



STATE ETHICS  
COMMISSION MEETING

June 15, 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

June 15, 2026, 10:00 a.m. to 1:00 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 April 17, 2026 Commission Meeting

**Commission Meeting Items**

**Action Required**

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| 4. Advisory Opinion 2026-07 – The Use of Campaign Funds for Informational Media as Part of Reelection Efforts<br>(Biderman)  | Yes |
| 5. Advisory Opinion 2026-08 – Contract with a Retired Agency Employee to Provide Training to Agency Staff Under the Governmental Conduct Act<br>(Biderman)   | Yes |
| 6. Advisory Opinion 2026-09 – Governmental Conduct Act and Campaign Contribution Disclosure Requirements for a Community College Board Member Simultaneously Serving as an Executive Director of a Nonprofit<br>(Su) | Yes |

7. Advisory Opinion 2026-10 – GCA Prohibition on Hiring a Former Agency Attorney as a Contractor Who Will Represent the Same Clients  
(*Su*) Yes
8. Advisory Opinion 2026-11 – Permissibility of Payment for a Legislator’s Travel Expenses from a Lobbyist Employer  
(*Biderman*) Yes
9. 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).**

10. Discussion regarding administrative matters under RULONA:  
(*Branch*)

I. 2026-NP-06

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

I. Administrative Complaint No. 2026-04

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

I. Authorization for a demand and civil action to enforce the Campaign Reporting Act  
(*Woods*)

II. Authorization for a demand and civil action to enforce the Campaign Reporting Act. Authorization for a petition to district court for the issuance of subpoenas related to the enforcement of the Campaign Reporting Act  
(*Woods*)

III. Authorization for a demand and civil action to enforce the Campaign Reporting Act  
(*Woods*)

IV. Authorization for the State Ethics Commission to intervene as a party under rule 1-024(b). Authorization for a petition to district court for the issuance of subpoenas related to the enforcement of the Governmental Conduct Act  
(*Farris*)

- V. Authorization for a demand and civil action to enforce the Nondisclosure of Sensitive Personal Information Act  
(*Farris*)

Upon applicable motion, Commission returns from executive session

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- 13. Administrative Matters under RULONA: Yes  
(*Branch*)
  - I. 2026-NP-06
- 14. Discussion regarding administrative matters under State Ethics Commission Act:  
(*Goodrich*)
  - I. Administrative Complaint No. 2026-04
- 15. Authorization of Civil Action: Yes  
(*Woods, Farris*)
  - I. Authorization for a demand and civil action to enforce the Campaign Reporting Act  
(*Woods*)
  - II. Authorization for a demand and civil action to enforce the Campaign Reporting Act. Authorization for a petition to district court for the issuance of subpoenas related to the enforcement of the Campaign Reporting Act  
(*Woods*)
  - III. Authorization for a demand and civil action to enforce the Campaign Reporting Act  
(*Woods*)
  - IV. Authorization for the State Ethics Commission to intervene as a party under rule 1-024(b). Authorization for a petition to district court for the issuance of subpoenas related to the enforcement of the Governmental Conduct Act  
(*Farris*)
  - V. Authorization for a demand and civil action to enforce the Nondisclosure of Sensitive Personal Information Act  
(*Farris*)
- 16. Discussion of next meeting No

(Lang)

17. Public Comment

No

18. 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](mailto: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](mailto:Ethics.Commission@sec.nm.gov), with the subject line: "Public Comment: June 15, 2026" until 9:00 am on June 15, 2026.*

*Individuals wishing to participate by providing oral comment should register and join using the following link [https://us02web.zoom.us/meeting/register/NgTiMduJS8G1NJDeTwCKqQ](https://us02web.zoom.us/join/https://us02web.zoom.us/meeting/register/NgTiMduJS8G1NJDeTwCKqQ). 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 April 17, 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 Bluestone moved to approve the agenda; Commissioner Castillo seconded. Hearing no discussion or objections, the agenda was approved unanimously by all present Commissioners.

#### **3. Approval of February 17, 2026, Commission Meeting Minutes**

Chair Lang sought a motion for approval of the minutes of the February 17, 2026, meeting. Commissioner Baker moved to approve the minutes; Commissioner Bluestone seconded. Hearing no discussion or objections, the April 17, 2026, meeting minutes were approved unanimously by all present Commissioners.

#### **4. Approval of FY27 Operating Budget**

Executive Director, Jeremy Farris, presented the FY27 operating budget of approximately \$1.92 million. Director Farris requested Commission approval for the budget. Chair Lang sought a motion to approve the budget. Commissioner Baker moved to approve; Commissioner Bluestone seconded. After some discussion Chair Lang conducted a roll call vote, and the FY27 Operating Budget was approved unanimously by all present Commissioners.

**5. HJR 5, Legislative Compensation**  
*(Bluestone)*

Commissioner Bluestone presented HJR 5, a joint resolution approved during the 2026 legislative session proposing a constitutional amendment to allow legislative compensation tied to the median household income in New Mexico, with adjustments based on changes to that metric and delayed implementation.

Commissioner Bluestone moved to endorse HJR 5. Commissioner Castillo seconded the motion. The motion failed for lack of concurrence by “at least two members of the largest political party in the state and two members of the second largest political party in the state” under NMSA 1978, Section 10-16G-3(H).

**6. Voting Structures of Ethics Commissions**  
*(Arreola)*

Thornburg Foundation Fellow, Aurora Areola, presented research requested by the Commission regarding comparative governance structures of state ethics commissions. The presentation provided background analysis of statutory frameworks across states, including quorum requirements, voting thresholds, appointment structures, and partisan composition. No action was taken.

**7. Advisory Opinion 2026-02 – Agency Considerations in Amending a Contract under the Governmental Conduct Act**  
*(Su)*

Staff Attorney Grace Su gave an overview of Advisory Opinion No. 2026-02. Advisory Opinion No. 2026-02 considers whether Section 10-16-7(A) of the Governmental Conduct Act applies when a state agency seeks to amend an existing small purchase contract for professional services after the contractor’s spouse becomes a public employee at another state agency. The Commission concluded that amending the contract to include additional compensation constitutes entering into a new agreement with the family of a public employee. As a result, the statute applies to the amended contract, requiring public notice of the public employee’s interest and procurement through a competitive process, particularly because the original contract was not competitively awarded and no prior public notice was provided.

Chair Lang sought a motion to approve Advisory Opinion 2026-02. Commissioner Clingman moved to approve the opinion for issuance; Commissioner Bluestone seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor. Advisory Opinion 2026-02 was approved for issuance.

**8. Advisory Opinion 2026-03 – Governmental Conduct Act Considerations for Local Public Officials Holding Local Government Contracts**  
*(Branch)*

Deputy Compliance Counsel Rebecca Branch gave an overview of Advisory Opinion No. 2026-03. Advisory Opinion No 2026-03 considers three scenarios involving municipal public officials who hold financial interests in companies that contract with the municipality and addresses how the Governmental Conduct Act applies in each case.

The Commission concluded that such arrangements are permissible, provided specific safeguards are followed. These include public disclosure of the official's financial interest, use of a competitive procurement process, recusal from any official actions related to the contract, and avoidance of participation in developing bid criteria. The opinion further emphasizes that public officials must not misuse their positions when advocating on behalf of their companies or clients. Additionally, the Commission determined that the municipality's existing practices—requiring written disclosures, public announcements, recusals, and competitive bidding—are consistent with the requirements of the Governmental Conduct Act and represent sound compliance measures.

Deputy Compliance Counsel Branch also noted a minor typographical error which has been corrected. Chair Lang sought a motion to approve Advisory Opinion 2026-03. Commissioner Bluestone moved to approve the opinion for issuance; Commissioner Castillo seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor. Advisory Opinion 2026-03 was approved for issuance.

**9. Advisory Opinion 2026-04 – Holding Dual Roles as a School Board Member and State Employee Under the Governmental Conduct Act**  
(Su)

Staff Attorney Grace Su gave an overview of Advisory Opinion No. 2026-04. Advisory Opinion No. 2026-04 considers whether an individual may simultaneously serve on a local school board while also acting as a state employee responsible for approving certain financial decisions affecting that same school board.

