



**STATE ETHICS
COMMISSION MEETING**

April 17, 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

April 17, 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 February 13, 2026 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|---|-----|
| 4. Approval of FY27 Operating Budget
(<i>Farris, George</i>) | Yes |
| 5. HJR 5, Legislative Compensation
(<i>Bluestone</i>) | TBD |
| 6. Voting Structures of Ethics Commissions
(<i>Arreola</i>) | No |
| 7. Advisory Opinion 2026-02 – Agency Considerations in Amending
a Contract under the Governmental Conduct Act
(<i>Su</i>) | Yes |
| 8. Advisory Opinion 2026-03 – Governmental Conduct Act Considerations | |

- | | |
|--|-----|
| for Local Public Officials Holding Local Government Contracts
(Branch) | Yes |
| 9. Advisory Opinion 2026-04 – Holding Dual Roles as a School Board Member and State Employee Under the Governmental Conduct Act
(Su) | Yes |
| 10. Advisory Opinion 2026-05 – Campaign Expenditures for Media Related to Lawsuits Arising from Legislative Duties
(Su) | Yes |
| 11. Advisory Opinion 2026-06 – Holding Dual Roles as a SWCD Board Supervisor and Secretary of State Under the Governmental Conduct Act
(Su) | Yes |
| 12. Public Comment | No |

Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) and 10-15-1(H)(7) (attorney client privilege pertaining to litigation).

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

I. 2025-NP-21

14. Discussion regarding current and potential litigation:
(Woods, Farris)

- I. Authorization for a demand and civil action to enforce the Campaign Reporting Act
- II. Authorization for a demand and civil action to enforce the Lobbyist Regulation Act
- III. Authorization for a demand and civil action to enforce the Lobbyist Regulation Act

Upon applicable motion, Commission returns from executive session

15. Administrative Matters under RULONA:
(Branch) Yes

I. 2025-NP-21

16. Authorization of Civil Action: Yes
 (Woods, Farris)
- I. Authorization for a demand and civil action to enforce the Campaign Reporting Act
 - II. Authorization for a demand and civil action to enforce the Lobbyist Regulation Act
 - III. Authorization for a demand and civil action to enforce the Lobbyist Regulation Act
17. Discussion of next meeting No
 (Lang)
18. Public Comment No
19. 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: April 17, 2026” until 9:00 am on April 17, 2026.

Individuals wishing to participate by providing oral comment should register and join using the following link [https://us02web.zoom.us/meeting/register/NgTtMduJS8G1NJDeTwCKqQ](https://us02web.zoom.us/join/https://us02web.zoom.us/meeting/register/NgTtMduJS8G1NJDeTwCKqQ). 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 February 13, 2026, 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 (excused)
Hon. Dr. Terry McMillan (attended virtually)
Dr. Judy Villanueva (attended virtually)

2. Approval of Agenda

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

3. Approval of December 5, 2025, Commission Meeting Minutes

Chair Lang sought a motion for approval of the minutes of the December 5, 2025, meeting. Commissioner Bluestone moved to approve the minutes; Commissioner Villanueva seconded. Hearing no discussion or objections, the December 5, 2025 meeting minutes were approved unanimously by all present Commissioners.

4. General Counsel's Initial Observations on the New Mexico Ethics Landscape

General Counsel, Zach Goodrich, discussed similarities and differences between the New Mexico State Ethics Commission and the Iowa Ethics and Campaign Disclosure Board. Similarities noted included strong leadership teams and effective compliance operations. Key differences highlighted included New Mexico's comparatively larger budget and personnel resources, resulting in greater operational capacity. The Commission's appointment structure in

New Mexico was summarized as a multi-appointing-authority model designed to support independence (legislative leadership appointments, additional commissioner-selected appointments, and a Governor-appointed Chair who must be a retired judge), with statutory political-party balance requirements and eligibility restrictions for commissioners. By contrast, Iowa's commissioners are appointed by the Governor with Senate confirmation. The discussion emphasized that agency resources and structure can affect program capacity. No action was taken.

5. Annual Open Meetings Act Resolution

(Chato)

Chief Compliance Officer Chato provided an overview of the Annual Open Meetings Act (OMA) Resolution, outlining the Commission's obligations under the Open Meetings Act and the procedures for public notice of meetings.

Chato explained that the Open Meetings Act requires all meetings of a public body, where a quorum is present and public policy is discussed or actions are taken, to be open to the public unless an exception applies to permit the closed meeting.

She highlighted the following key provisions of the resolution:

- **Regular Meetings:** The Commission will hold meetings every other month at the call of the Chair. Notices will be provided at least ten days in advance and agendas will be made available at least seventy-two hours in advance on the Commission's website.
- **Special Meetings:** Notices for special meetings must be issued at least three days in advance and will contain a copy of the agenda or information on how a copy of the agenda may be obtained.
- **Emergency Meetings:** Chato emphasized that emergency meetings are only permitted under unforeseen circumstances that require immediate action to protect public safety or prevent financial loss. These meetings require at least twenty-four hours' notice unless an imminent threat necessitates a shorter timeframe. Any action taken during an emergency meeting must be reported to the New Mexico Department of Justice within ten days.
- **ADA Compliance:** The resolution ensures that all notices will comply with the Americans with Disabilities Act (ADA).
- **Closed Meetings:** Chato summarized the provisions regarding closed meetings, explaining that the Commission may enter into a closed session only if the subject matter falls under an exemption permitted by the Open Meetings Act. The motion to close a meeting must be made during an open session, stating the specific legal basis for closure. Except as provided in Section 10-15-1 of the Open Meetings Act, any action resulting from a closed session must be taken in an open meeting and formally recorded in the minutes of a subsequent open meeting.

Chair Lang sought a motion to approve the Annual Open Meetings Act. Commissioner Baker moved to approve the Annual Open Meetings Act; Commissioner Castillo seconded. Chair Lang conducted a roll-call vote. After some discussion, all present Commissioners voted in the affirmative and approved of the Annual Open Meetings Act unanimously.

6. Advisory Opinion 2026-01 – Regulating Conflicted Votes of Attorney Legislators
(Farris)

Executive Director Jeremy Farris gave an overview of Advisory Opinion No. 2026-01. Advisory Opinion No. 2026-01 considers whether practicing attorneys serving as legislators would violate the Governmental Conduct Act by voting on legislation related to medical malpractice caps where they may have personal or pecuniary interests. The Commission concluded that such votes do not constitute a violation of the Governmental Conduct Act, noting that regulation of conflicted legislative voting is governed by constitutional provisions and legislative rules.

Chair Lang sought a motion to approve Advisory Opinion 2026-01. Commissioner Bluestone moved to approve the opinion for issuance; Commissioner Castillo seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners that were present voted in favor. Advisory Opinion 2026-01 was approved for issuance.

7. 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 Villanueva seconded the motion. Hearing no discussion, Chair Lang conducted a roll call vote, all present Commissioners voted unanimously to enter executive session.

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

- I. 2024-NP-08
- 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

---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).

10. Action on administrative matters under RULONA

(Goodrich, Branch)

- I. Commission staff sought a motion for dismissal in 2024-NP-08 *In re commissions of Vivian-Gonzales*. Chair Lang sought a motion for the dismissal. Commissioner Bluestone 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.
- II. Commission staff sought a motion for issuance of a default order in 2025-NP-15 *In re commission of Romero*. Chair Lang sought a motion for the default order. Commissioner Bluestone moved to approve the default order; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The default order was approved.
- III. Commission staff sought a motion for issuance of a default order in 2025-NP-17 *In re commission of Serrano*. Chair Lang sought a motion for the default order. Commissioner Castillo moved to approve the default order; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The default order was approved.
- IV. Commission staff sought a motion for issuance of a default order in 2025-NP-18 *In re commission of Haggerton (aka Mudgett)*. Chair Lang sought a motion for the default order. Commissioner McMillan moved to approve the default order; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The default order was approved.

11. Action on Authorization of Civil Action

(Goodrich, Farris)

- I. Commission staff sought a motion for the authorization for the demand and civil action against former staff members of Taos Municipal Schools and any associated companies they had that received expenditures from that school district in violation of the Procurement Code and Governmental Conduct Act. Chair Lang sought a motion for the authorization. Commissioner Bluestone moved to approve the authorization; Commissioner Villanueva seconded. Hearing no

discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The authorization was approved.

- II. Commission staff sought a motion for the authorization for a petition to district court for the issuance of subpoenas related to enforcement of the Nondisclosure of Sensitive Personal Information Act. Chair Lang sought a motion for the authorization. Commissioner Bluestone moved to approve the authorization; Commissioner McMillan seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The authorization was approved.

12. Discussion of Next Meeting

Chair Lang confirmed the next regularly scheduled meeting will take place on April 17, 2026.

13. Public Comment

There was no public comment.

14. Adjournment

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting adjourned at 10:32 AM.

State Ethics Commission

Business Unit 41000

FY27 BUDGET PROJECTIONS



FY27

Based on Single-Year CAFR Budget Status Report by Pcode dated 07/30/2026

Prepared by: *Wendy George*
Phone: *505-554-7608*
Date: *Thursday, April 2, 2026*

CATEGORY TOTALS

State Ethics Commission Business Unit 41000
Based on Single-Year CAFR Budget Status Report by Pcode dated 07/30/2026

04/02/26
04:06 PM

FY27

george\Downloads\FY27 Budget Projections 4.2.26.xlsx\Category

DESCRIPTION	CATEGORY	D	H	I	J
		FY27	FY27	FY27	FY27
		ADJUSTED BUDGET	UNOBLIGATED BALANCE	PROJECTED EXPENDITURES TO YEAR END	BALANCE AVAILABLE
Total Personal Services & Employee Benefits	200	1,610,600	1,610,600	1,594,919	15,681
General Fund Transfers		1,610,600	1,610,600	1,594,919	15,681
Total Contractual Services	300	120,000	120,000	114,000	6,000
General Fund Transfers		120,000	120,000	114,000	6,000
Total Other Operating Costs	400	190,600	190,600	168,800	21,800
General Fund Transfers		190,600	190,600	168,800	21,800
TOTAL		1,921,200	1,921,200	1,877,719	43,481
Total General Fund		1,921,200	1,921,200	1,877,719	43,481

General Fund Transfers Detail

04/02/26

CHARTFIELD	DESCRIPTION	SHARE CHART FIELD	D	G	H	I	J
			FY27	FY27	FY27	FY27	FY27
			FINAL	TOTAL OBLIGATIONS	UNOBLIGATED BALANCE	PROJECTED EXPENDITURES TO YEAR END ²	BALANCE AVAILABLE
Exempt Perm Positions P/T&F/T	520100	576,000.00	0.00	576,000.00	568,804.11	7,195.89	
Term Positions	520200	0.00	0.00	0.00	0.00	0.00	
Classified Perm Positions F/T	520300	555,440.00	0.00	555,440.00	550,672.77	4,767.23	
Temporary Positions F/T & P/T	520500	34,000.00	0.00	34,000.00	33,184.00	816.00	
Paid Unused Sick Leave	520600	0.00	0.00	0.00	0.00	0.00	
Overtime & Other Premium Pay	520700	8,000.00	0.00	8,000.00	7,886.32	113.68	
Annl & Comp Paid At Separation	520800	0.00	0.00	0.00	0.00	0.00	
Group Insurance Premium	521100	92,700.00	0.00	92,700.00	88,992.76	3,707.24	
Retirement Contributions	521200	211,800.00	0.00	211,800.00	211,683.81	116.19	
F I C A	521300	88,830.00	0.00	88,830.00	88,781.86	48.14	
GSD Work Comp Insur Premium	521410	1,100.00	0.00	1,100.00	1,100.00	0.00	
Unemployment Comp Premium	521500	0.00	0.00	0.00	0.00	0.00	
Employee Liability Ins Premium	521600	13,700.00	0.00	13,700.00	13,700.00	0.00	
RHC Act Contributions	521700	29,030.00	0.00	29,030.00	29,013.68	16.32	
Total Personal Services	200	1,610,600.00	0.00	1,610,600.00	1,594,919.31	15,680.69	
Professional Services	535200	36,000.00	0.00	36,000.00	35,000.00	1,000.00	
Professional Svcs - Interagenc	535209	7,000.00	0.00	7,000.00	5,000.00	2,000.00	
Other Services	535300	1,500.00	0.00	1,500.00		1,500.00	
Audit Services	535400	29,100.00	0.00	29,100.00	29,000.00	100.00	
Attorney Services	535500	20,400.00	0.00	20,400.00	20,000.00	400.00	
IT Services	535600	26,000.00	0.00	26,000.00	25,000.00	1,000.00	
			0.00				
Total Contractual Services	300	120,000.00	0.00	120,000.00	114,000.00	6,000.00	
Employee I/S Mileage & Fares	542100	5,000.00	0.00	5,000.00		5,000.00	
Employee I/S Meals & Lodging	542200	1,000.00	0.00	1,000.00		1,000.00	
Brd & Comm Member Mileage	542300	1,500.00	0.00	1,500.00		1,500.00	
Brd & Comm Member Per Diem	542310	1,500.00	0.00	1,500.00		1,500.00	
Maint - Furn, Fixt, Equipment	543200	0.00	0.00	0.00		0.00	
Maintenance IT	543820	0.00	0.00	0.00		0.00	
Maintenance HW/SW agreements	543830	22,000.00	0.00	22,000.00	22,000.00	0.00	
Other Maintenance	543900	0.00	0.00	0.00		0.00	
Supply Inventory IT	544000	2,400.00	0.00	2,400.00		2,400.00	
Supplies-Office Supplies	544100	1,000.00	0.00	1,000.00		1,000.00	
Supplies-Inventory Exempt	544900	0.00	0.00	0.00		0.00	

General Fund Transfers Detail

04/02/26

CHARTFIELD	DESCRIPTION	SHARE CHART FIELD	D	G	H	I	J
			FY27	FY27	FY27	FY27	FY27
			FINAL	TOTAL OBLIGATIONS	UNOBLIGATED BALANCE	PROJECTED EXPENDITURES TO YEAR END ²	BALANCE AVAILABLE
	Reporting & Recording	545600	0.00	0.00	0.00		0.00
	Report/Record Inter St Agency	545609	0.00	0.00	0.00		0.00
	ISD Services (TELECOM RATE)	545700	15,100.00	0.00	15,100.00	15,100.00	0.00
	DOIT HCM Assessment Fees (IS RATE)	545710	3,800.00	0.00	3,800.00	3,800.00	0.00
	Printing & Photo Services	545900	800.00	0.00	800.00		800.00
	Postage & Mail Services	546100	1,100.00	0.00	1,100.00		1,100.00
	Rent Of Land & Buildings	546400	82,200.00	0.00	82,200.00	82,200.00	0.00
	Rent Of Equipment	546500	8,000.00	0.00	8,000.00	8,000.00	0.00
	Communications	546600	0.00	0.00	0.00		0.00
	DOIT Telecommunications	546610	16,500.00	0.00	16,500.00	16,500.00	0.00
	Subscriptions & Dues	546700	15,500.00	0.00	15,500.00	15,500.00	0.00
	Subscription & Due Interagency	546709	0.00	0.00	0.00		0.00
	Employee Training & Education	546800	2,500.00	0.00	2,500.00		2,500.00
	Emp Train & Edu InterSt Agency	546809	0.00	0.00	0.00		0.00
	Advertising	546900	5,000.00	0.00	5,000.00		5,000.00
	Miscellaneous Expense	547900	0.00	0.00	0.00		0.00
	Misc Expense Interagency	547909	0.00	0.00	0.00		0.00
	Facilities & Admin. Expense	547915	0.00	0.00	0.00		0.00
	Request to Pay Prior Year	547999	0.00	0.00	0.00		0.00
	Furniture & Fixtures	548200	0.00	0.00	0.00		0.00
	Information Tech Equipment	548300	0.00	0.00	0.00		0.00
	Other Equipment	548400	0.00	0.00	0.00		0.00
	Buildings & Structures	548900	0.00	0.00	0.00		0.00
	Employee O/S Mileage & Fares	549600	2,100.00	0.00	2,100.00	2,100.00	0.00
	Employee O/S Meals & Lodging	549700	3,600.00	0.00	3,600.00	3,600.00	0.00
			0.00				
	Total Other Costs	400	190,600.00	0.00	190,600.00	168,800.00	21,800.00

