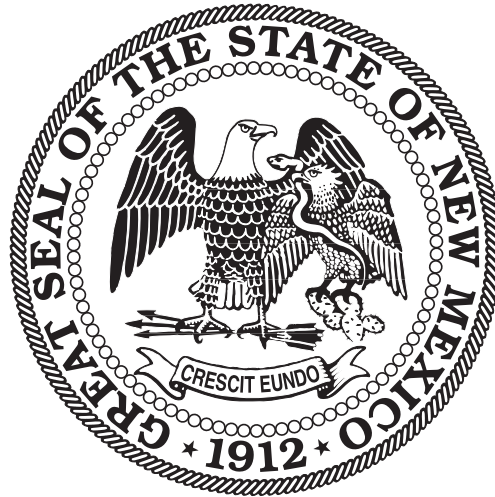




STATE ETHICS COMMISSION MEETING

December 5, 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

December 5, 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 October 10, 2025 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|--|-----|
| 4. Annual Report
(<i>Farris, Bierle</i>) | Yes |
| 5. Potential recommendations for amendment to NMSA 1978,
§10-16G-3(H) (2019)
(<i>Baker</i>) | No |
| 6. Advisory Opinion 2025-08 – Ethical Concerns for Legislator as
(<i>Chato</i>) Business Consultant | Yes |
| 7. Advisory Opinion 2025-09 – Training Conference for State
(<i>Chato</i>) Employees Paid for by Contractor | Yes |
| 8. 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).

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

- I. 2024-NP-06
- II. 2025-NP-14

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

- I. Administrative Complaint No. 2025-30
- II. Administrative Complaint No. 2025-31
- III. Administrative Complaint No. 2025-32
- IV. Administrative Complaint No. 2025-33
- V. Administrative Complaint No. 2025-34
- VI. Administrative Complaint No. 2025-37
- VII. Administrative Complaint No. 2025-38
- VIII. Administrative Complaint No. 2025-39

Upon applicable motion, Commission returns from executive session

11. Administrative Matters under RULONA:
(Branch, Goodrich)

Yes

- I. 2024-NP-06
- II. 2025-NP-14

12. Administrative Matters under State Ethics Commission Act:
(Goodrich)

Yes

- I. Administrative Complaint No. 2025-30
- II. Administrative Complaint No. 2025-31
- III. Administrative Complaint No. 2025-32
- IV. Administrative Complaint No. 2025-33
- V. Administrative Complaint No. 2025-34
- VI. Administrative Complaint No. 2025-37
- VII. Administrative Complaint No. 2025-38
- VIII. Administrative Complaint No. 2025-39

13. Discussion of next meeting
(Lang)

No

14. Public Comment

No

15. 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: December 5, 2025” until 9:00 am on December 5, 2025.

Individuals wishing to participate by providing oral comment should register and join using the following link <https://us02web.zoom.us/j/84451200000>. 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 October 10, 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 (excused)
Dr. Judy Villanueva (attended virtually)

2. Approval of Agenda

Executive Director Farris sought a motion to approve the agenda by removing item number 6, "Advisory Opinion 2025-05 Legislator Conflicts of Interest in Public Contracts". Chair Lang sought a motion to amend the agenda. Commissioner Castillo moved to approve the amended agenda; Commissioner Villanueva seconded. Hearing no discussion or objections, the amended agenda was approved unanimously.

3. Approval of September 9, 2025, Commission Meeting Minutes

Chair Lang sought a motion for approval of the minutes of the September 9, 2025 meeting. Commissioner Bluestone moved to approve the minutes; Commissioner Clingman seconded. Hearing no discussion or objections, the September 9, 2025 meeting minutes were approved unanimously.

4. Update on the Commission's Inaugural Ethics Forum

Deputy Director Bierle provided a brief overview of the Ethics Forum that the Commission is hosting on November 5, 2025.

5. Approval of the Commission's FY27 Budget Request

Executive Director Farris provided an overview of the Commission's Fiscal Year 2027 (FY27) Budget Request submitted to the Legislative Finance Committee (LFC) and the Department of Finance and Administration (DFA). Farris summarized key differences between the Fiscal Year 2026 (FY26) Budget and the FY27 Budget Request.

Chair Lang called for a motion to approve the FY27 Budget Request. Commissioner Bluestone moved to approve, and Commissioner Baker seconded the motion. Following brief discussion, Chair Lang conducted a roll call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The FY27 Budget Request was approved.

6. Advisory Opinion 2025-05 – Legislative Staff Conflicts of Interest in Public Contracts

Chief Compliance Counsel Chato gave an overview of Advisory Opinion 2025-05, which addresses how the Governmental Conduct Act applies to legislative staff engaging in contracts with public agencies. The opinion explains that legislative staff may enter into contracts with state agencies, including leases, if the contract is awarded through a competitive process and the staff member's interest is publicly disclosed. Legislative staff may also serve as subcontractors and enter into contracts with local governments. The opinion further outlines conflict-of-interest and disclosure requirements applicable to legislative staff who hold outside employment or business interests.

Chato recommended the inclusion of a clarifying footnote regarding notice for state agency contracts, noting that the RFP template provided by the General Services Department includes an affidavit where current state employees must disclose their current employer which would likely satisfy the notice requirement of Section 10-16-7(A) of the Governmental Conduct Act.

Chair Lang sought a motion to approve Advisory Opinion 2025-05. Commissioner Bluestone moved to approve the opinion with the inclusion of the footnote recommended by Chief Compliance Counsel Chato; Commissioner Castillo seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. Advisory Opinion 2025-05 was approved for issuance.

7. Advisory Opinion 2025-06 – Lobbyist Employer Requirements for Legislative Reception

Commission Staff Attorney Branch gave an overview of Advisory Opinion 2025-06, which addresses whether a grassroots membership organization's annual legislative reception complies with the Lobbyist Regulation Act and the Gift Act. The opinion explains that the event, as described, appears to be a social gathering with informational speakers and does not violate lobbying or gift restrictions so long as it is not conducted in support of or opposition to specific legislation or official action. The opinion further notes that if the event's expenditures are made to influence pending legislation, the organization may be required to file an expenditure report. Additionally, individual members who speak with legislators on behalf of the organization's

legislative agenda may need to register or report as lobbyists, while members who speak solely on their own behalf would fall under a personal advocacy exception.

Branch recommended a minor amendment to correct a typographical error in the draft advisory opinion.

Chair Lang sought a motion to approve the Amended Advisory Opinion 2025-06 as presented. Commissioner Baker moved to approve the Amended Advisory Opinion 2025-06; Commissioner Bluestone seconded. After some discussion Chair Lang conducted a roll call vote. All Commissioners voted in the affirmative and approved the Amended Advisory Opinion 2025-06 for issuance unanimously by all Commissioners present.

8. Advisory Opinion 2025-07 – Campaign Expenditures for Security Expenses.

Chief Compliance Counsel Chato gave an overview of Advisory Opinion 2025-07, which addresses whether campaign funds may be used to pay for security expenses—such as physical security systems, cybersecurity measures, or professional security services—incurred as a direct result of campaign activity or holding public office. The opinion explains that a candidate may use campaign funds for reasonable security expenses attributable to campaign activity, and legislators may do so for expenses reasonably related to the duties of legislative office, provided the costs would not exist absent the campaign or office. The opinion further clarifies that other public officers may not use campaign funds for security expenses arising solely from holding office and highlights recordkeeping and reasonableness considerations consistent with the Campaign Reporting Act and comparable federal guidance.

Chato recommended a clarifying amendment to the draft advisory opinion.

Chair Lang sought a motion to approve the amended Advisory Opinion 2025-07. Commissioner Clingman moved to approve the amended opinion; Commissioner Baker seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. Advisory Opinion 2025-07 was approved for issuance.

Beginning of Public Rule Hearing

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

9. Chief Compliance Counsel Chato identified the pre-filed documents constituting the rulemaking record, including: the notice of proposed rulemaking, published in the *New Mexico Register*, Volume XXXVI, Issue XVI, on August 26, 2025, which provided for a 30-day written comment period; publication of the notice on the Sunshine Portal and the Commission's website for more than 30 days; the communications providing the Notice to all interested persons and the Legislative Council Service; and public comment received from Chris Mechels and Walker Boyd, which were published on the Commission's website within three business days of receipt. Chato also presented a recommended amendment to proposed rule 1.8.3 NMAC based on public comment, which would clarify that a Commission hearing officer is permitted to choose a virtual hearing as an appropriate venue for an administrative

hearing based on the reasonable concerns of the respective parties, witnesses, and representatives in the proceeding, as well as if a party shows undue burden of a hearing location.

10. The Commission opened the rule hearing for public comment, but no members of the public were present and no public comment was provided during the rule hearing.

**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 governing general provisions (1.8.1 NMAC), administrative hearings (1.8.3 NMAC), and notary cases (1.8.5 NMAC)

I. Adoption of amendments in 1.8.1 NMAC

Chair Lang sought a motion to adopt proposed amendments in 1.8.1 NMAC. Commissioner Bluestone moved to adopt the amendments; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The amendments in 1.8.1 NMAC were adopted.

II. Adoption of amendments in 1.8.3 NMAC

Chair Lang sought a motion to adopt the proposed amendments in 1.8.3 NMAC and the additional staff recommendation to 1.8.3.14(B). Commissioner Clingman moved to adopt the amendments; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The amendments in 1.8.3 NMAC were adopted.

III. Adoption of amendments in 1.8.5 NMAC

Chair Lang sought a motion to adopt the proposed amendments in 1.8.5 NMAC. Commissioner Castillo moved to adopt the amendments; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The amendments in 1.8.5 NMAC were adopted.

12. Public Comment

There was no public comment.

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.

13. Discussion regarding administrative matters under RULONA:

- 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:

- 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:

- 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.)

---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).

16. Action on administrative matters under RULONA

- I. Commission staff sought a motion for a dismissal and the issuance of a warning letter in 2024-NP-06. Chair Lang sought a motion for the dismissal and issuance of a warning letter. Commissioner Clingman moved to approve the dismissal and issuance of a warning letter; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The dismissal and issuance of a warning letter was approved.

- II. Commission staff sought a motion for a default order in 2025-NP-09. Chair Lang sought a motion for the default order to suspend the two notary commissions with an amendment to correct a typographical error. Commissioner Baker moved to approve the default order and amendment; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The default order and amendment were approved.
- III. Commission staff sought a motion for dismissal in 2025-NP-11 because it lacked any matters related to RULONA. Chair Lang sought a motion to dismiss. Commissioner Clingman moved to approve the dismissal; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The dismissal was approved.
- IV. Commission staff sought a motion for the approval of a settlement agreement in 2025-NP-13. Chair Lang sought a motion to approve the settlement agreement. Commissioner Castillo moved to approve the settlement agreement; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The settlement agreement was approved.

17. Action on Administrative Matters under the State Ethics Commission Act

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

- I. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-24. Chair Lang sought a motion for approval of the dismissal. Commissioner Baker moved to approve the dismissal; Commissioner Clingman seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The dismissal was approved.
- II. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-25. Chair Lang sought a motion for approval of the dismissal. Commissioner Castillo moved to approve the dismissal; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The dismissal was approved.
- III. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-26. Chair Lang sought a motion for approval of the dismissal. Commissioner Clingman moved to approve the dismissal; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All

Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused and Commissioner Bluestone, who abstained from the vote. The dismissal was approved.