The Commission concluded that holding both roles is permissible under the Governmental Conduct Act, provided appropriate safeguards are followed. Specifically, the individual must recuse themselves from any state-level decisions affecting the school board to avoid functional incompatibility, disclose potential conflicts to both the state agency and the school board, and carry out duties in both roles fairly and impartially.

Chair Lang sought a motion to approve Advisory Opinion 2026-04. Commissioner Clingman moved to approve the opinion for issuance; Commissioner Villanueva seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor. Advisory Opinion 2026-04 was approved for issuance.

**10. Advisory Opinion 2026-05 – Campaign Expenditures for Media Related to Lawsuits Arising from Legislative Duties**  
(Su)

Staff Attorney Grace Su gave an overview of Advisory Opinion No. 2026-05. Advisory Opinion No. 2026-05 considers whether a former legislator may use campaign funds to purchase newspaper advertising addressing a lawsuit that arose directly from actions taken in their legislative capacity.

The Commission concluded that such expenditures are permissible, provided they are connected to legal proceedings arising from the individual's official duties as a legislator and would not have been incurred but for holding legislative office.

Chair Lang sought a motion to approve Advisory Opinion 2026-05. Commissioner Bluestone moved to approve the opinion for issuance; Commissioner Clingman seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor. Advisory Opinion 2026-05 was approved for issuance.

#### **11. Advisory Opinion 2026-06 – Holding Dual Roles as a Board Supervisor and State Agency Head Under the Governmental Conduct Act** (*Su*)

Staff Attorney Grace Su gave an overview of Advisory Opinion No. 2026-06. Advisory Opinion No. 2026-06 considers whether an individual may simultaneously serve as a State Board Supervisor and the head of a State Agency under the Governmental Conduct Act and other applicable ethics laws.

The Commission concluded that holding both positions is permissible, provided the individual can fulfill the duties of loyalty and care required of each role. The Commission further determined that, based on the facts presented, the two positions are not physically nor functionally incompatible, as there is no clear conflict in their functions that would prevent the individual from discharging the duties of both offices faithfully and impartially.

Chair Lang sought a motion to approve Advisory Opinion 2026-06. Commissioner Clingman moved to approve the opinion for issuance; Commissioner McMillan seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor. Advisory Opinion 2026-06 was approved for issuance.

#### **12. Public Comment**

There was no public comment.

#### **Commission Meeting Items**

##### **---Begin Executive Session---**

Chair Lang sought a motion to enter executive session. Commissioner Baker moved to enter executive session under NMSA 1978, § 10-15-1(H)(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.

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

I. 2025-NP-01

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

**---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).*

15. **Action on administrative matters under RULONA**  
(Branch)

- I. Commission staff sought a motion for issuance of a default order in 2025-NP-01. 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 Commissioners voted in favor. The default order was approved.

16. **Action on Authorization of Civil Action**  
(Woods, Farris)

- I. Commission staff sought a motion for the authorization for the demand and civil action to enforce the Campaign Reporting Act against the Republican Party of San Juan County. Chair Lang sought a motion for the authorization. Commissioner Clingman moved to approve the authorization; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor. The authorization was approved.
- II. This agenda item was deferred to the next regularly scheduled meeting.

- III. Commission staff sought a motion for the authorization for the demand and civil action to enforce the Lobbyist Regulation Act against the Virginia Nonstock Corporation Elevate New Mexico. 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 Commissioners voted in favor. The authorization was approved.

#### **17. Discussion of Next Meeting**

Chair Lang confirmed the next regularly scheduled meeting will take place on June 15, 2026.

#### **18. Public Comment**

There was no public comment.

#### **19. Adjournment**

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting adjourned at 11:32 AM.



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2026-07**

June 15, 2026<sup>1</sup>

### **The Use of Campaign Funds for Informational Media as Part of Reelection Efforts**

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

This request concerns a county commissioner's permissible use of campaign funds under the Campaign Reporting Act in their upcoming reelection. Specifically, the requester asks if they can use campaign funds to create informational media, such as an online FAQ or postcards, about a public issue that was a priority during their last

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). On February 23, 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.

campaign. The requester is running unopposed and wants to use the campaign funds to create an awareness campaign around the issue.

## ANSWER

Under New Mexico’s Campaign Reporting Act (“CRA”),<sup>3</sup> campaign funds may only be used for expenditures reasonably attributable to a candidate’s campaign and not for personal use or expenses that would exist regardless of the campaign. The county commissioner, however, may spend campaign funds to discuss and raise awareness about a public issue if the deliverables of this effort are part of their reelection campaign—even if they are running unopposed.

## ANALYSIS

- I. A county commissioner may expend campaign funds to raise awareness about a public issue if the expenditures are “reasonably attributable” to their campaign for reelection as county commissioner and are not “personal” expenses.**

Although a county commissioner is running unopposed, they may expend donated campaign funds to support their election. Those expenditures may be used to introduce themselves to the electorate and prove their merits to serve. But they may only expend campaign funds in relation to a public issue if the funds are spent as a part of their campaign. The CRA provides:

It is unlawful for a candidate or the candidate’s agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:

- (1) expenditures of the campaign;

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<sup>3</sup> NMSA 1978, §§ 1-19-25 to -36 (1979, as amended through 2025). The CRA defines a “candidate” as “an individual who seeks or considers an office in an election covered by the [CRA], including a public official, who has filed a declaration of candidacy and has not subsequently filed a statement of withdrawal.” NMSA 1978, § 1-19-26(H). The CRA further defines a candidate for a non-statewide office to be an individual who “has received contributions or made expenditures of more than one thousand dollar (\$1,000) or authorized another person or campaign committee to receive contributions or make expenditures of more than one thousand dollars (\$1,000) for the purpose of seeking election to the office.” § 1-19-26(H)(1).

- (2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses; ...<sup>4</sup>

While the CRA permits *legislators* to expend campaign funds on expenses “reasonably related to performing the duties of the office held,” that exception does not apply to any other elected official.<sup>5</sup>

The CRA defines a “campaign expenditure” as an expenditure that is made by a campaign committee or by a candidate in support of the candidate’s campaign in an election.”<sup>6</sup> Additionally, a rule adopted by the New Mexico Secretary of State defines “permissible campaign expenditures” as “expenditures that are reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses.”<sup>7</sup> The rule defines “personal use of campaign funds” 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.”<sup>8</sup> This means that any expense that would exist even

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<sup>4</sup> 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 and are not included.

<sup>5</sup> § 1-19-29.1(A)(2).

<sup>6</sup> NMSA 1978, § 1-19-26(G) (2024).

<sup>7</sup> 1.10.13.25(B)(2) NMAC. While the language of the statute is ultimately controlling, the Secretary of State (“SOS”) 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 regulation of the SOS is like that imposed by federal law. *See* The Federal Election Campaign Act provides that campaign contributions may be used by the candidate “(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual; (2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office ...” 52 U.S.C. § 30114(a). The statute also explains that “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).

<sup>8</sup> 1.10.13.25(B)(2) NMAC.

in the absence of the candidacy, or if the legislator were not in office, would not be considered to be a campaign-related expenditure.<sup>9</sup>

This opinion analyzes the question of whether the county commissioner can spend campaign funds in their role as a candidate for reelection. Under the CRA, the county commissioner is considered a “public official” and not a “legislator.”<sup>10</sup> The CRA defines a “public official” as “a person elected to an office in an election covered by the [CRA] or a person appointed to an office that is subject to an election covered by that act.”<sup>11</sup> The county commissioner is a public official because they are elected to their position.<sup>12</sup> Since the county commissioner is not considered a “legislator” under the CRA, they are not permitted to use campaign funds for a campaign about the public issue under Section 1-19-29.1(A)(2) as “expenditures reasonably related to the duties of legislative office.” The county commissioner’s campaign funds cannot be used to help subsidize the business of the county commission.