	General Fund	Other Funds	Compensation Transfers	Federal Funds	Total
Personal services and employee benefits	1,597.5	0.0	13.1	0.0	1,610.6
Contractual services	120.0	0.0	0.0	0.0	120.0
Other	185.6	5.0	0.0	0.0	190.6
USES Totals:	1,903.1	5.0	13.1	0.0	1,921.2

Permanent	10.00
FTE Totals:	10.00

Approved Language for FY27:

The state ethics commission may request budget increases up to thirty thousand dollars (\$30,000) from other state funds received from court ordered judgments or sanctions and settlement payments related to commission authorized civil actions for operating expenses;

FY27 Operating Budget
(Dollars in Thousands)

	General Fund	Other Funds	Compensation Transfers	Federal Funds	Total
Personal services and employee benefits	1,597.5	0.0	13.1	0.0	1,610.6
Contractual services	120.0	0.0	0.0	0.0	120.0
Other	185.6	5.0	0.0	0.0	190.6
USES Totals:	1,597.5	5.0	13.1	0.0	1,921.2
Permanent	10.00				
FTE Totals:	10.00				
Rec Language	Last Updated:				

Approved Language for FY27:

The state ethics commission may request budget increases up to thirty thousand dollars (\$30,000) from other state funds received from court ordered judgments or sanctions and settlement payments related to commission authorized civil actions for operating expenses;

Date: April 6, 2026

Introduction

This report provides comparative background analysis to assist the New Mexico State Ethics Commission in evaluating whether its current statutory decision-making structure remains consistent with the Commission's overlapping objectives of independence, fairness, effectiveness, bipartisanship, and public trust. The report relies exclusively on publicly available statutory provisions governing state ethics commissions across the United States. A comprehensive compilation of quorum rules, voting thresholds, and appointment requirements for state ethics commissions are provided separately in Appendix A.

The report does not recommend a particular governance model. Rather, it places New Mexico's statutory framework within the broader context of decision-making structures used by ethics commissions in other states. The analysis identifies several state recurring approaches to commission governance and examines how those approaches compare to the statutory model established for the New Mexico State Ethics Commission.

Across the United States, ethics commissions are structured with the shared objective of ensuring independence and fairness in the administration and enforcement of state ethics laws. To achieve this objective, legislatures embed key structural safeguards directly into statute, including provisions governing the number of commissioners, appointing authorities, eligibility criteria, partisan composition, quorum requirements, and voting procedures. In most states, state ethics commissions operate under majority rule of the total membership of the committee, meaning a majority vote of the total commission is necessary to take official action, where quorum rules reflect majority of commissions present. Within this framework, three general models emerge: (1) majority rule with political composition requirements, in which statutes authorize partisan balance by limiting the number of members from a single political party; (2) majority rule without specific political composition requirements, where commissions operate under standard majority voting rules without explicit requirements of partisan balance provisions, relying instead on eligibility criteria and appointment structures to support the objectives of fairness and independence; (3) tiered voting structures, in which statutes require higher voting threshold for certain actions, particularly investigative or enforcement decisions, than for routine administrative matters. Appendix A provides representative statutory comparisons describing commission composition, appointing authority, quorum requirements, and voting thresholds across several state ethics commissions.

New Mexico's Statutory Decision-Making Framework

The New Mexico State Ethics Commission structure operates under a distinctive decision rule embedded in the State Ethics Commission Act, which ties both quorum formation and the validity of commission action to bipartisan concurrence by the two major political parties. The Commission consists of seven members: three affiliated with the state's largest political party,

three affiliated with the second-largest political party, and one member unaffiliated with either party. Under the statute, four commissioners constitute a quorum for the transaction of business, but the quorum must include at least two members from each of the two largest political parties. Similarly, no commission action may be taken unless at least four members concur, and those four votes must include at least two members from each of the two largest political parties.¹

This structure is distinctive because it conditions both quorum and action on bipartisan concurrence (really bipartisan majorities: a majority of both parties is required for the Commission to meet and act), rather than simple majority of the Commission as such. As a result, the statute requires bipartisan participation for the Commission to act. The structure can result in no commission action even where a numerical majority of commissioners supports an action, if the required bipartisan number of votes is not present. The statutory rule also has implications for the functional role of the commissioner unaffiliated with either major party (the “DTS” seat). Because the legal validity of commission action depends on concurrence by members of the two major parties, the vote of the unaffiliated member cannot substitute for the statutory requirement that two members from each major party concur.

The New Mexico statute represents a two-party agreement model in which bipartisan agreement among commissioners affiliated with the two major parties serves as the requirement for any commission action.

Majority Rule with Political Composition Requirement

Several state ethics commissions rely on majority rule, with a majority of states, including California, Colorado, and Illinois, the number of commission members who may be affiliated with same political party is specified, allowing for political composition of the commission members.² Under these systems, statutes restrict the number of commissioners who may be part of the same political party or require representation from multiple parties, but they do not require that votes themselves be distributed across party lines. California, Tennessee, and Alaska are examples of this commission structure.

California’s Fair Political Practices Commission consists of five members. The Governor appoints a chair and one additional member; the appointees shall not be members of the same political party. The Attorney General, Secretary of State, and State Controller each appoint one additional member. Statute also limits the number of commissioners who may belong to the same political party to three members, ensuring political balance within the commission. Three commissioners constitute a quorum, and commission action generally proceeds through majority voting procedures.³ Although California statute requires that no more than three members may be members of the same political party, it does not specifically entail that all or any members

¹ [N.M. Stat. Ann. § 10-16G-3\(H\)](#).

² Cal. Gov’t Code § 83100; Colo. Const. Art. XXIX, § 5(2)(b); 5 Ill. Comp. Stat. Ann. § 430/20-5(b).

³ Cal. Gov. Code §§ 83100–83102.

need to be politically affiliated with any party. Currently, all the members of California's Fair Political Practices Commission are independent and non-partisan. California uniquely upholds fairness and independence through their method of having all their members be independent and non-partisan in lieu of having three members of one political party and two of the other. The interpretation, or rather the implementation is at the discretion of the state commission, a clear example is California and their implementation as aforementioned.

Another less restricted commission is Georgia's Government Transparency and Campaign Finance Commission. Georgia Government Transparency and Campaign Finance Commission, formerly known as the State Ethics Commission, must be composed of five members. Three members are appointed by the governor, one by the senate committee on assignments, and one by the speaker of the house. The statute limits the number of commissioners who may belong to the same political party to two members among the governor's appointees but does not require specific partisan distribution across the entire commission. Instead, the statute focuses primarily on appointment authority and eligibility requirements, including restrictions on recent candidates for public office. Commission action is generally determined through majority voting once a quorum, a majority of the members (three) is present.⁴

Similarly, the Kentucky Executive Branch Ethics Commission does not specify how many members must be affiliated with the two major parties to serve on the commission. Kentucky Executive Branch Ethics Commission shall be composed of seven members: two appointed by the Governor, one appointed by the Treasurer, one appointed by the Auditor of Public Accounts, one appointed by the Commissioner of Agriculture, one appointed by the Secretary of State, and one appointed by the Attorney General. No more than five members may be of the same political party. A quorum, as stated in the state statute, shall consist of at least four members, with a minimum requirement of four. An affirmative vote of four members is necessary for the commission to take action. Although there is an authorization for a number of member who may be politically affiliated, it is not a narrow requisite and a bipartisan decisive vote, with members affiliated with particular political parties, is not specifically required for the commission to enact action.

A state that has more restrictive requirements is Alaska, where party affiliation of members, is specifically required. The Alaska Public Offices Commission is composed of 5 members, where quorum requires a simple majority. Majority vote of the members to make decisions or take actions. The appointing entity for the Alaska State Ethics Commission must select a certain number of candidates from each of the two largest political parties in the state. Where the governor shall appoint two members of each of the two political parties or political groups with the largest number of registered voters at the time of the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties or groups

⁴ GA Code § 21-5-4 (2022).

shall be chosen from a list of four names to be submitted by the central committee of each party or group.⁵

Tennessee's Bureau of Ethics and Campaign Finance provide another example of narrow political requisite. The commission consists of six members. The Governor appoints one member from the majority party and one from the minority party. The Speaker of the Senate appoints two members, one selected from each list submitted by the majority and minority caucuses from each party, and the Speaker of the House appoints two members, one selected from each list submitted by the majority and minority caucuses from each party. Four members constitute a quorum, and four affirmative votes are required for commission action.⁶ The commission has the possibility of being evenly divided as each appointing authority may appoint one member who is affiliated with the majority party and one member who is affiliated with the minority party. In Tennessee the political party requirements are narrowly specific, creating less room for interpretation due to appointment requirements containing party affiliation requisite, but those who have appointing authority ultimately determine the commission make-up of the commission, which can also include those who are not party affiliated.

This model pursues goals similar to those reflected in New Mexico's bipartisan concurrence requirement. The model also has the same purpose as New Mexico's Ethics Commission objective, to ensure legitimacy and public confidence in ethics enforcement. However, majority-rule systems with composition requirements achieve this objective primarily through commission structure and appointment design rather than through party-based voting requirements.

Majority Rule Without Specific Political Composition Requirements

Several state ethics commissions operate under majority-rule without stringent political affiliation requirements. Under this model, statutes define the number of commissioners, identify appointing authorities, and specify quorum requirements but do not require that commissioners' memberships represent a narrow political affiliation. Alabama, Arkansas, and Maryland are illustrative of this commission structure model.

The Maryland State Ethics Commission is composed of five members. Three members are appointed by the Governor with the advice and consent of the Senate, while the President of the Senate and the Speaker of the House each nominate one additional member. Maryland statute requires that at least one of the Governor's appointees belong to a political party different from the Governor's but does not have a political affiliation requisite of the other four members being appointed.⁷ A majority of members constitute a quorum, and a majority vote is required for the

⁵ Alaska Stat. § 15.13.020(b).

⁶ Tenn. Code Ann. § 3-6-103

⁷ Md. Code, Gen. Prov. § 5-204.

commission to take official action.⁸ This model promotes political diversity within the commission while allowing decisions to proceed through majority-rule voting.

The Alabama State Ethics Commission requires that the state ethics commission consist of five members, where three members shall constitute a quorum. The members of the commission shall be appointed by the following officers: The Governor, the Lieutenant Governor, or in the absence of a Lieutenant Governor, the Presiding Officer of the Senate, and the Speaker of the House of Representatives. Alabama state statute does not require a number of members to be of a majority or minority political party in any of its members. Due to there not being any requirement of party affiliation in its members, it removes standards of a quorum to be bipartisan and requires bipartisan agreement among commissioners as the requirement for any commission action.⁹

Arkansas is structured similarly in terms of member requirements not containing a bipartisan membership. The Arkansas Ethics Commission shall be composed of five members, one each appointed by the governor, Attorney General, Lieutenant Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate. Although the membership of the ethics commission is not required to be party affiliated, it does require at least one member to be of the minority political party but does not require other members to be of the majority political party, instead the other two requirements for the commission is that at least one member be of a minority race, and one member be a woman. A majority of the membership of the commission shall constitute a quorum (three) for conducting business but does not have a voting bipartisan requirement for any commission action.¹⁰ A majority vote of the commission's total membership is required to take official action. An affirmative vote of at least three members of the commission who are present is required to impose sanctions.¹¹

In this model independence, fairness, and effectiveness is generally addressed through eligibility restrictions and appointment requirements rather than through partisan voting rules. State statutes commonly prohibit commissioners from holding public office, serving as lobbyists, or engaging in certain political activities while serving on the commission. Quorum and action depending on bipartisan concurrence is not applied to this model and ensures all their members have functional roles through the majority rule without narrow political requirements.

Tiered Voting Structures

Several state ethics commissions employ tiered voting structures, for example, in order for the commission to take official action, including initiating investigations, some jurisdictions require

⁸ Md. Code Ann., Gen. Provisions § 5-202(a)(1).

⁹ Ark. Code Ann. § 7-6-217(a)(1).

¹⁰ Ark. Code Ann. §§ 7-6-217(c)(1), 7-6-217(c)(2).

¹¹ Ark. Code Ann. § 7-6-217(d)(2)(C).

an affirmative vote from the majority of total numbers of commission members, while multiple jurisdictions, Alabama, Guam, Louisiana, South Carolina, and West Virginia, require a supermajority (a specified number of members that is higher than a simple majority) for the commission to initiate an investigation. In five jurisdictions, Connecticut, Guam South Carolina, Texas, and Utah, a supermajority is required for the commissions to make findings or a determination based on its investigation. Independence and fairness in this structure are maintained by requiring broader agreement among commissioners for actions involving investigative or enforcement authority. Under these systems, routine administrative decisions may be governed by majority rule, while more consequential actions require a higher voting threshold.

The Connecticut Citizens Ethics Advisory Board must consist of nine members. The members appointed are split between the executive and legislative branch, where one member appointed by the speaker, one member appointed by the president pro temp, one member appointed by the Senate majority leader one member appointed by the Senate minority leader, one member appointed by the House majority leader, one member appointed by the House minority leader, and three members appointed by the governor, and no more than five members shall be members of the same political party. Where six members constitute a quorum. A majority vote is required to initiate an investigation, and a super-majority vote is required to determine commission's findings of violations¹². For subpoena authority a majority vote of commission members is required to issue subpoenas, requiring a supermajority to determine the commission's findings.

Colorado's Independent Ethics Commission must consist of five members. The individuals appointed are split between the executive and legislative branches. Members of the commission shall be appointed in the following manner and order: one member by the Colorado Senate, one by the Colorado House of Representatives, one by the governor of Colorado, one by the chief justice of the Colorado Supreme Court, and one by either a local government official or employee, appointed by the affirmative vote of at least three of the four members. Three members constitute a quorum, and a majority of that quorum is required to determine the commission's findings. Additionally, the commission has the authority to issue subpoenas for witnesses, testimony, and records related to the matter. A tiered threshold for issuing subpoenas is set: a subsequent approval of four members is required to issue a subpoena, which can be initiated by a motion from one member.¹³

Alabama was aforementioned as a state that has no composition requirement, but Alabama also uniquely has a tiered structure without a compositional requirement. As mentioned previously, Commission is composed of five members.¹⁴The commission must include one Black citizen, one Alabama licensed attorney, and one former elected public official. A quorum consists of

¹² Conn. Gen. Stat. § 1-93(b).