- IV. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-27. Chair Lang sought a motion for approval of the dismissal. Commissioner Baker moved to approve the dismissal; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The dismissal was approved.
- V. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-28. Chair Lang sought a motion for approval of the dismissal. Commissioner Baker moved to approve the dismissal; Commissioner Clingman seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The dismissal was approved.
- VI. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-29. Chair Lang sought a motion for approval of the dismissal. Commissioner Bluestone moved to approve the dismissal; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The dismissal was approved.

18. Action on Authorization of Civil Action

- I. Executive Director Farris sought a motion authorizing amicus participation in *First Choice Women's Res. Centers, Inc. v. Platkin*, 24-781 (U.S.). Chair Lang sought a motion for amicus participation. Commissioner Bluestone moved to approve the authorization; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the authorization. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor, with the exception of Commissioner McMillan, who was excused. The authorization was approved.

19. Discussion of Next Meeting

Chair Lang confirmed the next regularly scheduled meeting will take place on December 5, 2025.

20. Public Comment

There was no public comment.

21. Adjournment

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting adjourned at 11:30 AM.

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

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OPENING MESSAGE

December XX, 2025

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

In the year 2025, the Commission made significant strides in fulfilling its broad constitutional and statutory obligations. The Commission:

- appointed Jeremy Farris for a second term as the Commission's Executive Director
- welcomed Zach Goodrich as the Commission's second General Counsel in its history
- handled XX administrative complaints newly filed in 2025, in addition to XX administrative complaints that were rolled over from 2024;
- reviewed and handled XX informal complaints submitted to the Commission in 2025;
- issued X formal advisory opinions and XX informal letter opinions;
- enforced the Governmental Conduct Act, Campaign Reporting Act, and the Procurement Code in several instances;
- enforced the Financial Disclosure Act for important agency heads and boards and commissions in the state;
- provided continuing legal education and ethics training to audiences around New Mexico.

On behalf of the Commissioners, I want to thank the New Mexico Legislature and the Governor for their continued support of the Commission. Public trust takes years of work by each branch of government to build and preserve and can be too easily eroded. Like those New Mexicans who worked over 40 years for the Commission's creation, we believe that the State Ethics Commission plays a central part in ensuring ethical and accountable government in New Mexico.

Respectfully,



Hon. William F. Lang (Ret.) Chair, New Mexico State Ethics Commission, on behalf of State Ethics Commissioners Jeffrey L. Baker, Stuart M. Bluestone, Hon. Celia Castillo (Ret.), Hon. Gary Clingman (Ret.), Hon. Dr. Terry McMillan, and Dr. Judy Villanueva.

COMMISSION MEMBERS

Hon. William F. Lang, Chair

Appointing authority: Governor Michelle Lujan Grisham

Term expires: June 30, 2026

Jeffrey L. Baker, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: August 11, 2028

Stuart M. Bluestone, Member

Appointing authority: Speaker of the House, Javier Martínez

Term expires: June 30, 2027

Hon. Dr. Terry McMillan, Member

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

Term expires: June 30, 2027

Hon. Celia Castillo, Member

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

Term expires: June 30, 2029

Hon. Gary Clingman, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: July 26, 2028

Dr. Judy Villanueva, Member

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

Term expires: July 1, 2029

HISTORY OF THE STATE ETHICS COMMISSION

The Commission is the product of over 40 years of work by Governors, state legislators, advocacy organizations, and other New Mexicans fighting for accountable government.

In 2017, the Legislature passed a joint resolution to amend the New Mexico Constitution to create an independent ethics commission. The House of Representatives unanimously passed this joint resolution (66-O), and the Senate passed it on a vote of 30-9. The legislation gave the New Mexico electorate the final decision on whether to create an independent ethics commission. In November 2018, over 75% of New Mexican voters voting on the ballot question elected to amend the Constitution to add Article V, Section 17, creating an independent and bipartisan ethics commission. With this election, New Mexico became the 45th state to create an independent ethics commission.

The New Mexico Constitution provides for the Commission's seven-member composition and directs the process for the appointment of the Commissioners. N.M. Const. Art. V, § 17(A). It also empowers the Commission to adjudicate alleged violations of, and issue advisory opinions regarding, ethical standards and reporting requirements for "state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts" and for such other jurisdiction as provided by law. N.M. Const. Art. V, § 17(B). Finally, the state Constitution empowers the Commission with subpoena powers, as provided by law, and enables the Commission to "have such other powers and duties and administer or enforce such other acts as further provided by law." N.M. Const. Art. V, § 17(C).

In the 2019 legislative session, the Legislature unanimously enacted enabling legislation, Senate Bill 668 (Laws 2019), which created the State Ethics Commission Act, providing for additional structure for the Commission and delegating to the Commission a specific set of powers. Senate Bill 668 also amended the Governmental Conduct Act, the Procurement Code, the Campaign Reporting Act, the Lobbyist Regulation Act, the Voter Action Act, the Financial Disclosure Act, and the Gift Act, delegating additional adjudicatory and civil enforcement powers to the Commission. Governor Michelle Lujan Grisham signed Senate Bill 668 into law on March 28, 2019.

The organizational provisions of the State Ethics Commission Act took effect on July 1, 2019, and the statute's jurisdictional and enforcement provisions took effect on January 1, 2020. The Commission has been operating since.

ORGANIZATION

Commissioners

The State Ethics Commission is comprised of seven Commissioners. The State Ethics Commission Act sets forth a procedure for appointing Commissioners that ensures a bi-partisan independent commission.

The Commission has a unique appointment process. The Speaker of the House of Representatives, the Minority Floor Leader of the House, the President Pro Tempore of the Senate, and the Minority Floor Leader of the Senate each appoint one Commissioner. The four legislatively appointed Commissioners then appoint two additional Commissioners. Finally, the Governor appoints the Commission's Chair, who must be a retired judge. No more than three Commissioners may be members of the same political party. Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms.

There are also statutory requirements regarding who may serve as a Commissioner. To qualify, a person must be a New Mexico voter; not have changed party registration in the five years preceding appointment; and not have been in the two years preceding appointment a public official, a public employee, a candidate, a lobbyist, a government contractor, or an office holder in a political party at the federal or state level.

Commission Staff

The administrative, compliance, and enforcement functions of the Commission are performed by the agency's staff. The State Ethics Commission Act creates two staff positions: the Executive Director and General Counsel. The Commission hires the Director, and the Director hires the General Counsel and all other staff. Each statutorily created office is subject to limited terms. Under the Act, the Director may serve for, at most, two six-year terms; the General Counsel may serve for, at most, two five-year terms. The Commission's current staff members are as follows:

Executive Director | Jeremy D. Farris

Jeremy D. Farris is the State Ethics Commission's founding Executive Director. He previously served as General Counsel to New Mexico's Department of Finance and Administration and practiced law at Bondurant, Mixson & Elmore in Atlanta, Georgia and Freedman Boyd Hollander & Goldberg in Albuquerque, New Mexico. Jeremy clerked for the Honorable Julia S. Gibbons on the United States Court of Appeals for the Sixth Circuit; the Honorable Judith K. Nakamura on the New Mexico Supreme Court; and the Honorable James O. Browning on the United States District Court for the District of New Mexico. He holds a law degree from Harvard Law School, a doctorate and master's degree from the University of Oxford, where he was a Rhodes Scholar, and a Bachelor of Science from the Georgia Institute of Technology.

General Counsel | Zach Goodrich

Zach Goodrich serves as the State Ethics Commission's General Counsel. A native Iowan, Zach received his Bachelor's Degree from Simpson College and his J.D. from Drake University Law School. He previously served as Director and Counsel for the Iowa Ethics and Campaign Disclosure Board, as well as Counsel for the Iowa Public Information Board.

Chief Compliance Counsel | Caroline "KC" Manierre

KC Manierre serves as Chief Compliance Counsel to the State Ethics Commission. She previously practiced law at Rothstein Donatelli LLP, and prior to that served as an Assistant Attorney General at the New Mexico Department of Justice. She holds a law degree from the University of New Mexico, and a Bachelor of Arts in International Studies and in Spanish from the University of Denver.

Deputy Director and Public Information Officer | Amelia Bierle

Amelia Bierle is the State Ethics Commission's Deputy Director and Public Information Officer. She previously held the role of Deputy Chief of Staff at Graphite Health. Amelia earned a Master of Public Policy and a Master of Business Administration from the University of New Mexico. She also earned a Bachelor of Science from the University of New Mexico, while playing collegiate soccer for the Lobos. Amelia's academic background is complemented by a certificate in Artificial Intelligence Applications for Growth from Northwestern Kellogg Executive Education.

Deputy Compliance Counsel | Rebecca Branch

Rebecca Branch serves as the State Ethics Commission's Deputy General Counsel. She previously served as Deputy Director of Litigation and Deputy Director of Consumer Protection at the Office of the New Mexico Attorney General. She was also with the Office of the Superintendent of Insurance as Legal Counsel. Rebecca began her legal career at the Branch Law Firm. She holds a law degree from the University of Denver, Sturm School of Law and a Bachelor of Arts in History from Alfred University.

Attorney | Connor G. Woods

Connor G. Woods serves as the State Ethics Commission's Attorney. A sixteenth-generation New Mexican, he earned his law degree from the University of New Mexico School of Law. In law school, he served as the Professional Articles Editor for the New Mexico Law Review, interned for the Department of Finance and Administration, and externed for the Honorable Megan P. Duffy of the New Mexico Court of Appeals. Before law school, he worked for the Legislative Finance Committee as an assistant analyst and earned a Bachelor of Arts in Political Science from New Mexico Highlands University.

Case Manager | Amy Ballou

Amy Ballou is a case manager whose responsibilities include case management, legal research, and civil litigation. A native of Michigan, Amy has a Bachelor's Degree from the University of Michigan, a Master's Degree from the University of Southern California, and an ABA-approved paralegal certification from Central New Mexico Community College. Prior to joining the Commission, Amy worked in the Civil Division of the Second Judicial District Court in Albuquerque for over a decade. She worked as a paralegal for several law firms before joining the Second Judicial District Court.

Finance and Administration Director | Wendy George

Wendy George serves as the State Ethics Commission's Director of Finance and Administration. She previously served as Budget Manager to New Mexico's Department of Finance and Administration and has many years of governmental financial experience. She also has corporate financial and compliance experience working for Wells Fargo and Ameriprise Financial in Minneapolis, MN. She holds a Bachelor of Science in Business Management from Cardinal Stritch University.

Financial Coordinator | Sharon Garcia

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

Paralegal | Shariesse McCannon

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

Legal Summer Clerks | Cassandra Luna & Wiley Waggoner

During the summer of 2025, the Commission invited two law students to participate in the Commission's work. Cassandra Luna (a current 3L at the University of New Mexico School of Law) and Wiley Waggoner (current 2L at the University of New Mexico School of Law), performed various legal research and drafting projects. They attended court hearings and Commission meetings. The Commission is committed to working with the University of New Mexico School of Law to introduce successive classes of law students to the Commission's legal work through summer clerkships.

