

²⁰ Compare NMSA 1978, § 10-16-2(K) (2011) (defining "state agency" as "any branch, agency, instrumentality or institution of the state"), with NMSA 1978, § 10-16-2(G) (2011) (defining "local government agency" as "a political subdivision of the state or an agency of a political subdivision of the state").

²¹ NMSA 1978, § 10-16-2(C) (2011) (emphasis added).

with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract.”²²

While the first requirement (disclosure of the legislator’s interest) is straightforward, the second requirement, that the state agency award the contract in accordance with the provisions of the Procurement Code, is more complicated. First, the Procurement Code applies only to “the procurement of *items of tangible personal property, services and construction*.”²³ The General Services Department, however, has promulgated regulations (pursuant to statutory authority requiring the Facilities Management Division to “control the lease or rental of space in private buildings by state executive agencies other than the state land office”²⁴) that provide for the confidential solicitation of bids for state agency leases of space in private buildings, and include specific requirements for requests for proposals, public notice, and Facilities Management Division’s approval of requests for proposals and leases.²⁵ Even though Section 10-16-9(A) does not identify either the Property Control Act or the accompanying regulations, they apply, with some exceptions, “to all leases and rentals of space in public and private buildings, for periods exceeding ninety (90) days, by state executive agencies other than the state land office.”²⁶ Therefore, while the Procurement Code does not directly apply to leases of property, where statutory authority and any associated regulations direct a comparable competitive process requirement for state executive agency leases of private property, the state agency meets the requirements of Section 10-16-9(A).

²² § 10-16-9(A).

²³ NMSA 1978, § 13-1-30(A) (2005). *Cf.* State Ethics Comm’n Op. 2023-05, at 3 (Aug. 4, 2023), available at <https://nmonesource.com/nmos/secap/en/18778/1/document.do> (determining that while “the Procurement Code itself does not apply to contracts by which local public bodies sell real property[,]” Section 10-16-7 of the Governmental Conduct Act still requires a competitive process for a local public body to enter into a contract with a public employee of that local public body) (citing NMSA 1978, § 13-1-30(A) (2005) (providing for the application of the Procurement Code)).

²⁴ NMSA 1978, § 15-3B-4(A)(6) (2001).

²⁵ 1.5.21 NMAC.

²⁶ 1.5.21.2(A) NMAC. While the regulations contain certain exclusions, including leases of vacant land and parking spaces, the request specifically asks about leasing “commercial property.”

As such, a legislator is permitted to enter into a lease with a state agency where the legislator discloses the legislator's interest in the lease, the lease is procured under any applicable procurement requirements, and the lease does not constitute a small purchase or sole source contract.²⁷ Section 10-16-9(A) does not prohibit a legislator from entering into a contract pursuant to an emergency procurement, so long as the other conditions of the Subsection are met.²⁸

II. Additional considerations related to conflicts of interest

The Governmental Conduct Act does not disqualify a legislator from a vote on legislation affecting the legislator's financial interest, although a legislator may voluntarily request to be excused from such a vote. A legislator is prohibited, however, from using the powers and resources of office in order to personally benefit the legislator. Further, a legislator is required to disclose any real or potential conflicts of interest, a disclosure obligation that may be met through the legislator's annual Financial Disclosure Statement.

A. The Governmental Conduct Act does not disqualify a legislator from a vote *affecting* a financial interest, although it might prohibit a vote for the *purpose* of benefitting a financial interest.

First, the Governmental Conduct Act's main disqualification rule does not apply to legislators. Section 10-16-4(B) provides that "a public officer or employee

²⁷ The Governmental Conduct Act does not define a small purchase or sole source contract, but the GSD regulations at least contemplate a contract for leases under \$10,000 a year which, when viewed alongside the comparable provisions of the Procurement Code, demonstrates such a lease would constitute a small purchase contract, and therefore would be prohibited under Section 10-16-9(A). *See* 1.5.21.12(C) NMAC (exempting leases less than \$10,000 per year, not to exceed \$50,000 total term or less than 2,000 usable square feet, from the competitive sealed proposal process, but requiring an RFP form and that the state agency attempt to receive a minimum of three written quotations and to use an identified series of factors to justify the selection). *Cf.* NMSA 1978, § 13-1-125 (2019) (permitting under the Procurement Code the procurement of services, construction or items of tangible personal property not exceeding \$20,000 "by issuing a direct purchase order to a contractor based upon the best obtainable price").

²⁸ *See* 1.5.21.22(A) NMAC (allowing the director of the Facilities Management Division to grant full or partial waivers to the default rules regarding state agency leases of commercial property when the state "agency certifies, in writing, that an emergency condition exists").

shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest . . . [that is not] proportionately less than the benefit to the general public.”²⁹ Under the Governmental Conduct Act, a “financial interest” means “(1) an ownership interest in business or property; or (2) any employment or prospective employment for which negotiations have already begun.”³⁰ Legislators, however, are expressly excluded from the definition of a “public officer or employee.”³¹ Consequently, the disqualification requirement in section 10-16-4(B) does not apply to a legislator.

Second, Section 10-16-3(A) also bears on the question of a legislator's potential conflicts. Unlike Section 10-16-4, Section 10-16-3(A) applies to legislators. That section provides:

A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.³²

Under this provision, a legislator may not use the powers and resources of legislative office “to obtain personal benefits or pursue private interests.”³³ Whether a legislator uses the powers and resources of office for the specific purpose “to obtain personal benefits or pursue private interests” is a question of fact.³⁴ Furthermore, whether a particular use of “the powers and resources” of a legislator's office results in “personal benefits” to the legislator or advances their

²⁹ § 10-16-4(B).

³⁰ NMSA 1978, § 10-16-2(F) (2011).

³¹ § 10-16-2(I).

³² § 10-16-3(A) (2011).

³³ *Id.*

³⁴ *Id. See, e.g., State v. Muraida*, 2014-NMCA-060, ¶ 18, 326 P.3d 1113 (concluding that intent presents a question of fact and may be inferred from both direct and circumstantial evidence).

“private interests” is also a question of fact dependent on the particular circumstances.