¹³ Colo. Rev. Stat § 24-18.5-101 (2024).

¹⁴ Ala. Code § 36-25-3(a)

three members; the commission may then initiate an investigation upon written consent of a supermajority (four members). Although, a majority vote (three members) is required to issue a finding regarding the violation.¹⁵

Arkansas also falls within this specific non requirement of political composition but has a tiered voting for specific actions. Partial political party balance is not a bipartisan requirement of all the members of the commission, instead the requirements are that one commission member must represent a minority party. Commission membership must include at least one woman and one individual of a minority race. and one individual of a minority party. The commission must be composed of five members. A majority of total members (three) constitutes a quorum. An affirmative vote of at least three members of the commission who are present is required to impose sanctions.¹⁶ A majority vote of the commission's total membership is required to take official action.

These tiered systems reflect legislative judgments that actions involving investigative authority, sanctions, or formal findings of violations should require broader institutional agreement than routine administrative decisions.

Statutory Delegation of Voting Procedures

One state takes a different approach by establishing the commission's authority in statute while delegating internal governance procedures to commission rulemaking. Washington provides an example of this structure. The statute governing the Executive Ethics Board authorizes the board to adopt rules and policies governing the conduct of its business, including internal procedural rules.¹⁷

Board Composition, Appointment, and Voting Structure

The comparison of models in the report highlights how voting design is closely linked to the structure of the commission itself. Across different states, ethics commission statutes usually specify the number of commissioners, who appoint them, eligibility criteria, and often set limits on the number of members affiliated with a political party. Many states rely on these structural features to promote independence and fairness, rather than requiring agreement from a specific political party when voting. Achieving political balance often involves setting limits on same-party memberships or creating appointment processes that distribute power across various branches of government.

This approach is especially relevant when comparing other states ethics commission to New Mexico state ethic commission. In many states, bipartisan balance is structured into the composition of the commission itself, rather than conditioning both quorum and action on

¹⁵ Ala. Code § 36-25-4(d). 32 See Ala. Code § 36-25-27(c)

¹⁶ Ark. Code Ann. § 7-6-217(c). See Ark. Code Ann. § 7-6-217(a)(1). See Ark. Code Ann. § 7-6-217(d)(2)(A). Ark. Code Ann. § 7-6-217(d)(2)(B). See Ark. Code Ann. § 7-6-217(d)(2)(C).

¹⁷ Wash. Rev. Code § 42.52.360.

bipartisan concurrence. States such as California, Colorado, Maryland, Minnesota, and Ohio incorporate different methods to ensure membership balance, but generally, once a quorum is present, the commission can carry out its decisions through majority-rule voting.

Policy Rationales Reflected in Statutory Design

Although most state ethics commission statutes do not include explicit legislative findings explaining their voting structures, the statutory designs reflect several recurring policy considerations.

Majority-rule systems combined with composition requirements are intended to promote legitimacy and public confidence by preventing control of the commission by a single political party. By limiting same-party membership or distributing appointment authority among multiple officials, these statutes create institutional structures designed to support balanced decision-making.

Tiered voting structures reflect a different policy judgment: that certain categories of commission action warrant additional procedural safeguards. Legislatures often distinguish between routine administrative decisions and actions involving investigative authority or formal enforcement findings. Higher voting thresholds help ensure broader institutional support for decisions with significant legal or reputational consequences.

Appointment structures themselves also serve as independence safeguards. Many statutes distribute appointment authority among executive and legislative officials while imposing eligibility restrictions on commissioners. These provisions reflect legislative efforts to promote fairness, reduce the appearance of partisan control, and strengthen public confidence in the integrity of commission decisions. Within this broader statutory landscape, New Mexico's decision-making structure is distinctive because it conditions the validity of commission actions on bipartisan concurrence rather than relying solely on commission composition to ensure political balance.

In many states, political diversity is achieved through commission membership and appointment structures while decisions themselves are determined through majority voting. Under those systems, each commissioner's vote carries equal potential to determine the outcome of a decision. New Mexico's statute incorporates both structural political balance and bipartisan concurrence requirements. Commission membership is evenly divided between the two largest political parties, and commission action requires concurrence from members affiliated with those parties. Because of this requirement, the vote of the commissioner unaffiliated with either major party cannot substitute for the statutory requirement that members from each major party concur.

Implementation

In forty jurisdictions, ethics commissions were established solely by statute, which are indicated in Table 1. The state of New Mexico is one of the ten states where the ethics commission was established solely by the state constitution. The State Ethics Commission Act establishes the State Ethics Commission as an independent state agency under New Mexico law, which outlines the powers duties, voting procedures and requirements, specifically in section, [N.M. Stat. Ann. § 10-16G-3\(H\)](#), where it indicates the specific membership attendance of members of the largest political party and second largest political party to constitute a quorum. In order to change or amend the quorum requirements for the transaction of business, to not limit the requirement of attendance in correlation with political parties, a legislative initiative must be introduced by either chamber during the state legislative session, the House of Representatives or Senate, and the legislative initiative must pass both chambers of the legislature. Once passed by both chambers in the legislature, the governor can choose to sign or veto it the legislative initiative.

Table 1: Jurisdictions in which the commission was established solely by statute.

Alabama	Illinois	Michigan	New Jersey	South Dakota
Alaska	Indiana	Minnesota	New York	Tennessee
California	Iowa	Mississippi	North Carolina	Utah
Connecticut	Kansas	Missouri	Ohio	Vermont
Delaware	Kentucky	Montana	Oregon	Virginia
District of Columbia	Maine	Nebraska	Pennsylvania	Washington
Georgia	Maryland	Nevada	Puerto Rico	West Virginia
Guam	Massachusetts	New Hampshire	South Carolina	Wisconsin

Table 2: Jurisdictions in which the commission was established by state constitution.

Arkansas	New Mexico
Colorado	North Dakota
Florida	Oklahoma
Hawaii	Rhode Island
Louisiana	Texas

Appendix A.

State	Non-legislative ethics commission / closest statewide ethics body	Majority Rule, w/o specific composition requirement, Majority-rule with specific Composition requirement/ Tiered	Quorum (statute)	Commission Structure & Appointing Authority
Alabama	Alabama State Ethics Commission	Majority No composition requirements. A tiered voting for investigation initiation.	Ala. Code § 36-25-3	5 members of the commission. Members appointed by the governor, speaker and either the lieutenant governor or the presiding officer of the Senate. Members must always include one Black member, one licensed attorney and one former elected official who served at least two terms.
Alaska	Alaska Public offices Commission	Majority vote with compositional authority ² from each political party, and the fifth members chosen by the four members appointed by the governor,	See Alaska Stat. § 15.13.020(e)(1) 39 See Alaska Stat. § 15.13.020(e)(2) Alaska Stat. § 15.13.020(b). 42 See Alaska Stat. § 15.13.020(e)(3). 43 See Alaska Stat. § 15.13.020(a). 44 See Alaska Stat. § 15.13.045(a)	The commission is composed of 5 members, where 3 shall constitute a quorum. he governor shall appoint two members of each of the two political parties or political groups with the largest number of registered voters at the time of the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties or groups shall be chosen from a list of four names to be submitted by the central committee of each

				<p>party or group. The four members selected under (b) of this section shall, by a majority vote, nominate to the governor an individual to serve as the fifth member of the commission. The governor shall either appoint the nominee to the commission or shall reject the nominee and request those four members to nominate another individual to serve as the fifth member of the commission.</p>
Arkansas	Arkansas Ethics Commission	<p>Majority-vote with no political composition requirements, specific tiered vote for imposing sanctions.. Majority of 3 of the 5 members constitutes a quorum. Majority vote of the commission's total membership is required to take official action. An affirmative vote of at least three members of the commission who are present is required to impose sanctions.</p>	Ark. Code § 7-6-217	<p>5 members:</p> <ul style="list-style-type: none"> One member appointed by the governor. One member appointed by the attorney general. One member appointed by the lieutenant governor. One member appointed by the speaker. One member appointed by the president pro tem. <p>In making appointments to the commission, the appointing officials shall ensure that at least one (1) member of a minority race, one (1) woman, and one (1) member of the minority political party, as defined in § 7-1-101,</p>

				serves on the commission.
California	Fair Political Practices Commission	Majority rule with Composition requirements.	<p>Political Reform Act (Government Code §§ 81000–91014.</p> <p>Cal. Gov’t Code § 83115.</p> <p>Cal. Gov’t Code § 83101–83102.</p> <p>Cal. Gov’t Code § 83105.</p> <p>Cal. Gov’t Code § 83100.</p> <p>Cal. Gov’t Code § 83105.</p> <p>Cal. Gov’t Code § 83100.</p> <p>Cal. Gov’t Code § 83105.</p> <p>Cal. Gov’t Code § 83100.</p> <p>Cal. Gov’t Code § 83104.</p> <p>Cal. Code Regs. tit. 2, § 18327.</p> <p>Cal. Gov’t Code § 83118</p>	<p>5 members:</p> <p>Chair and one member appointed by the governor and must be members of different parties.</p> <p>One member appointed by the attorney general.</p> <p>One member appointed by the secretary of state.</p> <p>One member appointed by the controller.</p> <p>No more than three members may be of same political party.</p>
Colorado	Independent Ethics Commission	Majority with compositional requirements. Tiered voting (subpoena).	<p>C.R.S. § 24-18.5-101.</p> <p>See Colo. Const. Art. XXIX, § 5(3). 75 See Colo. Const. Art. XXIX, § 5(2).</p> <p>See Colo. Rev. Stat. § 24-18.5-101(b). See Colo.</p>	<p>5 members:</p> <p>One member appointed by the Senate.</p> <p>One member appointed by the House.</p> <p>One member appointed by the governor.</p> <p>One member appointed by the chief justice.</p>

			<p>Const. Art. XXIX, § 5(2)(a)(V).</p> <p>See Colo. Const. Art. XXIX, § 5(2)(b). 79 See Colo. Const. Art. XXIX, § 5(1).</p> <p>See Colo. IEC Rules 2(A)(22). See Colo. IEC Rules 7(L)(3).</p> <p>See Colo. Rev. Stat. § 24-18.5-101(8).</p>	<p>One member who is a local govt official or employee appointed by a vote of three of the four other members.</p> <p>No more than two may be affiliated with same party. All must be registered voters.</p>
<p>Connecticut Created in 2005</p>	<p>Citizen’s Ethics Advisory Board</p>	<p>majority action with compositional requirements.</p>	<p>Conn. Gen. Stat. § 1-80</p> <p>Conn. Gen. Stat. § 1-82(a)(2).</p>	<p>9 members:</p> <p>One member appointed by the speaker.</p> <p>One member appointed by the president pro tem.</p> <p>One member was appointed by the Senate majority leader.</p> <p>One member appointed by the Senate minority leader.</p> <p>One member appointed by the House majority leader.</p> <p>One member appointed by the House minority leader.</p> <p>Three members appointed by the governor.</p> <p>No more than five members may be affiliated with the same party. All must be registered voters. May</p>

				not hold a campaign, have held office with in the last three years or be a lobbyist.
Delaware	Public Integrity Commission	Majority rule with Compositional Requirements.	Del. Code tit. 29, ch. 58, subch. I. Del. Code Ann. tit. 29 § 5808(b). Del. Code Ann. tit. 29 § 5808(d)	7 members: Members appointed by the governor. No more than four may be affiliated with same party. No member may be in an elected or appointed office.
Florida	Commission on Ethics	Majority rule with composition requirements.	Fla. Stat. §§ 112.321, 112.324 Fla. Stat. § 112.321(1)	9 members: Five members appointed by the governor. No more than three of them may be from the same party. Two members from different parties appointed by the speaker. Two members from different parties appointed by the Senate president. Political party balance among commission members is required; No more than five of the members may be of the same pollical party. No member may be a public employee or lobbyist.

Georgia	State Ethics Commission	Majority Rule with Composition Authority	<p>O.C.G.A. § 21-5-4</p> <p>Ga. Code Ann. §§ 21-5-4(d)(1), 21-5-4(d)(2).</p> <p>Ga. Code Ann. § 21-5-4(d)(3). 140</p> <p>See Ga. Code Ann. § 21-5-4(b)</p>	<p>5 members:</p> <p>Three members appointed by the governor. No more than two may be from same political party.</p> <p>One member appointed by the senate committee on assignments.</p> <p>One member appointed by the speaker.</p> <p>Members must be residents of the state. No member may have run or held office within five years prior to appointment.</p>
Guam	Guam Ethics Commission	Majority rule no composition requirements.	<p>Guam Code Ann. § 15301(a).</p> <p>Guam Code Ann. § 15301(b).</p> <p>Guam Code Ann. § 15301(a).</p> <p>Guam Code Ann. § 15408.</p> <p>Guam Code Ann. § 15301(a).</p> <p>Guam Code Ann. § 15401(a)(4).</p> <p>Guam Code Ann. § 15401(b).</p> <p>Guam Code Ann. § 15401(e).</p> <p>Guam Code Ann. § 15401(a)(4)</p>	<p>The commission must be composed of seven members.</p> <p>A vote of five or more members is required to initiate an investigation</p> <p>The executive branch appoints all commission members.</p> <p>Appointments require confirmation by the legislative branch</p>
Hawaii	State Ethics Commission	Majority vote, three of five members	dHRS § 10-8	5 members:

	(board default rule applies unless overridden)	needed. No political composition requirements.	Haw. Rev. Stat. § 84-21(a).	Members appointed by the governor from a panel of 10 people chosen by the judicial council. Members must be a U.S. citizen and a resident of the state. Members may not hold public office.
Illinois	Illinois Executive Ethics Commission	Majority vote with composition requirements.	<p>Ill. Comp. Stat. Ann. §§ 430/20-5(f)(1), 430/20-5(c)(iv), 430/20-5(3).</p> <p>Ill. Comp. Stat. Ann. § 430/20-5(c)(ii).</p> <p>Ill. Comp. Stat. Ann. § 430/20-5(c)(i).</p> <p>Ill. Comp. Stat. Ann. § 430/20-5(b).</p> <p>Ill. Comp. Stat. Ann. § 430/20-5(4).</p> <p>Ill. Comp. Stat. Ann. § 430/20-5(b).</p> <p>Ill. Comp. Stat. Ann. § 430/20-5(e)</p>	<p>The commission is composed of nine members, a quorum consists of five members.</p> <p>he Executive Ethics Commission shall consist of 9 commissioners. The Governor shall appoint 5 commissioners, and the Attorney General, Secretary of State, Comptroller, and Treasurer shall each appoint one commissioner. Appointments shall be made by and with the advice and consent of the Senate by three-fifths of the elected members concurring by record vote. Any nomination not acted upon by the Senate within 60 session days of the receipt thereof shall be deemed to have received the advice</p>

				and consent of the Senate.
Indiana	Indiana State Ethics Commission.	Majority vote with political composition requirements.	Code Ann. § 4-2-6-2(c). 201 . Code Ann. § 4-2-6-2(b). 202 Code Ann. § 4-2-6-4(a)(1). 203 Code Ann. § 4-2-6-4(a)(3)	The members are appointed by the governor, no more than three members may be from the same political party. Procedure The commission must be composed of five members. An affirmative vote of four members is required to refer potential violations to the Inspector General for investigation. A majority vote is required to determine the commission's findings.
Iowa	Iowa Ethics & Campaign Disclosure Board	Majority vote with political composition requirements.	Iowa Code § 68B.32(1) Iowa Admin. Code §§ 351-1.4(4), 351-1.4(7), 351-1.4(6), 351-1.4(8) Iowa Admin. Code § 351-1.4(1), § 351-1.4(3). Iowa Code §§ 68B.32(1), 69.16 Iowa Code § 68B.32(1) Iowa Admin. Code § 351-1.1(4)	6 members, all appointed by the governor. A quorum consists of four members, an affirmative vote of four members is required for a motion to pass. No more than four members may be of the same political party.

