STATE ETHICS COMMISSION MEETING

August 21, 2026

PUBLIC MATERIALS

STATE ETHICS COMMISSION

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

August 21, 2026, 9:00 a.m. to 12:00 p.m. (Mountain Time)

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

Commission Meeting

Chair Castillo Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of June 15, 2026 Commission Meeting

Commission Meeting Items	**Action Required**
4. FY28 Operating Budget (*Farris, George*)	Yes
5. History of the SEC (*draft*) (*Eberhardt*)	No
6. Proxy Voting – Open Meetings Act Analysis (*Su*)	No
7. Advisory Opinion 2026-12 – Application of Section 10-16-8 of the GCA to a Former State Agency Attorney's Post-State Employment as a Contractor Representing Different Clients (*Su*)	Yes
8. Public Comment	No

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

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

   I. 2024-NP-06

   II. 2024-NP-09

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

    I. Administrative Complaint No. 2026-21

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

    I. Authorization for a demand and civil action to enforce the Lobbyist Regulation Act
    (*Farris*)

    II. Babylon Bee, LLC v. Foy Castillo, et al.
    (*Farris*)

Upon applicable motion, Commission returns from executive session

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12. Administrative Matters under RULONA: Yes
    (*Branch*)

    I. 2024-NP-06

    II. 2024-NP-09

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

    I. Administrative Complaint No. 2026-21

14. Authorization of Civil Action: Yes
    (*Farris*)

    I. Authorization for a demand and civil action to enforce the Lobbyist Regulation Act
    (*Farris*)

15. Resolutions:
    (*Farris*)

    I. Resolution No. 2026-12: Artificial intelligence disclaimer requirements for political parody and satire

16. Discussion of next meeting — No
    (*Castillo*)

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 at least (1) week prior to the meeting.

The Commission will accept written public comment to Ethics.Commission@sec.nm.gov, with the subject line: "Public Comment: August 21, 2026" until 9:00 am on August 21, 2026.

Individuals wishing to participate by providing oral comment should register and join using the following link https://us02web.zoom.us/j/83479276487?pwd=NNz8Cx89PsKyb08c94jVFOm91Eo1rW.1. *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 June 15, 2026, 10:00 AM
[Subject to Ratification by Commission]

Call to Order

Chair Lang called the meeting to order at 10:00 AM.

1. **Roll Call**

Chair Lang called roll; the following Commissioners were present:

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

2. **Approval of Agenda**

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

Commissioner Bluestone requested the addition of a New or Old Business section and discussion of the next meeting. Chair Lang suggested adding an Administrative section at the end of the agenda to address both items. The present Commissioners agreed by unanimous consent.

3. **Approval of April 17, 2026, Commission Meeting Minutes**

Chair Lang sought a motion for approval of the minutes of the April 17, 2026, meeting. Commissioner Baker moved to approve the minutes; Commissioner Castillo seconded.

Commissioner Bluestone requested an amendment to the April meeting minutes to reflect comments he made for future consideration regarding the Commission's voting requirements. Commissioner Bluestone suggested that, as part of a future legislative recommendations process, the Commission consider recommending amendments to require at least five affirmative votes for Commission action, including at least two votes from each of the two major political parties represented on the Commission.

With the amendment and hearing no further discussion or objections, the April 17, 2026, meeting minutes were approved unanimously by all present Commissioners.

4. **Advisory Opinion 2026-07 – The Use of Campaign Funds for Informational Media as Part of Reelection Efforts**
   (Biderman)

Commission Staff Paul Biderman presented Advisory Opinion 2026-07, which addressed whether a county commissioner running for reelection may use campaign funds to create informational materials regarding a public issue that was a priority during their previous campaign. The opinion concluded that campaign funds may be used to discuss and raise awareness of a public issue when the materials are reasonably attributable to the candidate's reelection campaign, even if the candidate is running unopposed.

Chair Lang sought a motion to approve Advisory Opinion 2026-07. Commissioner Baker moved to approve the opinion for issuance; Commissioner Bluestone seconded. Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. Advisory Opinion 2026-07 was approved for issuance.

5. **Advisory Opinion 2026-08 – Contract with a Retired Agency Employee to Provide Training to Agency Staff Under the Governmental Conduct Act**
   (*Biderman*)

Commission Staff Paul Biderman presented Advisory Opinion 2026-08 concerning whether a retired state employee may contract with their former agency to provide training services. The opinion concluded that, under the facts presented, the contract was permissible because it was not contemplated or discussed prior to the employee’s retirement and did not involve prohibited post-employment representation before the agency.

Chair Lang sought a motion to approve Advisory Opinion 2026-08. Commissioner Castillo moved to approve the opinion for issuance; Commissioner McMillan seconded. Following discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. Advisory Opinion 2026-08 was approved for issuance.

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**
   (*Su*)

Staff Attorney Grace Su presented Advisory Opinion 2026-09 concerning the application of the Governmental Conduct Act and the Procurement Code to a community college board member who also serves as the executive director of a nonprofit organization. The opinion concluded that: (1) the dual roles are permissible under the Governmental Conduct Act, provided the board member complies with applicable disclosure, recusal, conflict-of-interest, and use-of-position requirements; (2) the board member may seek additional services from the community college on behalf of the nonprofit, such as office space or intern assignments through memorandums of understanding, so long as the board member fully discloses conflicts of interest, recuses from official actions when appropriate, and does not use the position or confidential information for the nonprofit's private benefit; and (3) under the Procurement Code, the board member must disclose certain campaign contributions made to or accepted by applicable public officials when entering into contracts with the community college if the statutory disclosure thresholds are met.