According to the facts in the request, there are potentially two financial interests, either a direct interest in the contracts or subcontracts at issue or an ownership interest in a legislator’s business’s contracts.³⁵ The Governmental Conduct Act would prohibit a legislator from taking any official act for the purpose of benefitting either of these financial interests. The facts in the request, however, do not provide sufficient additional information to opine as to whether participation in a particular legislative matter would violate Section 10-16-3(A). A legislator would be prohibited, for example, from using the powers and resources of office to direct a contract to a primary contractor with whom the legislator or the legislator’s business had an agreement where, upon award of the contract, the legislator would become the subcontractor.

Although the facts presented in the request do not suggest a violation of Section 10-16-3(A) of the Governmental Conduct Act, a legislator may *voluntarily* request to be excused from participation in a matter that affects (or has the appearance of affecting) the legislator’s financial interest. A decision to do so, although not required by law, would demonstrate that a legislator is not using the powers of legislative office “to obtain personal benefits or pursue private interests” and would likely defeat a Section 10-16-3(A) claim that a legislator used the powers of legislative office to obtain personal gain.

B. Section 10-16-3(C) of the Governmental Conduct Act requires a legislator to disclose real or potential conflicts of interest.

Section 10-16-3(C) of the Governmental Conduct Act imposes on legislators a duty of “full disclosure of real or potential conflicts of interest[.]”³⁶ As an initial matter, many contracts and their subcontracts contain certain requirements

³⁵ See § 10-16-2(F).

³⁶ NMSA 1978, § 10-16-3(C).

pertaining to disclosures and approval.³⁷ Further, the Financial Disclosure Act³⁸ imposes a duty on legislators to disclose in writing all sources of gross income of more than five thousand dollars, a general description of the type of real estate owned in New Mexico, other than a personal residence, all other New Mexico business interests not otherwise listed of ten thousand dollars or more in a New Mexico business entity, and each state agency the legislator sold goods or services in excess of five thousand dollars and each state agency before which a legislator represented or assisted clients in the course of the legislator's employment.³⁹ In complying with these requirements, a legislator meets much of the disclosure requirement under Subsection 10-16-3(C) because it covers employment or business interests of the legislator, real estate owned by the legislator beyond the legislator's personal residence, and any state agencies the legislator sold goods or services or before whom a legislator represented or assisted clients during the legislator's employment.

Of course, the minimum disclosure required by the Financial Disclosure Act is just that—a minimum. The Secretary of State permits Financial Disclosure Statement filers to supplement their disclosures with additional information, and it may be prudent to include in a Financial Disclosure Statement other information related to a legislator's business's contract with a state agency which is not otherwise included in the Financial Disclosure Act. Doing so would permit a legislator to fully comply with the spirit and requirements of Subsection 10-16-3(C).

CONCLUSION

The Emoluments Clause and the Governmental Conduct Act permit legislators to enter into contracts with state agencies, including leases for commercial property, provided the above requirements are met. Where legislators represent a business (including one in which the legislator holds a substantial

³⁷ See, e.g., New Mexico General Serv's Dept., Contract Boilerplate Form 7/1/25, at 4 (available at <https://www.generalservices.state.nm.us/state-purchasing/contracts-review-bureau/>) (last visited Sept. 24, 2025) (requiring that a contractor shall not subcontract a portion of the services to be performed under a contract without prior written approval of the agency).

³⁸ NMSA 1978, §§ 10-16A-1 to -8 (1993, as amended through 2021).

³⁹ See NMSA 1978, § 10-16A-3(D) (2021).

interest) before a state agency, the legislator must comply with the requirements of Section 10-16-9(A). Only the Emoluments Clause, however, would directly prohibit a contract between a state legislator and a local government agency. The law also permits a legislator to enter into a subcontract with a primary contractor holding a contract with the state so long it is not an attempt to avoid the requirements of Section 10-16-9(A). Finally, a legislator is required to comply with the ethical requirements of Subsections 10-16-3(A) and (C) of the Governmental Conduct Act, including using the powers and resources of legislative office only for the public interest and appropriate disclosure of real or potential conflicts of interest.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFFREY L. BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. CELIA CASTILLO, Commissioner

HON. GARY L. CLINGMAN, Commissioner

HON. DR. TERRY MCMILLAN, Commissioner

DR. JUDY VILLANUEVA, Commissioner



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-06

October 10, 2025¹

Legislative Staff Conflicts of Interest in Public Contracts

QUESTIONS PRESENTED²

The request seeks guidance on the application of the Governmental Conduct Act³ and all related ethical statutes as they pertain to legislative staff, including both staff assigned to individual legislators—such as district legislative aides—and staff serving in leadership offices.

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On June 12, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commission staff issued an informal advisory opinion in response, and Commissioner Baker requested that this 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); 1.8.1.9(A)(1) NMAC. “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. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

³ NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023).

Specifically, the request seeks clarification on the following issues:

1. **Bidding on State Contracts:** May legislative staff directly bid on state [contracts]? Are there different rules for staff employed year-round versus session-only?
2. **Serving as Subcontractors:** If direct bidding is restricted, are these individuals permitted to serve as subcontractors on state-funded projects?
3. **Local Government Contracts:** May legislative staff bid on or serve as subcontractors for contracts awarded by local governmental entities (e.g., municipalities, counties, or school districts)? If so, are there any ethical limitations or disclosure requirements?
4. **Leasing Property to the State:** Would it be ethically permissible for a legislative staff member to lease commercial property they own to a state agency, and what safeguards, if any, would be required to avoid a conflict of interest?
5. **Conflict of Interest Considerations:** At what point would a legal or perceived conflict of interest arise if a legislative staff member engages in such business activities? Would these staff members be required to disclose their outside employment or recuse themselves from certain legislative functions?

ANSWERS

1. **Bidding on State Contracts:** A state agency may award a legislative staff member a contract with the agency, provided the contract is awarded pursuant to a competitive process and the staff member's interest in the contract is disclosed through public notice.
2. **Serving as Subcontractors:** A legislative staff member is not prohibited from serving as a subcontractor on a state-funded project, other than the general ethical restrictions imposed on public employees.

