



STATE ETHICS
COMMISSION MEETING

February 13, 2026

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

February 13, 2026, 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 December 5, 2025 Commission Meeting

Commission Meeting Items

Action Required

- | | |
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| 4. General Counsel’s Initial Observations on the New Mexico Ethics Landscape
(<i>Goodrich</i>) | No |
| 5. Annual Open Meetings Act Resolution
(<i>Chato</i>) | Yes |
| 6. Advisory Opinion 2026-01 - Regulating Conflicted Votes of Attorney Legislators
(<i>Farris</i>) | Yes |
| 7. 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).

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

- I. 2024-NP-18
- II. 2025-NP-15
- III. 2025-NP-17
- IV. 2025-NP-18

9. Discussion regarding current and potential litigation:
(Goodrich, Farris)

- I. Authorization for a demand and civil action against former staff members of Taos Municipal Schools
- II. Authorization for a petition to district court for the issuance of subpoenas related to enforcement of the Nondisclosure of Sensitive Personal Information Act

Upon applicable motion, Commission returns from executive session

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

- I. 2025-NP-18
- II. 2025-NP-15
- III. 2025-NP-17
- IV. 2025-NP-18

11. Authorization of Civil Action: Yes
(Goodrich, Farris)

- I. Authorization for a demand and civil action against former staff members of Taos Municipal Schools
- II. Authorization for a petition to district court for the issuance of subpoenas related to enforcement of the Nondisclosure of Sensitive Personal Information Act

12. Discussion of next meeting No
(Lang)

13. Public Comment No

14. 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: February 13, 2026” until 9:00 am on February 13, 2026.

Individuals wishing to participate by providing oral comment should register and join using the following link <https://us02web.zoom.us/join/9tTmduJS8G1NJDeTwCKqQ>. 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 December 5, 2025, 9:00 AM [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

Chair Lang sought a motion to approve the agenda. Commissioner Baker moved to approve the amended agenda; Commissioner Bluestone seconded. Hearing no discussion or objections, the amended agenda was approved unanimously by all present Commissioners.

3. Approval of October 10, 2025, Commission Meeting Minutes

Chair Lang sought a motion for approval of the minutes of the October 10, 2025 meeting. Commissioner Bluestone moved to approve the minutes; Commissioner Clingman seconded. Hearing no discussion or objections, the October 10, 2025 meeting minutes were approved unanimously by all present Commissioners.

4. Annual Report

Executive Director Farris provided a brief overview of the Commission's Annual Report. The Commission is tasked to make an annual report to the Governor and the Legislature for amendments to statutes relating to the Commission's jurisdiction and New Mexico's ethics laws, including New Mexico's governmental conduct, procurement, campaign finance reporting, and financial disclosure statutes

Chair Lang sought a motion to approve the Annual Report. Commissioner Bluestone moved to approve the Annual Report; Commissioner Castillo seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners that were present voted in favor. The Annual Report was approved for issuance.

5. Potential recommendations for amendment to NMSA 1978, §10-16G-3(H) (2019)

Commissioner Baker led a discussion regarding the statutory structure of the Commission, including how current provisions affect commissioner participation, quorum, and decision-making. The discussion was exploratory in nature and focused on governance considerations and potential long-term structural implications. The Commissioners requested that staff conduct additional research on this topic and develop a preliminary framework for future consideration.

6. Advisory Opinion 2025-08 – Ethical Concerns for Legislator as Business Consultant

Chief Compliance Counsel Chato gave an overview of Advisory Opinion 2025-08. 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.

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 legislator, the limitations on compensated representation as a State legislator contained in Section 9 of the Governmental Conduct Act, 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.

Chair Lang sought a motion to approve Advisory Opinion 2025-08. Commissioner Bluestone moved to approve the opinion; Commissioner Castillo seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners that were present voted in favor. Advisory Opinion 2025-08 was approved for issuance.