Chair Lang sought a motion to approve Advisory Opinion 2026-09. Commissioner McMillan moved to approve the opinion for issuance; Commissioner Bluestone seconded. Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. Advisory Opinion 2026-09 was approved for issuance.

7. **Advisory Opinion 2026-10 – GCA Prohibition on Hiring a Former Agency Attorney as a Contractor Who Will Represent the Same Clients**
   (*Su*)

Staff Attorney Grace Su presented Advisory Opinion 2026-10, which addressed whether a state agency may enter into a professional services contract with a former agency to represent the same clients after the attorney's resignation. The opinion concluded that the arrangement would be prohibited under the Governmental Conduct Act because the attorney would continue representing the same clients in a contractual capacity following state employment.

Chair Lang sought a motion to approve Advisory Opinion 2026-10. Commissioner Baker moved to approve the opinion for issuance; Commissioner Bluestone seconded. Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. Advisory Opinion 2026-10 was approved for issuance.

8. **Advisory Opinion 2026-11 – Permissibility of Payment for a Legislator's Travel Expenses from a Lobbyist Employer**
   (*Biderman*)

Commission Staff Paul Biderman presented Advisory Opinion 2026-11 concerning whether a legislator may accept payment of travel expenses from a lobbyist employer to attend a ceremony and receive an award. The opinion concluded that payment of travel expenses may be permissible under the Gift Act, depending on whether the expenses are reimbursed through the Legislature or paid directly to the legislator, and further addressed limitations under the Governmental Conduct Act and reporting requirements under the Lobbyist Regulation Act.

Chair Lang sought a motion to approve Advisory Opinion 2026-11. Commissioner Castillo moved to approve the opinion for issuance; Commissioner McMillan seconded.

During discussion, Commissioner Bluestone requested that staff follow up with the Legislative Council Service to determine how the matter was ultimately handled and whether the requester followed the guidance provided in the advisory opinion. Executive Director Farris stated that he would follow up with the Director of the Legislative Council Service.

Following discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. Advisory Opinion 2026-11 was approved for issuance.

9. **Public Comment**

Executive Director Jeremy Farris thanked Wendy George and Sharon Garcia for their work supporting the Commission's administrative operations and recognized Amy Ballou for her work as the Commission's case manager. Mr. Farris introduced the Commission's summer interns and associates: Darin Eberhardt, a rising sophomore at Georgetown University, who is researching the history of the Commission; Maricia Marquez, a rising senior at Loyola Marymount University, whose project focuses on using R to analyze Campaign Reporting Act violations; Scott Piper, a rising second-year law student at the University of New Mexico School of Law; and Miquala Purscell, a rising second-year law student at Creighton University School of Law. Mr. Farris noted that the summer associates will be assisting the Commission with various legal research projects.

Commission Staff Paul Biderman expressed his appreciation for the work of the Commission and its staff, with particular recognition of Grace Su for her contributions.

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.

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
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).

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

I. Commission staff sought a motion for dismissal in 2026-NP-06. Chair Lang sought a motion for the dismissal. Commissioner Villanueva moved to approve the dismissal; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The dismissal was approved.

14. **Action on administrative matters under State Ethics Commission Act**
(Goodrich)

I. Commission staff sought a motion for the authorization to extend the investigation in 2026-04 for an additional 90 days. Commissioner Baker moved to approve the authorization; Commissioner McMillan seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The authorization was approved.

15. **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 New Chapter New Mexico the political committee and New Chapter New Mexico the nonprofit. Chair Lang sought a motion for the authorization. Commissioner Bluestone moved to approve the authorization; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor. The authorization was approved.

II. Commission staff sought a motion for the authorization for the demand and civil action to enforce the Campaign Reporting Act and an authorization for a petition to district court for the issuance of subpoenas related to the enforcement of the Campaign Reporting Act. Chair Lang sought a motion for the authorizations. Commissioner Bluestone moved to approve the authorizations; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor aside from Chair Lang who recused himself from the vote. The authorizations were approved.

III. Commission staff withdrew their request for authorization for the demand and civil action to enforce the Campaign Reporting Act in this agenda item.

IV. Commission staff sought a motion for the State Ethics Commission to intervene as a party under rule 1-024(b) and an authorization for a petition to district court for the issuance of subpoenas related to the enforcement of the Governmental Conduct Act. Chair Lang sought a motion for the authorizations. Commissioner Bluestone moved to approve the authorizations; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All present Commissioners voted in favor aside from Commissioner Baker who recused himself from the vote and discussion. The authorizations were approved.

V. Commission staff sought a motion for the authorization to initiate a civil claim to seek injunctive relief under the Nondisclosure of Sensitive Personal Information Act against the New Mexico Corrections Department Cabinet Secretary in her official capacity. Chair Lang sought a motion for the authorization. Commissioner Bluestone moved to approve the authorization; Commissioner McMillan seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in favor. The authorization was approved.

16. **Public Comment**

There was no public comment.

17. **Administrative**

At Commissioner Bluestone's request, the Commission added an Administrative section to the agenda.

Chair Lang confirmed the next regularly scheduled meeting will take place on August 14, 2026.

Commissioner Bluestone raised, for future consideration, whether the Commission should amend its procedural rules to permit proxy voting when a Commissioner is unable to attend a meeting. Staff was asked to research the issue and report back to the Commission. No action was taken.