3. **Local Government Contracts:** A legislative staff member may bid on and be awarded contracts with local governments or subcontracts with contractors on local government contracts.
4. **Leasing Property to the State:** A legislative staff member may lease commercial property to a state agency, provided the lease is awarded pursuant to a competitive process and the staff member's interest in the contract is disclosed through public notice.
5. **Conflict of Interest Considerations:** Legislative staff members must disclose any outside employment and any financial interest they should have reason to believe may be affected by their official acts or the actions of the state agency for whom they are employed. Legislative staff members must also always use the powers and resources of state employment for the good of the public, rather than personal gain, and are prohibited from taking an official act that could affect their financial interests. Legislative staff members are also prohibited from acquiring a financial interest (including negotiating for employment) where they should have reason to believe their official acts will affect that interest.

ANALYSIS

- I. **Legislative staff may bid on state contracts so long as the public employee's interest in the contract is published and the contract is awarded pursuant to a competitive process.⁴**

As a first point, the Governmental Conduct Act applies to any “employee of a state agency . . . who receives compensation in the form of salary or is eligible for per diem or mileage.”⁵ A “state agency” includes “any branch, agency, instrumentality or institution of the state[.]”⁶ As such, the Governmental Conduct Act applies to legislative staff members as public employees, whether they are staff

⁴ Legislative staff are also subject to any applicable policies of the Legislative Council. *See* Laws and Policies of the Legislative Council (June 23, 2025) (available at <https://www.nmlegis.gov/Publications/handbook/Laws%20and%20Policies.pdf>). This opinion focuses on the ethics laws at issue and does not cover any requirements that may be contained in those policies.

⁵ NMSA 1978, § 10-16-2(I) (2011).

⁶ NMSA 1978, § 10-16-2(K) (2011).

serving in leadership offices or as a district legislative aide.⁷ If a legislative staff member is seasonal, that is, employed by the state for a certain portion of the year but is not an employee for the remainder of the year, the Governmental Conduct Act would apply while the individual meets the definition of “public employee.” Following the employee’s exit from public service (whether because the session ends or permanently), the employee will be subject to the revolving door provisions of Section 10-16-8 of the Governmental Conduct Act.⁸

Section 10-16-7(A) of the Governmental Conduct Act governs contracts between a state employee and a state agency, providing that

A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest *unless the public officer or employee has disclosed through public notice the public officer’s or employee’s substantial interest and unless the contract is awarded pursuant to a competitive process*; provided that this section does not apply to a contract of official employment with the state. .⁹

Separately, the Procurement Code¹⁰ prohibits a state agency employee from participating directly or indirectly in a procurement when the employee knows they have a financial interest in the business seeking or obtaining the contract.¹¹

⁷ State Ethics Comm’n Adv. Op. 2024-05, at 3 (Oct. 5, 2024), available at <https://nmonesource.com/nmos/secap/en/18985/1/document.do> (concluding district legislative aides are “public employees” for purposes of the Governmental Conduct Act).

⁸ See NMSA 1978, § 10-16-8(B), (D) (2011) (prohibiting a former public employee from representing a person on a matter in which the employee participated personally or substantially while a public employee, and prohibiting a former public employee from representing a person for pay before the former public employer for a period of one year after departure from public employment).

⁹ NMSA 1978, § 10-16-7(A) (2011) (emphasis added).

¹⁰ NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023).

¹¹ See NMSA 1978, § 13-1-190 (2009).

Accordingly, a legislative staff member, while a state public employee, may enter into a contract with a state agency only where the contract is awarded pursuant to a competitive process, the staff member discloses the staff member's substantial interest in the contract through public notice, and the staff member did not participate directly or indirectly in the procurement on behalf of the state.

II. Legislative staff may serve as subcontractors on a primary contract with a state agency.

The Governmental Conduct Act does not prohibit or impose additional requirements on a legislative staff member entering into a subcontract under a primary contract with the state. Section 10-16-7(A) addresses contracts between a state agency and a state public employee, the employee's family, or a business in which the employee or the employee's family has a substantial interest. Section 10-16-7(A) does not extend, however, to a subcontract between a state public employee (or the employee's business) and a contractor who holds a primary contract with a state agency. This is not to say that a public employee can use a subcontract to skirt the requirements of the Governmental Conduct Act where this Section would otherwise apply or otherwise violate other ethical requirements of the law in the making of such a contract (for example, a *quid pro quo* arrangement with a prime contractor related to the employee's official public duties).¹² But as a general matter, the Governmental Conduct Act does not restrict a legislative staff member from entering into a subcontract for a primary contract with a state agency. Similarly, while the Procurement Code includes certain requirements for subcontracts and subcontractors,¹³ none directly restrict a legislative staff member from holding a subcontract on a primary contract with a state agency.

III. Legislative staff members are permitted to enter into contracts with local government agencies.

The Governmental Conduct Act also does not directly restrict contracts between a legislative staff member and a local government agency. Section 10-16-7(A) applies only to contracts between a *state* agency and a public employee of the *state* (or their family and businesses). Section 10-16-7(B) applies to local

¹² See NMSA 1978, § 10-16-3(D) (2011) (prohibiting a public employee from taking an official act in exchange for something of value).

¹³ See, e.g., NMSA 1978, §§ 13-1-148.1 (2007), 13-1-198 (1984).

government agencies, but again, only affects contracts between a *local* government agency and a public employee of that *local* government. As a result, there are no specific requirements in the Governmental Conduct Act for a legislative staff member's contract with a local government agency, although the general ethical requirements of the Governmental Conduct Act would still apply to the staff member's conduct.

IV. Because a lease is a contract, a legislative staff member is permitted to lease property to a state agency provided that the staff member gives public notice of their interest in the lease and the agency awards the lease pursuant to a competitive process.

Where a lease of any land or building has a value of more than one thousand dollars, the agreement is a “contract” for purposes of the Governmental Conduct Act. The Governmental Conduct Act defines “contract” to mean “an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for . . . *the acquisition, sale or lease of any land or building . . .*”¹⁴ As with the discussion of contracts above, to the extent a state agency intends to enter into a contract with a state employee (or a business the employee substantially owns), including a legislative staff member, in an amount greater than \$1,000, the state agency must award the contract pursuant to a competitive process and the employee must disclose the employee's interest through public notice.¹⁵

The Governmental Conduct Act does not define “competitive process” and the Procurement Code applies only to “the procurement of *items of tangible personal property, services and construction.*”¹⁶ But regulations issued by the General Services Department (pursuant to statutory authority requiring the Facilities Management Division “control the lease or rental of space in private

¹⁴ NMSA 1978, § 10-16-2(C) (2011) (emphasis added).