7. Advisory Opinion 2025-09 – Training Conference for State Employees Paid for by Contractor

Chief Compliance Counsel Chato gave an overview of Advisory Opinion 2025-09, noting a typographical correction to the title in the provided draft, which had been incorrectly labeled as Advisory Opinion 2025-08. 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?

A contractor with a state agency is a “restricted donor” under the Gift Act. 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.

Chair Lang sought a motion to approve the Advisory Opinion 2025-09 as presented. Commissioner Clingman moved to approve the Advisory Opinion 2025-09; Commissioner Castillo seconded. After some discussion Chair Lang conducted a roll call vote. All present Commissioners voted in the affirmative and approved Advisory Opinion 2025-09.

8. 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)(3) (administrative adjudicatory proceedings) and 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.

9. Discussion regarding administrative matters under RULONA:

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

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

- 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

---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).

11. Action on administrative matters under RULONA

- I. Commission staff sought a motion for dismissal and 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 letter; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal and issuance of the warning letter was approved.
- II. Commission staff sought a motion for a dismissal in 2025-NP-14. Chair Lang sought a motion for the dismissal. Commissioner Clingman moved to approve the dismissal; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal was approved.

12. 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 in Administrative Case No. 2025-30. Chair Lang sought a motion for approval of the dismissal. Commissioner Clingman moved to approve the dismissal; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal was approved.
- II. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-31. Chair Lang sought a motion for approval of the dismissal. Commissioner Clingman moved to approve the dismissal; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal was approved.
- III. Commission staff sought a motion for an order of dismissal in Administrative Case No. 2025-32. Chair Lang sought a motion for approval of the dismissal. Commissioner Clingman moved to approve the dismissal; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal was approved.
- IV. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-33. Commissioner Baker recused from the discussion and vote. Chair Lang sought a motion for approval of the dismissal. Commissioner Castillo moved to approve the dismissal; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present

Commissioners voted in favor except for Commissioner Baker who recused from the matter. The dismissal was approved.

- V. Commission staff sought a motion for an order of dismissal in Administrative Case No. 2025-34. 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 present Commissioners voted in favor. The dismissal was approved.
- VI. Commission staff sought a motion for an order of dismissal in Administrative Case No. 2025-37. Chair Lang sought a motion for approval of the dismissal. Commissioner Castillo moved to approve the dismissal; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal was approved.
- VII. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-38. 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 present Commissioners voted in favor. The dismissal was approved.
- VIII. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-39. Chair Lang sought a motion for approval of the dismissal. Commissioner Bluestone moved to approve the dismissal; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal was approved.

13. Discussion of Next Meeting

Chair Lang confirmed the next regularly scheduled meeting will take place on February 13, 2025.

14. Public Comment

There was no public comment.

15. Adjournment

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting adjourned at 11:14 AM.



STATE ETHICS COMMISSION

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

RESOLUTION NO. 2026-01: State Ethics Commission Annual Open Meetings Resolution

WHEREAS, THE STATE ETHICS COMMISSION met virtually in regular session, as required by law, on Friday, February 13, 2025, at 9:00 a.m. via video teleconference; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 10-15-1 to -4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the State Ethics Commission to determine annually what notice for a public meeting is reasonable;

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

1. All meetings shall be held at the place and time as indicated in the meeting notice.

2. Unless otherwise specified, regular meetings may be held every other month subject to the call of the Chair of the State Ethics Commission. Notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice. The notice will include a copy of the agenda or information on how a copy of the agenda may be obtained. If not included in the notice, the agenda will be available to the public at least seventy-two hours before the meeting and posted on the State Ethics Commission's website at <https://www.sec.nm.gov/>.

3. Notice of regular meetings other than those described in Paragraph 2 will be given ten days in advance of the meeting date. Notice requirements for such meetings are met if notice of the date, time, and place is available to the public and posted on the website of the State Ethics Commission. Notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice. The notice will include a copy of the agenda or information on how a copy of the agenda may be obtained. If not included in the notice, the agenda will be available to the public at least seventy-two hours before the meeting and posted on the State Ethics Commission's website.

