

SEC Office
800 Bradbury Dr. SE,
Suite 215
Albuquerque, NM 87106



Hon. William F. Lang
Jeff Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Ron Solimon
Judy Villanueva
Frances F. Williams

STATE ETHICS COMMISSION

Commission Meeting Minutes of June 5, 2020 | 9:00am-12:00pm
Virtually Via Zoom
[View Recording Here](#)

[SUBJECT TO RATIFICATION BY COMMISSION]

The meeting began with introductions from public attendees.

1. CALL TO ORDER AND ROLL CALL:

The meeting was called to order by Chair Lang. The roll was called. The following Commissioners were present:

Jeffrey Baker, Commissioner
Stuart Bluestone, Commissioner
Garrey Carruthers, Commissioner
Ronald Solimon, Commissioner
Judy Villanueva, Commissioner
Frances Williams, Commissioner
William Lang, Chair

2. APPROVAL OF AGENDA:

- Chair Lang sought a motion to approve the agenda. Commissioner Williams moved to approve the agenda; Commissioner Carruthers seconded. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative, and the agenda was approved unanimously.

3. APPROVAL OF APRIL 3, 2020 COMMISSION MEETING MINUTES:

- Chair Lang sought a motion to approve the minutes of the April 3, 2020 meeting. Commissioner Solimon moved to approve the minutes; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative, and the minutes were approved unanimously.

1. OPERATIONAL UPDATES

Director Jeremy Farris provided updates on the following matters:

- STAFF AND HIRING
 - o The Commission hired a Finance and Administration Director, Wendy George.
 - o Director Farris introduced SEC Summer Associates, Lane Towery and Annie Swift.

- OUTREACH AND PRESENTATIONS
 - o On June 3, Director Farris and General Counsel Walker Boyd conducted a CLE Webinar presentation on filing and litigating complaints before the State Ethics Commission.
 - o The webinar was well attended, peaking at 63 participants.

- *STATE V. GUTIERREZ*
 - o The Court of Appeals released its opinion in *State v. Gutierrez* (a case related to *State v. Padilla*, in which the Commission filed an amicus brief).
 - o The opinion represents a win, as it upheld key provisions of the Governmental Conduct Act (namely, NMSA 1978, § 10-16-3(A)).
 - o The opinion supports the Commission’s capacity to enforce the GCA under that provision.
 - o The parties have approximately three weeks to seek a writ of certiorari with the NM Supreme Court, and the SEC staff will monitor the docket.

- ADMINISTRATIVE CASELOAD
 - o The Commission’s administrative caseload is up to 17 filed complaints.
 - o The staff are actively working with Real Time Solutions to develop the Commission’s online docket application, which should be ready for testing in the coming weeks.

- SPECIAL LEGISLATIVE SESSION AND COMMISSION BUDGET
 - o In preparation for the special legislative session, all agencies were asked to provide adjusted FY21 budgets accounting for a 6.7% reduction.
 - o The staff submitted an FY21 budget to the State Budget Division reflecting the 6.7% reduction.
 - o The Commission will sustain this reduction by hiring one less employee than previously planned for FY21.

- COMMISSIONER ADDED UPDATE
 - o Chair Lang requested Director Farris fill in for him (due to a scheduling conflict) to give a one-hour presentation to Leadership New Mexico on Friday, June 12, 2020.

2. ADVISORY OPINION 2020-003.

- Director Farris provided an overview of Advisory Opinion 2020-003.
 - o Advisory Opinion 2020-003 responds to the following questions:
 - *1) Holtec International offers to provide flights, meals, refreshments, and lodging to New Mexico legislators as part of a two-day tour of Holtec’s Callaway Nuclear Generating Station near Reform, Missouri. Does the Gift Act, NMSA 1978, §§ 10-16B-1 to -5, permit Holtec’s donations?*

 - *2) Does the Campaign Reporting Act, NMSA 1978, §§ 1-19-25 to -36, require the legislators who attend Holtec’s tour of the Callaway station to report the flights,*

meals, refreshments, and lodging accommodations as in-kind campaign contributions?