Policy Summer Clerk | Jaden Chavez

During the summer of 2025, the Commission welcomed Jaden Chavez, a recent political science graduate, to serve as a Policy Summer Clerk. Jaden contributed to the Commission's *Money in Politics* project, applying statistical analysis and coding in R to examine and interpret campaign contribution data from the 57th Legislature.

FISCAL REPORT

The following chart reflects revenues, expenditures, and changes in fund balance for the fiscal year ending June 30, 2025.

NEW MEXICO STATE ETHICS COMMISSION STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE – GOVERNMENTAL FUND – GENERAL FUND YEAR ENDED JUNE 30, 2025	
	General Fund
REVENUES	
Court Fees	\$ 4,500
Miscellaneous Revenue	900
Total Revenues	5,400
EXPENDITURES	
Current:	
Personal Services and Fringe Benefits	1,388,802
Contractual Services	101,797
Other Costs	200,596
Debt Service:	
Principal	2,460
Interest	169
Total Expenditures	1,693,824
EXCESS (DEFICIENCY) OF REVENUE OVER (UNDER) EXPENDITURES	(1,688,424)
OTHER FINANCING SOURCES (USES)	
State General Fund Appropriations	1,776,400
Transfers In from Other State Agencies	36,500
Reversions to State General Fund - FY2025	(44,342)
Total Other Financing Sources (Uses)	1,768,558
NET CHANGE IN FUND BALANCE	80,134
Fund Balance - Beginning of Year	-

In accordance with the Government Auditing Standards, CliftonLarsonAllen LLP (CLA), has completed an audit of the State Ethics Commission's financial statements ending June 30, 2025. Following approval by the Office of the State Auditor, CLA's financial statement includes an **unmodified** auditor's report confirming no material weakness(es), significant deficiency(ies), nor noncompliance material to the financial statements. In CLA's opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities and the major general fund as of June 30, 2025, the respective changes in financial position and budgetary comparison of the general fund for the year then ended in accordance with accounting principles generally accepted in the United States. The full report on the State Ethics Commission's Financial Statements and Supplementary Information for fiscal year ended June 30, 2025 can be found [here](#).

OPERATIONS

The Commission has five main functions: (i) investigation and adjudication of administrative complaints filed with the Commission; (ii) issuance of advisory opinions and advisory letters upon request; (iii) civil enforcement of New Mexico's ethics and disclosure laws in state court; (iv) issuance of a model code of ethics for state agencies and the provision of ethics and governmental conduct trainings for legislators, state agencies, and local public bodies; and (v) recommendations for statutory amendments to improve New Mexico's ethics and disclosure laws. Below is a profile of the Commission's progress in the year 2025 across these functions and a report of the Commission's workload.

Administrative Complaints

Adjudication of Administrative Complaints

The Commission's adjudication of administrative complaints alleging ethics violations is divided across four roles. The Executive Director (or their designee) determines jurisdiction. The General Counsel (or their designee) determines whether the allegations of a complaint are supported by probable cause, in which case a hearing officer must confirm that finding. In administrative matters where both the General Counsel and a hearing officer determines a complaint is supported by probable cause, a separate hearing officer then conducts a hearing and issues findings of fact and conclusions of law. The Commission sits as an appellate body, reviewing hearing officer determinations if and when appealed. The Commission currently has a Memorandum of Understanding with the Administrative Hearings Office for hearing officer services. The Commission also has a professional services contract with the Honorable Alan C. Torgerson, retired federal Magistrate Judge for the United States District Court for the District of New Mexico, for hearing officer services.

The Commission's adjudication of administrative complaints is controlled by the provisions of the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended through 2023), and the Commission's rules of procedure for administrative cases, promulgated at 1.8.3 NMAC. In 2025, the Commission amended its rules of procedure for administrative cases. These rule amendments became effective on November 4, 2025, and align the Commission's rules of procedure with legislative amendments to the State Ethics Commission Act during the 2023 legislative session. The Commission has also established and maintains its [Proceedings Portal](#), a web-based case management and docketing system where parties and their attorneys may submit and view filings on the docket. To review the Commission's rules of administrative procedure, click [here](#). To review the Commission's rulemaking record for 1.8.3 NMAC, click [here](#).

Also, in 2025, the Commission promulgated rules of procedure for the adjudication of administrative complaints alleging violations of the Revised Uniform Law on Notarial Acts (RULONA), which the State Records and Archives Center published at 1.8.5 NMAC ("Complaints against Notaries"). The Commission promulgated these rules pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978, and Laws 2023 Chapter 110 (being SB 246, Section 23(C)). The rules became effective on November 4, 2025, and govern the Commission's receipt, investigation, and adjudication of complaints alleging violations of RULONA. To review the regulations

governing complaints against notaries, please click [here](#).

The Commission's administrative ethics caseload

Below is a profile of the Commission's caseload for administrative complaints alleging ethics violations in 2025, presented by quarter.

Q1 (January – March) Rolled Over From 2024-Q4: 16 New Filed in 2025-Q1: 14 Closed in 2025-Q1: 16	<u>Complaints filed in Q1</u> Campaign Reporting Act: 1 Governmental Conduct Act: 1 Other: 12
Q2 (April – June) Rolled Over From 2025-Q1: 5 New Filed in 2025-Q2: 7 Closed in 2025-Q2: 7	<u>Complaints filed in Q2</u> Other: 7
Q3 (July – September) Rolled Over from 2025-Q2: 5 New Filed in 2025-Q3: 9 Closed in 2025-Q2: 5	<u>Complaints filed in Q3</u> Financial Disclosure Act: 1 Governmental Conduct Act: 5 State Ethics Commission Act: 1 Other: 4
Q4 (October – December XX) Rolled Over from 2025-Q3: X New Filed in 2025-Q4: X Closed in 2025-Q4: X	<u>Complaints filed in Q4</u> Campaign Reporting Act: X Financial Disclosure Act: X Governmental Conduct Act: X Lobbyist Regulation Act: X Other: X
<u>2025 Cumulative Case Data</u> Total Rolled Over from 2024: 16 Total New Filed in 2025: XX Total Closed in 2025: XX Total Pending on December XX, 2025 (date of submission): XX	<u>2025 Complaints</u> Campaign Reporting Act: X Financial Disclosure Act: X Governmental Conduct Act: X Lobbyist Regulation Act: X Procurement Code: X State Ethics Commission Act: X Other: X

The Commission's RULONA caseload

Below is a profile of the Commission's caseload for administrative complaints filed against notaries public in 2025, presented annually.

Complaints rolled over from 2024: 6

Complaints filed in 2025: XX

Cases closed in 2025: XX

Cases rolled over to 2025: XX

Advisory Opinions

The State Ethics Commission may issue advisory opinions requested in writing by “a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer.” NMSA 1978, § 10-16G- 8(A)(1). Under the State Ethics Commission Act, requests for advisory opinions are confidential and not subject to disclosure under the Inspection of Public Records Act. Additionally, advisory opinions are binding on the Commission in any subsequent administrative proceeding concerning a person who acted in good faith and in reasonable reliance on an advisory opinion.

The Commission has adopted two administrative rules regarding advisory opinions. First, the Commission allows persons subject to the Governmental Conduct Act to submit a request for an informal advisory letter to the Commission’s attorney staff. Such requests are also confidential, but informal advisory letters are not binding on the Commission unless and until the Commission votes to adopt the informal advisory letter as an advisory opinion. Second, the Commission allows any Commissioner to request that any informal advisory opinion or any legal determination made in a confidential administrative proceeding be converted into an advisory opinion. In 2025, Commission staff provided 23 informal advisory letters to state and local governmental employees around New Mexico.

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

Below is a profile of the advisory opinions the Commission issued in 2025.

CAMPAIGN REPORTING ACT

Advisory Opinion 2025-01 (Feb. 7, 2025)

Question: A request sought clarification on whether campaign funds may be used to pay for childcare expenses incurred by a legislator performing official duties or by a candidate who is not yet elected to office.

Conclusion: Under the Campaign Reporting Act, a legislator may use campaign funds to pay for childcare expenses only in limited circumstances where the expenses arise directly from performing legislative duties and would not exist but for the legislator’s official role. Similarly, a candidate who is not yet a legislator may use campaign funds to cover childcare expenses that are a direct result of campaign activities and would not exist but for the candidate’s campaign. [Read full opinion here.](#)

Advisory Opinion 2025-04 (June 6, 2025)

Question: A request sought clarification on whether campaign funds may be used to pay legal expenses incurred by legislators, candidates, or former legislators. The inquiry also asked whether campaign funds may be used to cover legal costs associated with defamation lawsuits related to campaign or legislative activities.

Conclusion: Under the Campaign Reporting Act, legislators may use campaign funds to pay for legal expenses that are directly related to their official duties and that would not exist but for those duties. Candidates may similarly use campaign funds to pay for legal expenses that are reasonably attributable to their campaigns. A legislator, candidate, or former legislator may use campaign funds to pursue or defend a defamation action only when the litigation arises from campaign or legislative activities. However, any monetary recovery from such a lawsuit may not be converted to personal use. [Read full opinion here.](#)

Advisory Opinion 2025-07 (Oct. 10, 2025)

Question: A request sought clarification on whether campaign funds may be used to pay for security-related expenses—including security devices, professional security personnel, and cybersecurity software or services—when such expenses are incurred as a direct result of campaign activity or holding public office.

Conclusion: Under the Campaign Reporting Act, a candidate may use campaign funds to pay for security expenses that are reasonably attributable to campaign activities. A legislator may also use campaign funds to cover comparable security expenses that arise directly from legislative duties and would not exist but for those duties. Other public officers, however, may not use campaign funds to cover security or other expenses incurred solely as a result of holding public office. [Read full opinion here.](#)

GOVERNMENTAL CONDUCT ACT

Advisory Opinion 2025-02 (June 6, 2025)

Question: A request sought clarification on whether the Governmental Conduct Act prohibits a public employee from maintaining a second paid position outside their primary employment.

Conclusion: The Governmental Conduct Act does not prohibit secondary employment so long as the employee discloses the outside position to their employer, is not compensated twice for the same work, and avoids any conflict or incompatibility between the two positions. [Read full opinion here.](#)

Advisory Opinion 2025-03 (June 6, 2025)

Question: A request sought clarification on whether a district legislative aide may hold full-time employment with another state agency while serving in the legislative role.

Conclusion: A district legislative aide may maintain full-time employment with another state agency only if the aide meets the requirements of both positions, discloses the additional employment, and refrains from taking any official action in one position that could affect the other. [Read full opinion here.](#)

Advisory Opinion 2025-05 (October 10, 2025)

Question: A request sought guidance on how the Governmental Conduct Act and related ethical statutes apply to legislative staff, including both district legislative aides and staff serving in leadership offices.

Conclusion: Legislative staff are not categorically prohibited from contracting with state or local government entities or from holding outside employment. A staff member may be awarded a contract with a state agency or lease property to the state if the arrangement is made through a competitive process and the staff member's interest in the contract or lease is publicly disclosed. Staff may also serve as subcontractors on state-funded projects or hold contracts with local governments, subject to the same disclosure and ethical requirements that apply to public employees generally.