4. Notice of special meetings will be given at least seventy-two hours in advance of the meeting date. Notice requirements for such meetings are met if notice of the date, time, and place is available to the public and posted on the website of the State Ethics Commission. Notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice. The notice for a special meeting shall include an agenda for the meeting or information on how a copy of the agenda may be obtained. The agenda will be available at least seventy-two hours before the meeting and posted on the State Ethics Commission's website.

5. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. The State Ethics Commission will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chair or a quorum of members with twenty-four hours' prior notice, unless threat of personal injury or property damage requires less notice. Notice requirements for such meetings are met if notice of the date, time, and place is available to the public and posted on the website of the State Ethics Commission. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within ten days of taking action on an emergency matter, the State Ethics Commission will notify the New Mexico Department of Justice of the action taken and the circumstances creating the emergency.

6. In addition to the information specified above, all notices shall comply with the Americans with Disabilities Act concerning individuals seeking accommodations to attend or participate in Commission meetings.

7. The State Ethics Commission may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Section 10-15-1 of the Open Meetings Act. (a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of members taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting. (b) If a closed meeting is conducted when the Commission is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public. (c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure. (d) Except as provided in Section 10-15-1 of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Commissioners in an open public meeting.

Adopted by the State Ethics Commission this 13th day of February, 2026.

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



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2026-01

February 13, 2026¹

Regulating Conflicted Votes of Attorney Legislators

QUESTION PRESENTED²

Given the provisions contained in Section 10-16-3(A) of the Governmental Conduct Act, would it constitute a violation of the Governmental Conduct Act for practicing attorneys serving as legislators (who have personally benefited from and stand to further benefit from lawsuits alleging medical malpractice) to vote on measures related to caps on judgments and/or settlements stemming from such lawsuits?

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) (2019).

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 January 19, 2026, the Commission received a request for an advisory opinion that detailed the issues as presented herein. “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

ANSWER

No. While a legislator's conflicted vote might constitute a violation of a rule of procedure of the legislator's respective house, it does not make out a violation of the Governmental Conduct Act.³

ANALYSIS

We are asked to opine whether a legislator would violate the Governmental Conduct Act by voting on legislation that, if enacted or defeated, might affect the legislator's personal interests. At the outset, we observe that the Commission's relationship to this question is purely advisory. A Commission advisory opinion is binding on the Commission in subsequent Commission administrative proceedings concerning persons who act in good faith and in reasonable reliance on the advisory opinion.⁴ However, there can be no subsequent Commission proceeding involving an administrative complaint against a legislator alleging violations of the Governmental Conduct Act for voting on legislation in which they have a direct personal or pecuniary interest. The Speech or Debate Clause of Article IV, Section 13 of the New Mexico Constitution provides that Members "shall not be questioned *in any other place* [apart from their respective houses] for any speech or debate or for any vote cast in either house."⁵ As we have concluded in prior opinions, "any other place" includes adjudications by the State Ethics Commission, and, therefore, administrative complaints against legislators alleging violations based on conflicted votes are subject to dismissal for lack of jurisdiction.⁶

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

⁴ § 10-16G-8(C).

⁵ N.M. Const. art. IV, § 13 (emphasis added).