- The advisory opinion concludes:
 - *The Gift Act's limitations do not apply to reasonable expenses incurred for flights, meals, refreshments, and lodging incidental to an educational tour. Because these expenditures are for an educational purpose, and not a political purpose, legislators participating in the tour are not required to report the flights, meals, refreshments, and lodging as in-kind contributions.*
- Chair Lang sought a motion to approve Advisory Opinion 2020-003. Commissioner Baker moved to approve advisory opinion as written; Commissioner Solimon seconded. Chair Lang conducted the vote by roll call. All commissioners voted in the affirmative, and the advisory opinion was approved unanimously.

3. **ADVISORY OPINION 2020-004.**

- Director Farris provided an overview of Advisory Opinion 2020-004.
 - Advisory Opinion 2020-004 responds to the following questions:
 - *1) Does the Procurement Code prohibit a person involved in a procurement award decision from discussing the contents of a proposal submitted in response to request for proposals prior to the award?*
 - *2) Does the Procurement Code prohibit a person involved in a procurement from applying a local vendor preference to a procurement over and above the resident business preference set forth in NMSA 1978, Section 13-1-21(D)?*
 - *3) Does the Procurement Code prohibit a person involved in a procurement from having ex parte communications with potential offerors outside the context of public notice, pre-proposal conferences, or written questions?*
 - The advisory opinion concludes:
 - *The Procurement Code prohibits disclosure of the contents of a sealed proposal during the negotiation process—i.e., from the time the proposals are submitted to the award of the contract. The Procurement Code does not allow a procuring agency to apply an undisclosed local business preference over and above the application of the resident business preference. The Procurement Code does not prohibit ex parte communications with potential offerors about a procurement where the procurement is not the subject of a protest.*
- Chair Lang sought a motion to approve Advisory Opinion 2020-004 as written. Commissioner Villanueva moved to approve Advisory Opinion as written; Commissioner Carruthers seconded. Chair Lang conducted the vote by roll call. All commissioners voted in the affirmative, and the advisory opinion was approved unanimously.

4. PROPOSED RULE 1.8.1.16 NMAC – COMMISSION MEETINGS

- Mr. Boyd provided an overview of a proposed rule change to the Commission’s administrative rule 1.8.1.16 NMAC. Mr. Boyd explained the staff are proposing the rule to more clearly establish the Commission’s capacity to meet virtually via zoom and do so in closer compliance with the Open Meetings Act.
- Chair Lang sought a motion to approve the rule as proposed for issuance and public comment. Commissioner Williams moved to approve rule for public comment; Commissioner Baker seconded. Chair Lang conducted the vote by roll call. All commissioners voted in the affirmative, and the proposed rule was approved for submission to public comment unanimously.

5. PROPOSED RULE 1.8.1.9-10 NMAC – INFORMAL ADVISORY OPINIONS

- Mr. Boyd provided an overview of a proposed rule change to the Commission’s administrative rules 1.8.1.9 and 1.8.1.10 NMAC. Mr. Boyd explained the changes would allow the Commission staff to provide expedited informal advice. This advice would be treated differently from formal advisory opinions providing only a good faith defense to requestors who rely on it but not immunity from a subsequent complaint as with the formal advisory opinion. This allows Commission staff to provide advice to requestors more quickly while maintaining the value of requesting a formal advisory opinion.
- Chair Lang sought a motion to approve the rule as proposed for issuance and public comment. Commissioner Carruthers moved to approve rule for issuance and public comment; Commissioner Villanueva seconded. Chair Lang conducted the vote by roll call. All commissioners voted in the affirmative, and the proposed rule was approved for issuance and public comment unanimously.

6. PROPOSED RULE 1.8.4 NMAC – PROPOSED CODE OF ETHICS

- Director Farris provided an overview of the proposed rulemaking and timeline for the development of the proposed code.
- Paul Biderman, an attorney contracted to help draft the model code, provided an update on how the current draft of the proposed code of ethics has developed and answered questions from the Commissioners on the substance of the draft.
- Chair Lang sought a motion to approve the rule as proposed for issuance and public comment. Commissioner Carruthers moved to approve rule for public comment; Commissioner Baker seconded. Chair Lang conducted the vote by roll call. All commissioners voted in the affirmative, and the proposed rule was approved for issuance and public comment unanimously.