However, legislative staff must avoid conflicts of interest by disclosing any outside employment or financial interest that could be affected by their official duties. They must use the powers and resources of state employment solely for the public good, refrain from taking official acts that could affect their financial interests, and avoid acquiring new financial interests—including negotiating for employment—where those interests could be influenced by their official actions. [Read full opinion here.](#)

LOBBYIST REGULATION ACT

Advisory Opinion 2025-06 (Oct. 10, 2025)

Question: A request sought clarification on whether hosting an annual legislative reception that provides food, beverages, and guest speakers for legislators constitutes lobbying activity under the Lobbyist Regulation Act. The inquiry described an event sponsored by a political membership organization whose members occasionally discuss legislation with legislators and where most lobbyists are volunteers.

Conclusion: The reception, as described, appears to be a social event intended to provide general information and does not by itself constitute lobbying activity. However, if expenditures for the event are made in support of or opposition to pending legislation or official action consistent with the organization's legislative platform, the organization may be required to file an expenditure report. Individual members who independently discuss specific legislation with legislators may also have registration or reporting obligations if they meet the definition of "lobbyist." Members who approach legislators on their own behalf, rather than on behalf of the organization, would fall within an exception to that definition. [Read full opinion here.](#)

Civil Enforcement & Litigated Matters

In addition to its quasi-judicial power to adjudicate administrative matters and issue advisory opinions, the Commission also has a discretionary, executive power to pursue civil enforcement actions in state court to remedy violations of New Mexico's ethics laws. The Commission receives referrals from other state agencies and allegations from other individuals or entities. The Commission reviews and assesses those matters to determine whether to proceed with a civil enforcement action. In 2025, in the exercise of its discretion, the Commission was involved in the following litigated or civil enforcement matters:

(1) Litigated matters

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

(a) State Ethics Commission v. Alisha Tafoya Lucero, D-101-CV-2025-02343.

On September 12, 2025, the State Ethics Commission filed a declaratory judgment action in the First Judicial District against Alisha Tafoya Lucero, in her official capacity as Secretary of the New Mexico Corrections Department. The Commission alleges that employees of the Adult Probation and Parole Division have continued to disclose probationers' immigration status and national origin to federal ICE agents—conduct prohibited by the Nondisclosure of Sensitive Personal Information Act (“NSPIA”). These disclosures, made outside NSPIA's limited exceptions, have facilitated ICE arrests on state property and caused significant hardship to New Mexican families. The Commission therefore has good ground to seek injunctive relief under Section 10-16I-4 to prevent further violations.

The Commission seeks declaratory relief because federal statutes—8 U.S.C. §§ 1373 and 1644—have been asserted elsewhere as restricting state authority to prohibit such disclosures. The complaint requests a judicial determination that those statutes do not preempt NSPIA and do not bar the Commission from initiating an enforcement action. The Commission contends that the federal statutes violate the Tenth Amendment's anticommandeering rule, do not regulate private actors, and therefore cannot displace NSPIA.

On September 9, 2025, the Commission unanimously authorized the filing of the complaint. A copy of the complaint the Commission filed on September 12, 2025 is available here: [State Ethics Commission's Complaint for Declaratory Judgement](#).

(b) State Ethics Commission v. New Mexico Safety Over Profit, D-202-CV 2025-05277.

On June 10, 2025, the State Ethics Commission filed a civil enforcement action in the Second Judicial District against New Mexico Safety Over Profit (NMSOP), alleging violations of Section 2-11-6(I) of the Lobbyist Regulation Act. The Commission's lawsuit concerned NMSOP's issue-education and advertising campaigns related to medical malpractice reform and the organization's failure to make required disclosures of contributions, expenditures, and campaign activity. NMSOP denied all wrongdoing.

On July 25, 2025, the Commission and NMSOP executed a settlement agreement resolving all claims. Under the agreement, NMSOP must disclose all contributions, pledges, expenditures, and commitments related to its campaigns; pay \$5,000 to the State of New Mexico; and file both a Lobbying Advertising Campaign Registration Form and a Report of Advertising Campaign with the Secretary of State. Upon NMSOP's full compliance, the Commission will dismiss the lawsuit with prejudice, and each party will bear its own fees and costs. The agreement includes mutual releases and permits the Commission to enforce the agreement if NMSOP fails to perform.

Read the full settlement agreement and supporting disclosure documents here:

- (1) [Settlement agreement between and among the New Mexico State Ethics Commission and New Mexico Safety Over Profit](#)
- (2) [Disclosure of contributions and pledges](#)
- (3) [Disclosure of expenditures and commitments](#)
- (4) [Complete list of contributors to NMSOP](#)

(c) State Ethics Commission v. Joseph Shepard, D-117-CV-2025-00260.

On June 27, 2025, the State Ethics Commission filed a civil enforcement action in the First Judicial District against Joseph Shepard, former president of Western New Mexico University (WNMU), alleging violations of Sections 10-16-3(A) and 10-16-3.1(C) of the Governmental Conduct Act. The complaint asserts that Shepard repeatedly used public resources to pursue private interests, culminating in his direction to alter a capital project—originally planned as an ADA-compliant accessibility ramp—to instead construct an expanded patio adjacent to a university property for the purpose of hosting events related to his daughter's wedding. The Commission alleges that Shepard micromanaged the project, accelerated construction timelines, and authorized additional grading, utility, landscaping, and brickwork expenditures that served his private purposes and were funded by legislative appropriations intended for instruction and general university needs.

The Commission further alleges that Shepard routinely justified wedding-related expenditures by asserting that items could serve ostensible university purposes, and that WNMU employees understood the patio expansion to be for wedding events. Wedding activities were held on the newly constructed patio in May 2023, while the originally planned ADA ramp was not built. The Commission seeks civil penalties, restitution for public funds used to construct the patio, and any other appropriate relief to enforce the Governmental Conduct Act and deter misuse of public resources.

Read (1) [the Commission's complaint in State Ethics Commission v. Shepard](#).

(d) State Ethics Commission ex rel. Village of Angel Fire v. Lindsey, et al., D-809-CV-2024-00091.

In 2024, the State Ethics Commission filed a civil action on behalf of the Village of Angel Fire alleging that Mayor Barry Lindsey and Carristo Creative Consulting LLC violated the Procurement Code by entering into a \$1 million no-bid contract for advertising-related services without competitive, sealed proposals and in violation of

the Code's prohibitions on prepayment and conflicts of interest. The Commission alleged that the contract's broad scope—covering strategy development, branding, research, marketing, content creation, public relations, and website design—fell squarely within the Procurement Code and did not qualify for the narrow exemption for purchases of advertising placements in media outlets. After the Commission filed suit, the Village canceled the unlawful contract and issued a request for proposals. Carristo Creative subsequently entered into a settlement with the Commission and repaid amounts it had received in unlawful prepayment. The Commission also executed a settlement agreement with the Village's Chief Procurement Officer.

On June 23, 2025, the Honorable Steven A. Romero, District Judge for the Eighth Judicial District, granted the Commission's motion for partial summary judgment, holding that the Procurement Code applies to contracts between government bodies and private advertising agencies when the contracts involve design, branding, marketing, consulting, or other services beyond the limited purchase of advertising space in media outlets. The court rejected Mayor Lindsey's reliance on Section 13-1-98(V)'s exemption for "advertising" purchases, confirming that government entities may not bypass competitive procurement requirements simply by characterizing a broad professional-services contract as advertising-related. With the unlawful contract canceled and partial summary judgment entered, the case will proceed to trial on the Commission's remaining claim that Mayor Lindsey knowingly violated the Procurement Code.

Read the full order and settlement agreements here: (1) [Order Granting Plaintiff's Motion for Partial Summary Judgment](#) (2) [Settlement Agreement between and among the New Mexico State Ethics Commission and Carristo Creative Consulting, LLC](#) (3) [Settlement Agreement between and among the New Mexico State Ethics Commission and Julie Kulhan, in her official capacity as Chief Procurement Officer for the Village of Angel Fire](#)

(2) Pre-litigation settlement agreements

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

(a) Deming City Officials – Councilor Irma Rodriguez, Councilor Joe “Butter” Milo, and City Manager Aaron Sera

On October 8, 2025, the Commission announced pre-litigation settlements with Deming City Councilors Irma Rodriguez and Joe “Butter” Milo, with related compliance obligations involving City Manager Aaron Sera, resolving alleged violations of the Governmental Conduct Act. The Commission alleged that Councilor Rodriguez violated Section 10-16-7(B) by failing to disclose her ownership interest in Triadic Enterprises when the City of Deming contracted with that business. In a separate matter, the Commission alleged that Councilor Milo failed to disclose his ownership interest in J&J Printing, Inc. during City contracting and failed to recuse himself from a vote affecting the Rio Mimbres Corporation, in which he and his spouse held stock, in violation of Section 10-16-4(B). Finally, the Commission alleged that City Manager Sera and his spouse held interests in Rio Mimbres Corporation at the time Mr. Sera was empowered to negotiate its sale to the City, also implicating

Section 10-16-4(B).

To resolve these matters without litigation, Councilor Rodriguez agreed to pay a \$500 civil fine and ensure that her ownership interest in Triadic Enterprises is disclosed on the City of Deming's website. Councilor Milo agreed to renounce, along with his spouse, all interests in Rio Mimbres Corporation; disclose his ownership of J&J Printing, Inc. on the City's website; and remit \$200 to the State of New Mexico. City Manager Sera and his spouse voluntarily renounced their interests in Rio Mimbres Corporation to avoid any alleged unlawful benefit; Mr. Sera resolved the matter without a formal settlement agreement.

Read the full settlement agreements here: (1) [Memorialization of the verbal Settlement Agreement between the New Mexico State Ethics Commission and Irma Rodriguez](#) (2) [Settlement Agreement between the New Mexico State Ethics Commission and Joe Milo](#)

(b) Mayor Denny Herrera, Village of Cuba

On May 28, 2025, the Commission announced a pre-litigation settlement with Denny Herrera, former mayor of the Village of Cuba, and his business, DDH, Inc. Fuel Service Station, resolving alleged violations of the Governmental Conduct Act. Following an investigation, the Commission found reason to believe that Mayor Herrera improperly benefited from a village directive requiring employees to refuel all Village vehicles exclusively at DDH, Inc. Fuel Service Station, a business he owned, in violation of Section 10-16-13.2(A), which prohibits public officers from selling goods or services to public employees under their supervision.

To resolve the matter without litigation, Mayor Herrera and DDH, Inc. agreed to take corrective action. Mr. Herrera notified the Village of Cuba of his ownership interest and clarified that Village employees may purchase fuel from any station accepting WEX cards in accordance with procurement rules. He also agreed to remit \$2,500 to the State of New Mexico and an additional \$1,000 to the Village of Cuba, with proof of payment to the Commission.

Read the full settlement agreement here: (1) [Settlement agreement between and among the New Mexico State Ethics Commission and Denny Herrera and his business DDH, Inc. Fuel Service Station.](#)

(c) Daniel Flack, DTF Engineering, and D&G Construction

On May 9, 2025, the Commission announced a pre-litigation settlement with Daniel Flack; AECS, Inc., doing business as DTF Engineering; and D&G Construction, resolving alleged violations of the Procurement Code and the Governmental Conduct Act. Following an investigation, the Commission found reason to believe that a professional services contract between DTF Engineering and the Town of Kirtland—which authorized a 15% markup on third-party services and materials—violated Section 13-1-149 of the Procurement Code. The Commission also found reason to believe that Mr. Flack participated in governmental decisions affecting his and his family's private financial interests, in violation of Sections 10-16-4(B) and 10-16-7(B) of the Governmental Conduct Act.