⁶ In 2021, the State Ethics Commission issued an advisory opinion concluding that Article IV, Section 13 limits the Commission's jurisdiction to review an administrative complaint alleging a statutory violation based on any legislative act by a legislator, such as a legislator introducing a bill that would result in personal benefits to the legislator, making comments related to the bill in a legislative committee or on the floor, or voting on the bill. *See* State Ethics Comm'n Adv. Op. No. 2021-12 (Dec. 3, 2021), <https://nmonesource.com/nmos/secap/en/item/18250/index.do>. Not everything a legislator might do through their office, however, is a legislative act. *See id.* at 4 & n.5 (collecting cases). For example, the Speech or Debate Clause does not bar jurisdiction for complaints alleging violations of NMSA 1978, Section 10-16-3(D) (2011), which prohibits legislators from requesting or receiving anything of value or promise thereof in exchange for a vote. *See* State Ethics Comm'n Adv. Op. No. 2021-12, at 4 & n.5. In that circumstance, the

In previous advisory opinions, we have opined that the Governmental Conduct Act does not require a legislator to refrain from voting on legislation that implicates a conflict of interest.⁷ We maintain that view today, for at least three reasons.

First, Section 10-16-4(B) of the Governmental Conduct Act is the provision that disqualifies public officers from engaging in official acts, including casting votes, due to a conflict of interest.⁸ The statute provides that “a public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer’s or employee’s financial interests . . . [that is not] proportionately less than the benefit to the general public.”⁹ Section 10-16-4(B)’s disqualification requirement, however, does not apply to legislators because legislators are expressly excluded from the definition of a “public officer or employee.”¹⁰ Accordingly, the Governmental Conduct Act provision that expressly requires recusal (including from voting) on a conflicted matter does not apply to legislators.

Second, reading Section 10-16-3(A) alongside Section 10-16-4(B), we doubt that the former imposes an obligation on legislators to refrain from voting on pending legislation. Both Section 10-16-3(A) and Section 10-16-4(B) create prohibitions against a self-dealing use of government power to benefit a personal interest. Section 10-16-3(A) frames that prohibition at a higher level of generality

prohibited conduct is not the vote, but the solicitation or the *quid pro quo* transaction, which obviously is not itself a legislative act. In this formal advisory opinion, we address only the question of a vote where a legislator might have a personal or pecuniary interest in the legislation. Nothing in the request asks that we consider the circumstance of a *quid pro quo* solicitation or exchange.

⁷ See, e.g., State Ethics Comm’n Adv. Op. No. 2021-07, at 2 (Apr. 2, 2021), available at <https://nmonesource.com/nmos/secap/en/item/18160/index.do> (“The Governmental Conduct Act does not require a legislator to recuse from a vote on legislation that implicates a conflict of interest.”).

⁸ NMSA 1978, § 10-16-4(B) (2011).

⁹ *Id.*

¹⁰ NMSA 1978, § 10-16-2(I) (2011) (defining “public officer or employee” to mean “any elected or appointed official or employee of a state agency or local government agency . . . but excludes legislators”).

and applies to a broader set of government actors: legislators, public officers, and public employees may not use public powers and resources to obtain personal benefits. Section 10-16-4(B), by contrast, articulates a more specific prohibition, applying to public officers and employees only and requiring disqualification from engaging in any official act that would directly and disproportionately affect a financial interest. Ordinarily, where one statute deals with a subject in general terms, and another deals with part of the same subject in a more detailed way, only the latter applies and is enforceable.¹¹ Accordingly, considering the more specific articulation of a recusal duty in Section 10-16-4(B), we doubt that Section 10-16-3(A) operates also to impose a recusal requirement for not only public officers and employees but also legislators.

Third, and most fundamentally, Article IV, Sections 11 and 13 of the New Mexico Constitution suggest that any prohibition on any vote by a legislator and the enforcement of such a prohibition are subject matters regulated exclusively by each legislative chamber for their own members.¹² Section 11 provides that “[e]ach house may determine the rules of its procedure, [and] punish its members or others for contempt or disorderly behavior in its presence[.]”¹³ Further, as we have observed above and before, the Speech or Debate Clause of Article IV, Section 13 provides that the only available forum to address any question, claim, or challenge arising from any vote is the legislator’s respective house.¹⁴ These constitutional provisions commit to each chamber the exclusive power to enact and to enforce regulations for its respective members regarding their votes.¹⁵