7. EXECUTIVE SESSION

- Chair Lang sought a motion to enter a closed executive session to discuss pending administrative complaints pursuant to the Open Meetings Act, NMSA 1978, § 10-15-

1(H)(3), and the State Ethics Commission Act, NMSA 1978, § 10-16G-10 & 13(B). Commissioner Baker moved to enter executive session; Commissioner Solimon seconded. Chair Lang conducted the vote by roll call. All commissioners voted in the affirmative, and the Commission entered executive session.

- The Commission discussed the following administrative complaints:
 - o Administrative Complaint No. 2020-002
 - o Administrative Complaint No. 2020-003
 - o Administrative Complaint No. 2020-005

- The matters discussed in the closed meeting were limited only to those specified in the motion for closure. After concluding its discussion of these matters, the Commission resumed public session.

8. ACTIONS ON ADMINISTRATIVE COMPLAINTS

- **Administrative Complaint No. 2020-002**
 - o Director Farris requested a motion to enter an order of dismissal in Administrative Complaint No. 2020-002 for lack of subject matter jurisdiction claims against the respondent.
 - o Chair Lang sought a motion to issue the order of dismissal. Commissioner Carruthers moved to issue the order of dismissal; Commissioner Baker seconded. All Commissioners voted in the affirmative and the order of dismissal was issued.

- **Administrative Complaint No. 2020-003**
 - o Director Farris requested a motion to enter an order of dismissal of the federal claims alleged in the complaint as well as the claims against the entity respondent in Administrative Complaint No. 2020-003.
 - o Chair Lang sought a motion to issue the order of dismissal. Commissioner Baker moved to issue the order of dismissal; Commissioner Williams seconded. All Commissioners voted in the affirmative and the order of dismissal was issued.

- **Administrative Complaint No. 2020-005**
 - o Director Farris requested a motion to enter an order of dismissal in Administrative Complaint No. 2020-005 for lack of personal jurisdiction claims against the entity respondent.
 - o Chair Lang sought a motion to issue the order of dismissal. Commissioner Baker moved to issue the order of dismissal; Commissioner Solimon seconded. All Commissioners voted in the affirmative, and the order of dismissal was issued.

9. COMMISSIONER APPOINTMENTS

- Director Farris provided an update on the terms and method of reappointment for Commissioners Baker and Solimon.

- Commissioner Carruthers suggested that the discussion should begin with Commissioner preferences on the reappointment of Commissioners Baker and Solimon. Chair Lang sought the preferences of the four legislatively appointed Commissioners.
 - o All legislatively appointed Commissioners expressed enthusiasm for the reappointment of both Commissioners Baker and Solimon.
- Chair Lang sought a motion from the four legislatively appointed Commissioners to reappoint Commissioners Baker and Solimon for full four-year terms. Commissioner Bluestone moved to reappoint both Commissioners; Commissioner Carruthers seconded. All four legislatively appointed Commissioners voted to reappoint Commissioners Baker and Solimon to four-year terms.

10. DISCUSSION OF COMMISSION VISIBILITY

- Commissioner Bluestone discussed the benefits and potential opportunities to educate the public on key ethics issues. He suggested starting with an initiative to educate candidates for office on the proper and improper uses of campaign funds.
- Commissioner Solimon suggested assigning Commission members such as Commissioner Carruthers to be spokespersons to help educate the public.

11. SCHEDULING THE NEXT COMMISSION MEETING

- The Commissioners agreed to meet next on August 7, 2020. .

12. PUBLIC COMMENT

- Kathleen Sabo: Thanked Commissioner Bluestone for speaking with her group regarding Commission visibility and funding. Ms. Sabo suggested using the Commission’s website to improve Commission’s visibility and educate the public.

13. ADJOURNMENT

- Chair Lang sought a motion to adjourn. Commissioner Williams moved to adjourn. Commissioner Baker seconded. All Commissioners voted in the affirmative and the meeting was adjourned.

[SUBJECT TO RATIFICATION BY COMMISSION]