Applying the Secretary of State’s rule defining allowable uses of campaign funds, it appears permissible for a person running for the office of county commissioner to state their positions on issues voters would consider pertinent to their campaigns. Even though an unopposed candidate may need only one vote to win office, voters may look to their positions on issues in deciding whether to cast their vote or leave the ballot blank for that position. Campaign statements may be relied upon by voters to hold elected officials accountable for delivering on those commitments, which may sway voter support. The explanation of the candidate’s priorities would also be helpful to voters in deciding how to approach other candidates for the same body, who may reinforce or oppose the positions of even

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<sup>9</sup> *See id.*

<sup>10</sup> Section 1-19-29.1(A)(1)-(2). While the CRA does not explicitly define a “legislator,” Section 1-19-29.1(A)(2) refers to the “legislative session,” which suggests that the term “legislator” refers to one of the 112 members of the New Mexico Legislature according to its ordinary and usual meaning. *See, e.g., Tafoya v. N.M. State Police Bd.*, 1970-NMSC-106, ¶ 17 (“There being no clearly expressed legislative intent requiring otherwise, the word is to be given its usual, ordinary meaning.”) Furthermore, the CRA is careful to expressly say when its provisions apply to the expenditures of candidates broadly or to the expenditures of legislators specifically. *See, e.g.* § 1-19-29.1(A).

<sup>11</sup> NMSA 1978, § 1-19-26(Y) (2024).

<sup>12</sup> *See* NMSA 1978, § 4-38-3 (2002) and -6 (1993).

an unopposed candidate on the commission. Voters may also express their support or opposition to the candidate's election in letters or other forums, to use the election to move the candidate toward their positions. Candidates may expend campaign funds to go on the record with their positions on issues or on the strengths of their experience, to build their record for further office.

In short, the county commissioner appears to this Commission to be permitted under the CRA to make campaign expenditures that discuss and raise awareness about the public issue as part of the county commissioner's reelection efforts, even though they are running unopposed. To that end, the county commissioner may expend campaign funds to create informational materials, such as social media, mailers, brochures, advertising, or newsletters, outlining their key priorities as a candidate. The county commissioner, however, may not use campaign funds to produce materials focused on public issues that are not reasonably connected to their reelection campaign.

### **CONCLUSION**

So long as the county commissioner's campaign expenditures are "reasonably attributable" to their campaign and are made in support of their candidacy instead of being spent for personal purposes the county commissioner is permitted to spend the campaign funds.<sup>13</sup>

**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**

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<sup>13</sup> See 1.10.13.25(B)(2) NMAC.



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2026-08**

June 15, 2026<sup>1</sup>

### **Contract with a Retired Agency Employee to Provide Training to Agency Staff Under the Governmental Conduct Act**

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

This request concerns Section 10-16-8 of the Governmental Conduct Act regarding the employment of a retired employee as a contractor with their former agency.<sup>3</sup> Specifically, the request asks if a retired state employee may come back to their agency as a contractor to provide training after six months, when the proposed contract was not

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On March 11, 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.

<sup>3</sup> *See* NMSA 1978 §§ 10-16-1 to -18 (1967, as amended 2023).

contemplated nor discussed by the retiree or any state employees before the retiree's retirement.

### ANSWER

Yes. The retired state employee can come back to their agency as a contractor to provide training, based on the facts presented in the request, for two reasons. First, the retired state employee did not contemplate or discuss the training contract while employed as a state employee. Consequently, the retired employee did not take an official act that could have directly resulted in the contract's approval or disapproval. Second, the retired state employee would not be representing a person on a matter in which the retired employee participated personally and substantially; nor would the employee be representing for pay a person before the agency where they were formerly employed.

### ANALYSIS

**I. The Governmental Conduct Act permits the retired state employee to provide training as a contractor because the employee did not act on the proposed contract during their employment; and because the contract does not involve the employee representing a person.**

A. Based on the facts presented in this request, the retired state employee is permitted to come back to their agency as a contractor to provide training after their retirement under Subsection 10-16-8(A).

Section 10-16-8 of the Governmental Conduct Act limits contracts involving former public officers.<sup>4</sup> Subsection 10-16-8(A) provides:

A state agency shall not enter into a contract with. . . any person or business that is:

- (1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

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<sup>4</sup> See *id.*

- (2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.<sup>5</sup>

The purpose of subsection 10-16-8(A) is to prevent government officials from using the powers and resources of their public office to secure a benefit for themselves after they separate from government service. Subsection 10-16-8(A) works alongside the other revolving-door provisions in section 10-16-8 to guard against conflicts of interest.<sup>6</sup>

Whether subsection 10-16-8(A) prohibits a retired state employee from returning to their agency as a contractor to provide training after retirement turns on two issues. First, did the training contract directly result from an official act of the public officer or employee?<sup>7</sup> Second, if so, will that act directly result in the agency entering into a contract that it would not enter but for the retired employee's official act?<sup>8</sup>

The Governmental Conduct Act defines an "official act" as "an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority."<sup>9</sup> Here, the facts of your request indicate that the contract was neither contemplated nor discussed by the retired state employee while the retired employee was still employed by the agency. The employee retired six months prior to the first discussion of the contract. Under these facts, the retired employee did not take an official act regarding the contract and is therefore not barred from entering into it under Section 10-16-8(A).

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<sup>5</sup> NMSA 1978, § 10-16-8(A) (2011). This request does not address § 10-16-8(C) because that subsection concerns local government agencies instead of a state agency.

<sup>6</sup> See generally *Ortiz v. Taxation and Revenue Dep't*, 1998-NMCA-027, ¶ 9 ("The purpose of 'revolving door' legislation is to enhance public trust and confidence in our governmental agencies by prohibiting conduct which may permit or appear to permit undue influence or a conflict of interest.").

<sup>7</sup> See § 10-16-8(A).

<sup>8</sup> See *id.*

<sup>9</sup> NMSA 1978 § 10-16-2(H) (2011).

B. Subsection 10-16-8(B) is not applicable to this request based on the facts presented.

Subsection 10-16-8(B) provides that “[a] former public officer or employee shall not represent a person in the person’s dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.”<sup>10</sup> Subsection (B) contains three elements. First, the former public officer or employee must represent a person in “the person’s dealings with the government.”<sup>11</sup> Second, the person’s dealings with the government must be the same “matter” as one in which the former public officer or employee participated in while in public service.<sup>12</sup> Third, the former public officer’s or employee’s participation in that matter must have been personal and substantial.<sup>13</sup>

This “restriction on a former public officer’s or employee’s representation does not expire: a former public officer or employee is forever barred from representing a person in the person’s dealings with the government relating to the same matter in which the former officer or employee participated personally and substantially while in public service.”<sup>14</sup>

This subsection does not apply to the facts presented in this request because the first element is not present: the retired employee would not be representing a person in the person’s dealings with the government. Instead, the employee themselves would be presenting a training to agency staff.

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<sup>10</sup> NMSA 1978, § 10-16-8(B) (2011).

<sup>11</sup> *Id.* Note that although the Governmental Conduct Act does not define the term “represent,” it is commonly understood to mean “to assume or occupy the role or functions of (a person), typically in restricted, and usually formal situations; to be entitled to speak or act on behalf of (a person, group, organization, etc.); ... to act or serve as the spokesperson or advocate of.” OED Online, Represent v.1 (Oxford University Press, March 2021), [www.oed.com/view/Entry/162991](http://www.oed.com/view/Entry/162991).

<sup>12</sup> *See* § 10-16-8(B).

<sup>13</sup> *See id.*

<sup>14</sup> State Ethics Comm’n Adv. Op. 2020-02, at 3 (Apr. 3, 2020), available at <https://nmonesource.com/nmos/secap/en/18164/1/document.do> (footnote omitted).