Each chamber has enacted rules for voting. For example, while there is a general rule that every legislator must vote on a proposal before them, both the New Mexico House of Representatives and the New Mexico Senate have adopted

¹¹ See *State v. Cleve*, 1999-NMSC-017, ¶ 17, 127 N.M. 240 (citing 2B Norman J. Singer, *Sutherland Statutory Construction* § 51.05 (5th ed.1992), and *Wilburn v. Territory*, 10 N.M. 402, 408, 62 P. 968, 971 (1900), *overruled sub silencio on other grounds*, *Tais v. Territory*, 14 N.M. 399, 402–03, 94 P. 947, 948–49 (1908)).

¹² See N.M. Const. art. IV, §§ 11, 13.

¹³ N.M. Const. art. IV, § 11.

¹⁴ See N.M. Const. art. IV, § 13; State Ethics Comm’n Adv. Op. No. 2021-12 (Dec. 3, 2021).

¹⁵ See *Mason’s Manual of Legislative Procedure*, § 2, ¶ 3 (Nat’l Conference of State Legislatures, rev. ed. 2020) (“A house of a state legislature has complete authority concerning its procedure, so far as it is not limited by constitutional provisions.”).

rules allowing a member's excusal from the general duty to vote.¹⁶ In the New Mexico House of Representatives, a member cannot simply refrain from voting; rather, the member must request excusal and that request must be approved by a majority of the members present.¹⁷ House Rule 7-5 provides that "[e]very member of the house shall vote on each question or motion coming up before the house when requested to do so by the speaker, unless excused by a majority vote of those members present."¹⁸ The New Mexico Senate, by contrast, allows its members to refrain from voting without requesting excusal if that member has a direct conflict involving a personal or pecuniary interest.¹⁹ Senate Rule 7-5 provides that "[e]very member shall vote on each question stated from the chair, unless the senator has a direct personal or pecuniary interest in the event of such question. If any senator refuses to vote, unless excused by the senate or unless such interest exists, refusal to vote shall be deemed a contempt of the senate."²⁰

While members of the New Mexico House of Representatives and the New Mexico Senate *may* refrain from voting on legislation in which they have a direct personal or pecuniary interest, it is less clear if they *must* do so. Neither House Rule 7-5 nor Senate Rule 7-5 expressly states that duty. Those rules rather create an exception to the general duty to vote, allowing a member not to vote on a question stated by a presiding legislative officer.

Other legal material, however, suggests legislators have an affirmative duty not to vote on proposals in which a legislator has a direct personal or pecuniary interest. First, we look to *Mason's Manual of Legislative Procedure*. Section 522, Paragraph 1 of that manual provides:

It is the general rule that no members can vote on a question in which they have a direct personal or pecuniary interest. The right of members to represent their constituencies is of such major importance that members

¹⁶ See New Mexico House of Representatives Rule 7-5; New Mexico Senate Rule 7-5 (Jan. 21, 2025).

¹⁷ New Mexico House of Representatives Rule 7-5.

¹⁸ *Id.*

¹⁹ See New Mexico Senate Rule 7-5 (Jan. 21, 2025).

²⁰ *Id.*

should be barred from voting on proposals of direct personal interest only in clear cases and when the proposal is particularly personal. This rule is obviously not self-enforcing and, unless the vote is challenged, members may vote as they choose. A member may vote on a proposal when other members are included with that member in the motion, even though that member has a personal or pecuniary interest in the result, or the member may vote to increase salaries of all of the members.²¹

Mason's Manual is not an ordinary treatise. To the contrary, both the New Mexico House of Representatives and the New Mexico Senate have adopted the rules and parliamentary practice as set forth in *Mason's Manual* in all cases not inconsistent with their respective standing rules and orders.²² It is certainly arguable that House Rule 7-5 nor Senate Rule 7-5, which allows excusals from voting, is not inconsistent with the general rule requiring members to refrain from voting on matters in which they have a direct personal or pecuniary interest. Nor does it seem that a rule that allows excusals occupies the field of regulations concerning votes, thereby precluding any rule imposing an affirmative duty not to cast a self-interested vote. In *Mason's Manual*, for example, the two rules live harmoniously next door to each other.²³