18. **Adjournment**

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting adjourned at 12:35 PM.

STATE ETHICS COMMISSION

http://sec.nm.gov

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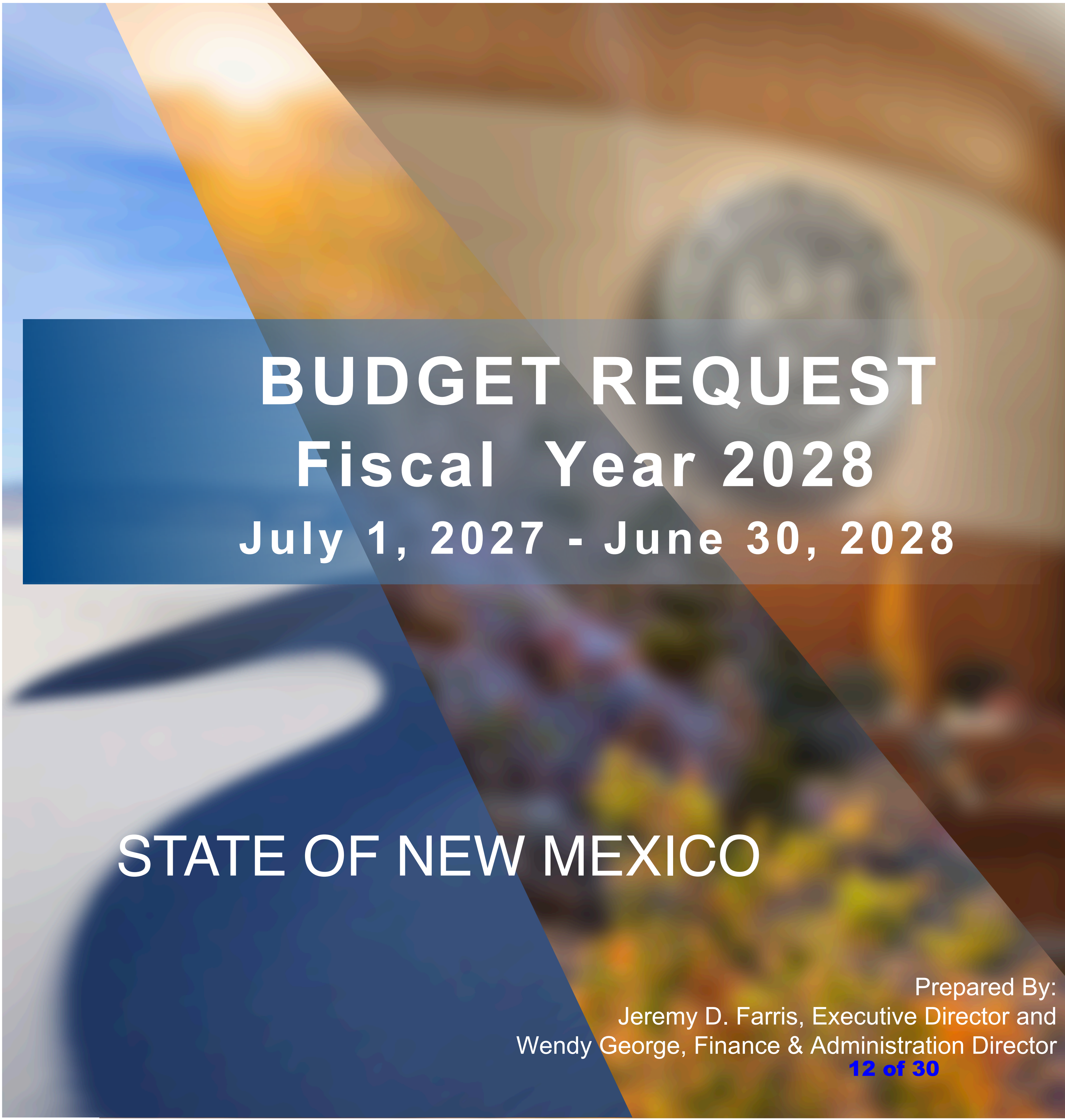
(505) 827-7800



BUDGET REQUEST
Fiscal Year 2028
July 1, 2027 - June 30, 2028

STATE OF NEW MEXICO

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

BU	PCode	Department
41000	P410	000000

State of New Mexico

S-8 Financial Summary

(Dollars in Thousands)

		2025-26 Opbud	2025-26 Actuals	2026-27 Opbud	2027-28 PCF Proj	FY 2028 Agency Request Base	FY 2028 Agency Request Expansion	FY 2028 Agency Request Total
REVENUE								
111	General Fund Transfers	1,858.3	1,802.3	1,916.2	0.0	2,006.2	148.0	2,154.2
112	Other Transfers	0.0	86.5	0.0	0.0	0.0	0.0	0.0
130	Other Revenues	5.0	5.0	5.0	0.0	5.0	0.0	5.0
REVENUE, TRANSFERS		**1,863.3**	**1,893.8**	**1,921.2**	**0.0**	**2,011.2**	**148.0**	**2,159.2**
REVENUE		**1,863.3**	**1,893.8**	**1,921.2**	**0.0**	**2,011.2**	**148.0**	**2,159.2**
EXPENSE								
200	Personal services and employee benefits	1,567.0	1,532.9	1,610.6	1,774.1	1,690.6	148.0	1,838.6
300	Contractual services	151.9	147.9	120.0	0.0	125.0	0.0	125.0
400	Other	144.4	168.1	190.6	0.0	195.6	0.0	195.6
EXPENDITURES		**1,863.3**	**1,848.9**	**1,921.2**	**1,774.08**	**2,011.2**	**148.0**	**2,159.2**
EXPENSE		**1,863.3**	**1,848.9**	**1,921.2**	**1,774.08**	**2,011.2**	**148.0**	**2,159.2**
FTE POSITIONS								
810	Permanent	10.00	13.00	10.00	10.00	0.00	1.00	11.00
FTEs		**10.00**	**13.00**	**10.00**	**10.00**	**0.00**	**1.00**	**11.00**
FTE POSITIONS		**10.00**	**13.00**	**10.00**	**10.00**	**0.00**	**1.00**	**11.00**