C. Subsection 10-16-8(D) is not applicable to this request based on the facts presented.

Subsection 10-16-8(D) provides that “[f]or a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.”<sup>15</sup> Subsection (D) contains several elements. First, whether the former employee represents a person “for pay.”<sup>16</sup> Second, whether the representation is “before” the former employee’s former government employer.<sup>17</sup> Third, whether the representation occurs within the one year after leaving government service.<sup>18</sup>

This subsection, too, does not apply to the facts presented in this request because the retired employee would not be representing any person or entity at all, let alone for compensation. Although the retired employee proposes to provide a training to agency staff within one year of retiring from government service, such activity does not constitute representation before the agency. Rather, the training as described will be an educational or informational service provided directly to the agency, without advocacy on behalf of another party. Accordingly, because the retired employee is neither acting for pay on behalf of a third party nor appearing before the agency in a representative capacity, the restrictions set forth in this subsection are not implicated.

## CONCLUSION

For the above enumerated reasons, the retired state employee can come back to their agency as a contractor to provide training based on the facts presented in your request.

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<sup>15</sup> NMSA 1978, § 10-16-8(D) (2011).

<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

<sup>18</sup> *See id.*

**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. 2026-09**

June 15, 2026<sup>1</sup>

### **Governmental Conduct Act and Campaign Contribution Disclosure Requirements for a Community College Board Member Simultaneously Serving as an Executive Director of a Nonprofit**

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

This request concerns three questions asked on behalf of a community college regarding the Governmental Conduct Act (“GCA”) and the Procurement Code:

1. Under the Governmental Conduct Act, can a member of the community college’s board also

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On March 11, 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) (2019); 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.

serve as the executive director of a nonprofit that receives grant funding awarded through the college through a no-bid, small professional services contract?

2. Under the Governmental Conduct Act, may the board member seek out other services from the community college for the nonprofit, such as office space and intern assignments, through Memorandums of Understanding?
3. Under the Procurement Code, is the board member who is serving as the executive director of a nonprofit required to disclose campaign contributions to themselves in bidding for a contract with the community college?

### ANSWER

1. The board member would be permitted to hold the dual roles under the Governmental Conduct Act so long as the board member (1) fairly and impartially effectuates their duties as a board member; (2) avoids using their position as a board member for personal or private gain; (3) adheres to certain recusal and disclosure requirements under the GCA; and (4) discloses their employment in writing as the executive director to the community college.<sup>3</sup>
2. The board member would be permitted to seek out other services from the community college for the nonprofit under the GCA so long as the board member avoids any favorable treatment, by fully disclosing any conflicts of interest, properly recusing themselves from official acts when appropriate, and not using any confidential information acquired as a board member for the nonprofit's private gain.
3. The board member should disclose campaign contributions that they make to, or accept in their own capacity as, any "applicable public official" if the following conditions are met under the Procurement

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<sup>3</sup> This advisory opinion does not analyze the legality of the board member's dual roles with being a nonprofit executive director under NMSA 1978, § 21-1-35 (1999) because it is outside of the State Ethics Commission's jurisdiction. This opinion also does not opine about whether the no-bid, small professional services contract that the board member's nonprofit would have with the community college complies with the Procurement Code.

Code.<sup>4</sup> If the board member, or a family member or representative of the board member, has received, or given to another board member, any contributions with an aggregate total exceeding two hundred fifty dollars (\$250) over the two-year period prior to the date on which the board member signs the contract, the board member must disclose those campaign contributions to the community college. Failure to disclose could lead to the cancellation of the contract.

## ANALYSIS

### **I. Section 10-16-7 of the GCA does not apply to this inquiry because the board member does not have a “substantial interest” in the nonprofit, despite employment as the nonprofit’s executive director.**

While the request specifically asks about Section 10-16-3 of the GCA, it is pertinent to discuss whether Section 10-16-7 applies because the community college is a state agency.<sup>5</sup> Section 10-16-7 provides:

A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the

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<sup>4</sup> See NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023). The Procurement Code defines an “applicable public official” to mean “a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract [...]” NMSA 1978, § 13-1-191.1(G)(1) (2007).

<sup>5</sup> The GCA defines a “state agency” to mean “any branch, agency, instrumentality or institution of the state” NMSA 1978 § 10-16-2(K) (2011). See also N.M. State Ethics Comm’n Adv. Op. No. 2021-10, at 4 (Aug. 13, 2021), *available at* <https://nmonesource.com/nmos/secap/en/item/18187/index.do> (concluding that a “state agency” under the Financial Disclosure Act (FDA) and given the FDA’s “governmental-ethics-related purpose” is “a state entity that has ‘powers and resources’—more specifically, the (i) legally authorized powers to alter the rights, duties, or privileges of others; and (ii) appropriated funds.” This interpretation of “state agency” is in accordance “with other elements in definitions of state agencies or public bodies in New Mexico law. Cf. § 12-8-2(A) (Administrative Procedure Act) (defining “agency” to emphasize the legal power of the state to alter the rights and privileges of others);<sup>3</sup> § 14-2-6(F) (Inspection of Public Records) (defining “public body” to include any branch of government that receives public funding).” Adv. Op. 2021-10, at 4.

public officer’s or employee’s substantial interest and unless the contract is awarded pursuant to a competitive process [...].<sup>6</sup>

Here, the community college would be contracting with the nonprofit through a no-bid, small professional services contract. The board member would potentially be employed by the nonprofit as the executive director. It is therefore necessary to analyze if the board member’s employment as the executive director of the nonprofit would constitute a “substantial interest.” If it does, then the community college could not contract with the nonprofit through a no-bid contract without public notice.

The Commission has previously determined that unpaid membership on the board of directors of a nonprofit is not a financial interest subject to disclosure or regulation under the GCA.<sup>7</sup> The GCA defines a “substantial interest” to mean “an ownership interest that is greater than twenty percent.”<sup>8</sup> Although the GCA does not define “ownership interest,” a legal dictionary defines “ownership” as “[t]he bundle of rights allowing one to use, manage, an enjoy property, including the right to convey it to others.”<sup>9</sup> Since a nonprofit corporation cannot issue shares,<sup>10</sup> no person, including an officer, can hold any ownership interest in it, let alone a “substantial interest.”<sup>11</sup> Therefore, Section 10-16-7(A) does not apply, enabling the community college to contract with the nonprofit through a no-bid, small professional services contract.

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<sup>6</sup> NMSA 1978, § 10-16-7(A) (2011).

<sup>7</sup> NM State Ethics Comm’n Adv. Op. 2021-02, at 2 (Feb. 5, 2021), *available at* <https://nmonesource.com/nmos/secap/en/item/18155/index.do> (citing NMSA 1978, § 10-16-2 (D), (F) (2011)).

<sup>8</sup> NMSA 1978, § 10-16-2(L) (2011).

<sup>9</sup> *Ownership*, Black’s Law Dictionary (11th ed. 2019).

<sup>10</sup> NMSA 1978, § 53-8-28 (A) (1989); *see also Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 585 (1997) (“A nonprofit entity is ordinarily understood to differ from a for-profit corporation principally because it ‘is barred from distributing its net earnings, if any, to individuals who exercise control over it, such as members, officers, directors, or trustees.’”).

<sup>11</sup> *See also* N.M. Att’y Gen., No. 90-17 (Sept. 20, 1990) (“Nonprofit organizations in New Mexico are not permitted to issue shares, and there is no other provision for owning interests in them.”); *See* § 10-16-2(F)(2).

**II. The board member can serve as the executive director of the nonprofit that contracts with the community college so long as the board member complies with Subsection 10-16-3 of the GCA.**

The GCA does not prohibit a community college board member from serving as the executive director of a nonprofit that receives grant funding awarded through the college through a no-bid, small professional services contract, but the board member must (1) avoid using their position as a board member for personal or private gain; (2) adhere to certain recusal and disclosure requirements under the GCA; and (3) disclose their employment as the executive director to community college.

- A. The board member must avoid using their position as a board member to obtain private benefits under Subsection 10-16-3(A).