Kansas	Governmental Ethics Commission	Tiered (subpoenas require 3/4)	Kan. Stat. Ann. § 25-4119a	<p>9 members:</p> <p>Two members from different parties appointed by the governor.</p> <p>One member appointed by the president of the Senate.</p> <p>One member appointed by the speaker.</p> <p>One member appointed by the minority leader of the House.</p> <p>One member appointed by the minority leader of the Senate.</p> <p>One member appointed by the chief justice of the Supreme Court.</p> <p>One member appointed by the attorney general.</p> <p>One member appointed by the secretary of state.</p> <p>Not more than five members of the commission shall be members of the same political party and the two members appointed by the governor shall not be members of the same political party.</p>
Kentucky	Executive Branch Ethics Commission	Majority vote without political Composition Requirements.)	KY Rev Stat § 11A.060 (2025) Ky. Rev. Stat. Ann. § 11A.090	7 members, A quorum consists of four or more members:

			<p>Ky. Rev. Stat. Ann. § 11A.060(8).</p>	<p>Two members appointed by the Governor.</p> <p>One member appointed by the Treasurer.</p> <p>One member appointed by the Auditor of Public Accounts.</p> <p>One member appointed by the Commissioner of Agriculture.</p> <p>One member appointed by the Secretary of State.</p> <p>One member appointed by the Attorney General.</p> <p>Members must be registered voters of the state.</p>
Louisiana	Board of Ethics	Tiered voting(11 members, quorum consists of 6 members, 2/3rd needed to initiate an investigation.	<p>La. Stat. Ann. §§ 42:1132(B)(4)(a), 42:1132(B)(4)(c).</p> <p>La. Stat. Ann. § 42:1132(B)(4)(d).</p> <p>La. Stat. Ann. § 42:1132(B)(4)(e)</p> <p>La. Stat. Ann. § 42:1132(B)(1). 254 See La. Stat. Ann. § 42:1133(A).</p> <p>La. Stat. Ann. § 42:1141(B).</p> <p>La. Stat. Ann. § 42:1141(A)(2).</p>	<p>The commission must be composed of eleven members. A quorum consists of six members</p> <p>At least one member shall be appointed from each congressional district. At least three members appointed by the Governor shall be licensed attorneys. Commission members may not have served as public officials/candidates or public employees within six months prior to their</p>

				<p>appointment. Commission members may not have engaged in lobbying activities within two years prior to their appointment. Commission members are prohibited from engaging in political party activity.</p>
Maine	Commission on Governmental Ethics & Election Practices	Majority vote with composition requirements.	Me. Rev. Stat. Ann. tit. 1, § 1002	<p>5 members: Members appointed by the governor from lists prepared by the senate and house caucus leaders.</p> <p>No more than two members may be of the same party. A member may not be a current or former member of the legislature or a candidate for office within 2 years prior to appointment.</p>
Maryland	State Ethics Commission	Majority vote without composition requirements.	<p>Md. Code, Gen. Prov. § 5-204</p> <p>Md. Code Ann., Gen. Provisions § 5-202(a)(2).</p> <p>Md. Code Ann., Gen. Provisions §§ 5-202(b)(1), 5-202(b)(1)(iv), 5-202(b)(2).</p> <p>Md. Code Ann., Gen. Provisions § 5-202(a)(2)(i).</p>	<p>5 members:</p> <p>Three members appointed by the governor, at least one of whom shall be a member of the principal political party of which the governor is not a member.</p> <p>One member appointed by the president of the Senate.</p>

			Md. Code Ann., Gen. Provisions § 5-202(a)(1)	One member appointed by the speaker of the House. A member may not be a lobbyist or an elected or appointed official.
Massachusetts	Massachusetts State Ethics Commission.	Majority-vote Composition Requirements. No more than three members shall be from the same political party.	<p>Mass. Gen. Laws Ann. ch. 268B, § 2</p> <p>Mass. Gen. Laws ch. 268B, § 2.</p> <p>Mass. Gen. Laws ch. 268B, § 2(b).</p> <p>Mass. Gen. Laws ch. 268B, § 2(f)(2).</p> <p>Mass. Gen. Laws ch. 268B, § 2(f)(1)</p> <p>Mass. Gen. Laws ch. 268B, § 2(a).</p> <p>Mass. Gen. Laws ch. 268B, § 2(f)(3).</p> <p>Mass. Gen. Laws ch. 268B, § 2(a).</p> <p>Mass. Gen. Laws ch. 268B, § 2(j).</p> <p>Mass. Gen. Laws ch. 268B, § 4(c)</p>	<p>5 members:</p> <p>Three members appointed by the governor. At least two members must be of different political parties.</p> <p>One member appointed by the state secretary.</p> <p>One member appointed by the attorney general.</p> <p>No member shall be a candidate or hold public office within one year prior to appointment.</p>
Michigan	(State ethics commission structure; action vote floor)	Majority vote, composition requirements.	<p>Mich. Comp. Laws § 15.344</p> <p>Mich. Comp. Laws §§ 15.341, 15.343.</p> <p>Mich. Comp. Laws § 15.344(1).</p>	<p>7 members:</p> <p>Members appointed by the governor.</p> <p>Not more than four members of the board shall be members of the same political party.</p> <p>Members must be a resident of the state and</p>

			<p>Mich. Comp. Laws § 15.344(3)</p> <p>Mich. Comp. Laws § 15.345(4).</p> <p>Mich. Comp. Laws §§ 15.345(1)(e), 15.346.</p> <p>Mich. Comp. Laws § 15.343.</p>	not associated with any public employment.
Minnesota	Campaign Finance & Public Disclosure Board	Majority vote, political party composition required.	<p>Minn. Stat. § 10A.02</p> <p>Minn. Stat. § 10A.02.</p> <p>Minn. Stat. § 10A.03.</p> <p>Minn. Stat. § 10A.02(1).</p> <p>Minn. Stat. §§ 10A.02(7), 10A.02(1).</p> <p>Minn. Stat. § 10A.02(1).</p>	<p>6 members: Members appointed by the governor.</p> <p>Two members must be former members of the legislature who support different political parties. Two members have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the date of their appointment. The other two members must support different political parties. No more than three of the members of the board may support the same political party. No member of the board may currently serve as a lobbyist.</p> <p>Affirmative vote of four members required to determine the commissions findings.</p>

Mississippi	Ethics Commission	Majority rule no composition requirements.	<p>Miss. Code Ann. § 25-4-5(1).</p> <p>Miss. Code Ann. § 25-4-11(1).</p> <p>Miss. Code Ann. § 25-4-19(c).</p> <p>Miss. Code Ann. §§ 25-4-19(a)(ii), 25-4-29(2), 25-4-109</p>	<p>8 members, 5 members constitute a quorum. :</p> <p>Two members appointed by the governor,</p> <p>Two members appointed by the lieutenant governor.</p> <p>Two members appointed by the Speaker.</p> <p>Two members appointed by the chief justice.</p> <p>Not more than one person appointed by each appointing requirements shall be an elected official. Each member shall be a qualified elector of the state and be of good moral character and integrity.</p>
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Missouri	Ethics Commission	Majority vote with composition requirements.	<p>Mo. Rev. Stat. § 105.955.</p> <p>Mo. Rev. Stat. § 105.955(1).</p> <p>Mo. Rev. Stat. § 105.955(3).</p> <p>. Rev. Stat. §§ 105.955(7), 105.955(9)(1), 105.955(9)(4), 105.955(9)(2).</p> <p>Mo. Rev. Stat. § 105.955(9)(5)-(6).</p> <p>Mo. Rev. Stat. § 105.955(1).</p> <p>Mo. Rev. Stat. § 105.955(6)</p>	<p>6 members, a quorum consists of four members., affirmative vote of four members required for the commission to take action.: Members appointed by the governor.</p> <p>Each congressional district committee of the political parties having the two highest number of votes cast for their candidate for governor at the last gubernatorial election shall submit two names of eligible nominees for membership on the commission to the governor, and the governor shall select six members from such nominees to serve on the commission. No more than three members of the commission shall be members of the same political party, nor shall more than one member be from any one U.S. congressional district. A person must be a citizen and a resident of the state and shall have been a registered voter in the state for a period of at least five years preceding the person's appointment.</p>
Montana	Commissioner of Political Practices	Non-commission enforcement model	Mont. Code Ann. §§ 13-37-102, 13-37-103	One commissioner: Appointed by the governor from a list

	(single-officer model)			provided by the legislature.
Nebraska	Accountability & Disclosure Commission	Majority vote with composition requirements.	<p>Neb. Rev. Stat. §§ 49-14,105, 49-14,111</p> <p>Neb. Rev. Stat. § 49-1483.02.</p> <p>Neb. Rev. Stat. § 49-14,105</p> <p>Neb. Rev. Stat. § 49-14,105(1).</p> <p>Neb. Rev. Stat. § 49-14,105(2).</p> <p>Neb. Rev. Stat. § 49-14,110.</p> <p>Neb. Rev. Stat. § 49-14,114. 368</p> <p>Rev. Stat. § 49-14,106.</p> <p>Neb. Rev. Stat. § 49-14,105.</p> <p>Neb. Rev. Stat. § 49-14,118.</p>	<p>9 members, a quorum consists of five members, five members is required for the commission to take official action or impose sanctions. : our members appointed by the governor. One member from lists provided by the legislature and two members from the citizenry at large.</p> <p>The secretary of state is a member.</p> <p>Four members appointed by the secretary of state. One member from each list proved by the Democrat and Republican state chairs and two members from the citizenry at large.</p> <p>No more than three members may be from the same congressional district.</p>

<p>Nevada</p>	<p>Commission on Ethics</p>	<p>Majority vote with composition requirements.</p>	<p>Nev. Rev. Stat. § 281A.280.</p> <p>Nev. Rev. Stat §§ 281A.200(2), 281A.200(3).</p> <p>Nev. Rev. Stat. §§ 281A.200(5)(a), 281A.200(5)(b).</p> <p>Nev. Rev. Stat. § 281A.200(4).</p> <p>Nev. Rev. Stat. § 281A.200(5)(b)</p> <p>Nev. Rev. Stat. § 281A.200(1).</p> <p>Nev. Rev. Stat. § 281A.300(2)</p>	<p>8 members:</p> <p>Four members appointed by the legislative commission.</p> <p>Four members appointed by the governor.</p> <p>Each appointing body shall select residents of the state, at least two of which are former public officers or employees and at least one who is a licensed attorney in the state.</p> <p>Not more than four members may be of the same political party.</p> <p>None may hold public office or work on a campaign.</p>
<p>New Hampshire</p>	<p>Executive branch Ethics Committee</p>	<p>Majority vote, tiered vote with composition requirements.</p>	<p>N.H. Rev. Stat. Ann. § 21-G:29(II).</p> <p>N.H. Rev. Stat. Ann. § 21-G:29(III).</p> <p>N.H. Rev. Stat. Ann. § 21-G:29(V).</p> <p>N.H. Rev. Stat. Ann. § 21-G:29(III)(a).</p> <p>N.H. Rev. Stat. Ann. § 21-G:29(III)(b).</p> <p>N.H. Rev. Stat. Ann. § 21-G:29(III)(c).</p>	<p>Political party balance among commission members is required:</p> <p>Of the three members nominated by the Governor, one of whom shall be a member of the Democratic party, one of whom shall be a member of the Republican party, and one of whom shall have no political party affiliation. Of the two members nominated by the Secretary of State, one of whom shall be a member of the Democratic party and one of whom shall be a member of the Republican party. Of</p>

			<p>N.H. Rev. Stat. Ann. § 21-G:29(VI)</p> <p>N.H. Rev. Stat. Ann. § 21-G:29(III).</p> <p>N.H. Rev. Stat. Ann. § 21-G:30(II)</p>	<p>the two members nominated by the treasurer, one of whom shall be a member of the Democratic party and one of whom shall be a member of the Republican party. Commission members are prohibited from engaging in partisan political activity The commission must be composed of 7 members. A quorum consists of 4 members. An affirmative vote of at least 4 members is required for the commission to take official action. A unanimous vote of all members present is required to dismiss a complaint.</p>
New Jersey	State Ethics Commission	Majority vote with composition requirements.	<p>N.J. Rev. Stat. § 52:13D-21</p> <p>N.J. Stat. Ann. § 52:13D-21(f)</p> <p>N.J. Stat. Ann. § 52:13D-21(h).</p> <p>N.J. Stat. Ann. § 52:13D-21(b).</p> <p>N.J. Stat. Ann. § 52:13D-21(f).</p> <p>N.J. Stat. Ann. § 52:13D-21(i).</p>	<p>7 members, a quorum consists of majority members,</p> <p>Three members appointed by the governor among state officers and employees serving in the executive branch.</p> <p>Four appointed by the governor among public members, not more than two of whom shall be of the same political party.</p>
New York	Commission on Ethics & Lobbying in Government	Majority rule without composition requirements.	<p>N.Y. Exec. Law § 94(1)(a).</p> <p>N.Y. Exec. Law § 94(3)(a). N.Y.</p>	<p>11 members:, 7 shall constitute a quorum. to be nominated by the selection members as follows: three members</p>

			<p>Exec. Law § 94(3)(b).</p> <p>N.Y. Exec. Law §§ 94(3)(e)(ii), 94(3)(e)(iii), 94(3)(e)(i).</p> <p>N.Y. Exec. Law § 94(4)(e).</p> <p>N.Y. Exec. Law § 94(3)(a).</p> <p>N.Y. Exec. Law § 94(4)(h).</p>	<p>by the governor; two members by the temporary president of the senate; one member by the minority leader of the senate; two members by the speaker of the assembly; one member by the minority leader of the assembly; one member by the attorney general; and one member by the comptroller.</p>
Ohio	Ohio Ethics Commission	Majority vote with composition requirements.	<p>Ohio Rev. Code Ann. § 102.06(D).</p> <p>Ohio Rev. Code Ann. § 102.06(C)(1)(a).</p> <p>Ohio Rev. Code Ann. § 102.08</p>	<p>6 members, majority of members, 4, constitute a quorum.:</p> <p>Members appointed by the governor.</p> <p>Members shall consist of three from each major political party. No member may be a public officer, legislative agent or a lobbyist.</p>
Oklahoma	Oklahoma Ethics Commission	Majority vote with composition requirements.	<p>Okla. Const. Art. 29, § 1(A).</p> <p>Okla. Ethics Commission, Annotated Ethics Rules, Rule 1.5 (2019).</p> <p>Okla. Const. Art. 29, § 1(B). 497 Id.</p> <p>Okla. Const. Art. 29, § 1(A).</p> <p>Okla. Const. Art. 29, § 1(G).</p>	<p>5 members, with majority to constitute a quorum:</p> <p>One member appointed by the governor.</p> <p>One member appointed by the attorney general.</p> <p>One member appointed by the president pro tempore of the Senate.</p> <p>One member appointed by the speaker.</p> <p>One member appointed by the chief justice.</p>

			Okla. Const. Art. 29, § 4	No more than three members may have the same political registration. All members must be registered voters. No congressional district may be represented by more than one member.
Oregon	Government Ethics Commission	Majority + party affiliation composition requirements	Or. Rev. Stat. § 244.250	9 members: One member appointed by the governor. Eight members appointed by the governor from recommendations by the democratic and republican leadership of each chamber. No more than three members may be of the same political party. A member may not hold public office.
Pennsylvania	State Ethics Commission	Tiered (violation finding after hearing requires elevated concurrence)	Pa. Stat. tit. 65, § 1106	7 members: Three members appointed by the governor. No more than two may be of the same political party. One member appointed by the president pro tempore of the Senate. One member appointed by the minority leader of the Senate. One member appointed by the speaker.