¹⁵ § 10-16-7(A).

¹⁶ NMSA 1978, § 13-1-30(A) (2005). *Cf.* State Ethics Comm'n Op. 2023-05, at 3 (Aug. 4, 2023), available at <https://nmonesource.com/nmos/secap/en/18778/1/document.do> (determining that while “the Procurement Code itself does not apply to contracts by which local public bodies sell real property[.]” Section 10-16-7 of the Governmental Conduct Act still requires a competitive process for a local public body to enter into a contract with a public employee of that local public body) (citing NMSA 1978, § 13-1-30(A) (2005) (providing for the application of the Procurement Code)).

buildings by state executive agencies other than the state land office”¹⁷) provide for a competitive process for state agency leases of space in private buildings, including requirements for the solicitation of proposals, public notice, and Facilities Management Division’s approval of requests for proposals and leases.¹⁸ Accordingly, while the Procurement Code does not directly apply to leases of buildings, where the Property Control Act and the regulations issued pursuant thereto direct a comparable competitive process requirement for state executive agency leases of private buildings, this would satisfy the requirements of Section 10-16-7(A).

Based on the foregoing, a legislative staff member may enter into a contract with a state agency to lease property so long as the staff member provides public notice of the employee’s interest in the lease, the state agency awards the contract following a competitive process sufficient to provide other persons an opportunity to be awarded the contract, and the agency complies with any other requirements applicable to a state agency’s lease of property.

V. Conflict of interest considerations

The request asks generally about when a legislative staff member would have a conflict of interest related to contracting with a public agency, disclosure obligations of legislative staff members, and recusal obligations. Certain provisions of the Governmental Conduct Act govern ethical conduct and conflicts of interest for public employees, including legislative staff members, which should shape legislative staff members’ conduct related to outside, private interests the staff members may hold. These rules prohibit a legislative staff member from using the powers and resources of public employment for personal gain, require disclosure of outside employment and disclosure and avoidance of conflicts of interest, and prohibit outside compensation for performing public job duties. Legislative staff should review and adhere to these provisions in navigating personal contracts, or contracts through their business or family members, with state agencies.

First, Section 10-16-3 of the Governmental Conduct Act contains the statute’s core anti-corruption provisions. Section 10-16-3(A) requires a public “employee shall treat the . . . employee’s government position as a public trust. The . . . employee shall use the powers and resources of public office only to

¹⁷ NMSA 1978, § 15-3B-4(A)(6) (2001).

¹⁸ 1.5.21 NMAC.

advance the public interest and not to obtain personal benefits or pursue private interests.”¹⁹ This provision would prohibit, for example, a district legislative aide from using their position as aide to a certain legislator to get an advantage in the procurement of a contract with a state agency.

Section 10-16-3(C) of the Governmental Conduct Act provides that “[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.”²⁰ Where a legislative staff member holds a contract with a state agency, it would be prudent to disclose that contract if the staff member’s public job duties somehow affect the state agency. Further, the Financial Disclosure Act²¹ requires that “[e]very employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act *or actions of the state agency by which he is employed* shall disclose the nature and extent of that interest.”²² If there is reason to believe an action by the legislature may affect a legislative staff member’s contract with a state agency (or any other outside financial interest), the staff member should file a disclosure of that interest in writing to the Secretary of State before entering state employment and annually in January.

Section 10-16-4 restricts a legislative staff member’s official acts related to the staff member’s financial interests. Specifically, Section 10-16-4 of the Governmental Conduct Act prohibits a public employee from taking an official act “for the primary purpose of directly enhancing the public . . . employee’s financial interest[,]” generally disqualifies a public employee from “engaging in any official act directly affecting the public . . . employee’s financial interest[,]” and provides that “no public employee during the period of employment shall acquire a financial interest when the public . . . employee believes or should have reason to believe that the new financial interest will be directly affected by the . . . employee’s official act.”²³ For example, if a legislative staff member is tasked with making

¹⁹ NMSA 1978, § 10-16-3(A) (2011).

²⁰ NMSA 1978, § 10-16-3(C) (2011).

²¹ NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended through 2021).

²² NMSA 1978, § 10-16A-4(A) (1993) (emphasis added).

²³ NMSA 1978, § 10-16-4 (2011).

official recommendations to a supervising legislator about authorizing contracts or appropriations, they would be prohibited from taking an official act that would affect a contract the legislative staff member's business holds with a state agency.²⁴ A legislative staff member is also prohibited from negotiating for employment if the staff member knows or should have reason to know that those negotiations will be directly affected by their official act.²⁵

If a legislative staff member holds outside employment, including if they are employed by a business in which they hold a substantial interest that contracts with state agencies, Section 10-16-4.2 of the Governmental Conduct Act requires the staff member "disclose in writing to the . . . employee's . . . employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency."²⁶ And Section 10-16-4.1 of the Governmental Conduct Act provides that no legislative staff member "may request or receive an honorarium for a speech *or a service rendered that relates to the performance of public duties*."²⁷ If a legislative staff member were to

²⁴ See also NMSA 1978, § 10-16-4.3 (2011) (further providing that it is unlawful for a state agency employee involved in the contracting process on behalf of a state agency to become the employee of anyone contracting with that state agency); NMSA 1978, § 10-16-13 (2011) (prohibiting a state agency from "accept[ing] a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based"); NMSA 1978, § 10-16-6 (2011) (prohibiting a public employee from using or disclosing confidential information acquired by virtue of the employee's position with their public employer for the "employee's or another's private gain").

²⁵ § 10-16-4(C). See NMSA 1978, § 10-16-2(F)(2) (2011) (defining "financial interest" to included "any employment or prospective employment for which negotiations have already begun").

²⁶ NMSA 1978, § 10-16-4.2 (2011).

²⁷ § 10-16-4.1 (1993) (emphasis added) ("For the purposes of this section, 'honorarium' means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.). Cf also Article IV, § 27 ("No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution."); Article XX, § 9 ("No officer of the state who receives a salary, shall accept or receive to his own use any compensation, fees, allowance or emoluments for or on account of his office, in any form whatever, except the salary provided by law.").

receive a payment of money or any other thing of value in excess of one hundred dollars specifically for work the staff member does as part of their public duties, the staff member would violate this provision.