To resolve the matter without litigation, the Released Parties entered into a formal settlement agreement. Under the agreement, DTF Engineering will remit \$5,500 to the Town of Kirtland, and Mr. Flack will remit \$500 to the State of New Mexico. The parties also agreed not to use or rely on any contract provision authorizing a 15% markup on third-party costs; that Mr. Flack will not participate in any aspect of “procurement” under the Procurement Code unless formally appointed as a Professional Technical Advisor; and that, if Mr. Flack exercises or is delegated any governmental authority while any relevant contract remains in effect, he will comply with all requirements of the Governmental Conduct Act as if he were a Kirtland public employee.

Read the full settlement agreement here: (1) [Settlement agreement between and among the New Mexico State Ethics Commission and Daniel Flack, AECS, Inc., dba DTF Engineering and D&G Construction.](#)

(d) Luna County Officials, Contractor, and Former Employee

On March 21, 2025, the Commission announced two pre-litigation settlements involving Luna County officials, a contractor to Luna County, and a former county employee, resolving alleged violations of both the Procurement Code and the Governmental Conduct Act. In the first matter, the Commission alleged that Christie Ann Harvey, former Luna County Economic Development Director, violated Section 10-16-8(D) by representing The Greater Luna County Economic Opportunity Council, Inc. (“The Council”) before Luna County within one year of leaving county employment, and violated Section 13-1-193 by participating in the procurement of economic-development services from The Council while also employed by it. The Commission further alleged that Luna County improperly awarded contracts to The Council in violation of Procurement Code requirements for competitive RFP processes.

To resolve these allegations, Ms. Harvey and The Council agreed to remit a \$500 civil penalty to the State of New Mexico and a \$1,000 civil penalty to Luna County. In a separate settlement, the Commission alleged that County Manager Chris Brice and Chief Procurement Officer Joanne Hethcox awarded four contracts totaling more than \$400,000 to The Council without using the required RFP process, in violation of Sections 13-1-111 to 13-1-117.1. Luna County agreed to cancel a \$125,000 contract awarded on July 1, 2024; require competitive RFPs for any professional economic-development contract exceeding \$20,000 for the next two years; and ensure procurement training for county officials within one year.

Read the full settlement agreements here: (1) [Settlement agreement between and among the New Mexico State Ethics Commission, and Christie Ann Harvey and The Greater Luna County Economic Opportunity Council, Inc.](#) (2) [Settlement agreement between and among the New Mexico State Ethics Commission, and Chris A. Brice and Joanne Hethcox](#)

Trainings

Under the Governmental Conduct Act, the State Ethics Commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act—that is,

all legislators and all elected or appointed officials or employees of a state agency or a local government agency who receives compensation or per diem. Further, under the Governmental Conduct Act, the Commission has a biennial responsibility to develop and provide to all legislators a minimum of two hours of ethics continuing education. Similarly, under the State Ethics Commission Act, the Commission may offer annual ethics trainings to public officials, public employees, government contractors, lobbyists and other interested persons. The Commission has developed presentations that Commission staff can offer to government agencies around the state. During 2025, Commission staff have offered several trainings regarding the ethics laws, as detailed below. For more information on the Commission's presentations and trainings, visit: <https://www.sec.nm.gov/education/>

- **January 29, 2025** – Ethics for Local Government to the Municipal League (Rebecca Branch, Deputy Compliance Counsel)
- **February 3, 2025** – The Anti-Donation Clause & Capital Outlay to the New Mexico State Legislature (Jeremy Farris, Executive Director)
- **April 16, 2025** – Corruption and Error to Oliver Seth Inn of Court (Jeremy Farris, Executive Director)
- **May 1, 2025** – The Anti-Donation Clause to the Thornburg Foundation (Jeremy Farris, Executive Director)
- **May 2, 2025** – Ethics: Know the Law to the NM Cooperative Extension Service & the NMSU Department of Government (Rebecca Branch, Deputy Compliance Counsel)
- **May 15, 2025** – Ethics for Government Auditors and Accountants to the NMSCPA Government Finance Experts Conference (Jeremy Farris, Executive Director)
- **June 11, 2025** – Ethics Law in New Mexico (Rebecca Branch, Deputy Compliance Counsel)
- **July 22, 2025** – The Anti-Donation Clause to the Santa Fe Community Foundation (Jeremy Farris, Executive Director)
- **August 7, 2025** – Navigating Ethics in Municipal Governance to the Municipal Official Leadership Institute (Rebecca Branch, Deputy Compliance Counsel)
- **August 14, 2025** – The Procurement Code: exceptions, exemptions, and ethics to the New Mexico Municipal League (Jessica Randall, Deputy General Counsel)
- **August 15, 2025** – Navigating Governmental Ethics to the New Mexico Association of Counties (Rebecca Branch, Deputy Compliance Counsel)
- **September 19, 2025** – Ethical Issues in Appellate Advocacy to the New Mexico Appellate Practice Institute (Jeremy Farris, Executive Director)
- **September 29, 2025** – Navigating Governmental Ethics to Torrance County (Rebecca Branch, Deputy General Counsel)
- **October 29, 2025** – Exceptions, Exemptions, & Ethics in New Mexico Procurement to the State Bar of New Mexico (Jeremy Farris, Executive Director)
- **November 5, 2025** – Ethics Forum for Local Government (Commission Staff)
- **December 8, 2025** – Staying Steady in the Storm: Lessons for Local Ethics Amid Washington's Chaos (How State and Local Ethics Commissions Can Learn from the Federal Level (Jeremy Farris, Executive Director)
- **December 9, 2025** – Fine Tuning Enforcement: Alternative Sanctions in Ethics Accountability (Jeremy Farris, Executive Director)
- **December 9, 2025** – Fighting for Resources: Strategies to Strengthen Budgets for Ethics, Disclosures, and Oversight Programs (Amelia Bierle, Deputy Director)

LEGISLATIVE RECOMMENDATIONS

The Commission offers the following recommendations for the First Session of the Fifty-Eighth Legislature.

(1) Recommendations for Improving Local Campaign-Finance and Disclosure Authority

New Mexico's Campaign Reporting Act and Financial Disclosure Act establish transparency requirements for state-level candidates, officeholders, political committees, and certain public officials, but neither statute extends to municipal elections or to many other local officials. As a result, only home-rule municipalities currently possess the authority to adopt their own campaign-finance or financial-disclosure ordinances, while most local jurisdictions lack clear legal authority to implement transparency rules tailored to their own electoral or governance needs. To ensure that all local governments have the tools necessary to promote transparency and public confidence in their elections and public institutions, the Commission recommends amending both the Campaign Reporting Act and the Financial Disclosure Act to authorize municipalities and counties to adopt and enforce supplemental local disclosure provisions, provided those local rules do not conflict with state law.

The Commission would support the following amendments:

Campaign Reporting Act

§ 1-19-37. Applicability.

(A) The provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] do not apply to any candidate subject to the provisions of the federal law pertaining to campaign practices and finance.

(B) Municipalities and counties are authorized to adopt and enforce campaign finance ordinances that impose reporting, disclosure, or contribution requirements in addition to, or more stringent than, those contained in the Campaign Reporting Act, provided that such ordinances do not conflict with the provisions of that act. Nothing in this subsection shall be construed to limit any authority granted to municipalities or counties by the constitution of New Mexico or by other statute.

Financial Disclosure Act

§ 10-16A-10. Local financial-disclosure authority. (New Section)

(A) Municipalities and counties are authorized to adopt and enforce financial-disclosure ordinances that impose reporting or disclosure requirements in addition to, or more stringent than, those contained in the Financial Disclosure Act, provided such ordinances do not conflict with that act.

(B) Nothing in the Financial Disclosure Act shall be construed to limit any authority granted to municipalities or counties by the constitution of New Mexico or by other statute.

(2)Recommendations for Amendments to the Lobbyist Regulation Act

Over the past year, the Commission's enforcement work has highlighted gaps in the Lobbyist Regulation Act that allow significant lobbying activity to remain undisclosed during the period when the public and policymakers most need transparency. In a recent enforcement matter arising from an informal complaint, the Commission was unable to verify allegations of undisclosed donors and lobbying expenditures until several months after the legislative session had concluded, because the relevant expenditure reports were not statutorily due until May. During that intervening period, the organization conducted a substantial lobbying campaign opposing proposed medical malpractice reforms—efforts that directly responded to measures under active consideration by the Legislature. Those reforms ultimately did not advance during the session, yet the public received no contemporaneous disclosure of the organization's spending while the legislation was pending. Based on these lessons, the Commission recommends amendments to the Lobbyist Regulation Act to ensure timely disclosure of lobbying expenditures during legislative sessions. The Commission would support amending Section 6(E) of the Lobbyist Regulation Act:

E. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

(1) no later than January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

(2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars (\$500) or more;

~~(3) no later than the first Wednesday after the first Monday in May for all expenditures and political contributions made or incurred through the first Monday in May of the current year and not previously reported; and~~

(3) in any regular sixty-day legislative session, no later than the Monday occurring in the fourth week of the session for all expenditures and political contributions made or incurred during the current calendar year and not previously reported;

(4) no later than the Monday immediately preceding adjournment of any regular legislative session for all expenditures and political contributions made or incurred during the current calendar year and not previously reported; and

(5) no later than the first Wednesday after the first Monday in October for all expenditures and political contributions made or incurred through the first Monday in October of the current year and not previously reported.

I. An organization of two or more persons, including an individual who makes any representation as being an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars (\$2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying shall register with the secretary of state within forty-eight hours after expending two thousand five hundred dollars (\$2,500). Such registration shall

indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. ~~Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses, employers and occupations of the contributors, to the secretary of state on a prescribed form.~~

Additionally, the LRA does not require meaningful disclosure of expenditures and activities connected with lobbying; it contains no provisions that serve as guardrails against conflicts of interest; and, perhaps worst of all, it *creates* dark-money problems. To address these additional issues, the Commission recommends the following amendments to the Lobbyist Regulation Act:

The Commission recommends that the LRA be amended to include a definition of a lobbyist's client and to require more information regarding expenditures that a lobbyist makes on behalf of their client, including the beneficiary of the expenditure, the purpose of the expenditure, and the client to whom the expenditure is attributable (including for lobbyist expenditures that are campaign contributions).

Second, as in previous Annual Reports, to slow the revolving door between government service and lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

- A. A former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary shall not accept compensation as a lobbyist for a period of two calendar years after the conclusion of service as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.
- B. A lobbyist's employer shall not compensate a former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary as a lobbyist for a period of two calendar years after the person served as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.
- C. A person who violates a provision of this section is subject to a civil penalty of five thousand dollars (\$5,000) for each violation.

Fourth, as in previous Annual Reports, to allow for transparency when the family member of a legislator is lobbying for a bill, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

- A. A legislator shall, before voting on a bill, disclose that the legislator's family member is lobbying on a bill on which the legislator must vote.
- B. As used in this section, "family member" means a spouse, daughter, son, parent or sibling.