				<p>One member appointed by the minority leader of the House.</p> <p>No member may have served as an officer in a political party one year prior to appointment. No member may hold or campaign for public office, hold office in any political party or political committee, lobby or be a public employee.</p>
Rhode Island	Ethics Commission	Tiered Majority + party affiliation composition requirements	R.I. Gen. Laws §§ 36-14-8, 36-14-13	<p>9 members:</p> <p>Four members appointed by the governor.</p> <p>Five members appointed by the governor selecting one member from each list provided by the president of the Senate, minority leader of the Senate, speaker, majority leader of the House and the minority leader of the House.</p> <p>No member may hold or campaign for public office, hold office in any political party or political committee, lobby or held elective public office or have been a candidate for elective public office for a one-year period prior to appointment. No member may have any equity interest or ownership interest in, or be employed by, a</p>

				business entity that derives any of its revenue or income by engaging in lobbying.
South Carolina	State Ethics Commission	Majority + party affiliation composition requirements	S.C. Code Ann. § 8-13-310	<p>8 members:</p> <p>Four members appointed by the governor. No more than two may be members of the governor's political party.</p> <p>Two members appointed by the Senate, one upon the recommendation of the members of the majority political party in the Senate and one upon the recommendation of the members of the largest minority political party in the Senate.</p> <p>Two members appointed by the House of Representatives, one upon the recommendation of the members of the majority political party in the House and one upon the recommendation of the members of the largest minority political party in the House.</p> <p>Members may not be legislators, former legislators in the previous eight years have contributed to the governor's campaign in the previous four years</p>

				<p>or a person under the jurisdiction of the ethics commission. A member may not be a family member of a legislator or a statewide elected official.</p> <p>Appointing authorities shall ensure geographic and political balance of appointees.</p>
South Dakota	State Government Accountability Board (closest statewide integrity board)	Majority rule with party affiliation composition requirements	S.D. Codified Laws Ann. §§ 3-24-1, 3-24-2	<p>4 members: Members appointed by the governor.</p> <p>Members must be former or retired circuit court judges or supreme court justices. No more than two members may be of the same political party.</p>
Tennessee	Ethics Commission	Fixed affirmative-vote floor (4 affirmative votes for any action)	Tenn. Code Ann. § 3-6-103	<p>6 members: Two members appointed the governor. One member each from the majority and minority parties.</p> <p>Two members appointed by the speaker of the senate. One selected from each list submitted by the majority and minority caucuses.</p> <p>Two members appointed by the speaker of the house. One selected from each list submitted by the majority and minority caucuses.</p>

				<p>At least one member must be a female member. At least one member must be Black. A Black female member shall not satisfy the requirement of one female member and one Black member. No member may hold public office, be a public employee, be an officer of a political party or lobby. Members must be at least 30 years old, be a registered voter, not be a felon and have resided in the state for at least five years.</p>
Texas	Ethics Commission	Majority- party affiliation composition requirements	Tex. Gov't Code § 571.026	<p>8 members: Members appointed by the governor. Two members must be selected from each list provided by members of the House, members of the Senate, the speaker and the lieutenant governor. Members selected from each list must be from different political parties.</p> <p>Each of the above list of names must include at least 10 names. Members may not be lobbyists.</p>
Utah	Independent Executive Branch Ethics Commission	Tiered (supermajority determination)	Utah Code §§ 63A-14-202 et seq.	<p>5 members: Two members who served as elected officials in state</p>

				<p>government or in a management position in the executive branch no more recently than four years before the date of appointment to the commission. One member who has previously served as a judge or is a licensed attorney in the state who has not served as a judge Two citizen members. Members must be registered to vote in Utah.</p>
Vermont	State Ethics Commission	Majority quorum + majority of those present voting (board default rule)	3 V.S.A. § 132; 3 V.S.A. § 1221	<p>5 members:</p> <p>One member appointed by the Chief Justice of the Supreme Court.</p> <p>One member of the League of Women Voters of Vermont appointed by the League.</p> <p>One member of the Vermont Society of Certified Public Accountants appointed by the society's Board of Directors.</p> <p>One member of the Vermont Bar Association appointed by the bar's Board of Managers.</p> <p>One member of the SHRM (Society for Human Resource Management) Vermont State Council appointed by the</p>

				<p>council's board of directors.</p> <p>Members may not hold or run for office, be employed by the state, be a lobbyist, or hold any office on a political campaign, committee or party.</p>
Virginia	Conflict of Interest & Ethics Advisory Council (closest statewide ethics body)	Majority quorum (vote threshold not embedded in quorum. Nine members in commission.)	Va. Code § 30-355	<p>9 members:</p> <p>Two members from the House of Delegates appointed by the Speaker of the House.</p> <p>One member who is a former judge appointed by the speaker of the House.</p> <p>Two members from the Senate appointed by the Senate Committee on Rules</p> <p>One member who is a former judge appointed by the Senate Committee on Rules.</p> <p>One member who is a current or former executive branch employee appointed by the governor.</p> <p>One member from a list of three nominees submitted by the Virginia Association of Counties appointed by the governor.</p> <p>One member from a list of three nominees submitted by the Virginia Municipal</p>

				<p>League appointed by the governor.</p> <p>Members from the House of Delegates and the Senate must be split equally among the two major parties.</p>
Washington	Executive Ethics Board	Statutory delegation/5 members necessary for quorum, but not specific voting requirements for action from the commission. (statute directs adoption of rules governing business)	RCW 42.52.360	<p>5 members:</p> <p>One member shall be a classified service employee.</p> <p>One member shall be a state officer or state employee in an exempt position.</p> <p>One member shall be a citizen selected from a list of three names submitted by the attorney general.</p> <p>One member shall be a citizen selected from a list of three names submitted by the state auditor.</p> <p>One member shall be a citizen selected at large by the governor.</p> <p>No more than three members may be identified with the same political party.</p>
West Virginia	Ethics Commission	Fixed quorum; no party concurrence. Five of the nine members of the committee constitute a quorum.	§6B-2-1.	<p>9 members:</p> <p>One member who served as a member of the West Virginia Legislature.</p>

				<p>One member who served as an elected or appointed county official.</p> <p>One member who served as an elected or appointed municipal official.</p> <p>One member who served as an elected county school board member.</p> <p>One member from a rural area.</p> <p>Four citizen members.</p> <p>No member may be a candida</p>
Wisconsin	Ethics Commission	Numeric supermajority for action (2/3 for non-procedural action)	2015 Wis. Act 118	<p>6 members:</p> <p>One member appointed by the senate majority leader.</p> <p>One member appointed by the senate minority leader.</p> <p>One member appointed by the Speaker of the assembly.</p> <p>One member appointed by the Assembly minority leader.</p> <p>Two individuals who formerly served as judges for a court of record and picked by the two major political parties.</p> <p>The commission must include a member from each minor political party that received 10%</p>

				of the vote in the most recent gubernatorial race. No member may be a lobbyist, a candidate or hold public office.
Wyoming				

Table 3: Jurisdictions in which a majority vote of the **Total** membership is required for the commission to take official action:

California	Iowa	Michigan
Delaware	Kansas	Minnesota
Illinois	Kentucky	Mississippi
Indiana	Massachusetts	Missouri
New Hampshire	Oregon	Pennsylvania
Tennessee	New Mexico	

Table 4: Jurisdictions in which a supermajority is required to initiate an investigation.

Alabama	New Mexico
Guam	South Carolina
Louisiana	West Virginia

Table 5: Jurisdictions in which a supermajority is required to determine the commission's findings.

Connecticut	South Carolina	Utah
Guam	Texas	



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2026-02

April 17, 2026¹

Agency Considerations in Amending a Contract under the Governmental Conduct Act

QUESTION PRESENTED²

The Commission received a request from a state agency which entered into a small purchase contract for professional services with a contractor whose spouse subsequently became an employee of another state agency. The requesting state agency explained it is in the process of amending the contract as to the contract's scope and compensation terms. As part of the amendment process, the State Purchasing Division of the General Services Department requires an Agency

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 12, 2026, 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 Baker and Bluestone requested that advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC. "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

Certification Form and Affidavit. The Affidavit requires the contractor verify that the contract was not awarded via a sole source or small purchase procurement method, which the vendor is unwilling to sign because the original contract was procured under a small purchase procurement method.

The request seeks guidance on whether Section 10-16-7(A) of the Government Conduct Act applies to the contract amendment given that the contractor's spouse was not a public employee until after the original contract was signed.³

ANSWER

By amending the contract to include compensation for additional work, the agency is affirmatively entering into an agreement for the provision of services with the family of a public employee. Consequently, Section 10-16-7(A) of the Governmental Conduct Act applies to the contract amendment, requiring public notice of the public employee's interest in the contract and the contract must be procured by a competitive process, particularly because the contract was not originally awarded pursuant to a competitive process and there has been no public notice of the public employee's interest.

ANALYSIS

Section 10-16-7(A) of the Governmental Conduct Act addresses contracts between a state agency and a state public employee, family of a state public employee (defined to include spouses), and businesses in which a state public employee or family of a state public employee hold a substantial interest (defined as an ownership interest that is greater than twenty percent).⁴ The Governmental Conduct Act defines a "contract" to "mean[] an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state . . . agency for . . . the rendition of services, including professional services[.]"⁵ Under Section 10-16-7(A), the Governmental Conduct Act prohibits a state agency from "enter[ing] into" such a contract "unless the public officer or employee has disclosed through

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

⁴ § 10-16-2(E), (L).

⁵ § 10-16-2(C).

public notice the public officer’s or employee’s substantial interest and unless the contract is awarded pursuant to a competitive process[.]”⁶ Section 10-16-7 of the Governmental Conduct Act ensures that public purchases are awarded based on merit and value.

Accordingly, where a governmental entity has entered into a contract identifying the specific scope and cost of a project, if the contractor’s family member subsequently becomes an employee of the state and the entity seeks to then change the scope and cost of the project such that it constitutes a “contract” under the Governmental Conduct Act, the agency cannot do so without providing public notice and a competitive process for the additional terms of the purchase. At that point, the agency is “entering into” an agreement for the rendering of additional services for additional funds.

The Commission previously reviewed an analogous question in Advisory Opinion 2021-06, where the Commission determined that an amendment to a sole source contract required the state purchasing agent or the central purchasing office to provide the notice required of an initial sole source contract under Section 13-1-126.1 and 13-1-128.⁷ The Commission opined that “[t]he safeguards of public notice and the right to protest apply not only when a government entity enters a sole source contract but also when it amends a sole source contract.”⁸ The Commission reasoned, “the Code requires public notice of the amended contract so that the public and the potential contractors can scrutinize whether the state purchasing agent’s or central purchasing office’s sole source determination for the original contract remains applicable as to the amended contract.”⁹ Further, “notice for amended contracts prevents unfair gamesmanship in sole source procurement.”¹⁰ The Commission noted that “[b]ecause of the notice requirement,

⁶ NMSA 1978, § 10-16-7(A) (2011). The term “financial interest” includes “an interest held by an individual *or the individual’s family . . .*” § 10-16-2(F) (emphasis added).

⁷ State Ethics Comm’n Adv. Op. No. 2021-06 (Apr. 2, 2021), available at <https://nmonesource.com/nmos/secap/en/18159/1/document.do>.

⁸ *Id.* at 4.

⁹ *Id.* at 5 (footnote omitted).

¹⁰ *Id.*

state agencies may not notice and receive approval for a sole source contract that has a comparatively insignificant compensation term and then, hidden from the scrutiny of the public and competing contractors, amend the contract to considerably increase the scope of work and compensation terms.”¹¹ As the Commission explained:

Nor is public notice of an original sole source contract necessarily sufficient to provide notice of an amended contract, particularly where the amended contract contains a considerably larger compensation term. For example, where state agencies propose to enter sole source procurements, notice of a \$70,000 sole source contract reasonably would not generate the same scrutiny and potential protest of the state purchasing agent’s sole source determination as would notice of a \$7,000,000 contract.¹²

The Commission concluded, “[a]ccordingly, it is fair neither to the public, nor to the state purchasing agent or central purchasing office, for a state agency to receive approval for and notice a sole source contract at a lower compensation term, only then, having received the sole source determination, to turn around and amend the contract to increase the scope and compensation terms considerably.”¹³

Here, by amending the contract, the agency is affirmatively entering into an agreement¹⁴ for the provision of additional services where public notice of the

¹¹ *Id.*

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ See, e.g., *Medina v. Sunstate Realty, Inc.*, 1995-NMSC-002, ¶ 14, 119 N.M. 136 (“The parties to a written contract *may modify that contract by express or implied agreement* as shown by their words and conduct.” (emphasis added)); *A Mountain Professional Construction, LLC v. ARborunda, Inc.*, 2018 WL 3336425, at *6 (D.N.M., 2018) (“A modification occurs when the parties intend to continue the contractual relationship but wish to change one or more of the terms of the contract. In order for a modification to the contract to be effective, there must be ‘mutual assent’ by the parties for the modification. ‘For there to be a mutual assent, the parties must have had the same understanding of the material terms of the agreement.’” (citing NMRA, Civ. UJI 13-817; quoting NMRA, Civ. UJI 13-816)).

financial interest of the public employee's family member in the contract has never been provided, and the contract was not procured through a competitive process. The request provides that the state agency is seeking to "amend[] the contract to add funds based on an increased workload." While the request does not indicate what the additional funds will be or the extent of the increased workload, assuming it meets the one-thousand-dollar threshold,¹⁵ the contract amendment is an agreement with a state agency for the rendition of professional services, and therefore is a contract requiring public notice and a competitive process.

This conclusion contrasts with, for example, a situation where an initial contract met the terms of Section 10-16-7(A) and the state agency enters into a subsequent amendment which is fairly within the scope of the original procurement. In that circumstance, public notice of the public employee's interest has already been provided, and the contract is the result of a competitive process. Or, for example, where a state agency and a contractor are simply fulfilling an already-agreed-upon contract, in which case the parties are not affirmatively entering into an agreement. At its core, the concern here is that the state agency is entering into an agreement for professional services without the public notice and competitive process required under Section 10-16-7(A).