Subsection 10-16-3(A) of the GCA requires a public officer to “treat [the] government position as a public trust” and to “use the powers and resources of public office only to advance the public interests and not to obtain personal benefits or pursue private interests.”<sup>12</sup> A community college board member is a public officer subject to the GCA.<sup>13</sup>

Under this provision, the board member may also serve as the executive director of the nonprofit so long as the board member does not use the powers and resources of being a board member “to obtain personal benefits or pursue private interests.”<sup>14</sup> Whether the board member does so is a question of fact.<sup>15</sup> For example, the board member could not use the community college’s staff time and resources to serve the nonprofit without an appropriate contract. Nor could the

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<sup>12</sup> NMSA 1978 § 10-16-3(A) (2011).

<sup>13</sup> The GCA defines a “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.” NMSA 1978 § 10-16-2(I) (2011).

<sup>14</sup> § 10-16-3(A).

<sup>15</sup> See, e.g., *State v. Muraida*, 2014-NMCA-060, ¶ 18 (concluding that intent presents a question of fact and may be inferred from both direct and circumstantial evidence).

board member use the community college’s board meetings as fundraising opportunities for the nonprofit.

- B. The board member must disclose any conflicts of interest between the community college and the nonprofit on which they serve as the executive director under Subsection 10-16-3(C).

Subsection 10-16-3(C) provides, “[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.” To conform to these requirements, the public officer must (1) disclose any real or potential conflict of interest; (2) take reasonable efforts to avoid undue influence; and (3) take reasonable efforts to avoid abuse of office.

While the GCA does not define “abuse of office,” the common law informs the meaning of the statutory term.<sup>16</sup> The abuse of office is a civil action based in common law. It is also known as “malfeasance in office,” “official misconduct,” and the “abuse of the public trust.”<sup>17</sup> It is a claim for the breach of a fiduciary duty, as applied to public officers who have a fiduciary relationship with the public.<sup>18</sup>

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<sup>16</sup> See *Sims v. Sims*, 1996-NMSC-078, ¶ 23 (“[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))).

<sup>17</sup> See Abuse of Public Office, *Black’s Law Dictionary* (11th ed. 2019).

<sup>18</sup> It is “beyond dispute” that public officials owe fiduciary duties to the public. See *Skilling v. United States*, 561 U.S. 358, 407 n.41 (2010); see also, e.g., *United States v. Carter*, 217 U.S. 286, 306 (1909) (observing that a fiduciary duty is applicable to public officials); *United States v. DeVegter*, 198 F.3d 1324, 1328 (11th Cir. 2013) (“Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.” (citation omitted)); *United States v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (“Elected officials generally owe a fiduciary duty to the electorate.” (citing *Shushan v. United States*, 117 F.2d 110, 115 (5th Cir. 1941))); *United States v. Kearns*, 595 F.2d 729, 734 (D.C. Cir. 1978) (reversing dismissal of federal common law breach of fiduciary duty claim the government asserted against federal officials, concluding “[t]he action pursued here is a proper tool, based on common law notions of principal-agent relations, for controlling the possible loss of impartial public administration”); *Marjac, LLC v. Trenk*, No. CIV A 06-1440 JAG, 2006 WL 3751395, at \*15 (D.N.J. Dec. 19, 2006) (denying a motion to dismiss a breach of fiduciary duty claim against

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.<sup>19</sup> Moreover, as a fiduciary, a public officer or employee owes 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.<sup>20</sup>

When Section 10-16-3(C) requires public officers and employees to avoid “undue influence and abuse of office in public service,”<sup>21</sup> that statutory language is informed by the common law fiduciary duties that public officers owe the public.<sup>22</sup> Because the Legislature has declared that a public officer’s or employee’s government position is a public trust, those officials owe fiduciary duties to the public.<sup>23</sup> They would violate Section 10-16-3(C) by abusing their office in any manner that breaches those fiduciary obligations.<sup>24</sup>

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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)).

<sup>19</sup> *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).

<sup>20</sup> *See*, e.g., *Moody v. Stribling*, 1999-NMCA-094, ¶ 27 (“A fiduciary duty is a duty of loyalty.” (citations omitted)); *Kueffer v. Kueffer*, 1990-NMSC-045, ¶ 12 (“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.”).

<sup>21</sup> NMSA 1978, § 10-16-3(C) (2011).

<sup>22</sup> *See Sims*, 1996-NMSC-078.

<sup>23</sup> *See* § 10-16-3(A).

<sup>24</sup> *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”).

For example, if the board member were to fail to disclose their dual role as the executive director of the nonprofit when the community college is discussing or acting upon contracts that involve the nonprofit and/or failed to recuse from official acts that directly affect contracts that involve the nonprofit, the board member would likely violate Subsection 10-16-3(A) and (C).

- C. Subsection 10-16-4.2 requires the board member to disclose their employment as the executive director of the nonprofit to the community college.

The GCA 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.”<sup>25</sup> Thus, the board member is required to report their employment as the executive director of a nonprofit, in writing, to an appropriate official at the community college.

- D. Section 10-16-4 of the GCA does not apply to the board member despite the member’s position as the executive director of the nonprofit.

Section 10-16-4 A and B restrict the board member’s official acts related to the board member’s financial interests.<sup>26</sup> The GCA defines a “financial interest” as “an ownership interest in business or property” or “any employment or prospective employment for which negotiations have already begun.”<sup>27</sup> Since, as explained in Section I of this opinion, no one can have an ownership interest in a nonprofit corporation, the only concern is whether the board member’s employment with the corporation creates a conflict. If the grant helps to fund the organization and

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<sup>25</sup> NMSA 1978, § 10-16-4.2 (2011).

<sup>26</sup> See NMSA 1978, § 10-16-4 (2011). Section 10-16-4(A) speaks to the unlawfulness of a public officer taking an official act that *directly enhances* the public officer’s financial interest or position and Section 10-16-4(B) speaks to when a public officer is disqualified from taking an official act that *directly affects* the public officer’s financial interest.

<sup>27</sup> § 10-16-2(F); see also § 10-16-2(D) (defining “employment” as “rendering of services for compensation in the form of salary as an employee”).

thereby contributes to the board member's salary as executive director, that conflict would arise.

As a result of that conflict, the board member can follow the requirements of Section 10-16-4 B and disqualify themselves from engaging in all official acts involving the organization. This should include excusing themselves from any board meeting involving the grant and avoiding all private discussion with other board members about it. It is advisable to have a different employee of the nonprofit report to the board on the grant, except where the executive director's communication with the board is necessary.

**III. The board member can seek other services from the community college for the nonprofit under the GCA so long as they do not misuse their position as a board member for the nonprofit's gain through memorandums of understanding.**

Subsection 10-16-3(A) prohibits the board member from using the powers and resources of their office in a way that directly benefits the nonprofit but does not advance the public interest. Under Subsection 10-16-3(A), the board member could not, for example, use their board authority to give the nonprofit preferential terms for office space or intern assignments, i.e., free office space when other nonprofits would typically have to pay rent.

Subsection 10-16-3(C) requires the board member to fully disclose conflicts of interest in taking official acts, i.e., discussion, agenda-setting, and voting on contracts, involving the nonprofit. The board member should fully disclose their nonprofit role and recuse themselves from all related official acts. For example, the community college's staff could initiate and negotiate memorandums of understanding with the nonprofit's staff instead of with the board member.

Lastly, Subsection 10-16-6 provides, "[n]o... public officer... shall use or disclose confidential information acquired by virtue of the ... public officer's ... position with a state agency or local government agency for the ... public officer's ... or another's private gain."<sup>28</sup> Consequently, the board member cannot use nor disclose any confidential information that they may learn by virtue of being a board member in seeking out services from the community college for the

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<sup>28</sup> NMSA 1978, § 10-16-6 (2011).

nonprofit. For example, if the board member learns in a closed meeting that the community college will offer office space to community organizations on a first-come, first-served basis and that applications must meet specific requirements, the board member may not alert the nonprofit about this opportunity before the public announcement, because doing so would give the nonprofit an unfair advantage in preparing its application.