(3) Recommendations for Amendments to the Campaign Reporting Act

Over the past five years, the Commission has achieved an understanding of the gaps and loopholes in the Campaign Reporting Act that persons have relied on to avoid disclosure of the source of the funds used to pay for political advertisements. Based on these lessons, the Commission recommends a set of amendments to the Campaign Reporting Act related to disclosure of the sources of the funds for independent expenditures and to personal loans that candidates make to their own campaign committees.

First, the Commission recommends closing gaps related to attack advertisements that do not expressly refer to an election or contain an appeal to vote. Under the current definition of “expenditure,” an advertisement that targets a candidate or public official but does not reference the impending election may fall outside the Campaign Reporting Act’s disclosure requirements. To ensure that the sources of funds used for such attack ads are disclosed, the Commission recommends updating the definition of “expenditure.” Second, the Commission recommends addressing a reporting loophole for groups that make major expenditures on the eve of an election. If a group pays for an attack advertisement shortly before an election and qualifies as a “political committee” under the Campaign Reporting Act, Section 1-19-29(B) may allow the group to delay reporting those expenditures until thirty days after the election. To prevent this delay, the Commission recommends removing the phrase “not otherwise required to be reported under the Campaign Reporting Act” from Section 1-19-27.3(A). Eliminating this language would ensure that information about the independent expenditure is disclosed promptly, even when the group making the expenditure qualifies as a political committee.

Third, the Commission recommends making clear that the Campaign Reporting Act disallows persons making independent or coordinated expenditures from concealing the identity of contributors who contribute more than five thousand dollars (\$5,000) during an election cycle, where (i) the contributor requested in writing that that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee and (ii) the person making independent expenditures nevertheless used the contributor’s contributions for independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.

Fourth, the Commission recommends amendments to require persons—including out-of-state groups—who make independent expenditures to disclose the source of significant funds (i.e., funds exceeding \$5,000) used to make independent expenditures, whether or not the donations were made or received for the purpose of supporting a ballot question or candidate in a New Mexico election. If a person making independent expenditures uses funds to make independent expenditures related to elections subject to the Campaign Reporting Act, disclosure requirements should apply, no matter what was said or intended when the initial fundraising occurred.

Fifth, the Commission recommends a set of amendments that concern disclosure of personal loans that candidates make to their own political campaigns. The current practice in New Mexico is that candidate committees report the amount of the loan principal that candidates have loaned their campaigns, as well as any expenditures that candidate committees make to repay debts. These are significant disclosures, but they are not specific or demanding enough to deter the threat of corruption that can accompany loans that candidates make to their campaign

committees. The Campaign Reporting Act currently does not require disclosure of the terms of the loan, including any interest. Nor does the Act currently require that the campaign committee demonstrate evidence that a loan was actually made. Because the Campaign Reporting Act allows candidate committees to expend campaign contributions raised to repay loans, including personal loans that a candidate makes to their campaign, New Mexico needs additional safeguards to prevent candidates from converting campaign contributions into a personal source of income.

Accordingly, the Commission recommends amendments to the Campaign Reporting Act that (i) impose certain disclosure of loans that candidates make to their own political campaigns, including proof that the loan was made and the loan's terms; and (ii) constrain the rate of interest that a candidate can charge on a personal loan that they make to their own campaign.

The Commission's recommendations for amendment to the Campaign Reporting Act align with [Senate Bill 387](#) introduced by Senator Wirth in the First Session of the Fifty-Fifth Legislature, with [Senate Bill 42](#), also introduced by Senator Wirth, in the First Session of the Fifty-Sixth Legislature, with [Senate Bill 85](#), also introduced by Senator Wirth, in the First Session of the Fifty-Seventh Legislature.

Read [Letter from Jeremy Farris, Executive Director, State Ethics Commission, to Senator Wirth, Senator Duhigg and Representative McQueen regarding potential amendments to the Campaign Reporting Act](#)

(4) Recommendations for Amendments to the Financial Disclosure Act

The State Ethics Commission recommends the reintroduction of a bill similar to [Senate Bill 125](#), which Senator Tallman, Representative Garratt, and Representative Sariñana sponsored in the First Session of the Fifty-Sixth Legislature, known as the Disclosure Act. This year, the Commission endorses that bill with the following targeted revisions to improve clarity and reduce unnecessary burdens on reporting individuals:

1. **Investment Fund Disclosures:**
Retain the requirement to disclose the name of the fund and its manager, particularly when the fund pertains to specific industries (e.g., energy, defense) that may pose conflicts of interest. Remove the obligation to disclose individual fund holdings exceeding \$50,000, provided the fund is publicly traded and regulated.
2. **Professional Client Confidentiality:**
To address concerns from legal professionals about client confidentiality, revise the requirement for income source disclosure by allowing reporting individuals to describe their practice areas or service categories in precise yet general terms. This revision balances transparency with the need to respect professional confidentiality obligations.

The Commission believes these revisions maintain the Act's integrity, further its goals of transparency and accountability, and reduce unnecessary burdens on reporting individuals while respecting their professional obligations. As the American Law

Institute has reported:

Disclosure by public servants of financial and other information is a key component of most government ethics systems. Disclosure reminds public servants of ethics principles, detects and deters conflicts of interests, facilitates enforcement of ethics rules, and promotes public confidence in government. Transparency is one of the most important principles underlying a representative democracy, and ethics rules that enhance transparency not only improve the quality of government and the ethical commitments of public servants but also reinforce public confidence in government. Public confidence in government in turn is critical to the continued public support that is the ultimate foundation of our representative democracy.

American Law Institute, *Principles of Law: Government Ethics*, Tentative Draft No. 3, Ch. 6 (Disclosure), Introductory Note (April 9, 2021).

The current Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended 2021) seeks to balance the public interest in disclosure against public servants' privacy interests by giving public servants significant discretion in deciding whether to make a disclosure and what they must disclose. The Commission believes that this approach to disclosure is flawed in at least two respects:

First, the Financial Disclosure Act is vague and undemanding as to what must be disclosed. It requires public servants to disclose sources of gross income in excess of \$5,000 but does not require disclosure of the specific source of the income. Instead, a public servant need only disclose the "general category descriptions that disclose the nature of the income source . . . [in] broad categories." § 10-16A-3(D)(2) (2021). But requiring disclosure only of "broad category descriptions" does not suffice to alert the public of whether a public servant is subject to a financial conflict of interest. Take as an example a state legislator who receives income by selling pesticides to farms, and another state legislator who makes more than \$5,000 from the sale of organic produce. While legislation proposing a partial ban on the use of pesticides would have different effects on these financial interests, both legislators are required only to report income from "farming and ranching" on their financial disclosure statements. § 10-16A-3(D) (2021). As a result, the Financial Disclosure Act does not remind the disclosing senators of their potential obligations under the state's ethics laws, and the public is not able to determine what (if any) conflicts of interest might affect the legislators' votes.

Second, the Financial Disclosure Act contains significant omissions in several categories of reporting requirements—*e.g.*, the identification of specific sources of income, the identification of ownership assets, business-entity relationships, liabilities, membership and other positions in non-profit organizations, and gifts. Because Financial Disclosure Act omits these requirements, it does not do enough to inform the public whether officials in state government are engaged in self-dealing, are subject to conflicts of interest, and are in compliance with the duties that the Governmental Conduct Act and other statutes impose. In short, it is not a very effective disclosure law.

Over the past five years, the Commission and its staff have received input from

organizations in New Mexico that have bemoaned the Financial Disclosure Act's shortcomings. The Commission staff has also carefully reviewed the American Law Institute's *Principles of Law: Government Ethics*, Tentative Draft No. 3 (April 9, 2021), which includes principles relating to disclosure in government. As a result, the Commission recommends a new statute—the Disclosure Act—to replace the current Financial Disclosure Act as a more comprehensive and more effective approach to disclosure in government.

Read (1) [the “Disclosure Act,” House Bill 149 \(55th Legis., 2nd Sess.\)](#); (2) [Read the “Disclosure Act,” Senate Bill 125 \(56th Legis., 1st Sess.\)](#).

(5) Recommendations for the State Ethics Commission Act

To further establish the Commission's independence, which is provided by Article V, Section 17(A) of the New Mexico Constitution, the Commission recommends the creation of a nonreverting fund in the state treasury for use by the Commission. Specifically, the Commission recommends a new section in the State Ethics Commission Act, as follows:

(A) The "state ethics commission fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations, and any revenue received from court-ordered judgments or sanctions and settlement payments related to commission-authorized civil actions. Money in the fund at the end of a fiscal year shall not revert to any other fund. The commission shall administer the fund, and money in the fund is appropriated to the commission.

(B) The legislature may appropriate from the state ethics commission fund to the general fund in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund, the tobacco settlement permanent fund, the state-support reserve fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, to avoid an unconstitutional deficit, the legislature may appropriate from the state ethics commission fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized transfers from the appropriation contingency fund, the general fund operating reserve, the tax stabilization reserve and the tobacco settlement permanent fund that exhaust those fund balances.

There are more than 50 nonreverting funds in the state treasury that exist to support various government functions. Nonreverting funds generally serve as a financial buffer, allowing a public agency to continue operations in cases of emergencies or unexpected expenses. The Commission's constitutional independence

requires that the agency be able to operate free from pressures that could foreseeably emerge as a consequence of the Commission's ordinary work to enforce New Mexico's ethics laws. The creation of a nonreverting fund would alleviate those foreseeable pressures.

DRAFT



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-08

December 5, 2025¹

Ethical Concerns for Legislator as Business Consultant

QUESTION PRESENTED²

A legislator provided a proposed consulting agreement the legislator was considering entering into with a Corporation and requested an opinion as to potential ethical concerns related to the engagement.

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 October 27, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein and Commission staff issued an informal advisory opinion letter in response. *See* 1.8.1.9(B) NMAC. Commissioners Bluestone and 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.” 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.

ANSWER

After review of the proposed consulting agreement, there are several ethical considerations under New Mexico law a legislator should bear in mind before executing an agreement of the sort proposed and in performance of the agreement. These include fiduciary duties of loyalty to the public in the legislator's role as State Senator, the limitations on compensated representation as a State Senator contained in Section 9 of the Governmental Conduct Act,³ considerations relevant to attempting to influence other legislators, and the sharing of information with the Corporation. If, after considering the application of the foregoing provisions of law, the legislator decides to enter into the proposed consulting agreement, then the legislator would also be required to report the income received as a result of the agreement on the annual financial disclosure statement reported to the Secretary of State.

ANALYSIS

- I. The "Conflict of Interest" provision in the proposed agreement is, at a minimum, in tension with the statutory duties to treat the legislative office as a public trust and to take reasonable steps to avoid undue influence.**

The Governmental Conduct Act provides that "[a] legislator . . . shall treat the legislator's . . . government position as a public trust."⁴ Further, "[a]t all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service."⁵ While the Governmental Conduct Act does not define "abuse of office," the common law informs the meaning of the statutory term.⁶ The abuse of office was (and remains) a civil action at common law. It is also known as

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

⁴ NMSA 1978, § 10-16-3(A) (2011).

⁵ NMSA 1978, § 10-16-3(C).

⁶ See *Sims v. Sims*, 1996-NMSC-078, ¶ 23, 122 N.M. 618 ("[W]hen determining the meaning of a statute, courts will often construe the language in light of the preexisting common law." (citing 2A Norman J. Singer, *Sutherland Statutes & Statutory Construction* § 45.02 (1992))).