CATEGORY TOTALS MUST RECONCILE WITH THE GENERAL FUND COLUMN OF THE **BFM REV EXP COMPARISON AGENCY REPORT**

STATE ETHICS COMMISSION (410)
FY28 RECURRING GENERAL FUND: AGENCY APPROPRIATION REQUEST
CHANGES BY PROGRAM AND CATEGORY

State Ethics Commission (P410)	Salaries and Benefits (200's)	Contractual Services (300's)	Other (400's)	Other Financing Uses (500's)	TOTAL
FY27 Operating Budget: General Fund	**$1,610.6**	**$120.0**	**$185.6**	**$0.0**	**$1,916.2**
Increases (Decreases)					
520300 Classified Perm Postion - cover salary for existing employees. BFM PCF proj - vac savings = 633.8 / FY27 557.0	$30.0				$30.0
520100 Exempt Perm Postion - cover salary for existing employees. BFM PCF proj - vac savings = 712.3 / FY27 584.8	$50.0				$50.0
535209 Professional Services Interagency - AHO price increase for hearing officer services. Critical to business operations for litgated casework.		$5.0			$5.0
543830 Software Agreements - Westlaw legal subscription software contract increase effective 12/1/2026. Critical to business operations for legal staff.			$5.0		$5.0
546700 Subscriptions / Dues / Licenses increase in costs: see spreadsheet for breakdown.			$5.0		$5.0
General fund increase/decrease #6 description					$0.0
General fund increase/decrease #7 description					$0.0
General fund increase/decrease #8 description					$0.0
General fund increase/decrease #9 description					$0.0
General fund increase/decrease #10 description					$0.0
General fund increase/decrease #11 description					$0.0
General fund increase/decrease #12 description					$0.0
General fund increase/decrease #13 description					$0.0
General fund increase/decrease #14 description					$0.0
General fund increase/decrease #15 description					$0.0
FY28 Request: General Fund	**$1,690.6**	**$125.0**	**$195.6**	**$0.0**	**$2,011.2**
$ increase over FY27	$80.0	$5.0	$10.0	$0.0	$95.0
% increase over FY27	5.0%	4.2%	5.4%	#DIV/0!	5.0%

STATE ETHICS COMMISSION (410)
FY28 RECURRING GENERAL FUND: AGENCY EXPANSION
REQUEST CHANGES BY PROGRAM AND CATEGORY

State Ethics Commission (P410)	Salaries and Benefits (200's)	Contractual Services (300's)	Other (400's)	Other Financing Uses (500's)	TOTAL
FY28 Expansion Request -1 FTE					
Increases (Decreases)					
520200 Class Perm Position 1 NEW FTE - Attorney LLLA45 Salary	$108.9				$108.9
521200 PERA	$20.9				$20.9
521300 FICA	$8.3				$8.3
521100 RHCA	$2.2				$2.2
Health / Vision / Dental	$7.7				$7.7
General fund increase/decrease #6 description					$0.0
General fund increase/decrease #7 description					$0.0
General fund increase/decrease #8 description					$0.0
General fund increase/decrease #9 description					$0.0
General fund increase/decrease #10 description					$0.0
General fund increase/decrease #11 description					$0.0
General fund increase/decrease #12 description					$0.0
General fund increase/decrease #13 description					$0.0
General fund increase/decrease #14 description					$0.0
General fund increase/decrease #15 description					$0.0
FY28 Expansion Request: General Fund	**$148.0**	**$0.0**	**$0.0**	**$0.0**	**$148.0**
$ increase over FY27	$148.0	$0.0	$0.0	$0.0	$148.0

FY28 Nonrecurring - Special Appropriation Request			
Agency	Item #	Amount (thousands)	Description
41000	1	125.0	For litigation and attorney costs, student interns, software agreements, subscriptions and dues, employee training including related costs and IT equipment for expenditures through fiscal year 2029.

Opinion 10-02

OPINION OF: GARY K. KING Attorney General

February 23, 2010

BY: Elizabeth A. Glenn, Assistant Attorney General

TO: John Bigelow, Chair, New Mexico Sentencing Commission, 2808 Central Avenue, SE, Room 114, Albuquerque, NM 87106

QUESTIONS:

1. Is the policy of the New Mexico Sentencing Commission ("NMSC") regarding use of a designee for voting purposes authorized by the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (as amended through 2009) ("OMA")?

2. What constitutes an "official act" of an agency such as the NMSC for purposes of OMA?

3. What are the sanctions for noncompliance with the provisions of OMA?

CONCLUSIONS:

1. To the extent it authorizes members to vote by proxy, the NMSC's policy regarding the use of a designee for voting purposes is not authorized by OMA.

2. An "official act" for purposes of OMA broadly encompasses any activity related to an agency's official business, authority and responsibilities.