**IV. Under the Procurement Code, the board member must disclose campaign contributions exceeding \$250 during the two years prior to the date on which the member signs the contract with the community college.**

Under Subsection 13-1-191.1 of the Procurement Code, the board member would have to disclose all campaign contributions, pursuant to the disclosure requirements in Section 13-1-191.1(C), so long as the board member, or a family member or representative of the board member, has received any contributions with an aggregate total that exceeds two hundred fifty dollars (\$250) over the two-year period prior to the date on which the board member signs the contract.<sup>29</sup> This is because the board member, as the executive director of the nonprofit seeking to contract with the community college, is a “prospective contractor.”<sup>30</sup> Additionally, the board member, or a family member or representative of the board member, is prohibited from “giv[ing] a campaign contribution or other thing of value to an applicable public official or the applicable public official’s employers during the pendency of negotiations” for the sole source or small purchase contract.<sup>31</sup>

The contract may be cancelled if (1) the board member “fails to submit a fully completed disclosure statement pursuant to this section” or (2) the board member, or a family member or representative of the board member, “gives a campaign contribution or other thing of value to an applicable public official or the applicable public official’s employees during the pendency of the procurement

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<sup>29</sup> See NMSA 1978 § 13-1-191.1(B) (2007). Note that this disclosure requirement applies regardless of whom the board member (or a family member or representative of the board member) made contributions to during the relevant time period. In this request, the relevant time period is the two years prior to the date on which the contract signs the contract because the request discusses a no-bid sole source or small purchase procurement contract.

<sup>30</sup> See NMSA 1978 § 13-1-191.1(G)(4) (2007).

<sup>31</sup> NMSA 1978 § 13-1-191.1(E) (2007).

process.”<sup>32</sup> Therefore, it would be a violation of the Procurement Code if the board member did not disclose campaign contributions to themselves in bidding for a contract with the community college if the aggregate total of contributions exceeds two hundred fifty dollars (\$250) over the relevant period.

## **CONCLUSION**

Under the GCA, the board member of the community college may also serve as the executive director of the nonprofit provided that the member (1) acts fairly and impartially in their board duties, (2) avoids personal or private gain from their position as a board member, (3) discloses their executive director role in writing to the community college, (4) recuses themselves from relevant official acts when appropriate as a board member, (5) fully discloses any conflicts of interest, and (6) does not use any confidential information obtained as a board member for the nonprofit's benefit.

Under the Procurement Code, the board member is a “prospective contractor” as the executive director of the nonprofit and must disclose all campaign contributions exceeding \$250 in aggregate over the two years prior to signing a contract. The board member, their family members, and their representatives are prohibited from making contributions or providing anything of value to applicable public officials during contract negotiations.

**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**

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<sup>32</sup> NMSA 1978 § 13-1-191.1(F) (2007). Additionally, civil and criminal penalties could apply for violations of the Procurement Code. *See* NMSA 1978 §§ 13-1-196 (2019) and -199 (2013).



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2026-10**

June 15, 2026<sup>1</sup>

### **GCA Prohibition on Hiring a Former Agency Attorney as a Contractor Who Will Represent the Same Clients**

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

This request concerns Section 10-16-8 of the Governmental Conduct Act (GCA)<sup>3</sup> regarding the employment of a former state agency staff attorney as a contracted agency attorney. Specifically, the request asks if the state agency can

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On April 7, 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.

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

immediately enter into a small professional services contract with the attorney to represent the same clients.

The attorney did not have any finance, procurement, or strategic planning functions while working for the state agency and did not have any involvement in the decision-making process or creation of the contract. The attorney did not and will not represent the same clients in front of the state agency because the agency does not hear matters in any adjudicatory capacity.

## ANSWER

Under Section 10-16-8 of the GCA, the agency may not enter a small professional services contract with the attorney who resigned because they are representing the same clients as a contractor as they did when she was an attorney for the agency. Note that this opinion only analyzes the inquiry under the GCA, and not the application of the Rules of Professional Conduct for attorneys, Rule Set 16 NMRA.

## ANALYSIS

- I. Section 10-16-8 of the GCA prohibits the agency from entering into a small professional services contract with a former staff attorney to represent the same clients because the attorney’s representation of the same clients violates Subsection 10-16-8(B).<sup>4</sup>**

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<sup>4</sup> New Mexico legal authorities stand for the rule that a party cannot contract to do something that is illegal or against public policy and that such contracts are void and unenforceable, for example, the commentary to Rule 13-835 on illegality and enforceability of contractual obligations states that “[a] contract made or performed in violation of a statute may be unenforceable on public policy grounds” (citing *DiGesu v. Weingart*, 1978-NMSC-017, ¶ 7; *Granger v. Caviness*, 1958-NMSC-106, ¶¶ 6, 10; *Davis v. Savage*, 1946-NMSC-011, ¶ 42, *City of Artesia v. Carter*, 1980-NMCA-006, ¶ 12). UJI 13-835 NMRA, committee commentary (Oct. 31, 2025) (available at <https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/2025/10/UJI-13-835-NMRA.pdf>). Common law also holds that courts will not enforce contracts that require illegal acts or are against public policy. *See, e.g., McMullen v. Hoffman*, 174 U.S. 639, 654 (1899) (stating that “no court will lend its assistance in any way towards carrying out the terms of an illegal contract” and that “[i]n case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract.” *See also* Restatement (Second) of Contracts § 178 (1981) (stating that “[a] promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides

- A. Based on the facts presented in this request, the contract does not violate Subsection 10-16-8(A).

Section 10-16-8 of the GCA limits contracts involving former public officers.<sup>5</sup> Subsection 10-16-8(A) provides:

A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

- (1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or
- (2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.<sup>6</sup>

The purpose of subsection 10-16-8(A) is to prevent government officials from using the powers and resources of their public office with a purpose to secure a benefit for themselves after they separate from government service. Subsection 10-16-8(A) works alongside the other revolving-door provisions in section 10-16-8 to guard against conflicts of interest.<sup>7</sup>

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that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.”).

<sup>5</sup> See NMSA 1978, §§ 10-16-8(A), (B), (D) (2011). Note that this request does not address § 10-16-8(C) because that subsection concerns local government agencies instead of a state agency.

<sup>6</sup> § 10-16-8(A).

<sup>7</sup> See generally *Ortiz v. Taxation and Revenue Dep't*, 1998-NMCA-027, ¶ 9 (“The purpose of ‘revolving door’ legislation is to enhance public trust and confidence in our governmental agencies by prohibiting conduct which may permit or appear to permit undue influence or a conflict of interest.”).

Whether subsection 10-16-8(A) prohibits the attorney who resigned from the agency to work as a contracted attorney turns on two issues. First, did the attorney take an “official act” while a state employee with respect to their contract? Second, if so, did that act directly result in the agency entering into a contract that it would not enter but for the attorney’s official act?

The Governmental Conduct Act defines an “official act” as “an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.”<sup>8</sup> The facts presented in this request indicate that the attorney did not have any authority or input in the decision-making process or creation of their contract and that no work was done on the creation of their contract with they were still employed by the agency. Thus, the contract is not prohibited under 10-16-8(A).

- B. Based on the facts presented in this request, the contract violates Subsection 10-16-8(B) because as a contractor, the attorney deals with the government on the same matters in which they participated personally and substantially as an agency attorney.

Subsection 10-16-8(B) provides that “[a] former public officer or employee shall not represent a person in the person’s dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.”<sup>9</sup> This “restriction on a former public officer’s or employee’s representation is stringent because it does not expire: a former public officer or employee is forever barred from representing a person in the person’s dealings with the government relating to the same matter in which the former officer or employee participated personally and substantially while in public service.”<sup>10</sup>

Subsection (B) contains three elements. First, the former public officer or employee must represent a person in “the person’s dealings with the

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<sup>8</sup> NMSA 1978 § 10-16-2(H) (2011).

<sup>9</sup> § 10-16-8(B).