“malfeasance in office,” “official misconduct,” and the “abuse of the public trust.”⁷ Notwithstanding the several names that courts have given it, the claim for abuse of office is straightforward: it is a claim for the breach of a fiduciary duty, as applied to public officers who have a fiduciary relationship with the public.⁸

Central among the duties that a fiduciary owes are the duty of care and the duty of loyalty. As a fiduciary, a legislator owes the public a duty of care—i.e., the duty to exercise reasonable diligence in the performance of their office.⁹ Moreover, as a fiduciary, a legislator owes the public a duty of loyalty—i.e., the duty to use the powers and resources of the public’s office for the public’s benefit only and, thus, to refrain from putting the legislator’s interests before the public’s interest.¹⁰

⁷ See Abuse of Public Office, *Black’s Law Dictionary* (11th ed. 2019).

⁸ It is “beyond dispute” that public officials owe fiduciary duties to the public. See *Skilling v. United States*, 561 U.S. 358, 407 n.41 (2010); see also, e.g., *United States v. Carter*, 217 U.S. 286, 306 (1909) (observing that a fiduciary duty is applicable to public officials); *United States v. DeVegter*, 198 F.3d 1324, 1328 (11th Cir. 2013) (“Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.” (citation omitted)); *United States v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (“Elected officials generally owe a fiduciary duty to the electorate.” (citing *Shushan v. United States*, 117 F.2d 110, 115 (5th Cir. 1941)); *United States v. Kearns*, 595 F.2d 729, 734 (D.C. Cir. 1978) (reversing dismissal of federal common law breach of fiduciary duty claim the government asserted against federal officials, concluding “[t]he action pursued here is a proper tool, based on common law notions of principal-agent relations, for controlling the possible loss of impartial public administration”); *Marjac, LLC v. Trenk*, No. CIV A 06-1440 JAG, 2006 WL 3751395, at *15 (D.N.J. Dec. 19, 2006) (denying a motion to dismiss a breach of fiduciary duty claim against elected officials that stand in a fiduciary relationship with their constituents); see also generally *Driscoll v. Burlington-Bristol Bridge Co.*, 86 A.2d 201, 221–22 (N.J. 1952) (describing the fiduciary duties that public officers owe to the public and observing that the duties may be enforced in the civil courts (citations omitted)).

⁹ Cf., e.g., *Air Line Pilots Ass’n, Inter. v. O’Neill*, 499 U.S. 65, 75 (1991) (discussing the fiduciary duty of care that a labor union, as a fiduciary, owes its represented employees).

¹⁰ See, e.g., *Moody v. Stribling*, 1999-NMCA-094, ¶ 27, 127 N.M. 630 (“A fiduciary duty is a duty of loyalty.” (citations omitted)); *Kueffer v. Kueffer*, 1990-NMSC-045, ¶ 12, 110 N.M. 10 (“A fiduciary is obliged to act primarily for another’s benefit in matters connected with such undertaking. A fiduciary breaches this duty by placing his interests above those of the beneficiary.” (citations and quotation marks omitted)); cf. UJI 13-2406, Duty of loyalty; definition (“A lawyer has a duty of loyalty to a client. A lawyer breaches the duty of loyalty by putting the lawyer’s own interests, or the interests of another, before those of the client.”).

When Section 10-16-3(C) requires legislators to avoid “undue influence and abuse of office in public service,”¹¹ that statutory language is informed by the common law fiduciary duties that public officers owe the public.¹² Indeed, the Legislature has confirmed that a legislator’s government position is “a public trust,” reinforcing that, by virtue of their government positions, public officers have fiduciary duties to the public.¹³ Accordingly, a legislator engages in the “abuse of office in public service” in violation of Section 10-16-3(C) when that legislator uses their government office in a way that breaches a fiduciary duty that the legislator owes to the public.¹⁴

The proposed consulting agreement’s “Conflict of Interest” provision raises the concern of competing duties of loyalty. The proposed agreement provides that “The Consultant agrees not to undertake *any* engagement, lobbying activity, or *representation that would be directly adverse to the Company’s interests or that could reasonably compromise its duty of loyalty to the Company without the Company’s prior written consent.*” This provision suggests an untenable position, wherein the legislator would hold competing duties of loyalty. Those duties may come into conflict during the course of legislative service. If, for example, a bill came before the Legislature that the Corporation considered directly adverse to its interests, this provision suggests that the legislator would be prohibited from taking action in favor of the bill, or at a minimum would be required to get the Corporation’s consent before engaging in that action. Furthermore, while the Corporation “reserves the right to terminate the engagement immediately if a conflict arises that, in the Company’s sole discretion, cannot be adequately resolved[,]” there is no comparable provision for the legislator as the consultant. As a result, even in matters before the Legislature, the legislator would be bound by the terms of the contract to put the Corporation’s interests first or seek its written consent to act otherwise. Consequently, the obligation to the Corporation to not undertake any “representation that would be directly adverse to the Company’s interests or that could reasonably compromise [the legislator’s] duty of loyalty to

¹¹ § 10-16-3(C).

¹² See *Sims*, 1996-NMSC-078.

¹³ See § 10-16-3(A).

¹⁴ See *Abuse*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/abuse> (defining “abuse” to mean “to put [something] to a wrong or improper use”).

[the Corporation]” could potentially come into conflict with the provisions of Section 10-16-3(A) and (C).

Section 10-16-3(A) requires the legislator to treat the legislative position as a “public trust,” suggesting that a legislator owes a duty of loyalty to the public and, particularly, to those members of the public who the legislator represents in the Senate. In other words, Section 10-16-3(A) imposes a duty on legislators not to put their own private pecuniary interests, or the pecuniary interests of another private corporation or individual, above the interests of the public. A commitment, like the one expressed in the proposed consulting agreement, not to represent the legislator’s constituents in a way that would be directly adverse to the Corporation, potentially could conflict with the legislator’s statutory duty to treat the legislative office as a public trust. In matters concerning “government relations” where the Corporation’s interests are not in alignment with the public’s interests, it is not possible to put *both* the Corporation’s *and* the public’s interest first. Yet, prioritizing a principal’s interests is what the duty of loyalty generally requires,¹⁵ and therefore prioritizing the public’s interests is what Section 10-16-3(A) requires of public officials. Accordingly, a contractual commitment not to represent the public in a way that “would be directly adverse to [the Corporation]’s interests,” is in tension with the statutory duty to treat the legislative office as a public trust.

Next, Section 10-16-3(C) requires legislators to take reasonable efforts “to avoid undue influence[.]”¹⁶ Accepting payment in exchange for giving a duty of loyalty to the Corporation in a contract concerning “government relations” work—and, in particular, the proposed contractual obligation to seek and obtain the Corporation’s prior written consent before undertaking a representation that is directly adverse to the Corporation’s interests—is inconsistent with a legislator’s statutory duty to take reasonable efforts to avoid undue influence. Legislators should avoid contractually binding themselves to a company in a way that gives the private company the power to withhold consent to a legislator representing the public in a way that is adverse to the company’s interests. Rather, under Section 10-16-3(C), legislators should maintain the unfettered ability to represent the public and act in its best interests.

¹⁵ Restatement (Third) of the Law of Agency, § 8.01, cmt(b).

¹⁶ § 10-16-3(C).

II. The breadth of the Scope & Term provision raises several considerations related to the extent of the legislator’s work on behalf of the Corporation.

The Scope identified in the proposed consulting agreement includes “outreach, and action with respect to government relations at the New Mexico Executive and Legislative Branches.” Because it is unclear the extent to which the proposed consulting work might intersect with the position as legislator, this opinion addresses below some limitations of which to be aware.

A. The Governmental Conduct Act limits the types of representation a State Senator may undertake for pay.

Sections 10-16-9(B) through (C) prohibit a legislator from “appear[ing] for, represent[ing] or assist[ing] another person in a matter before a state agency,” unless one of two enumerated exceptions applies.¹⁷ Given the information provided in the request, the legislator should be aware that Section 10-16-9 likely prohibits the legislator from extending work the legislator would perform on behalf of the Corporation to include appearing for, representing, or assisting the Corporation in a matter before a state agency, including the New Mexico House of Representatives and the New Mexico Senate.¹⁸

The first exception to the prohibition in Section 10-16-9(B) does not apply. Under that exception, a legislator may represent another person in a matter before a state agency if the legislator *is not compensated* for that representation or assistance. Here the contract clearly contemplates compensation.

Next, Section 10-16-9(C) permits a legislator to represent another person (including a corporation) in a matter before a state agency “when the legislator is an attorney or *other professional* who is making that appearance or providing that

¹⁷ NMSA 1978, § 10-16-9(B). 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). This would include the Corporation.

¹⁸ The definition of “state agency” under the Governmental Conduct Act includes the legislative branch. *See* NMSA 1978, § 10-16-2(K) (2011) (“[S]tate agency’ means any branch, agency, instrumentality or institution of the state[.]”).

representation or assistance *while engaged in the conduct of that legislator’s profession.*”¹⁹ The text of Section 10-16-9(C), its relationship with other ethics statutes, and legislative history, establish that a legislator must be a licensed professional, regulated by the state, in order to qualify for Section 10-16-9(C)’s narrow “other professional” exception. The facts set out in the request do not indicate that the work to be performed will be done as the holder of a professional license engaged in the conduct of that business and, therefore, this exception likely would not apply.

If the legislator does conduct work as a licensed professional, however, the legislator is permitted to represent the Corporation, 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.”²⁰ Additionally, 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[.]”²¹ But, again, the request does not include facts that tend to suggest the scope of work is for services of a professional operating under a professional license.

Accordingly, unless the legislator’s representation is permitted under either Section 10-16-9(B) or (C), the legislator would not be permitted to appear for, represent, or assist the Corporation in a matter before a state agency, including the Legislature. If the legislator does meet one of those conditions, the legislator must still adhere to the restrictions in Section 10-16-9(D).

¹⁹ § 10-16-9(C) (2023). *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).

²⁰ § 10-16-9(C).

²¹ § 10-16-9(D).

B. Considerations relevant to attempting to influence legislation

1. Lobbying disclosures are not applicable to a legislator.

To the extent the “outreach, and action” included in the scope of work includes approaching other legislators concerning the Corporation’s interests related to legislation or an official action by a state official or a state agency, then the proposed consulting agreement requires the legislator to engage in “lobbying” as the Lobbyist Regulation Act²² defines the term. Ordinarily, the Lobbyist Regulation Act requires lobbyists to register and file reports as a lobbyist for work done as a paid consultant attempting to influence “an official action” or “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[.]”²³ These statutory obligations would not apply to a legislator, however, because the Lobbyist Regulation Act specifically excludes legislators from the definition of a “lobbyist.”²⁴

2. Article IV, Section 39

The legislator would also need to be aware of a potential violation of Article IV, Section 39 of the New Mexico Constitution. That constitutional provision defines bribery and solicitation for legislators. It provides:

²² NMSA 1978, § 2-11-1 to -10 (1977, as amended through 2023).

²³ NMSA 1978, § 2-11-2(D) (1994).