3. Sanctions for violating OMA include invalidation of agency action, award of attorney fees and costs to plaintiffs who prevail in a court action to enforce OMA, and criminal penalties.

FACTS:

Section 9-3-10 of the Corrections Department Act, NMSA 1978, ch. 9, art. 3 (as amended through2007), creates the NMSC, which is composed of 24 individuals "or their designees." Id. § 9-3-10(B). Under Section 9-3-10(C), "[a] majority of the members of the [NMSC] constitutes a quorum for the transaction of commission business."

The NMSC has adopted a policy "[p]ursuant to the authority granted in Section 9-3-10" that permits members to use a designee for voting purposes. Specifically, a member may "designate another person, including another member who serves on the same entity, to vote in the member's stead." NMSC Policies Regarding Use of a Designee for Voting Purposes, Section 1. A designee is permitted to cast no "more than three votes at a single time." Id. Effectively, the policy enables members to vote by proxy without attending or participating in NMSC meetings. It is not clear from the policy whether members who vote by proxy are counted for purposes of establishing a quorum at NMSC meetings.

ANALYSIS:

1. Use of Designees for Voting Purposes

As a state commission, the NMSC must conduct its meetings in compliance with OMA. See NMSA 1978, § 10-15-1(B). OMA's purpose is "to open the meetings of governmental bodies to public scrutiny...." Gutierrez v. City of Albuquerque, 96 N.M. 398, 401, 631 P.2d 304 (1981). This purpose is accomplished by OMA's provisions requiring governmental bodies to make their meetings accessible to the public:

> The formation of public policy or the conduct of business by vote shall not be conducted in closed meetings. All meetings of any public body ... shall be public meetings, and all persons desiring shall be permitted to attend and listen to the deliberations and proceedings.

Id. § 10-15-1(A).

The open meetings requirement applies to all "meetings of a quorum of members of any ... commission ... held for the purpose of formulating public policy ..., discussing public business or for the purpose of taking any action...." Id. § 10-15-1(B). OMA requires advance public notice for "[a]ny meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance...." Id. § 10-15-1(D) (emphasis added). The written minutes of a meeting must include, among other things, "the names of members in attendance and those absent...." Id. § 10-15-1(G) (emphasis added).

Although not expressly stated, these provisions make clear that a meeting is not open for purposes of OMA unless a quorum of the public body's members attends the meeting. Generally, OMA contemplates that the members will attend a meeting in person. The only exception is when it is "otherwise difficult or impossible" for a member to be physically present at a meeting. Id. § 10-15-1(C). In those instances, an absent member may participate by conference telephone if the member can be identified when speaking, all participants at the meeting can hear each other at the same time and members of the public can hear any member of the public body who speaks during the meeting. Id.

Requiring a member's attendance, either physically or by conference telephone, is consistent with the public access to meetings OMA guarantees. This includes the opportunity to observe not only the votes or action taken by the members of a public body, but also the discussions and deliberations that are an essential part of the formulation of public policy. Given OMA's purposes, it is unlikely that the legislature intended to allow mechanisms, such as proxy voting, that enable individual members of a public body to discuss business and formulate policy among themselves outside the public view.[1]

Our interpretation of OMA is consistent with pertinent legal authority from other states. For example, a recent Michigan Attorney General opinion concluded that a provision in a municipal board's bylaws that allowed absent board members to vote by proxy violated the Michigan Open Meetings Act. See Mich. Att'y Gen. Op. No. 7227 (2009). According to that opinion, while the bylaw allowed persons attending a meeting to know how an absent member voted,

> it nevertheless facilitates a process that denies citizens the equally important opportunity to observe that member's deliberation toward and formulation of that decision. Indeed, voting by proxy effectively forecloses any involvement by the absent member in the board's public discussion and deliberations before the board votes and, if applicable, public comment on a matter effectuating public policy.

See also Miss. Att'y Gen. Op. No. 95-0575 (1995) (for a public body covered by the Mississippi Open Meetings Act "to conduct official acts, a quorum must be physically present, and not present by way of a proxy"); Okl. Att'y Gen. Op. No. 82-7 (1982) (allowing members of a public body to vote by proxy rather than in person would be contrary to Oklahoma Open Meeting Act's protection "against secret decision-making and ... the Legislative intent of facilitating the understanding of government by informed citizens"). Cf. Collins v. Nix, 188 S.E. 2d 235 (Ga. Ct. App. 1972) (holding that because hospital authorities were "in effect instrumentalities of the State discharging essential governmental obligations, it would be contrary to the public interest" to allow board members to "discharge their solemn responsibilities by way of proxies").

In light of its language and underlying policy, we conclude that OMA does not allow a NMSC member to use a designee solely to convey the member's vote at a meeting. Each member or the member's designee must attend meetings in person or, in appropriate circumstances, by conference telephone. In that way, as OMA contemplates, members of the public attending the meeting may observe the give and take among NMSC members and general discussion of public business in addition to any action taken.

2. Official Acts

The first sentence of OMA provides:

> In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts those officers and employees that represent them.

NMSA 1978, § 10-15-1(A) (emphasis added). This is the only provision in OMA using the term “official acts.”

OMA does not define “official acts.” Consequently, the rules of statutory construction dictate that we give the term its ordinary and usual meaning. See, e.g., State ex rel. Reynolds v. Aamodt, 111 N.M. 4, 5, 800 P.2d 1061 (1990). The dictionary definition of “official” is “[o]f or relating to an office or position of trust or authority.” Black’s Law Dictionary (8th ed. 2004) (on Westlaw). An “official act,” therefore, would be an act of or related to an office. See also Ballentine’s Law Dictionary (1969) (on LEXIS) (defining “official act,” in pertinent part, as an “act done by an officer in his official capacity, under color and by virtue of his office”).