This determination is in keeping with the purposes of Section 10-16-7. Where a public employee's family member holds a preexisting contract with a state agency, the agency should not be able to avoid the requirements of Section 10-16-7(A) by entering into an amended contract with an extended scope and additional compensation. The purpose of Section 10-16-7(A) is to safeguard against public employees using the powers and resources or influence of their public employment to sway the award of a contract in favor of themselves or their family members, and to ensure that contracts between public agencies and their employees and employees' family members are entered into after full disclosure and a merits-based process.

If a state agency subsequently amends a contract with a contractor (to, for example, increase the contractor's compensation, scope, and term) after the contractor's family member becomes an employee of the state without going through the notice and required competitive process, then the public might suspect

¹⁵ See § 10-16-2(C).

self-dealing or insider advantage—a suspicion that works to erode the public’s trust in its public offices. Here, there is no indication in the facts presented that the intention of the proposed amendment is to avoid any requirements or that the public employee’s family member is misusing their position (particularly given that the family member is employed by a separate state agency). Nevertheless, we interpret Section 10-16-7(A) in light of its purpose to guard against self-dealing and insider advantage in the award of state agency contracts, including in circumstances, as here, where there are changes to both the contract and the contractor’s relationship with the state.

CONCLUSION

Under the facts provided, in order to amend the contract to include additional funds and services, Section 10-16-7(A) requires public notice of the public employee’s interest in the contract (including the contract amendment), and the contract (again, including the contract amendment) must be awarded through a competitive process.

SO ISSUED.

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



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2026-03

April 17, 2026¹

Governmental Conduct Act Considerations for Local Public Officials Holding Local Government Contracts

QUESTIONS PRESENTED²

The request presented scenarios related to three different municipal public officials who hold significant financial interests in companies contracting with the municipality and seeks guidance on the applicability of the Governmental Conduct Act.³

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On September 12, 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.

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

First, a new public official on the governing body of a municipality currently holds a subcontract with a contractor to the municipality. The municipality owns a property and currently uses Company A to manage the property. The public official owns Company B which holds a subcontract with Company A to manage the property. Next year the municipality will issue a new request for proposals for the property management contract, and Company B has expressed a desire to submit a proposal.

Second, another new public official on the governing body has a firm which is the only one in the area to provide certain services. The official's firm is used in a vast majority of the contracts with the municipality as well as a vast majority of contractors and general business owners. It is often practice for this public official to speak before the commission to advocate for the company's clients and explain zoning changes. Prior to taking office, the public official frequently participated in municipal committee meetings to work through either the municipality's or client's proposals. The request also asks whether other employees of the firm would be able to present at municipal meetings on behalf of the clients, even though the public official still benefits financially should they succeed.

Third, there is another public official on the governing body who is often a subcontractor on bids for municipal contracts.

The request explains that currently, to comply with the procurement requirements, local requirements, and Governmental Conduct Act requirements, the municipality requires potential contractors bidding on any municipal contract to state in writing whether or not they are using the services of an elected public servant (local ordinance requires financial interests be disclosed in writing), having that public official announce that they have a financial interest in a public meeting, recusing themselves from the decision involving that bid, and using the competitive process for all the municipality's bids. The request asks whether there is anything else the

municipality needs to do to ensure compliance with the Governmental Conduct Act for these three officials.⁴

ANSWERS

1. The first public official's company is permitted to bid for a contract with the municipality under the Governmental Conduct Act, provided the public official's substantial interest is disclosed through public notice, the contract is awarded pursuant to a competitive process, the public official does not take any official acts concerning the contract, and the public official does not participate in the preparation of the criteria for the contract.
2. The second public official is also permitted to contract with the municipality, but similarly must comply with the recusal and disqualification provisions of Section 10-16-4, any contract with the public official must be the product of a competitive process and the commissioner's substantial interest in the contract must be disclosed, and the public official may not both be involved in the creation of the criteria for a certain bid or proposal as well as submit a bid or proposal on the same project. Further, the second public official must be careful not to misuse the powers and resources of public office in any participation before the municipality's governing body or its committees on behalf of the public official's company or clients.

⁴ The request also inquired as to applicable requirements under the Procurement Code. NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023). The New Mexico Procurement Code complements the ethical restrictions contained in the Governmental Conduct Act by barring participation in any procurement in which a public officer or their business has a financial interest. Section 13-1-190 prohibits such participation. The municipality here, however, operates under a home-rule charter and has adopted its own Purchasing Ordinance to govern municipal procurement. "The provisions of the Procurement Code shall not apply to . . . municipalities having adopted home rule charters and having enacted their own purchasing ordinances[.]" NMSA 1978, § 13-1-98(K) (2023). As the Procurement Code does not apply to the municipality and the State Ethics Commission does not have authority over municipal ordinances, we will not address the applicability of that ordinance here, other than to note that it must be followed where applicable.

3. The municipality's current practices to ensure written disclosure by contractor's employing the services of a public officer, public announcement by the public officer of the financial interest at a public meeting, recusal from the decision involving a potential contractor's bid, and adherence to the competitive bid process for all bids incorporate the requirements of the Governmental Conduct Act in addition to being good practices that encourage disclosure, competitive bidding processes, and prudent recusals.

ANALYSIS

I. Relevant law

The Governmental Conduct Act applies to elected officials and employees of state and local government. The Governmental Conduct Act defines "public officer or employee" to "mean[] any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators[.]"⁵ "[L]ocal government agency' means a political subdivision of the state or an agency of a political subdivision of the state[.]"⁶

Section 10-16-4 of the Governmental Conduct Act provides:

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public

⁵ NMSA 1978, § 10-16-2(I) (2011).

⁶ NMSA 1978, § 10-16-2(G), (K).

officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

The Governmental Conduct Act defines a "financial interest" to include "an ownership interest in business or property."⁷ "Official act" includes "an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority."⁸ (defining "official act" as). A "substantial interest" is considered to be "an ownership interest that is greater than twenty percent."⁹

Section 10-16-7(B) of the Governmental Conduct Act includes specific requirements where a local government agency contracts with a public officer or employee:

Unless a public officer or employee has disclosed the public officer's or employee's substantial interest *through public notice and unless a contract is awarded pursuant to a competitive process*, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.¹⁰

⁷ See NMSA 1978, § 10-16-2(F).

⁸ § 10-16-2(H).

⁹ § 10-16-2(L).

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

Other provisions of the Governmental Conduct Act may also be relevant. Section 10-16-6 prohibits a public employee from using or disclosing confidential information acquired by virtue of the employee's position with their public employer for the "employee's or another's private gain."¹¹ Similarly, Section 10-16-13 would prohibit the municipality from "accept[ing] a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section."¹²

II. Application to facts presented in the request

A. Scenario One: Public Official who Owns Company B

The first situation involves a public official who owns Company B, a private business currently subcontracted by Company A, which manages a property owned by the municipality. The municipality's payments to Company A indirectly fund Company B's operations. The public official has indicated that Company B intends to submit a proposal when the municipality reissues the property management contract for bid next year. The public official will have voting privileges related to the contract.

This situation involves two sets of considerations. First, limitations on a public officer's actions related to the existing subcontract. Second, a public officer's bidding on a municipal contract.

The Governmental Conduct Act does not prohibit or impose additional requirements on a public official or employee entering into a subcontract under a primary contract with the local agency for which they are an officer or employee.¹³ Section 10-16-7(B) addresses contracts between a local government agency and an officer of that agency, the officer's family, or a business in which the officer or the

¹¹ NMSA 1978, § 10-16-6 (2011).

¹² NMSA 1978, § 10-16-13 (2011).

¹³ *See, e.g.*, State Ethics Comm'n Adv. Op. 2025-05 (Oct. 10, 2025), available at <https://nmonesource.com/nmos/secap/en/item/19146/index.do> (concluding the same in reviewing Section 10-16-7(A), the comparable provision for contracts between state employees and agencies).

officer's family has a substantial interest. By its text, Section 10-16-7(B) does not extend, however, to a subcontract between a public officer (or the officer's business) and a contractor who holds a primary contract with a local government agency.

This is not to say that a public officer can use a subcontract to skirt the requirements of the Governmental Conduct Act where this Section would otherwise apply (if for example, the public officer or the officer's company has an agreement with the prime contractor under which the public officer will perform all work under the prime contract) or otherwise violate other ethical requirements of the law in the making of such a contract (for example, a *quid pro quo* arrangement with a prime contractor related to the officer's official public duties).¹⁴ But as a general matter, the Governmental Conduct Act does not restrict a public officer from entering into a subcontract for a primary contract with the public agency in which they hold office.

The public official should also be aware, however, should Company A's contract come before the Municipality for renewal, that Section 10-16-4(A) and (B) prohibit a public officer from taking an official act that either directly enhances the officer's financial interest or financial position, and disqualifies a public officer from taking an official act directly affects the public officer's financial interest.¹⁵ If the public official's official act will directly affect a financial interest, the official is disqualified from taking that act. While Section 10-16-4(B) provides an exception where "a public officer . . . shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer . . . is proportionately less than the benefit to the general public[,]"¹⁶ this provision is unlikely to apply where a public officer stands to earn a specific financial benefit compared to a general benefit for the public. Here, for example, if the public official's official act would affect the primary contract with Company A, thereby affecting the financial benefit the official receives under the subcontract (through Company B or otherwise), the public official should recuse from taking that official act.

¹⁴ See NMSA 1978, § 10-16-3(D) (2011) (prohibiting a public employee from taking an official act in exchange for something of value).

¹⁵ § 10-16-4(A), (B).

¹⁶ § 10-16-4(B).

As to the second consideration, that is, whether the official can submit a proposal on the contract, the municipality is permitted to enter into a contract with the public official but can only award such a contract following a competitive process and the public official's substantial interest must be disclosed through public notice.¹⁷ As noted above, a "substantial interest" is an ownership interest of greater than twenty percent (20%). The public official, however, will need to be careful not to violate several Sections of the Governmental Conduct Act. Unlike the subcontract discussed above, Section 10-16-7(B) will apply to any contract between the public official and the municipality. Additionally, the disclosure component of Section 10-16-7(B) is reinforced by Section 10-16-3(C) which requires "[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct."¹⁸

In addition to the considerations discussed above under Section 10-16-4(A) and (B), Section 10-16-4(C) further prohibits a "public officer during the term for which elected . . . [from] acquir[ing] a financial interest when the public officer . . . believes or should have reason to believe that the new financial interest will be directly affected by the officer's . . . official act."¹⁹ Subsection 10-16-4(C) includes an objective query as to whether a public officer, upon acquiring a financial interest, believes "*or should have reason to believe*" that the officer's official act will directly affect their new financial interest.²⁰ In other contexts, New Mexico courts have reviewed the phrase "knew or should have known" to include an objective standard of a "reasonable person" in the same position as the individual in question.²¹ If, for example, the public official is involved in vetting criteria for

¹⁷ § 10-16-7(B).

¹⁸ § 10-16-3(C).

¹⁹ § 10-16-4(C).

²⁰ *Id.* (emphasis added).

²¹ In *State v. Suazo*, 2017-NMSC-011, 390 P.2d 674, for example, the court reviewed the standard for second-degree murder which requires actual knowledge ("knows") and differentiated it from an objective standard ("whether a reasonable person 'should have known'"), explaining that the standard "should have known of the risk of his or her conduct without anything more" is "essentially a civil negligence standard." *Id.* ¶ 39 (quoting also from Leo M. Romero, *Unintentional Homicides Caused by Risk-Creating Conduct: Problems in Distinguishing Between Depraved Mind Murder, Second Degree Murder, Involuntary Manslaughter, and Noncriminal Homicide in New Mexico*, 20 N.M. L. Rev. 55, 65 (1990), for

or approving the contract itself, he would be prohibited from acquiring the contract or would be required to recuse from any official acts a reasonable person would have reason to believe would directly affect the contract. This is further supported by Section 10-16-13, which also prohibits a local government agency from “accept[ing] a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.”²²

Taken together, under the Governmental Conduct Act, the public official’s company is permitted to bid for a contract with the municipality, provided the public official’s substantial interest is disclosed through public notice, the contract is issued pursuant to a competitive process, the public official does not take any official acts concerning the contract, and the public official does not participate in the preparation of the criteria for the contract.

As a final note, the Governmental Conduct Act requires that “[a] public officer or employee shall disclose in writing to the officer’s or employee’s respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local

the proposition that “[t]o say that a person should have known of the risk imposes a negligence standard based on an objective test of what the reasonable person would have known under the circumstances”). *See also First Nat’l Bank v. Diane, Inc.*, 1985-NMCA-025, ¶¶ 18–19, 102 N.M. 548 (determining in a legal malpractice case that whether an “attorney has reason to believe, or should have reason to believe that there could be adverse consequences” to the client and therefore should advise the client of those consequences, is analyzed as to whether, based on the facts in that case, “a lawyer possessing and exercising ordinary skill and capacity would have found it prudent” to so advise the client); *Martinez-Sandoval v. Kirsch*, 1994-NMCA-115, ¶ 21, 118 N.M. 616 (determining the discovery rule for the statute of limitations where the standard is “knew or should have known” begins running when an individual in the same position as the plaintiff, exercising due diligence, would have discovered the conduct forming the basis of a lawsuit). Whether a reasonable person “should have reason to believe” may be supported by circumstantial evidence. *See State v. Elmquist*, 1992-NMCA-119, ¶ 20, 114 N.M. 551 (determining that whether a defendant who shot at a building had “knowledge or reason to believe” a building was occupied may be proved by circumstantial evidence such as time of day, type of building, presence of vehicles, sounds from the building, and lights in the building).

²² NMSA 1978, § 10-16-13 (2011). This is addition to any requirements imposed by the municipality itself. For example, an applicable municipal ordinance requires a public employee with a financial interest in a business contracting with the municipality disclose that financial interest in writing and recuse from voting or participating in the making of such a contract.

government agency.”²³ The statute defines “employment” as “rendering of services for compensation in the form of salary as an employee[.]”²⁴ If the public official is also an “employee” of Company B, the official must also disclose this outside employment in writing to the municipality.

B. Scenario Two: Public Official whose firm contracts with the municipality

The second scenario involves a public official who is on the governing body and who owns a firm that is the only company providing certain services in the county. The firm performs the majority of those services for both municipal departments and private developers, and the owner frequently speaks before a committee of the governing body on behalf of clients. The firm has also expressed interest in continuing to contract with the municipality. As a public official, the individual and their firm are not prohibited from contracting with the municipality, but must abide by certain statutory requirements. First, the public official must comply with the recusal and disqualification provisions of Section 10-16-4 implicating his financial interest, whether through a primary contract or, if applicable, as subcontract. Second, the municipality must require any contract with the public official be the product of a competitive process and the public official’s substantial interest in the contract must be disclosed (both under Section 10-16-7(B) and under 10-16-3(C) where appropriate), and the cautions above concerning any subcontracting work the public official performs should be adhered to. And third, the public official may not be involved both in the creation of the criteria for a certain bid or proposal as well as submit a bid or proposal on the same project. Again, to the extent the public official is an “employee” of the firm, he will need to disclose that in writing to the municipality.