²⁴ NMSA 1978, § 2-11-2(E)(5). Given that the language of the proposed agreement also includes “outreach, and action with respect to government relations at the New Mexico Executive [Branch,]” if the legislator were to lobby related to an “official action,” i.e., rulemaking, by an executive agency (in a manner that does not violate Section 9’s prohibition on representation before a state agency) rather than addressing legislation, there is an argument the legislator would no longer fall under the exception. *See State ex rel. Dep’t of Pub. Safety, State Police Div. v. One 1990 Chevrolet Pickup, Model Z-71, Four Wheel Drive, White, Bearing Texas License No. 3003VR, VIN: IGCDK14K62204458*, 1993-NMCA-068, ¶ 11, 115 N.M. 644 (“[T]he last antecedent rule is merely an aid to interpretation, and is not inflexible and uniformly binding. Where the context requires that a qualifying word or phrase apply to several preceding phrases, the qualifying word or phrase will not be restricted to its immediate antecedent. (citing Norman J. Singer, 2A *Sutherland, Statutes and Statutory Construction* § 47.33 (5th Ed.1992)).

Any member of the legislature who shall vote or use his influence for or against any matter pending in either house in consideration of any money, thing of value or promise thereof, shall be deemed guilty of bribery; and any member of the legislature or other person who shall directly or indirectly offer, give or promise any money, thing of value, privilege or personal advantage, to any member of the legislature to influence him to vote or work for or against any matter pending in either house; or any member of the legislature who shall solicit from any person or corporation any money, thing of value or personal advantage for his vote or influence as such member shall be deemed guilty of solicitation of bribery.²⁵

Given the terms of Article IV, Section 39, the Scope & Term “outreach, and action” provision is troubling, for two reasons.

First, if the legislator receives consulting fees from the Corporation in exchange for work the legislator does as a legislator to introduce, amend, or otherwise influence the passage of legislation, then the legislator’s consulting work likely would implicate Article IV, Section 39’s first prohibition—i.e., using the legislator’s vote or influence in exchange for something of value.²⁶ This

²⁵ N.M. Const. art. IV, § 39. Section 10-16-3(D) of the Governmental Conduct Act is slightly narrower but also makes it a fourth-degree felony for a legislator to request or receive, or for a person to offer to a legislator, “any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.” NMSA 1978, § 10-16-3(D) (2011). An “official act” under the Governmental Conduct Act includes “an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority[.]” § 10-16-2(H).

²⁶ *See, e.g.*, N.M. Att’y Gen. Op. 65-229 (Nov. 30, 1965) (reviewing a similar question and noting that if a legislator “is a paid lobbyist on retainer he would, in all probability, be precluded from voting on or in any way using his influence for or against any pending legislation which directly affects the person or persons paying the retainer -- this for the reason that it could be reasonably assumed his action was motivated by the retainer” and that “a legislator being compensated during the session by some industry, business, union or other interest group is extremely troublesome”). 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

constitutional provision is particularly relevant because “*outreach, and action with respect to government relations*” ordinarily includes work to influence legislation.

Second, if the “outreach, and action” related to the legislative branch includes, when acting as a the Corporation consultant, offering a thing of value or privilege or personal advantage to another member of the legislature in order to influence that member to vote or work for or against a matter pending in either house, then that conduct would likely implicate the second prohibition in this constitutional provision.

In order to avoid an appearance of impropriety or actual violation of the provisions above, during the course of legislative service, a legislator should not vote on or use the legislator’s influence for or against any pending legislation which directly affects the Corporation. Accordingly, if a matter that directly affects the Corporation or its interests comes before the Senate or a legislative committee of which the legislator is a member, the legislator should disclose the interest in the contract and seek excusal of a vote on the matter.²⁷

C. Section 10-16-6 prohibits the legislator from sharing with the Corporation confidential information learned as a legislator.

In light of the legislator’s years of experience and service in state government, the legislator should ensure that the knowledge and information the legislator bring to the table does not expand into impermissible disclosure of confidential information. Section 10-16-6 of the Governmental Conduct Act provides that “[n]o legislator . . . shall use or disclose confidential information acquired by virtue of the legislator’s . . . position with a state agency . . . for the legislator’s, . . . or another’s private gain.”²⁸ In this context, Section 10-16-6 would

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.”).

²⁷ § 10-16-3(C) (“Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct.”).

²⁸ NMSA 1978, § 10-16-6 (2011).

not prohibit the legislator from entering into the proposed agreement. It would, however, prevent the legislator from using or disclosing any confidential information acquired as a legislator for the benefit of the Corporation.

III. Financial disclosure

Under the consulting agreement, the legislator would be paid a flat monthly fee of \$5,000. The Financial Disclosure Act²⁹ would require the legislator to report the income on the annual Financial Disclosure Statement filed with the Secretary of State.³⁰

CONCLUSION

The Commission takes no position on the propriety of entering into a consulting agreement containing the above-referenced terms. This opinion is based on current New Mexico law and principles relevant to the legal ethics questions presented.

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

²⁹ NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended through 2021).

³⁰ See NMSA 1978, § 10-16A-3(A), (D)(2) & (4) (2021).



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-08

December 5, 2025¹

Training Conference for State Employees Paid for by Contractor

QUESTION PRESENTED²

The requester is the Chief Procurement Officer and Purchasing Manager for a state agency. The request indicates the agency has a contract with a company for millions of dollars. The company would like to provide an all-expenses paid trip to another state for a training conference. The request asks: 1) Is the company a “restricted donor” under the Gift Act? and 2) Are state agency staff permitted to accept the all-expenses paid trips to a training conference out of state?

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 November 6, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein and Commission staff issued an informal advisory opinion letter in response. *See* 1.8.1.9(B) NMAC. Commissioner 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.” 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.

ANSWERS

1. A contractor with a state agency is a “restricted donor” under the Gift Act.³
2. A state employee is permitted to accept reasonable expenses for a bona fide educational program that is directly related to the state employee’s official duties.

ANALYSIS

The Gift Act limits gifts from restricted donors to state officers and employees.⁴ Specifically, the Gift Act provides that a state “employee . . . or that person’s family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state . . . employee . . . or that person’s family, a gift of a market value greater than two hundred fifty dollars (\$250).” Included in the definition of “restricted donor” is a person⁵ who “is or is seeking to be a party to any one or any combination of sales, purchases, leases *or contracts to, from or with the agency in which the donee holds office or is employed[.]*”⁶

Critically, however, the Legislature has excluded from the Gift Act’s definition of a “gift” ten specific kinds of payments or transfers.⁷ Included in the exceptions are “reasonable expenses for a bona fide educational program that is directly related to the state officer’s or employee’s official duties[.]”⁸ In looking at the “bona fide educational program” exception to the Gift Act, the Commission has

³ NMSA 2978, § 10-16B-1 to -5 (2007, as amended through 2019).

⁴ NMSA 1978, § 10-16B-3(A) (2007).

⁵ The Gift 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).

⁶ NMSA 1978, § 10-16B-2(D)(1) (2007) (emphasis added).

⁷ § 10-16B-2(B).

⁸ NMSA 1978, § 10-16B-2(B)(9).

broken down the requirements to three elements, explaining that a restricted donor may make payments in excess of the gift limit “for (i) ‘reasonable expenses’ for (ii) ‘a bona fide educational program’ that (iii) is ‘directly related to official duties.’”⁹

The Commission has determined “the costs of flights, meals, refreshments and lodging are ‘reasonable expenses’ for the purposes of the ‘educational’ exception.”¹⁰ While reasonableness is not defined in the Gift Act, the meaning as used in the statute is determined by the context of its use, the rules of grammar, and common usage.¹¹ In context, “reasonable expenses” refers to considerations such as the appropriateness of costs given the location, duration of the stay, and market rates.¹²

In Advisory Opinion 2020-03, the Commission concluded that a restricted donor was permitted to fly small groups of legislators from Santa Fe, Albuquerque, Farmington, and Las Cruces, to Jefferson City, Missouri, for a two-day program where the contractor informed legislators about the contractor’s operations, structure, environmental protections, safety precautions, and general business practices, and provided the legislators with flights, meals, refreshments, and lodging, the total cost of which would exceed \$250 per legislator.¹³ Because the program provided education and a bona fide opportunity to learn about the merits and risks of the contractor’s operations, which directly related to the legislators’ official duties because the program potentially affected constituents’ interests and the legislators would need to vote on related issues, the Commission concluded the

⁹ See State Ethics Comm’n Adv. Op. 2020-03 (June 5, 2020) (available at <https://nmonesource.com/nmos/secap/en/18165/1/document.do>).

¹⁰ *Id.* at 4–5 (citing § 10-16B-2-(B)(9)).

¹¹ NMSA 1978, § 12-2A-2 (1997); see also *State v. Farish*, 2021-NMSC-030, ¶ 11, 499 P.3d 622 (explaining that in interpreting any statute, the primary goal of the Court must be to give effect to the intent of the Legislature, and in doing so first look to the ordinary and plain meaning unless a different intent is clearly indicated); *State v. Adams*, 2019-NMCA-043, ¶ 26, 447 P.3d 1142, *aff’d*, 2022-NMSC-008 (noting that when ascertaining the ordinary and plain meaning of a statutory term, courts frequently will look to dictionary definitions).

¹² See *Reasonable*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/reasonableness> (defining “reasonable” to include not extreme or excessive, inexpensive, moderate or fair).

¹³ Adv. Op. 2020-03, at 1.

contractor's "payments for the flights, meals, refreshments, and lodging incidental to the tour . . . are not 'gifts,' as the Gift Act defines that term" and consequently the Gift Act's limitations did not apply.¹⁴

Turning to the questions at hand, the request identifies the company as a contractor with the agency. This meets the definition of "restricted donor" as a company that "contracts to, from or with the agency" where the public staff members are employed. As such, the company is prohibited from providing a "gift" to those staff members with a value in excess of \$250, unless one of the ten exceptions applies. Because the request posits that the trip is for training at a conference, it is possible that the "bona fide educational exception" applies. The contractor would be permitted to pay the cost of flights, meals, refreshments, and lodgings for state employees of the agency to attend the training conference, so long as the expenses it pays for are reasonable and the conference constitutes a bona fide educational program that is directly related to the employees' official duties.

CONCLUSION

Restricted donors, including state contractors, are permitted to pay the reasonable cost of flights, meals, refreshments, and lodging for a state employee to attend a bona fide educational program that is directly related to the state employee's official duties. Provided the expenses meet this criteria, and are reasonable under the circumstances, including location, market rates, and duration of the stay, they do not constitute a "gift" for purposes of the Gift Act.

SO ISSUED.

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

¹⁴ *Id.* at 5–6. The New Mexico Department of Justice reached the same conclusion as it related to the trip to Missouri, as well as to a trip to the Netherlands. *See* N.M. Att'y Gen. Adv. Ltr. 2020-04 (Apr. 22, 2020) (concluding the contractor's "two-day programs will fall within the bona fide exception, if, [in the legislator's] judgment, the programs directly related to [the legislators'] official duties"); N.M. Att'y Gen. Adv. Ltr. (June 5, 2007) (determining a five-day educational site visit to the Netherlands, where a restricted donor paid for legislators' travel, food and lodging, was permissible where "the payment constitutes reasonable expenses paid for a bona fide educational program that is directly related to [a legislator's] official duties as a legislator").

STUART M. BLUESTONE, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. GARY L. CLINGMAN, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner
DR. JUDY VILLANUEVA, Commissioner

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