In the context of the statute as a whole, it is unlikely that the reference to “official acts” in Section 10-15-1(A) was intended to limit public access only to formal action taken by a public body. As quoted above, Section 10-15-1(B) requires all meetings of a public body held to take action, formulate public policy or discuss public business to be open to the public. This indicates that “official acts” for purposes of OMA include informal acts by a public body in the course of official business, such as “the acts of deliberation, discussion and deciding occurring prior and leading up to ... affirmative ‘formal action.’” Times Publishing Co. v. Williams, 222 So.2d 470, 474 (Fla. Dist. Ct. App. 1969) (interpreting a provision of the Florida public meetings law declaring that meetings of state and local government bodies “at which official acts are to be taken” are open to the public). See also Board of Trustees v. Mississippi Publishers Corp., 478 So.2d 269, 278 (Miss. 1985) (holding that “official acts” for purposes of Mississippi open meetings law include “actions relating to formation and determination of public policy”).

Even if the term “official acts” was intended to refer only to formal action, it does not change our interpretation. As quoted above, Section 10-15-1(A) declares that “all persons are entitled to the greatest possible information regarding the affairs with government and the official acts” of their representatives in government. This statement of policy ensures public access not only to acts by public officers and employees in their official capacities, but also information regarding those acts. Thus, assuming a narrow definition of the term “official acts,” OMA ensures public access to “information regarding” those acts, which includes discussions among the members during a meeting related to the public body’s decisions, actions and policies.

3. Sanctions for Noncompliance

OMA specifies three remedies or consequences for violations of its provisions. First, “[n]o resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1.” NMSA 1978, § 10-15-3(A). Section 10-15-1 includes all the substantive provisions of OMA. Action taken at a meeting that does not comply with any of those provisions is deemed invalid and without effect.

Second, “any person” may bring an action in district court “to enforce the purpose of the Open Meetings Act....” NMSA 1978, § 10-15-3(C). A person who is “successful in bringing a court action” to enforce OMA is entitled to court costs and reasonable attorneys fees. Id.

Finally, OMA provides for criminal penalties. A person who is found to have intentionally acted in a manner that violates OMA “is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars ($500) for each offense.” NMSA 1978, § 10-15-4; Attorney General’s Office Open Meetings Act Compliance Guide, p. 47 (6th ed. 2008).

A public body may avoid the sanctions provided in OMA by taking appropriate action to cure a violation. See Kleinberg v. Board of Educ., 107 N.M. 38, 44, 751 P.2d 722 (Ct. App. 1988). Generally, this entails holding a properly noticed, public meeting to re-take an action or a vote that occurred at a meeting that violated OMA. Id. at 43-44 (local school board corrected failure to vote on teacher’s discharge in open session by promptly holding an open meeting and publicly voting on and ratifying its decision). Under OMA, “[a] public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation occurred.” NMSA 1978, § 10-15-3(B).

GARY K. KING
Attorney General

ELIZABETH GLENN
Assistant Attorney General

[1] Although the legislature could expressly authorize the NMSC to allow its members to vote by proxy, it has not done so. As quoted above, Section 9-3-10(B) currently provides that the NMSC consists of 24 specified “individuals or their designees.” Without more, this simply authorizes a NMSC member to designate a person to attend and participate in a meeting instead of the member. Section 9-3-10(B) does not authorize a member to vote through another member or person without otherwise attending and participating in the meeting.

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2026-12

August 21, 2026[1]

Application of Section 10-16-8 of the GCA to a Former State Agency Attorney's Post-State Employment as a Contractor Representing Different Clients

QUESTION PRESENTED[2]

This request asks a follow-up question in response to a prior formal advisory opinion on Section 10-16-8 of the Governmental Conduct Act (GCA),[3] which

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

[2] The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). On May 1, 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.

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

addressed whether a former state agency staff attorney could be hired as a contracted attorney for that agency. The prior request asked:

> if the state agency could immediately enter into a small professional services contract with the attorney to represent the same clients when 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 would not represent the same clients in front of the state agency because the agency does not hear matters in any adjudicatory capacity.[4]

This current request also concerns Section 10-16-8 of the Governmental Conduct Act.[5] It asks:

> Does NMSA 1978, Section 10-16-8, prohibit the state agency from entering into a professional services contract with a former staff attorney upon the termination of their employment to represent clients whom the attorney did not represent while a state employee in cases that the attorney was not involved in while a state employee?

Additionally, this request asks about whether there is "a distinction between entering into a Small Professional Services contract vs. a competitive contract based on an RFP" under the Procurement Code.[6]

ANSWER

Under the GCA, the state agency is allowed to enter into a professional services contract with a former agency attorney after their employment ends, as long as the attorney (1) did not take any official action as a state employee that led the agency to enter into the contract, and (2) as a contractor, does not represent clients in matters they personally and substantially worked on while employed as an agency attorney.

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[4] *See* State Ethics Comm'n Adv. Op. 2026-10 (June 15, 2026), *available at* https://nmonesource.com/nmos/secap/en/item/19349/index.do.

[5] NMSA 1978 § 10-16-8 (2011).