The fact that the owner speaks frequently before the governing body and its committees on behalf of clients raises additional concerns under Section 10-16-3(A) and (C). Section 10-16-3(A) requires a public officer “use the powers and resources of public office only to advance the public interest and not to obtain

²³ NMSA 1978, § 10-16-4.2 (2011). While there is conceivably an argument that this provision does not require disclosure of “service to a state agency or local government agency” such an argument runs counter to the common sense reading of the statute.

²⁴ NMSA 1978, § 10-16-2(D) (2011).

personal benefits or pursue private interests.”²⁵ The public official will need to ensure that he does not misuse the powers and resources of public office in his participation in any committees on behalf of clients. The official can make no threats or insinuations concerning potential repercussions or implications if the committee members do not take certain action related to his company or his clients. And while the public official’s co-workers would not necessarily be precluded from presenting to the municipality or its committees, the public official will need to ensure he is not participating in prohibited official acts related to his financial interests.

C. Scenario Three: Public Official who is a Subcontractor

The final situation involves a public official who is a member of the governing body who also operates a business that occasionally serves as a subcontractor on municipal projects. The request explains the municipality currently addresses potential conflicts by requiring potential contractors provide (1) written disclosure that are employing the services of a public officer, (2) public announcement by the public officer of the financial interest at a public meeting, (3) recusal from the decision involving a potential contractor’s bid, and (4) adherence to the competitive bid process for all bids.

Again, the considerations above would guide the public official’s actions as a public officer. The requirements identified in the request would largely cover the applicable Governmental Conduct Act provisions. Two things of note, the definition of “official act” includes not just decisions, but also any other official “recommendation, approval, disapproval or other action that involves the use of discretionary authority[.]” And again, if the public official’s position in the business is as an employee, that too will need to be disclosed in writing. While each of the identified requirements might not be directly required under the Governmental Conduct Act for a subcontract (see discussion above), they are still good practices and encourage disclosure, competitive bidding processes, and prudent recusals.

CONCLUSION

By enforcing full disclosure, maintaining transparency in procurement, and following the recommendations above, the municipality will ensure compliance

²⁵ § 10-16-3(A).

with the Governmental Conduct Act. Doing so protects both the integrity of municipal decision-making and the public's trust in its elected officials.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFFREY L. BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. CELIA CASTILLO, Commissioner

HON. GARY L. CLINGMAN, Commissioner

HON. DR. TERRY MCMILLAN, Commissioner

DR. JUDY VILLANUEVA, Commissioner



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2026-04

April 17, 2026¹

Holding Dual Roles as a School Board Member and State Employee Under the Governmental Conduct Act

QUESTION PRESENTED²

Under the Governmental Conduct Act,³ may an individual who serves on a local school board and who is also responsible for approving certain financial decisions for the same school board in their role as a state employee hold these dual roles despite a potential conflict of interest?

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

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

ANSWER

Yes, the individual would be allowed to hold the dual roles under the Governmental Conduct Act so long as the individual: (1) recuses from matters in their role as a state employee that would affect the school board to avoid any functional incompatibility between the two positions under state law; (2) discloses to the state agency employer any potential conflicts with the local school board, as well as disclose to the local school board to the extent there is a potential conflict in the individual's dual roles; and (3) fairly and impartially effectuates their duties as both a school board member and as a state employee.

ANALYSIS

I. The Governmental Conduct Act would not prohibit the dual roles.

The Governmental Conduct Act provides guidance on the disclosure and recusal requirements applicable to a public officer or employee where the individual's official acts enhance or directly affect a financial interest.⁴ Section 10-16-4(A) provides that “[i]t is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position.”⁵ Section 10-16-4(B) separately 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 interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.”⁶ A financial interest is defined as “an interest held by an individual or the individual's family that is: (1) an ownership interest in business or property; or (2)

⁴ See State Ethics Comm'n Adv. Op. 2025-02 (June 6, 2025) (concluding that, as a general matter, the Governmental Conduct Act does not prohibit a public employee from having secondary employment).

⁵ NMSA 1978, § 10-16-4(A) (2011).

⁶ NMSA 1978, § 10-16-4(B).

any employment or prospective employment for which negotiations have already begun[.]”⁷

Here, while the individual’s employment with the state agency would constitute a financial interest, the position as a local school board member would not. This poses a unique situation in that the local school board likely could not take any acts that would affect the individual’s state employment; and while the individual’s state employment would allow the individual to take official acts affecting the school board, because the individual does not have a financial interest in the position as a school board member, the disqualification and recusal requirements of Section 10-16-4(A) and (B) would not apply.

The Governmental Conduct Act, however, further provides that “[a] public officer or employee shall treat the . . . public officer’s or employee’s government position as a public trust.”⁸ Additionally, “[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.”⁹ While the Governmental Conduct Act does not define “abuse of office,” the common law informs the meaning of the statutory term.¹⁰ The abuse of office was (and remains) a civil action at common law. It is also known as “malfeasance in office,” “official misconduct,” and the “abuse of the public trust.”¹¹ 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.¹²

⁷ NMSA 1978, § 10-16-2(F) (2011).

⁸ NMSA 1978, § 10-16-3(A) (2011).

⁹ NMSA 1978, § 10-16-3(C).

¹⁰ 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))).

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

¹² 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.

Central among the duties that a fiduciary owes are the duty of care and the duty of loyalty. As a fiduciary, a public officer or employee owes the public a duty of care—i.e., the duty to exercise reasonable diligence in the performance of their office.¹³ Moreover, as a fiduciary, a public officer or employee owes their public employer (and, derivatively, the public) a duty of loyalty—i.e., the duty to use the powers and resources of the public’s office and employment for the public’s benefit only and, thus, to refrain from putting the officer’s or employee’s interests before the public’s interest.¹⁴

When Section 10-16-3(C) requires public officers and employees to avoid “undue influence and abuse of office in public service,”¹⁵ that statutory language is informed by the common law fiduciary duties that public officers owe to their

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)).

¹³ *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).

¹⁴ *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.”).

¹⁵ § 10-16-3(C).

public employers.¹⁶ Indeed, the Legislature has confirmed that a public officer's and employee's government position is "a public trust," reinforcing that, by virtue of their government positions, public officers have fiduciary duties to the public.¹⁷ Accordingly, a public officer or employee engages in the "abuse of office in public service" in violation of Section 10-16-3(C) when that officer or employee uses their government office in a way that breaches a fiduciary duty owed to the public.¹⁸

Turning to the question at issue, Section 10-16-3(C) requires the individual to disclose to the state agency employer the potential conflict with the local school board, as well as disclose to the local school board to the extent there is a potential conflict in the individual's dual roles. Second, the individual owes both entities a duty to fairly and impartially effectuate their job functions. If, as a state agency employee, the individual gives unfair treatment to approving the budget and the mill levy rates for the school board on which they serve that the employee does not give to other school boards, they have arguably abused their office or succumbed to undue influence because they have not exercised reasonable diligence in the performance of their state office. This is particularly so if there is limited budget across all local school boards and the state agency employee is required to make decisions concerning which school board will get what. The individual must be able to perform both positions faithfully and impartially, but this is not to say Section 10-16-3(C) prohibits the holding of both roles. To the extent the individual encounters a situation where the obligations as a board member conflict with the member's obligations to the state agency, the individual should disclose the conflict and decline to take action which would breach the public trust for either position.

On one other note, the Governmental Conduct Act requires that "[a] public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or

¹⁶ See *Sims*, 1996-NMSC-078.

¹⁷ See § 10-16-3(A).

¹⁸ 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").

employee other than the employment with or service to a state agency or local government agency.”¹⁹ The individual is required to report to the local school board the state agency employment. But “employment” is defined as “rendering of services for compensation in the form of salary as an employee[.]”²⁰ This provision itself would therefore not require reporting of the school board position to the state agency, but, as noted above, disclosure is likely required under Section 10-16-3(C).

II. Beyond the Governmental Conduct Act, the dual roles may be incompatible under New Mexico law.

Under New Mexico law, a public officer is prohibited from holding two public offices where the offices are functionally incompatible. Depending on the specific duties of the individual here, the state agency position may be incompatible with the position of board member unless the individual can recuse from taking actions affecting the school board of which they are a member.

In *Haymaker v. State*,²¹ the court reviewed a case where one individual was elected to a local board of education and was also appointed as clerk of the same board. The court relied in part on a New Hampshire case, where “the plaintiff was elected to the school board, and was thereafter chosen as auditor, the court holding that by the acceptance of an incompatible office he had vacated his membership on the board” and quoted “[t]he duties of an auditor are to examine the accounts of the prudential committee, and their vouchers, and report whether they are properly cast and supported, and whether the money has been legally expended. If the same person could hold both offices, he would in fact sit in judgment on his own acts.”²² The *Haymaker* court determined the positions of local board of education member and clerk were incompatible, noting that the relevant inquiry is whether there “is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and

¹⁹ NMSA 1978, § 10-16-4.2 (2011). While there is conceivably an argument that this provision does not require disclosure of “service to a state agency or local government agency” such an argument runs counter to the common sense reading of the statute.

²⁰ NMSA 1978, § 10-16-2(D) (2011).

²¹ 1917-NMSC-005, 22 N.M. 400.

²² *Id.* ¶ 12 (quoting *Cotton v. Phillips*, 56 N.H. 220).

antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.”²³

In *Amador v. N.M. State Bd. of Educ.*,²⁴ the court reviewed whether the positions of schoolteacher and a member of the State Board of Education are incompatible. The court explained that “[t]he State Board only has jurisdiction over a school teacher in the instance where the teacher appeals to that Board from an adverse ruling by the local board of education[.]”²⁵ Therefore, the court concluded that “[t]he fact that a teacher who is also a member of the State Board might appeal from the action of the local board presents no serious problem. The teacher would simply refrain from acting as a member of the Board in his case just as would a member of any other trade or profession who appealed to the board of which he was a member.”²⁶

Applying this framework to the posited situation, the prohibition against holding two incompatible offices would not outright prevent a local school board member from holding another position with a state agency. The prohibition only precludes the school board member from holding another position that is functionally *incompatible* with the position of school board member.²⁷ As noted above, the courts have identified functional incompatibility where one office is subordinate to the other.²⁸ Here, the position of state agency employee is not subordinate to local school board member, or vice versa.

The courts have also identified functional incompatibility “where a contrariety and antagonism would result in the attempt by one person to faithfully

²³ *Id.* ¶ 9 (quotation marks omitted) (quoting *People v. Green*, 58 N.Y. 295).

²⁴ 1969-NMSC-076, 80 N.M. 336.

²⁵ *Id.* ¶ 7.

²⁶ *Id.*

²⁷ See also State Ethics Comm’n Adv. Op. 2025-03 (discussing whether a district legislative aide may simultaneously hold employment with another state agency).

²⁸ *Haymaker*, 1917-NMSC-005, ¶ 9.

and impartially discharge the duties of both.”²⁹ Given that the state position makes approval decisions on the budget and mill levy of the local school board, there is a question here as to whether “a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties” of both positions. Particularly in light of the case referenced in *Haymaker* cautioning against a situation where “[i]f the same person could hold both offices, he would in fact sit in judgment on his own acts.”³⁰ But critically, as noted in *Amador*, the positions are not incompatible where the individual can refrain from acting on matters implicating the secondary position.

Therefore, if the state employee’s state position permits the employee to faithfully fulfill the responsibilities of state employment without taking action where the employee’s impartiality might be objectively questioned, for example, by recusing from matters involving the local school board, the employee is not necessarily precluded from holding both positions. If, however, the state position necessarily requires work on matters affecting the local board of which the individual is a member, the positions are arguably functionally incompatible.

CONCLUSION

The Governmental Conduct Act would not prohibit the dual roles because the employee does not have a financial interest as a member of the local school board, but because there appears to be an incompatibility between the two positions under state law, the individual would need to recuse on matters in their role as a state employee that affect the school board. Additionally, the individual would need to disclose any potential conflicts arising out of the individual’s dual roles to both their employer and to the school board on which they serve.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. GARY L. CLINGMAN, Commissioner

²⁹ *Id.*

³⁰ *Id.* ¶ 12 (quoting *Cotton v. Phillips*, 56 N.H. 220).

HON. DR. TERRY MCMILLAN, Commissioner
DR. JUDY VILLANUEVA, Commissioner



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2026-05

April 17, 2026¹

Campaign Expenditures for Media Related to Lawsuits Arising from Legislative Duties

QUESTION PRESENTED²

May a former legislator use campaign funds to purchase advertising space in a local newspaper to address a lawsuit that arose directly from the former legislator's official duties as a legislator and which involved action taken in the former legislator's legislative capacity, where the proposed advertisement would discuss the outcome of the lawsuit and provide information to the public regarding the matter?

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 December 18, 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.

ANSWER

A former legislator may expend campaign funds for press expenses incurred in connection with legal proceedings arising directly from the legislator's official duties as a legislator, so long as the expenditures would not exist if the legislator had not held legislative office.

ANALYSIS

I. Expenditures of campaign funds under Section 1-19-27.1 of the Campaign Reporting Act

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

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

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

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

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

including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses[.]”⁶ The New Mexico Secretary of State has promulgated a regulation defining “expenditures of the campaign” which further interprets “personal” expenses:

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

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

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

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

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

⁷ 1.10.13.25(B)(2) NMAC.

⁸ 52 U.S.C. §§ 30101–30146.

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

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

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

⁹ 52 U.S.C. § 30114(a).

¹⁰ 52 U.S.C. § 30114(b)(2).

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

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

II. Use of campaign funds for press or media expenditures incurred as a result of legal actions alleging conduct related to the duties of legislative office

New Mexico law does not specifically address whether a candidate or former legislator is permitted to use campaign funds to pay for press or media expenditures; that is, such expenditures are neither on the per se list of prohibited expenditures, nor are they expressly permitted. Such expenditures therefore fall under the general analysis of whether the expenditures are “expenditures of the campaign” or are “expenditures reasonably related to performing the duties of the office held[.]”¹³

The Federal Election Commission has issued several advisory opinions opining on the permissibility of paying for media expenses related to legal actions. The Federal Election Commission has consistently held that campaign funds may be used to pay for expenses incurred in responding to press inquiries regarding legal actions arising out of allegations related to a candidate’s campaign activities

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

¹³ § 1-19-29.1(A)(1), (2).

or duties as a Federal officeholder.¹⁴ These opinions often analyze both the underlying legal action as well as related media expenses.¹⁵

¹⁴ See FEC Adv. Op. 2009-12 (Coleman) (June 26, 2009) (concluding a senator’s “need to respond to the media’s demands for public discussion of the allegations would not exist irrespective of his campaign officeholder duties” and therefore his campaign committee “may use campaign funds to pay Senator Coleman’s legal fees and expenses incurred in responding to the press regarding the FBI investigation, Senate Ethics Committee complaints, and Texas and Delaware lawsuits”); FEC Adv. Op. 2006-35, at 4 (Kolbe) (“Accordingly, the Commission concludes that the Committee may use campaign funds to pay for the legal expenses incurred in responding to the press regarding the inquiries by the House Ethics Committee and the Department of Justice into allegations that are related to Representative Kolbe’s duties as a Federal officeholder, as discussed in response to question one above.”); FEC Adv. Op. 2005-11 (Cunningham) (Sept. 26, 2005) (“In the past, the Commission has determined that legal fees and expenses incurred to respond to the press regarding allegations that concern the candidate’s campaign activities or duties as a Federal officeholder would not exist irrespective of the candidate’s campaign or duties as a Federal officeholder and therefore may be paid for with campaign funds.”); FEC Adv. Op. 2001-09 (Kerrey) (July 17, 2001) (concluding a former candidate and officeholder was permitted to use campaign committee funds to pay for expenses incurred in responding to media inquiries because the inquiries were directly related to the individual’s campaign and officeholder duties); FEC Adv. Op. 1998-01 (Hilliard) (Feb. 27, 1998) (determining that identified allegations “arise directly out of Mr. Hilliard’s status and conduct as a Federal candidate or Member of Congress, and the expenses of responding to such would not arise irrespective of such status and conduct” and “[t]herefore, the legal expenses for dealing with, and responding to, the press as to these allegations would be 100% payable by the Committee”); FEC Adv. Op. 1997-12 (Costello) (Aug. 15, 1997) (“Thus, any legal expenses for preparing press releases and conducting press conferences can be paid 100% with campaign funds. Because they arise directly from your officeholder activity, the legal expenses relating to allegations that your vote in Congress was part of an impermissible plan to establish a business venture in which you held a secret interest can be paid 100% with campaign funds.”).