Next, the Speech or Debate Clause of Article IV, Section 13 of the New Mexico Constitution implies that members may be questioned for votes in their

²¹ *Mason's Manual of Legislative Procedure*, § 522, ¶ 1; see also Paul Mason, *Mason's Manual of Legislative Procedure for Legislative and Other Governmental Bodies*, § 522, ¶¶ 1, 4 (1953) (same).

²² See New Mexico House of Representatives Rule 24-2; New Mexico Senate Rule 24-2; see also *Mason's Manual of Legislative Procedure*, § 32, ¶ 1 (“When a legislative body in its rules adopts a specified manual for the government of its procedure and no other provision is made on that subject in the rules, the manual specified controls the procedure of the legislative body.”); § 31, ¶ 2 (“A manual manifestly can state only general rules. Any special rules desired by the body should be stated in the rules adopted by the body. These special rules supersede the rules stated in the manual where conflict exists, *leaving the manual to govern only when no special rules have been adopted.*” (emphasis added)).

²³ Compare *Mason's Manual of Legislative Procedure*, § 521 (providing rules regarding excusal), with § 522 (providing rules prohibiting self-interested voting).

respective houses.²⁴ This constitutional provision, we think, necessarily implies that there are occasions that members' votes may be questioned.²⁵ One such occasion, according to *Mason's Manual*, is when a member votes on a proposal in which the member has a direct personal or pecuniary interest. Section 522, Paragraph 1 of *Mason's Manual*, quoted in full *supra*, cross references Section 231, Paragraph 6, which provides that “[t]he proper time to raise a point of order questioning the right of a member to vote because of a direct personal or pecuniary interest is after the vote has been recorded and before the result is announced.”²⁶

Yet, we are also aware that neither the House Rules nor the Senate Rules, apart from adopting *Mason's Manual*, expressly state a duty not to vote on a matter. Nor do those rule sets expressly provide for a specific procedure by which members might challenge another member's allegedly conflicted vote.²⁷ Relatedly, we observe that in the federal Congress, while “no member has a right to vote on any proposal in which the member is immediately or particularly interested, . . . the uniform present practice is to permit all members to be the judge of their own personal interest.”²⁸

We stop our inquiry there. The interaction of *Mason's Manual* and a legislative rule set is a subject better suited for a parliamentarian, the presiding legislative officer with authority to rule on points of order, and, ultimately, the

²⁴ N.M. Const. art. IV, § 13.

²⁵ See *Mason's Manual of Legislative Procedure*, § 2, ¶ 2 (“Each house of a state legislature is controlled in its procedure by any provision of the constitution that directly, or by necessary implication, governs its procedure.” (citing *Atkins v. Philips*, 8 So. 429 (Fla. 1890); *Wheeler v Kentucky*, 32 S.W. 259 (Ky. 1895); *Witherspoon v. Mississippi ex rel. West*, 103 So. 134 (Miss. 1925)).

²⁶ *Mason's Manual of Legislative Procedure*, § 522, ¶ 1; *id.* § 231, ¶ 6. For those less accustomed to parliamentary practice, “[a] ‘point of order’ is the parliamentary device that is used to require a legislative body to observe its own rules and to follow established parliamentary practice.” *Id.* § 230, ¶ 1.

²⁷ Compare *Mason's Manual of Legislative Procedure*, § 560, ¶ 10 (“Notwithstanding a member's right to participate, practices in some of the states require a member to be recused from participating in a question involving the right of that member to a seat.”).