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

Under the Procurement Code, if the value of the professional services contract with the attorney is over sixty thousand dollars ($60,000), the state agency must proceed with the contract using a request for proposals.[7]

ANALYSIS

I. The contract would likely be permitted under the GCA's "revolving door" provisions.

Section 10-16-8 of the GCA is intended to ensure that a government employee only acts in the public interests while employed. But it is not meant to bar the employee from representation before her agency for such a long period that it would deter government recruitment of the best talent available.[8] Section 10-16-8 serves to protect the public from former public employees using their public service for private gain.[9]

A. Based on the hypothetical presented in this request, the contract would not violate Section 10-16-8(A).

Section 10-16-8 of the GCA limits contracts involving former public officers.[10] As discussed in Advisory Opinion 2026-10, dated June 15, 2026, whether Section 10-16-8(A) would prohibit a former state agency attorney to work as a contractor depends on whether (1) the former attorney takes any "official act" while a state employee with regard to their proposed contract, and (2) if so,

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[7] *See* NMSA 1978 § 13-1-125 (2019), § 13-1-102 (2022), and § 13-1-111 (2007); *see also* NMSA 1978, § 13-1-76 (1997) (including the "services of … lawyers" in the definition of "professional services").

[8] State Ethics Comm'n Adv. Op. 2022-10 (Dec. 9, 2022) *available at* https://nmonesource.com/nmos/secap/en/item/18748/index.do.

[9] *See generally Ortiz v. Taxation and Revenue Dep't*, 1998-NMCA-027, ¶ 9, 124 N.M. 677 ("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."); *Principles of the Law: Government Ethics*, Tentative Draft No. 2, American Law Institute § 511 (Mar. 12, 2018); "Section 10-16-8(C)(2) prevents government employees from using their government prerogatives and resources to feather their nest after separating from the government[.]").

[10] *See* NMSA 1978, §§ 10-16-8(A), (B), (D) (2011). Note that this request does not address § 10-16-8(C) because that section concerns local government agencies instead of a state agency.

whether that act directly results in the state agency entering into the contract that it would not have entered but for the official act.[11]

Given the parameters of the hypothetical contract, it does not violate 10-16-8(A) because the attorney did not have any authority or input in the decision-making process or creation of the contract, and no work was done on the creation of the contract while the attorney was still employed by the state agency.

B. Based on the hypothetical presented in this request, the contract likely would not violate Section 10-16-8(B).

Section 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."[12] This "restriction on a former public officer's or employee's representation is stringent because it does not expire…."[13]

As discussed in Advisory Opinion 2026-10, Section (B) contains three elements.[14] First, the former public officer or employee must represent a person in "the person's dealings with the government."[15] Second, the person's dealings with the government must be the same "matter" as one in which the former public officer or employee participated while in public service.[16] Third, the former public

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[11] State Ethics Comm'n Adv. Op. No. 2026-10, at 3-4

[12] § 10-16-8(B).

[13] 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).

[14] State Ethics Comm'n Adv. Op. No. 2026-10, at 4-8.

[15] *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.

[16] *See* § 10-16-8(B).

officer's or employee's participation in that matter must have been personal and substantial.[17]

The hypothetical contract would establish the first element because the attorney would be representing clients in district court, and participation in a court action in which a state agency is a party is a classic example of "dealing[] with the government."[18] The hypothetical contract would not, however, implicate the second or third elements, given that the contract would be for the attorney "to represent clients whom the attorney did not represent while a state employee in cases that the attorney was not involved in while a state employee." If this is true, it is likely that the hypothetical contract would not violate Section 10-16-8(B) because the attorney would be representing clients in "new" matters.

Determining whether a matter is the same for purposes of Section 10-16-8(B) is a fact-specific inquiry that cannot be resolved in this advisory opinion, considering the specific questions presented. Such a determination would require an assessment of whether the attorney's representation involves the same underlying facts, the same or related parties, and the amount of time that has passed.[19]

C. Based on the hypothetical presented in this request, Section 10-16-8(D) of the GCA would not apply to the attorney's contract.

Section 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."[20] This section does not apply to this inquiry because the attorney would be representing clients in district court instead of in front of their former state agency.

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[17] *See id.*

[18] *See id.*

[19] *See* Rule 16-111(E)(1)-(2) NMRA & cmt. [10] and ABA Model Rule of Professional Conduct 1.11; *see also* State Ethics Comm'n Adv. Op. 2020-02, at 4-5.

[20] § 10-16-8(D).

II. Under the Procurement Code, the state agency would need to proceed with a professional services contract through a request for proposals if the value of the professional services exceeds $60,000.

Subject to certain exceptions, the Procurement Code applies to "every expenditure by state agencies… for the procurement of items of tangible personal property, services, and construction."[21] The Procurement Code's purposes "are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value and to provide safeguards for maintaining a procurement system of quality and integrity."[22]

A. Since the state agency is seeking a professional services contract, it must use a request for sealed proposals in its procurement process.

In general, a government body's purchase of goods or services under the Procurement Code must proceed in one of two ways: (1) solicitation of competitive sealed bids or (2) a request for sealed proposals.[23] The default rule is that all procurements must take place through competitive sealed bids, unless a specific section of the Procurement Code applies to what is being procured.[24] Under Section 13-1-111, a state agency or local public body's procurement of professional services generally must occur via competitive sealed proposals.[25]

A request for proposals permits the agency to accept the offer that is "most advantageous . . . [after] taking into consideration the evaluation factors set forth in the request for proposals."[26] An agency conducting a procurement through a

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21 NMSA 1978, § 13-1-30(A) (2005).