<sup>10</sup> State Ethics Comm’n Adv. Op. 2020-02, at 3 (Apr. 3, 2020), available at <https://nmonesource.com/nmos/secap/en/18164/1/document.do> (footnote omitted).

government.”<sup>11</sup> Second, the person’s dealings with the government must be the same “matter” as one in which the former public officer or employee participated in while in public service.<sup>12</sup> Third, the former public officer’s or employee’s participation in that matter must have been personal and substantial.<sup>13</sup>

- i. As a contractor, the former agency attorney deals with the government in matters in which they had personal and substantial participation.

The facts from the request establish the first and third elements. Regarding the first element, the attorney represents the same clients as a private contractor as when they were an agency attorney in district court. Participation in a court action in which a state agency is a party is a classic example of “dealing[] with the government.”<sup>14</sup> As to the third element, the attorney’s participation in the cases are personal and substantial, because, as the request articulates, they will continue to represent the same clients as an agency contractor as they represented as an agency attorney.

- ii. As a contractor, the former agency attorney represents clients in their dealings with the government on the same matters as when they were an agency attorney.

Regarding the second element of Subsection 10-16-8(B), the GCA does not define “matter” and New Mexico courts have not addressed whether one or more matters are the same in the context of subsection 10-16-8(B). This subsection, however, is modeled on Rule 16-111(A)(2) NMRA and ABA Model Rule of

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<sup>11</sup> *Id.* Note that although the Governmental Conduct Act does not define the term “represent,” it is commonly understood to mean “to assume or occupy the role or functions of (a person), typically in restricted, and usually formal situations; to be entitled to speak or act on behalf of (a person, group, organization, etc.); ... to act or serve as the spokesperson or advocate of.” OED Online, Represent v.1 (Oxford University Press, March 2021), [www.oed.com/view/Entry/162991](http://www.oed.com/view/Entry/162991).

<sup>12</sup> *See* § 10-16-8(B).

<sup>13</sup> *See id.*

<sup>14</sup> *See id.*

Professional Conduct 1.11(a)(2).<sup>15</sup> Because the request involves a former state employee who is also an attorney, the comparison to Rule 16-111 NMRA is particularly apt.<sup>16</sup> The rule

represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is

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<sup>15</sup> Rule 16-111(A)(2) NMRA and ABA Model Rule 1.11(A)(2) provide:

[A] lawyer who has formerly served as a public officer or employee of the government . . . shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

Rule 16-111(A)(2) contains a provision, not present in the statute, allowing the "appropriate agency" to allow the representation by giving informed written consent. The Commission does not express an opinion on whether the rule or the statute controls in this matter.

<sup>16</sup> See State Ethics Comm'n Adv. Op. 2020-02, at 4-5.

disqualified only from particular matters in which the lawyer participated personally and substantially.<sup>17</sup>

The Governmental Ethics Task Force, created by Laws 1992, Chapter 109 and signed into law by Governor Bruce King, drafted the Governmental Conduct Act's revolving door provisions. The task force described subsection 10-16-8(B)'s purpose in similar terms:

The amendments proposed by the task force preclude public officers and employees, after leaving government service, from representing any person before or against the government on specific matters in which the former officer or employee participated personally and substantially while in government. . . . This provision is designed to balance the competing interests involved—ensuring that the government officer or employee acts only in the public interest and not in a way that might “feather his or her nest” for post-government employment, while at the same time not barring the officer or employee from representation before his or her agency for such a long period that it would deter government recruitment of the best talent available.<sup>18</sup>

Given subsection 10-16-8(B) and Rule 16-111(A)(2)'s shared phrasing and purpose, the definition and interpretation of the word “matter” in the latter context guides the Commission's analysis.<sup>19</sup> Rule 16-111 NMRA and ABA Model Rule of Professional Conduct 1.11 define the term “matter” as follows:

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<sup>17</sup> Rule 16-111 NMRA, comment [4]; *accord* ABA Model Rule of Professional Conduct 1.11 cmt.

<sup>18</sup> Rep. H. John Underwood & James B. Mulcock, Governmental Ethics Task Force, Final Report—Findings and Recommendations, at 19 (N.M. Legislative Council Service Info. Memo. No. 202.90785, Jan. 27, 1993).

<sup>19</sup> *See id.*; *Cf. Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) (“When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well.”); *Marquez v. Larrabee et al.*, 2016-NMCA-087, ¶ 12, 382 P.3d 968 (stating that New Mexico courts may look to the Federal Rules of Civil Procedure and caselaw interpreting those rules for guidance in interpreting substantially similar provisions in New Mexico court rules); Antonin Scalia & Bryan A. Garner, *Reading Law: The*

“matter” includes: (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and (2) any other matter covered by the conflict of interest rules of the appropriate government agency.<sup>20</sup>

In determining whether two or more matters are the same for purposes of subsection 10-16-8 (B), the Commission will consider whether the matters’ underlying facts, parties, and temporal relationship are the same or overlap substantially.<sup>21</sup>

Here, the facts in the request state the attorney took their caseload and therefore continues to represent the same clients as an contractor whom they were representing as an agency attorney. Without further details about the attorney’s cases, the Commission assumes that the underlying facts, parties, and temporal relationships in the attorney’s cases are the same as a contractor as when they were an agency attorney. The attorney’s representations of clients would be part of the same “matters,” consequently violating subsection 10-16-8(B). Subsection 10-16-(B)’s prohibition works to deter (1) the potential for conflicts of interest for government employees who anticipate separation from government service and (2) a former government employee’s use of insider information or connections with current government staff against the public’s interest.

C. Subsection 10-16-8(D) of the GCA does not apply to the attorney’s contract.

Subsection 10-16-8(D) provides that “[f]or a period of one year after leaving government service or employment, a former public officer or employee shall not

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*Interpretation of Legal Texts* 322 (West 2012) (discussing “prior-construction” canon of statutory interpretation).

<sup>20</sup> Rule 16-111(E) NMRA; *accord* ABA Model Rule of Prof. Conduct 1.11(e).

<sup>21</sup> *See Roy D. Mercer, LLC v. Reynolds*, 2013-NMSC-002, ¶ 26 (concluding that Rule 16-111 “indicate[s] a fact-specific, transactional approach to determining the scope of ‘[the] matter’”) (second alteration original); *see also* Rule 16-111 cmt. [10] (“In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties and the time elapsed.”).

represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.”<sup>22</sup> Subsection (D) contains several elements. First, whether the former employee represents a person “for pay.”<sup>23</sup> Second, whether the representation is “before” the former employee’s former government employer.<sup>24</sup> Third, whether the representation occurs within the one year after leaving government service.<sup>25</sup>

This subsection does not apply to this inquiry because the attorney who resigned is not representing clients in front of the agency, which is their former government employer, but is instead representing clients in district court.

### **CONCLUSION**

For the above enumerated reasons, the proposed contract violates Subsection 10-16-8(B) of the GCA so long as the attorney is representing clients as a contractor in the same matters that they personally and substantially participated in while an attorney for the state agency.

**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**

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<sup>22</sup> § 10-16-8(D).

<sup>23</sup> *See id.*

<sup>24</sup> *See id.*

<sup>25</sup> *See id.*



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2026-11**

June 15, 2026<sup>1</sup>

### **Permissibility of Payment for a Legislator’s Travel Expenses from a Lobbyist Employer**

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

This request concerns whether a state legislator may accept payment for their travel expenses to accept an award from a lobbyist employer (“the organization”) at a recognition ceremony. The request states that the legislator’s recognition is not associated in any way with their

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<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On April 15, 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.

election campaign<sup>3</sup> and that the primary nature of the legislator’s travel is to accept the award without providing a speech or service at the recognition ceremony.

### ANSWER

Under the Gift Act, the organization may pay for the legislator’s travel expenses to accept the award.<sup>4</sup> How much the organization may pay, however, depends on whether the organization is repaying the New Mexico State Legislature for covering the legislator’s travel expenses, or the organization is paying the legislator directly. If the State Legislature deems the trip to lie within the legislator’s official duties and pays their travel expense, for which the organization reimburses the State Legislature, then full payment for their travel expenses would be allowed under an exception to the Gift Act. If the organization directly reimburses the legislator for their travel expenses, then the Gift Act only permits the organization to make such payments in the amount of \$250 or less, not to exceed a total of \$1000 within each calendar year.