Recently, the Commission considered two separate opinion requests related to outside employment by a public employee and specifically by a district legislative aide. In Advisory Opinions 2025-02,²⁸ the Commission considered whether the Governmental Conduct Act prohibits a public employee from holding outside employment. The Commission concluded that the Governmental Conduct Act does not prohibit a public employee from having a second paying job, so long as the employee discloses the job to the employee's government employer, the employee is not being paid for work already performed as a public employee, and there is no conflict between the employee's public employment and secondary employment such that the positions are otherwise incompatible.²⁹ In Advisory Opinion 2025-03,³⁰ the Commission reviewed whether a district legislative aide may hold employment with another state agency. The Commission there concluded that a district legislative aide is permitted to hold full time employment with another state agency so long as the district legislative aide meets the requirements of each position, disclosed the position to each public employer, and does not take any official acts in one position that would affect the other.³¹

The Governmental Conduct Act provides a number of restrictions and guidelines a legislative staff member should consider when holding outside employment or contracts with public agencies. This opinion is intended to give an overview of potentially applicable law in those circumstances. To the extent staff members have questions related to particular inquiries, they may seek an advisory opinion from the Commission on those specific facts.³²

²⁸ State Ethics Comm'n Adv. Op. 2025-02 (June 6, 2025), available at <https://nmonesource.com/nmos/secap/en/19138/1/document.do>.

²⁹ *Id.*, at 1–2.

³⁰ State Ethics Comm'n Adv. Op. 2025-03 (June 6, 2025), available at <https://nmonesource.com/nmos/secap/en/19139/1/document.do>.

³¹ *Id.*, at 1.

³² See NMSA 1978, § 10-16G-8 (2019); 1.8.9 NMAC.

CONCLUSION

A legislative staff member may enter into a contract with a state agency, including leasing commercial property to a state agency, so long as the staff member's interest in the contract is publicly disclosed and the agency awards the contract pursuant to a competitive process. Other than general ethical restrictions imposed on public employees, a legislative staff member is also permitted to enter into a subcontract on a primary contract with a state agency or a local government. A legislative staff member is also permitted to bid on and be awarded contracts with a local government. Finally, the Governmental Conduct Act imposes certain ethical requirements on legislative staff members that may be implicated by outside employment or outside contracts. Legislative staff members must disclose to their employers any outside employment, and must file a financial disclosure statement for any financial interest they should have reason to believe may be affected by their official acts or the actions of the state agency for whom they are employed. Legislative staff members must also always use the powers and resources of state employment for the good of the public, rather than personal gain, and are prohibited from taking an official act that could affect their financial interests. And legislative staff members are prohibited from acquiring a financial interest (including negotiating for employment) where they should have reason to believe their official acts will affect that interest.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFFREY L. BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. CELIA CASTILLO, Commissioner

HON. GARY L. CLINGMAN, Commissioner

HON. DR. TERRY MCMILLAN, Commissioner

DR. JUDY VILLANUEVA, Commissioner



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-07

October 10, 2025¹

Lobbyist Employer Requirements for Legislative Reception

QUESTION PRESENTED²

Each legislative session a political grassroots network and membership organization hosts a reception for legislators. All attendees, including legislators, receive tickets for two drinks and food. The event features a guest speaker; in recent years, the speakers have included the Secretary of State and the Attorney General. On occasion, the speakers “will mention actual legislation.” The organization “does not

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On August 1, 2025, the Commission received a request for an informal advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commissioner Baker requested that this 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); 1.8.1.9(A)(1) NMAC. “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. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

specifically speak for any legislation at the session[,]” but individual “members may speak with legislators on specific legislation.”

The cost of food and beverages provided to each legislator is less than \$100. Additionally, all but one of the organization’s lobbyists are volunteers and do not receive compensation for their lobbying activities. The consultant for the organization who is paid focuses solely on redistricting issues and files the requisite lobbying reports.

The question is whether such activities constitute a violation of lobbying regulations.

ANSWER

Based on the facts presented, the reception appears to be a social event designed to provide informational speakers. The organization does not approach the reception with a lobbying agenda, but if the expenditures for the reception are in support of or in opposition to pending legislation or official action consistent with the organization’s legislative platform, the organization may be required to file an expenditure report to that effect. If individual members of the organization independently speak with legislators regarding specific legislation, they may also have registration or reporting requirements if they meet the definition of lobbyists. However, if the members approach the legislators on their own behalf, rather than acting to advance the organization’s official legislative agenda, they would fall under an exception to the definition of “lobbyist.”

ANALYSIS

I. Relevant law

The Lobbyist Regulation Act³ requires lobbyists to register with the Secretary of State and file expenditure reports.⁴ The Act defines a “lobbyist” as

³ NMSA 1978, §§ 2-11-1 to -10 (1977, as amended through 2021).

⁴ See, e.g., NMSA 1978, §§ 2-11-3(A) (2016), 2-11-6(A) (2019).

any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purposes of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis. . . .⁵

The Act in turn defines “lobbying” as

attempting to influence:

- (1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or
- (2) an official action.⁶

Importantly, the Act excludes several groups of individuals from the definition of lobbyist. Among these are “an individual who appears on his own behalf in connection with legislation or an official action[.]”⁷

While this request specifically asks about the Lobbyist Regulation Act, New Mexico’s Gift Act also contains provisions regulating gifts to legislators by lobbyists. First, the Gift Act⁸ prohibits a state officer (including a legislator) or that person’s family from “knowingly accept[ing] from a restricted donor, and a restricted donor shall not knowingly donate to a state officer . . . or that person’s family, a gift of a market value greater than two hundred fifty dollars (\$250).”⁹ A “restricted donor” includes “a person who . . . is a lobbyist or a client of a lobbyist

⁵ NMSA 1978, § 2-11-2(E) (1994).

⁶ § 2-11-2(D).

⁷ § 2-11-2(E)(1).

⁸ NMSA 1978 §§ 10-16B-1 to -5 (2007, as amended through 2019).