22 NMSA 1978, § 13-1-29(C); *see also Morningstar Water Users Ass'n, Inc. v. Farmington Mun. Sch. Dist. No. 5*, 1995-NMSC-052, ¶ 41, 120 N.M. 307 ("The purpose of the Procurement Code is to insure [*sic*] fairness when a public entity makes a purchase from a private entity."). It has also been said that the Procurement Code "protects against the evils of favoritism, nepotism, patronage, collusion, fraud, and corruption in the award of public contracts." *Planning & Design Solutions v. City of Santa Fe*, 1994-NMSC-112, ¶ 8, 118 N.M. 707 (citing *John J. Brennan Constr. Corp. v. City of Shelton*, 448 A.2d 180, 184 (1982)).

23 *See* § 13-1-102 and -111.

24 *See* § 13-1-102 (providing both the default rule and the exceptions thereto).

25 *See* § 13-1-111.

26 NMSA 1978, § 13-1-117 (1987).

request for proposals must "state the relative weight to be given to the factors in evaluating proposals" in the request.[27] This requirement gives a measure of predictability to proposal-based procurements, ensuring that the agency does not introduce additional evaluation factors mid-procurement to tip the scales in favor of an offer that is otherwise less advantageous.[28]

In a procurement through request for proposals, a government agency's award decision is based on application of factors set by the procuring agency—and not based on the cost alone.[29] When using requests for proposals, the procuring agency and responsible offerors may engage in pre-award negotiations.[30] Thus, while an agency's power to select a proposal is constrained in key respects (i.e., the agency must select proposals based only on the evaluation factors set forth in the request for proposals), the agency may negotiate with offerors "who submit proposals found reasonably likely to be selected for award," and the agency may permit revisions "for the purpose of obtaining best and final offers."[31]

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[27] NMSA 1978, § 13-1-114 (1984).

[28] *See Planning and Design Solutions*, 1994-NMSC-112, ¶ 14 ("The [Procurement] Code indicates that, in evaluating [responsive] proposals, [an agency is] required to apply the factors listed in the [r]equest [for proposals]—and no others."); *cf. also* 10 U.S.C. § 2305(b)(1) ("The head of an agency shall evaluate . . . competitive proposals and make an award based solely on the factors specified in the solicitation.").

[29] *See Planning and Design Solutions*, 1994-NMSC-112, ¶ 14; *cf. also PlanetSpace, Inc. v. United States*, 92 Fed. Cl. 520, 536 (Fed. Cl. 2010) ("It is beyond peradventure that the government may not rely upon undisclosed evaluation criteria in evaluating proposals. . . . Moreover, agencies must apply the stated evaluation factors in a fair and evenhanded manner across competing proposals. . . . Nevertheless, a solicitation need not identify criteria intrinsic to the stated evaluation factors, and agencies retain great discretion in determining the scope of a given evaluation factor.") (internal quotations, citations and alterations omitted).

[30] *See* NMSA 1978, § 13-1-115 (1989).

[31] *Id.* Also please note that although the Procurement Code permits negotiation of best and final offers with offerors whose proposals are likely to be selected, the State Purchasing Division of the General Services Division "strongly discourage[s]" executive state agencies from seeking best and final offers, directing to state agencies that "[a]n offeror's best offer should be included in that offeror's original proposal." 1.4.1.41 NMAC. The Procurement Code regulations contained in 1.4.1 NMAC apply to executive branch agencies of the State and only scattered sections of those regulations apply to local public bodies or school districts.

B. The Procurement Code's small purchases exception could apply to the state agency's contract.

Section 13-1-125 of the Procurement Code explains the parameters of a small purchases contract. Specifically, it provides:

> A. A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding sixty thousand dollars ($60,000), excluding applicable state and local gross receipts taxes, in accordance with the applicable small purchase rules adopted by the secretary, a local public body or a central purchasing office that has the authority to issue rules.
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> B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding sixty thousand dollars ($60,000), excluding applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement rules promulgated by the general services department or a central purchasing office with the authority to issue rules.
>
> C. […]
>
> D. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.[32]

If the value of the state agency's professional services contract with a former staff attorney is less than $60,000, then the state agency may use a small purchases contract. If the value of the contract exceeds $60,000, then the small purchases exemption does not apply, and the state agency must proceed with a request for sealed proposals for the procurement of the contract.

[32] § 13-1-125.

CONCLUSION

For the above enumerated reasons, the hypothetical contract would likely not violate Section 10-16-8 of the GCA, so long as the attorney did not, while still a state employee, take any official action that resulted in the state pursuing the contract; and that the attorney, in their contractor role, does not represent clients in matters in which they had personal and substantial involvement during their agency employment. The Commission notes, however, without opining, that the Rules of Professional Conduct contain specific provisions related to the imputation of conflicts of interest for former and current government officers and employees and that specific inquiries should be directed to the New Mexico State Bar.[33]

Additionally, under the Procurement Code, if the value of the attorney's professional services contract exceeds sixty thousand dollars ($60,000), the agency must award the contract through a request for sealed proposals.

SO ISSUED.

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

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[33] *See* State Ethics Comm'n Adv. Op. 2020-02, at 11 ("While the Commission 'may issue advisory opinions on matters related to ethics,' NMSA 1978, § 10-16G-8(A), the Commission will not issue advisory opinions regarding the application of the Rules of Professional Conduct for attorneys, Rule Set 16 NMRA.").