Additionally, the organization would likely not be able to directly reimburse the legislator for these travel expenses under the Governmental Conduct Act’s (GCA) honoraria provision, because it does not appear that the legislator will make a speech or render a service for the organization at the event.<sup>5</sup>

Lastly, as a registered lobby group, the organization would need to report its expenditure of travel expenses under the Lobbyist Regulation Act.<sup>6</sup>

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<sup>3</sup> Because of the facts presented in this request, this opinion does not analyze the organization’s payment as a “contribution” under New Mexico’s Campaign Reporting Act. *See* NMSA 1978, §§ 1-19-25 to – 36 (as amended through 2024).

<sup>4</sup> *See* NMSA 1978, § 10-16B-1 to -5 (2007, as amended through 2019).

<sup>5</sup> *See* NMSA 1978, § 10-16-4.1 (1993).

<sup>6</sup> *See* NMSA 1978, §§ 2-11-1 to -9 (2019).

## ANALYSIS

### I. The Gift Act

The Gift Act limits gifts by restricted donors to state officers and employees.<sup>7</sup> Specifically, the Gift Act provides that “a state officer... shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer ... a gift of a market value greater than two hundred fifty dollars (\$250).”<sup>8</sup> Additionally, “[a] lobbyist registered with the secretary of state, [or] the lobbyist’s employer... shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer...”.<sup>9</sup>

The legislator is a “state officer or employee” under the Gift Act because they are a “person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage.”<sup>10</sup> The organization is a “restricted donor” under the Gift Act, because it is the client of a lobbyist.<sup>11</sup> The organization is a “restricted donor” that is registered as a lobbyist employer with the New Mexico Secretary of State.<sup>12</sup>

Analyzing whether payment for the legislator’s travel expenses by the organization is allowable under the Gift Act involves two steps. First, if it is a gift, is it limited by the Act, or does it fall under an exception to those limits; and, second, if it does not fall under an exception, how much of the legislator’s travel expenses may be paid for by the organization?

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<sup>7</sup> See § 10-16B-1 to -5.

<sup>8</sup> NMSA 1978, § 10-16B-3(A) (2007).

<sup>9</sup> NMSA 1978, § 10-16B-3(B) (2007).

<sup>10</sup> NMSA 1978, § 10-16B-2(E) (2007).

<sup>11</sup> The Gift Act includes “a lobbyist or a client of a lobbyist with respect to matters within the donee’s jurisdiction” in its definition of a “restricted donor.” NMSA 1978, § 10-16B-2(D) (2007).

<sup>12</sup> See *id.*; (citation to New Mexico Campaign Finance System webpage for the lobbyist omitted for confidentiality of the requester).

The Legislature has created exceptions for ten specific kinds of payments or transfers from the Gift Act's definition of a "gift."<sup>13</sup> One exception could potentially apply to the facts presented. This exception is for "any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's ... official duties that take place away from the state official's ... station of duty."<sup>14</sup>

Here, if the organization were to pay the New Mexico State Legislature for the legislator's travel expenses so that they may travel to accept the award in recognition of their efforts as a legislator, and the State Legislature were to accept the payments as related to the legislator's official duties, then reimbursement for the full cost would be allowed under the Gift Act. The statute does not limit the amount that the State Legislature can accept as a gift from the organization for travel expenses that are actually incurred.

In contrast, if the payment for the legislator's travel expenses does not fall under that exception because the organization would be making the payment to the legislator directly instead of to the New Mexico State Legislature, then the organization may only make payments of \$250 or less each, for an aggregate payment of up to \$1,000 in any one calendar year, to the legislator as "gifts."

**II. The legislator likely will not be able to have their travel expenses directly reimbursed under Section 10-16-4.1 of the GCA because they will neither be making a speech nor rendering a service in relation to the performance of their public duties as a legislator.**

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<sup>13</sup> See NMSA 1978, § 10-16B-2(B) (2007); See also State Ethics Comm'n Adv. Op. 2025-09 (Dec. 5, 2025) (available at <https://nmonesource.com/nmos/secap/en/item/19154/index.do>) (explaining that restricted donors are permitted to pay reasonable expenses for a state employee to attend a bona fide educational program that is directly related to the state employee's official duties) and State Ethics Comm'n Adv. Op. 2020-03 (June 5, 2020) (available at <https://nmonesource.com/nmos/secap/en/item/18165/index.do>) (explaining that payment of reasonable expenses incidental to an educational tour for legislators is not subject to the Gift Act's limitation on gifts).

<sup>14</sup> § 10-16B-2(B)(7).

Section 10-16-4.1 of the GCA prohibits legislators from accepting honoraria, which are defined to include payments over \$100, but permits reasonable reimbursement for certain expenses. Specifically, it provides:

No legislator ... may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service  
....<sup>15</sup>

While the GCA does not define “reasonable,” its meaning as used in the statute is determined by the context of its use, the rules of grammar, and its common usage.<sup>16</sup> Here, “reasonable” means modest or inexpensive.<sup>17</sup> In context, Section 10-16-4.1 refers to the appropriateness of the costs given the circumstances surrounding a third party paying for the travel expenses of a public official, traveling in an official capacity. The determination of “reasonable” thus also includes considerations of location, duration of the stay, and market rates. Section 10-16-4.1 anticipates reimbursement for the costs associated with *travel* incurred because of making a speech or providing a service associated with public office.

The request indicates that the legislator will neither be rendering a service nor giving a speech in relation to the performance of their public duties. It appears that the legislator will simply thank the organization for the award, which would not constitute a “speech” reasonably intended to earn an honorarium. Nor would accepting the award be considered “rendering a service.” Consequently, the

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<sup>15</sup> § 10-16-4.1.

<sup>16</sup> NMSA 1978, § 12-2A-2 (1997); *see also State v. Farish*, 2021-NMSC-030, ¶ 11 (explaining that in interpreting any statute, the primary goal of the Court must be to give effect to the intent of the Legislature, and in doing so first look to the ordinary and plain meaning unless a different intent is clearly indicated); *State v. Adams*, 2019-NMCA-043, ¶ 26, *aff'd*, 2022-NMSC-008 (noting that when ascertaining the ordinary and plain meaning of a statutory term, courts frequently will look to dictionary definitions).

<sup>17</sup> *See Reasonable*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/reasonableness> (defining “reasonable” to include not extreme or excessive, inexpensive, moderate or fair).

legislator may not accept direct reimbursement of their expenses for traveling to the recognition ceremony, under the GCA's honoraria provision.

### **III. The organization must report the expenditures for the legislator's travel to the Secretary of State under the Lobbyist Regulation Act.**

The Lobbyist Regulation Act (LRA) would require the organization to report the expenditure on the legislator's travel to the Secretary of State. The LRA provides:

Each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures or makes political contributions for the benefit of or in opposition to a state legislator or candidate for the state legislature, ... shall file an expenditure report with the secretary of state using an electronic reporting system approved by the secretary of state in accordance with Section 2-11-7 NMSA 1978.<sup>18</sup>

### **CONCLUSION**

Under the Gift Act, the organization may pay for the legislator's travel expenses to accept the award, but the permissible amount that the organization may pay depends on the payment method. If the organization pays the travel expenses directly to the State Legislature to support the legislator's trip as an official duty, full reimbursement is allowed. In contrast, if the organization directly reimburses the legislator, payments for the travel expenses are capped at \$250 each, up to a \$1,000 maximum for any one calendar year. Additionally, the organization likely could not directly reimburse the legislator under the Governmental Conduct Act's honoraria provision, as the legislator would not be delivering a speech or rendering

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<sup>18</sup> NMSA 1978, § 2-11-6 (2019).

a service at the awards ceremony. Finally, the organization must report its expenditure for the legislator's travel expenses under the Lobbyist Regulation Act.

**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**