⁹ NMSA 1978, § 10-16B-3(A) (2007).

with respect to matters within the donee's jurisdiction[.]”¹⁰ The Gift Act also specifically restricts lobbyist or lobbyist employer contributions: “a lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.”¹¹

II. Application to facts presented in the request

Based on the facts provided, the organization's reception and the incidental mention of legislation by speakers do not, in themselves, appear to violate New Mexico lobbying regulations, provided the reception is not in support of or opposition to pending legislation or official action and the value of food and beverages per legislator remains below the statutory gift threshold.

Any “lobbyist's employer who makes or incurs expenditures . . . in support of or in opposition to . . . pending legislation or official action shall file an expenditure report with the secretary of state[.]”¹² The organization is registered as a lobbyist employer and the request indicates the reception is held every legislative session. The request also indicates “the organization does specifically speak for any legislation at the session.” The request also notes, however, that the speakers sometimes “will mention actual legislation”¹³ and “members may speak with legislators on specific legislation.” In light of these facts, if the expenditures of the reception are incurred “in support of or in opposition to” pending legislation or official action, for example, if speakers discuss actual legislation that aligns with the organization's legislative priorities and the reception facilitates members speaking to legislators on behalf of the organization or its legislative priorities, the organization (or its registered lobbyists) is subject to the reporting requirements in Section 2-11-6. If, however, the reception cannot be said to support or oppose pending legislation or official action, the reception would not trigger the reporting requirements of Section 2-11-6.

¹⁰ NMSA 1978, § 10-16B-2(D)(4) (2007).

¹¹ NMSA 1978, § 10-16B-3(B).

¹² NMSA 1978, § 2-11-6(A).

¹³ If the speaker is “any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity” such an individual is excluded from the definition of “lobbyist.” § 2-11-2(E)(2).

As to individual reporting requirements, there are several considerations to determine whether individual members that speak with legislators on specific legislation must register or file an expenditure report with the Secretary of State. First, if an individual member of the organization speaks to a legislator solely on the individual's own behalf regarding legislation, such communication would likely be covered by the personal-advocacy exception in Section 2-11-2(E)(1). Next, while all but one of the organization's designated lobbyists are unpaid volunteers, they may still qualify as "lobbyists" under the statute if they engage in activities for the organization that meet the statutory definition of lobbying. Where a member approaches a legislator in an attempt to influence legislative action to advance the organization's official legislative agenda this may constitute "lobbying" such that it would subject the individual to the applicable lobbying registration and reporting requirements in Section 2-11-6 of the Lobbyist Regulation Act. Where a member is "designated" by the organization "to represent it on a substantial or regular basis for the purposes of lobbying" the member would meet the definition of "lobbyist" even if they are not paid, as compensation is not a requirement under this definition of the Lobbyist Regulation Act. Therefore, if at the contemplated reception a member advances the organization's official legislative agenda and otherwise meets the definition of "lobbyist" they would be subject to applicable lobbying registration and reporting requirements.

The organization should also be aware of the restrictions set forth in the Gift Act that may apply to the organization. As a lobbyist employer, if the organization (or its designated lobbyists) meets or exceeds the monetary limits on a gift¹⁴ to an individual public official they would be in violation of the Gift Act. The provision of food and beverages valued under \$100 per legislator falls within the statutory gift limits, as long as the total value to any single legislator over a calendar year does not exceed \$1000, and does not, in itself, constitute a violation.

CONCLUSION

Under the facts provided, the organization's legislative reception appears to comply with both the Lobbyist Regulation Act and the Gift Act, provided that:

1. The organization does not support or oppose pending legislation or official action at the reception, or conversely, if the reception does

¹⁴ See § 10-16B-2(B).

- support or oppose pending legislation or official action the organization meets the reporting requirements in Section 2-11-6;
2. The value of food and beverages per legislator remains below the statutory limit;
 3. Any member meeting the definitions of a “lobbyist” register as a lobbyist and comply with all applicable reporting requirements; and
 4. The organization tracks the cumulative value of all gifts or benefits provided to each legislator in a calendar year.

By maintaining these practices, the organization can reduce the risk of noncompliance while continuing to host its legislative reception.

SO ISSUED.

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



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-08

October 10, 2025¹

Campaign Expenditures for Security Expenses

QUESTION PRESENTED²

Are security expenses – defined as non-structural security devices; structural security devices; professional security personnel and services; and cybersecurity software, devices, and services – incurred as a direct result of campaign activity and holding public office deemed a permissible expenditure in the state of New Mexico?

ANSWER

A candidate may use campaign funds to cover security expenses (as defined in the request) that are reasonably attributable to the candidate's

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). On September 18, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." N.M. 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. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

campaign. A legislator may use campaign funds to cover those same security expenses so long as the funds are reasonably attributable to the legislator's duties of office, and are not used to fulfill a commitment, obligation, or expense of the legislator that would exist even if the legislator were not in office. Other than legislators, however, public officers may not use campaign funds that are incurred as a direct result of holding public office.

ANALYSIS

As the State Ethics Commission has noted, campaigns generally enjoy “wide discretion in deciding how to spend their funds.”³ The State generally has no interest in dictating how a candidate spends contributions in pursuit of election (assuming the expenditures are not otherwise unlawful, i.e., bribes and kickbacks). Among the State's legitimate interests is the interest in ensuring that campaign expenditures do not directly or indirectly enrich the candidate. Put differently, the underlying purpose of restrictions on the use of campaign funds is the same as the restriction on contribution amounts: (i) preventing corruption and the appearance thereof; and (ii) “increas[ing] participation in the political process by allowing contributors to support a campaign without worrying that their funds will be converted to personal use.”⁴

New Mexico's Campaign Reporting Act⁵ provides “[i]t is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for . . . (1) expenditures of the campaign; [or] (2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but

³ See N.M. State Ethics Comm'n Adv. Op. 2025-01, at 2 (Feb. 7, 2025) (available at <https://nmonesource.com/nmos/secap/en/19133/1/document.do>) (citing Federal Election Commission, *Making disbursements*, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/>); N.M. State Ethics Comm'n Adv. Op. 2025-04, at 3 (June 6, 2025) (available at <https://nmonesource.com/nmos/secap/en/item/19140/index.do>).

⁴ *Id.* (quoting *Federal Election Comm'n v. O'Donnell*, 209 F.Supp.3d 727, 740 (D. Del. 2016)) (quotation marks omitted).