¹⁵ See FEC Adv. Op. 2009-12 (Coleman) (June 26, 2009) (“Thus, the Commission has determined that a candidate’s authorized committee may use campaign funds to pay certain legal fees and expenses incurred in responding to press inquiries and news stories regarding allegations both related and unrelated to campaign activities and duties as an officeholder.”); FEC Adv. Op. 2008-07 (Vitter) (Sept. 9, 2008) (“Senator Vitter’s need to respond to the intense media scrutiny regarding the Palfrey allegations would not exist irrespective of his campaign or officeholder duties. The Commission concludes that the Committee may use campaign funds to pay Senator Vitter’s legal fees and expenses incurred by Subpoena Counsel in press relations related to the Palfrey matter, including the review of press releases and consultations with a public relations professional.”); FEC Adv. Op. 2006-35, at 4 (Kolbe) (“The Commission has previously determined that legal expenses incurred to respond to the press regarding allegations that concern the candidate’s campaign activities or duties as a Federal officeholder may be paid for with campaign funds.”); FEC Adv. Op. 2005-11 (Cunningham) (Sept. 26, 2005) (“The Commission concludes that the Committee may use campaign funds to pay for the legal fees and

The State Ethics Commission has previously reviewed the question of whether a candidate, legislator, or former legislator may use campaign funds to cover legal expenses, concluding “a candidate may use campaign funds for legal expenses related to causes of action related to the candidate’s campaign, and a legislator or former legislator may also use campaign funds for legal expenditures for causes of action reasonably related to the duties of legislative office.”¹⁶ The Commission cautioned, however, that “[i]f the legal action is not sufficiently related to a campaign or legislative office, or if the legal expenses would exist in the absence of the campaign or legislative office, the expense is not considered a ‘campaign-related expenditure’ and the candidate, legislator, or former legislator may not use campaign funds to pay those legal expenses.”¹⁷

Looking to these authorities, a former legislator is permitted to use campaign funds for press expenditures incurred in responding to a matter reasonably related to the duties of office provided the expenditures do not constitute personal use, that is, if the expense “would exist regardless” of the “responsibilities as a legislator.”¹⁸ Here, the request explains that the press expenses would discuss the outcome of a lawsuit explain the outcome of a lawsuit which arose directly from the former legislator’s official duties as a legislator and involved actions taken by in the former legislator’s legislative capacity. Based on these facts, expenses incurred in responding to press inquiries or news stories regarding allegations in a lawsuit concerning the requester’s actions as a legislator would be reasonably related to the

expenses incurred in connection with the grand jury investigation and legal proceedings that may arise from this investigation because the investigation concerns allegations that are related to Representative Cunningham’s campaign activities or his duties as a Federal officeholder and the legal fees and expenses would not exist irrespective of Representative Cunningham’s campaign or duties as a Federal officeholder. The Committee may also use campaign funds to pay for the legal fees and expenses incurred in responding to the press regarding the grand jury investigation and legal proceedings that may arise from this investigation.”).

¹⁶ N.M. State Ethics Comm’n Adv. Op. 2025-04 (June 6, 2025) (available at <https://nmonesource.com/nmos/secap/en/item/19140/index.do>). “Legal expenses” are not included in the non-exhaustive list of per se personal use expenditures, but the rule governing “permissible expenditures” separately identifies “[l]egal expenses reasonably related to the candidate’s campaign are permissible campaign expenditures.” 1.10.13.25(B)(3) NMAC.

¹⁷ *Id.* (citing to numerous Federal Election Commission opinions concluding the same).

¹⁸ 1.10.13.25(B)(2) NMAC.

duties of legislative office. As such, so long as the expenditures would not be used to fulfill a “commitment, obligation or expense . . . that would exist regardless of . . . responsibilities as a legislator[.]” the requester would be permitted to use campaign funds for those expenses.¹⁹

CONCLUSION

Under the Campaign Reporting Act, a former legislator may expend campaign funds for press expenses incurred in connection with legal proceedings arising directly from the legislator’s official duties as a legislator, so long as the expenditures do not constitute personal use and would not exist if the legislator had not held legislative office.

SO ISSUED.

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

¹⁹ *Id.* The request does not identify whether the former legislator is a current candidate or not, but if the requester is a candidate, it is possible the expenditures would also constitute “expenditures of the campaign[.]” *Id.*



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2026-06

April 17, 2026¹

Holding Dual Roles as a SWCD Board Supervisor and Secretary of State Under the Governmental Conduct Act

QUESTION PRESENTED²

Under the Governmental Conduct Act and other ethics laws within the Commission's jurisdiction: Is it permissible for an individual to simultaneously hold the positions of a state Soil and Water Conservation District ("SWCD") Board Supervisor and New Mexico

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). On January 4, 2026, 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.

Secretary of State?³ If so, what safeguards (including recusals, disclosures, or other measures) are necessary to ensure compliance and maintain public trust? If not, what specific statutory or ethical provisions render the offices incompatible?

ANSWER

The Governmental Conduct Act⁴ would not prohibit one individual from holding the dual roles of SWCD Supervisor and Secretary of State, so long as the individual is able to adhere to the duties of loyalty and care inherent in holding each position as a public trust. Further, as to whether the positions are “incompatible” under New Mexico law, it is unlikely from the facts provided that there is an inconsistency in the functions of the two offices which would result from one person attempting to faithfully and impartially discharge the duties of each position.

ANALYSIS

I. The Governmental Conduct Act would not prohibit the dual roles.

The Governmental Conduct Act provides guidance on the disclosure and recusal requirements applicable to a public officer or employee where the individual’s official acts enhance or directly affect a financial interest.⁵ Section 10-16-4(A) provides that “[i]t is unlawful for a public officer or employee to take an

³ The request notes that a SWCD “is a governmental subdivision of the state focused on soil, water, and resource conservation within its district boundaries.” The requester explains that the role is a non-compensated role with a four-year statutory term pursuant to NMSA 1978, § 73-20-24, and that the position involves part-time duties, including attending board meetings, participating in local conservation plans, overseeing grants and contracts, and collaborating with state agencies like the New Mexico Department of Agriculture. Additionally, the request notes that the Soil and Water Conservation Act does not expressly prohibit dual office holding. If the requester is elected as Secretary of State, the requester would assume that role while serving the remainder of the requester’s SWCD term.

⁴ NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023).

⁵ See also State Ethics Comm’n Adv. Op. 2025-02 (June 6, 2025) (concluding that as a general matter the Governmental Conduct Act does not prohibit a public employee from having secondary employment).

official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position.”⁶ Section 10-16-4(B) separately 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 interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.”⁷ A financial interest is defined as “an interest held by an individual or the individual's family that is: (1) an ownership interest in business or property; or (2) any employment or prospective employment for which negotiations have already begun[.]”⁸ While employment as Secretary of State would constitute a financial interest, the position as a SWCD supervisor would not. Because the requester does not have a financial interest in the position as an SWCD supervisor, Sections 10-16-4(A) and (B) would not require disqualification in the role of Secretary of State. Further, because the SWCD position does not include taking official acts that would affect the role of Secretary of State, Section 10-16-4(A) and (B) are unlikely to apply.

The Governmental Conduct Act, however, further provides that “[a] public officer or employee shall treat the . . . public officer's or employee's government position as a public trust.”⁹ Additionally, “[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.”¹⁰ The statutory language in Section 10-16-3(C) requiring public officers and employees to avoid “undue influence and abuse of office in public service”¹¹ is informed by the common law fiduciary duties that

⁶ NMSA 1978, § 10-16-4(A) (2011).

⁷ § 10-16-4(B).

⁸ NMSA 1978, § 10-16-2(F) (2011).

⁹ NMSA 1978, § 10-16-3(A) (2011).

¹⁰ § 10-16-3(C).

¹¹ *Id.*

public officers owe the public.¹² Indeed, the Legislature has confirmed that a public officer's and employee'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 public officer or employee engages in the "abuse of office in public service" in violation of Section 10-16-3(C) when that officer or employee uses their government office in a way that breaches a fiduciary duty owed to their public employer (and, derivatively, to public).¹⁴

Here, if the requester were to be elected Secretary of State and maintain the position as SWCD Supervisor, the requester would owe both entities a respective duty to fairly and impartially effectuate each position. The requester must be able to perform both positions faithfully and impartially, but this is not to say that Section 10-16-3(C) prohibits the holding of both roles. To the extent the requester encounters a situation where the obligations as a SWCD supervisor conflict with the obligations of the Secretary of State, the requester should disclose the conflict and decline to take action which would breach the public trust for either position.

Additionally, the Governmental Conduct Act requires that "[a] public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency."¹⁵ The requester would be required to report employment as Secretary of State to the SWCD. But because "employment" is defined as "rendering of services for compensation in the form of salary as an employee[.]"¹⁶ the requester

¹² 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))).

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").

¹⁵ NMSA 1978, § 10-16-4.2 (2011). While there is conceivably an argument that this provision does not require disclosure of "service to a state agency or local government agency[.]" such an argument runs counter to the common sense reading of the statute.

¹⁶ NMSA 1978, § 10-16-2(D) (2011).

would not be required to report to the Office of the Secretary of State the position on the SWCD. As noted above, however, disclosure is still required under Section 10-16-3(C) if there is an actual or potential conflict of interest.

II. Under New Mexico law, a public officer is prohibited from holding another public office that is functionally incompatible with the first office.

Under New Mexico law, the analysis of whether a public employee may hold two public positions turns on whether the positions are “incompatible.” Incompatibility of positions takes two forms. Two positions may have “physical incompatibility,” that is, whether accepting another public employment interferes with the employee’s performance of the duties of the original employment. They may also have incompatibility of duties, that is, whether there is an inconsistency in the functions of two offices caused by one individual holding both positions.

First, Section 10-6-3 provides that a public employee who accepts “any public office or employment, . . . for which a salary or compensation is authorized” is “deemed to have resigned from and to have permanently abandoned his public office and employment” if the employee “fail[s] for a period of thirty successive days or more to devote his time to the usual and normal extent during ordinary working hours to the performance of the duties of such public office and employment[.]”¹⁷ But the facts posited in the request indicate that the position of SWCD supervisor “involves part-time duties.” So long as the requester meets the requirements of the position of Secretary of State or otherwise seeks appropriate accommodations to permit leave, it is unlikely these positions would be considered physically incompatible.

It is also unlikely the positions would be considered functionally incompatible. In *Haymaker v. State*,¹⁸ the court reviewed a case where one individual was elected to a local board of education and was also appointed as clerk of the same board. The court relied in part on a New Hampshire case, where “the plaintiff was elected to the school board, and was thereafter chosen as auditor,

¹⁷ NMSA 1978, §§ 10-6-3 (1953); 10-6-5 (1979).

¹⁸ 1917-NMSC-005, 22 N.M. 400.

the court holding that by the acceptance of an incompatible office he had vacated his membership on the board” and quoted “[t]he duties of an auditor are to examine the accounts of the prudential committee, and their vouchers, and report whether they are properly cast and supported, and whether the money has been legally expended. If the same person could hold both offices, he would in fact sit in judgment on his own acts.”¹⁹ The *Haymaker* court determined the positions of local board of education member and clerk were incompatible, noting that the relevant inquiry is whether there “is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.”²⁰

In *Amador v. N.M. State Bd. of Educ.*,²¹ the court reviewed whether the positions of schoolteacher and a member of the State Board of Education are incompatible. The court explained that “[t]he State Board only has jurisdiction over a school teacher in the instance where the teacher appeals to that Board from an adverse ruling by the local board of education[.]”²² Therefore, the court concluded that “[t]he fact that a teacher who is also a member of the State Board might appeal from the action of the local board presents no serious problem. The teacher would simply refrain from acting as a member of the Board in his case just as would a member of any other trade or profession who appealed to the board of which he was a member.”²³

Applying this framework to the request, the prohibition against holding two incompatible offices would likely not prevent the requester from holding the two positions.²⁴ As noted above, the courts have identified functional incompatibility

¹⁹ *Id.* ¶ 12 (quoting *Cotton v. Phillips*, 56 N.H. 220).

²⁰ *Id.* ¶ 9 (quotation marks omitted) (quoting *People v. Green*, 58 N.Y. 295).

²¹ 1969-NMSC-076, 80 N.M. 336.

²² *Id.* ¶ 7.

²³ *Id.*

²⁴ *See also* State Ethics Comm’n Adv. Op. 2025-03 (discussing whether a district legislative aide may simultaneously hold employment with another state agency).

where one office is subordinate to the other.²⁵ Here, the position of Secretary of State is not subordinate to SWCD supervisor, or vice versa.

The courts have also identified functional incompatibility “where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.”²⁶ Given that the two positions have essentially no overlap, it is doubtful that “a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties” of both positions. Under the facts provided, the only potential concern would be if the requester were to run in an election while holding the position of Secretary of State. *Haymaker* cautions against a situation where “[i]f the same person could hold both offices, he would in fact sit in judgment on his own acts.”²⁷ But critically, as noted in *Amador*, the positions are not incompatible where the individual can refrain from acting on matters implicating the secondary position. Therefore, so long as the positions permit the requester to faithfully fulfill the responsibilities as Secretary of State without taking action where the requester’s impartiality might be objectively questioned, for example, by recusing from matters involving the requester’s election to the SWCD, the requester is not necessarily precluded from holding both positions.

CONCLUSION

The Governmental Conduct Act would not prohibit an individual from holding the dual roles of Soil and Water Conservation District Supervisor and Secretary of State, so long as the individual is able to adhere to the duties of loyalty and care inherent in holding each position as a public trust. It is also unlikely from

²⁵ *Haymaker*, 1917-NMSC-005, ¶ 9.

²⁶ *Id.*

²⁷ *Id.* ¶ 12 (quoting *Cotton v. Phillips*, 56 N.H. 220).

the facts provided that there is an inconsistency in the functions that would lead to physical or functional incompatibility.

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