²⁸ *Id.* § 522, ¶ 2.

body itself.²⁹ What is clear to us is that, pursuant to the powers conferred by Article IV, Section 11, each legislative body not only has drawn regulations concerning excusals from votes, but also has adopted *Mason's Manual*—arguably thereby including (i) the general rule stated therein prohibiting votes on legislation in which members have direct personal or pecuniary interest, and (ii) the procedure of raising a point of order to challenge such a vote. Because “[t]he constitutional right of each house of a state legislature to control its own procedure cannot be withdrawn or restricted by statute,”³⁰ we doubt that, by enacting Section 10-16-3(A), the Legislature intended to impose an (additional) prohibition on a member’s right to vote on legislation. This doubt is reinforced by our interpretation of the Governmental Conduct Act as a whole, particularly reading Section 10-16-3(A) alongside Section 10-16-4. Accordingly, if legislators have a duty to refrain from voting on an item in which they have a personal interest, the source of that duty is not Section 10-16-3(A) of the Governmental Conduct Act. Rather, its source is the rules of procedure of the legislator’s respective house—the only body that, under the New Mexico Constitution, may enact such a rule and enforce compliance with it.³¹

Finally, we observe that the facts set forth in the request would not allow an opinion as to whether a legislator has a “direct personal or pecuniary interest” in the legislation the request describes.³² The request frames the “specific set of

²⁹ See Op. Att’y Gen. No. 70-21 (Feb. 16, 1970) (“It must be recognized at the outset that the Senate of the State of New Mexico is the ultimate judge of its own rules” (citing N.M. Const. Art. IV, § 11)); see also Senate Rule 4-3; House Rule 4-3.

³⁰ *Mason's Manual of Legislative Procedure*, § 2, ¶ 4 (“The constitutional right of each house of a state legislature to control its own procedure cannot be withdrawn or restricted by statute; however, statutes may control procedure insofar as they do not conflict with the rules of the houses or with the rules contained in the constitution.” (citation omitted)); see also *id.* § 2, ¶ 3 (“A house of a state legislature has complete authority concerning its procedure, so far as it is not limited by constitutional provisions.”); N.M. Const. art. IV, § 11 (“Each house may determine the rules of its procedure . . .”).

³¹ As in previous opinions, we reiterate that apart from whether a legislator has an affirmative duty to refrain from voting on a matter of direct personal interest, a legislator may, subject to the rules of the legislator’s respective chamber, *voluntarily* refrain from participating in matters of direct personal interest. Again, subject to the rules of procedure of the legislator’s respective house, this option is available to legislators to demonstrate that they are not using the powers of legislative office for private gain. See, e.g., State Ethics Comm’n Adv. Op. No. 2021-07, at 3.

³² See New Mexico Senate Rule 24-2; *Mason's Manual of Legislative Procedure for Legislative and Other Governmental Bodies*, § 522, ¶ 1.

circumstances” it presents to suggest that legislators who are attorneys practicing in the area of medical malpractice might be personally affected by legislation that limits a party’s recovery on a medical malpractice claim.³³ The request does not posit additional facts that would detail *how* the legislation might directly affect the legislator. For example, the request provides no factual assumptions regarding who a legislator might represent in a lawsuit involving a medical malpractice claim, the basis for the legislator’s fee when conducting that representation, the limitations on recovery provided for by the legislation at issue, or otherwise how limitations on a party’s recovery directly affect the legislator’s pecuniary interests.

Such facts, among others, are necessary to determine whether a duty to refrain from voting is required under applicable rules. For the reasons set forth above, however, that duty to refrain would sound only in the rules of each chamber, not in Section 10-16-3(A) of the Governmental Conduct Act.

CONCLUSION

While a legislator’s vote on legislation in which the legislator has a direct personal or pecuniary interest might constitute a violation of a rule of procedure of the legislator’s respective house, it does not make out a violation of the Governmental Conduct Act.

SO ISSUED.

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

³³ § 10-16G-8(A)(2).