⁵ NMSA 1978, §§ 1-19-25 to -37 (1979, as amended through 2024).

excluding personal and legislative session living expenses[.]”⁶ The New Mexico Secretary of State has promulgated a regulation defining “expenditures of the campaign” which further interprets “personal” expenses:

Expenditures that are reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate’s campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.⁷

This regulation follows that imposed in federal law. The Federal Election Campaign Act⁸ similarly provides:

A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual –

(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

⁶ NMSA 1978, § 1-19-29.1(A)(1)-(2) (2009). Section 1-19-29.1(A) sets out additional permissible uses of campaign funds, but those uses are not relevant to the request.

⁷ 1.10.13.25(B)(2) NMAC.

⁸ 52 U.S.C. §§ 30101–30146.

(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office⁹

After identifying the permitted uses of contributions, the federal statute identifies prohibited uses, explaining “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office[.]”¹⁰

New Mexico’s Campaign Reporting Act and campaign regulations largely follow the structure set out in federal law; that is, a campaign or legislative officeholder may expend funds for expenditures of the campaign or for expenditures reasonably related to the duties of legislative office, but may not use contributions for personal expenses.¹¹ Because there is no New Mexico case law applying the Campaign Reporting Act’s personal-use prohibition, and because the Campaign Reporting Act and the accompanying regulations are similar to their federal counterparts, the Commission looks to cases and administrative decisions interpreting similar provisions of law outside of New Mexico for guidance in

⁹ 52 U.S.C. § 30114(a).

¹⁰ 52 U.S.C. § 30114(b)(2).

¹¹ While it is ultimately the language of the statute that is controlling, the Secretary of State is charged with “adopt[ing] and promulgat[ing] rules and regulations to implement the provisions of the Campaign Reporting Act.” NMSA 1978, § 1-19-26.2 (1997). The regulations adopted by the Secretary of State follow a comparable provision in federal law and merely expand on what constitutes a “personal” expense under the Campaign Reporting Act. The Federal Election Campaign Act provides “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person *that would exist irrespective of* the candidate’s election campaign or individual’s duties as a holder of Federal office[.]” 52 U.S.C. § 30114(b)(2) (emphasis added). New Mexico’s campaign regulations identify personal use as “any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator *that would exist regardless of* the candidate’s campaign or responsibilities as a legislator.” See 1.10.13.25(B)(2) NMAC (emphasis added). While the language is not identical, there is not a material difference between the terms “regardless of” and “irrespective of.” See *Irrespective of*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/irrespective%20of> (defining “irrespective of” to mean “regardless of”).

applying the personal use prohibition as it applies to expenditures for security expenses presented by the request.¹²

Under federal law, the Federal Elections Commission has issued nearly two decades of opinions concluding that federal officeholders and candidates may use campaign funds to pay for the costs of security measures where those expenses were incurred in connection with the individuals' duties as federal officeholders or candidates for federal office, or both. These opinions support the use of campaign funds for each of the types of security expenses outlined in the request. This includes physical security devices, such as hardware, locks, alarm systems, motion detectors, security camera systems, wiring, lighting, gates, doors, and fencing, so long as the devices are not for purpose of improving the individual's property or increasing its value.¹³ The opinions also have determined campaign funds may be

¹² See *State v. Martinez*, 2006-NMCA-148, ¶ 12, 140 N.M. 792 (stating that "federal law interpreting [a] rule is instructive," when the federal rule is similar to its New Mexico counterpart), *aff'd*, 2008-NMSC-060, 145 N.M. 220.

¹³ See Fed. Elect. Comm'n Adv. Op. 2023-04 (Guy for Congress) (July 13, 2023) (determining the principle campaign committee of a U.S. Congressman was permitted under the Federal Election Campaign Act and federal campaign regulations to expend campaign funds to protect the Congressman's home against threats arising from the Congressman's duties as a federal officeholder, including for the cost and installation of a security window film to protect those inside the structure against incoming projectiles); Fed. Elect. Comm'n Adv. Op. 2022-25 (Crapo) (Jan. 12, 2023) (concluding a U.S. Senator could use campaign funds for various residential security installations and upgrades to the home of the senator including an electronic home security system, exterior closed-circuit video system, replacing doors, locks, security bars, and locking mechanisms on gates (including possible installation of additional gate posts), security film on accessible windows, automated residential lighting, and a lockable mailbox, where the need for the security measures was to protect from the ongoing threat environment arising from the senator's status as a federal officeholder); Fed. Elect. Comm'n Adv. Op. 2022-02 (Steube) (Apr. 28, 2022) (concluding it was permissible under the Federal Election Campaign Act and federal campaign regulations, and would not constitute a prohibited conversion of campaign funds to personal use, for a U.S. Representative to use campaign funds for the purchase and installation of a locking steel security gate as part of the residential security system, where since taking office, the representative had received direct and specific threats to his safety); Fed. Elect. Adv. Op. 2020-06 (Escobar) (Jan. 22, 2021) (opining that where a U.S. Representative had received numerous direct threats to her safety, which the Capitol Police had investigated, the representative could use campaign funds for wiring and lighting costs necessary for the operation of a residential security system at the representative's home, which had been recommended by the House Sergeant of Arms, without constituting a prohibited conversion of campaign funds to personal use); Fed. Elect. Comm'n Adv. Op. 2017-07 (Sergeant at Arms) (concluding that

used for cybersecurity software, devices, and services.¹⁴ The analysis has also extended to professional security personnel and services, so long as the personnel is bona fide, legitimate, and professional.¹⁵

Turning to the question in the request, a candidate or a legislator may expend campaign funds on security expenses in certain circumstances. Because there is no express language permitting the payment of security expenses for

Members of Congress may use campaign contributions for costs associated with installing, upgrading, and monitoring security systems at Members' residences without such payments constituting an impermissible conversion of campaign funds to personal use, basing its conclusion on information provided in the request about the heightened threat environment experienced by Members of Congress, and cautioning that if the threat environment should diminish significantly at some point in the future the conclusion may no longer apply); Fed. Elect. Comm'n Adv. Op. 2011-17 (Giffords) (Sept. 1, 2011) (determining that a U.S. representative could use campaign funds for security enhancements at her home including security lighting and locks because the need for security enhancements was due to violence and security threats stemming from her activities as an officeholder, the use of campaign funds to pay for those security measures did not constitute personal use of campaign funds and was permissible under the Federal Election Campaign Act and federal campaign regulations); Fed. Elect. Comm'n Adv. Op. 2011-05 (Terry) (concluding that the use of campaign funds to pay for enhanced security upgrades including a CCTV video surveillance system at a U.S. Representative's home did not constitute personal use of campaign funds and was permissible under the Federal Election Campaign Act and federal campaign regulations because the need for enhanced security was due to threats to the representative stemming from his role as an officeholder and a candidate for federal office); Fed. Elect. Comm'n Adv. Op. 2009-08 (May 7, 2009) (concluding that due to the need for enhanced security at a U.S. Representative's home due to threats to the officeholder and his wife stemming from his role as an officeholder and a candidate, the use of campaign funds to pay for such upgrades did not constitute personal use of campaign funds and was permissible under the Federal Election Campaign Act and federal campaign regulations).

¹⁴ See Fed. Elect. Comm'n Adv. Op. 2022-17 (Warren Democrats, Inc.) (Sept. 15, 2022) (concluding a senator's campaign committee could use campaign funds to pay for the costs of reasonable cybersecurity measures to protect her home network without such payments constituting an impermissible conversion of campaign funds to personal use); Fed. Elect. Comm'n Adv. Op. 2018-15 (Wyden) (Dec. 13, 2018) (determining a U.S. Senator could use campaign funds to pay for the costs of security measures to protect the senator's personal devices and accounts without such payments constituting an impermissible conversion of campaign funds to personal use).

¹⁵ See Fed. Elect. Adv. Op. 2021-03 (NRSC/NRCC) (Mar. 25, 2021) (concluding the use of campaign funds for bona fide, legitimate, professional personal security personnel against threats arising from the members' status as officeholders is a permissible use of campaign funds).

expenditures reasonably related to a candidate's campaign or to performing the duties of legislative office, such expenditures must be analyzed in the same way as any other expenditure which is neither "per se personal use" nor expressly permitted. Under this analysis, "personal use" consists of "any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate's campaign or responsibilities as a legislator."¹⁶ Where "the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure."¹⁷ Accordingly, a candidate may use campaign funds to pay for security expenses "reasonably attributable to the candidate's campaign" and a legislator may use campaign funds for security expenses where the expenditures "are reasonably related to performing the duties" of legislative office.

Importantly, this analysis does not provide a candidate or legislator to claim *any* security expense for a candidate's or legislator's home or office, physical or technological, is related to a candidate's campaign or the duties of legislative office. Where a legislator or candidate would have otherwise incurred the same security expenses even in the absence of the campaign or legislative office, for example, if an individual already had a security system in place or paid for a security company before they became a candidate or a legislator and would have continued to pay for those expenditures regardless of their candidacy or legislative office, those expenditures could be considered personal use.¹⁸ A candidate or legislator may use campaign funds for security expenses only in the narrow circumstances where the candidate or legislator incurs security expenses that they would not have incurred but for the individual's campaign activities or legislative responsibilities. And if a candidate or legislator does incur such expenses, those expenditures will need to be reported to the Secretary of State in accordance with the Campaign Reporting Act's reporting requirements.¹⁹ Additionally, where a candidate or legislator incurs security expenses as part of the campaign or

¹⁶ 1.10.13.25(B)(2) NMAC.

¹⁷ *Id.*

¹⁸ 1.10.13.25(B)(2) NMAC.

¹⁹ *See* NMSA 1978, § 1-19-31 (2019).

legislative office, the expenditures must be reasonable, and the candidate or legislator should consider obtaining quotes or researching rates charged by providers, as well as maintain invoices or other records for services rendered which would tend to establish the reasonableness of the expenditure and the specific dates and circumstances of the security expenses in order to document how the expense was related to the campaign or duties of legislative office. This is especially so where the recipient of the expenditure of campaign funds is a relative of the legislator or candidate.²⁰

Critically, the request does not ask about the expenditure of campaign funds by *legislators* only; rather, the request also asks whether security expenses incurred as a direct result of *holding public office* are permissible.²¹ The analysis above does not extend to security expenses by other public officers who are not legislators to pay for security expenditures arising out of their duties of public office. The Campaign Reporting Act permits the use of campaign funds for “expenditures of the campaign” and “expenditures of legislators that are reasonably related to performing the duties of the office held.”²² While the Act contains additional permissible uses, none extend the use of campaign funds to expenses related to the duties of public office beyond legislators. Candidates for those offices are permitted to make security expenditures where security measures are reasonably attributable to the candidate’s campaign, but once those individuals hold office and do not seek reelection, there is no comparable provision permitting the use of campaign funds for security expenditures related to performing the duties of those offices. This conclusion is directed by Section 1-19-29.1(A) of the Campaign Reporting Act, which permits the use of campaign funds for “performing the duties of the office held” only where those expenditures are incurred by legislators.²³

²⁰ See N.M. State Ethics Comm’n Adv. Op. 2023-09, at 4 (Dec. 15, 2023), available at <https://nmonesource.com/nmos/secap/en/18950/1/document.do> (explaining the steps a candidate should take if the campaign pays for bona fide services provided by a candidate’s family member); N.M. State Ethics Comm’n Adv. Op. 2025-01, at 10–11 (recommending the same for use of campaign funds for childcare expenses).

²¹ See § 1-19-29.1(A); 1.10.13.25(B) NMAC.

²² § 1-19-29.1(A)(1), (2). This distinction is a policy decision made by the Legislature and arises perhaps because legislators receive no compensation beyond per diem and mileage whereas other public officeholders receive salaries. See N.M. Const. art. IV, § 10.

²³ § 1-19-29.1(A)(2).

CONCLUSION

A candidate or legislator may use campaign funds to pay for security expenses provided the expenses are incurred as a direct result of campaign activity or the duties of legislative office, are reasonably related to the campaign or related to performing the duties of legislative office, and would not exist but for the candidate's campaign or the legislator's office.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFFREY L. BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. CELIA CASTILLO, Commissioner

HON. GARY L. CLINGMAN, Commissioner

HON. DR. TERRY MCMILLAN, Commissioner

DR. JUDY VILLANUEVA, Commissioner