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Hon. William F. Lang
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Ronald Solimon
Judy Villanueva
Frances F. Williams

STATE ETHICS COMMISSION

Commission Meeting Minutes of December 4, 2020 | 9:00pm-12:30pm

Virtually Via Zoom

[View Recording Here](#)

[SUBJECT TO RATIFICATION BY COMMISSION]

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 (joined shortly after minutes were approved)
Hon. Garrey Carruthers, Commissioner
Ronald Solimon, Commissioner
Judy Villanueva, Commissioner
Frances Williams, Commissioner
Hon. William Lang, Chair

2. APPROVAL OF AGENDA:

- Chair Lang sought a motion to approve the agenda. Commissioner Carruthers moved to approve the agenda; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the agenda was approved unanimously.

3. APPROVAL OF OCTOBER 2, 2020 COMMISSION MEETING MINUTES:

- Chair Lang sought a motion to approve the minutes of the October 2, 2020 Commission meeting. Commissioner Carruthers moved to approve the minutes; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the minutes were approved unanimously.

4. APPROVAL OF PROPOSED CODE OF ETHICS FOR STATE AGENCIES 1.8.4. NMAC

- Director Farris provided an overview of the proposed code of ethics and the revisions made based on Commissioner feedback since the last Commission meeting.
- Chair Lang sought a motion to approve the proposed code of ethics for state agencies as drafted. Commissioner Carruthers moved to approve the proposed code; Commissioner Baker seconded. After discussion on the motion, Chair Lang conducted a roll-call vote. All other Commissioners voted in the affirmative, and the proposed code was approved unanimously.

5. AMENDMENT TO RESOLUTION 4, INVESTIGATIONS OF REFERRALS AND INFORMAL COMPLAINTS AND INITIATION OF CIVIL ACTIONS.

- Director Farris provided an overview of the amendment and asked the Commission for a motion to adopt resolution 4 as amended.
- Chair Lang sought a motion to adopt resolution 4 as amended. Commissioner Carruthers moved to adopt resolution 4 as amended; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the amended resolution 4 was adopted unanimously.

6. APPROVAL OF 2020 ANNUAL REPORT

- Director Farris provided an overview of the 2020 annual report and asked the Commission for a motion to submit the annual report to the Governor and the Legislature, including any changes to legislative recommendations as approved later in the meeting (item 13 *infra*).
- Chair Lang sought a motion to approve the 2020 annual report. Commissioner Bluestone moved to submit the annual report as stated above; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the annual report was unanimously approved for submission.

7. RESOLUTION 6, AUTHORIZATION OF STAFF ACTION DURING 2021 LEGISLATIVE SESSION

- Director Farris provided an update on the upcoming legislative session and an overview of resolution 6, which authorizes staff action during the legislative session.
- Chair Lang sought a motion to approve resolution 6 as drafted. Commissioner Bluestone moved to approve resolution 6 as drafted; Commissioner Solimon seconded. After concluding a brief discussion, Chair Lang conducted a roll call vote. All Commissioners voted in the affirmative, and resolution 6 was approved unanimously.

8. COMMISSIONER PER DIEM REIMBURSEMENTS FOR VIRTUAL ATTENDANCE

- Director Farris provided an overview of the law on per diem and explained that the Department of Finance and Administration was permitting agencies to decide for themselves whether they want to receive per diem for attendance at virtual agency meetings.
- Chair Lang sought a motion to permit or deny Commissioners to take per diem for virtual meetings. Commissioner Carruthers moved that the Commission should not accept per diem for virtual meetings; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the motion was approved unanimously. The Commissioners will not submit and Commission staff will not process per diem reimbursements for Commissioner attendance at virtual meetings.

9. EXECUTIVE SESSION

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) & 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Williams moved to enter executive session; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the Commissioners entered an executive session.

---BEGINNING OF EXECUTIVE SESSION---

- The following matters were discussed in executive session:
 - Administrative Case No. 2020-007
 - Administrative Case No. 2020-031
 - Administrative Case No. 2020-033
 - Discussion of Council for a Competitive New Mexico and Campaign Reporting Act
 - Discussion of *State v. Gutierrez et al.* (N.M. Sup. Ct.)
- The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an applicable motion.

---END OF EXECUTIVE SESSION---

10. ACTIONS ON ADMINISTRATIVE CASES

Administrative Case 2020-007:

- Director Farris asked the Commission for a motion to instruct staff to continue the investigation of the complaint under 10-16G-11(A) of the State Ethics Commission Act.
- Chair Lang sought a motion to authorize the staff to continue its investigation in case 2020-007. Commissioner Villanueva moved authorize the staff as stated above; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the motion was approved unanimously.

Administrative Case 2020-031:

- Director Farris asked the Commission for a motion to enter an order dismissing the claims the complainant alleged against the respondent based on conduct occurring prior to July 1, 2019.
- Chair Lang sought a motion to dismiss claims related to conduct prior to July 1, 2019 in administrative case 2020-031. Commissioner Carruthers moved dismiss the claims in administrative case 2020-031 as stated above; Commissioner Williams seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the order was approved unanimously.

Administrative Case 2020-033:

- Director Farris asked the Commission for a motion to dismiss case 2020-033 for lack of jurisdiction.
- Chair Lang sought a motion to dismiss case 2020-033 for lack of jurisdiction. Commissioner Williams moved dismiss administrative case 2020-033 as stated above; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the motion was approved unanimously.

11. AUTHORIZATION REGARDING COUNCIL FOR A COMPETITIVE NEW MEXICO

- Director Farris asked the Commission to approve Resolution 7 authorizing staff to issue a demand letter and take subsequent civil action to enforce the Campaign Reporting Act against the Council for a Competitive New Mexico.
- Chair Lang sought a motion to authorize the staff as stated above. Commissioner Carruthers moved to authorize the staff as stated above; Commissioner Bluestone seconded. Hearing no

discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the motion was approved unanimously.

12. PUBLIC COMMENTS

Members of the public were invited to provide comments to the Commission.

- **Cliff Rees:**
- Agreed with the Commission’s strategy to propose limited, necessary legislation in the 2021 legislative session.
- Regarding the 2021 interim starting next spring: suggested the Commission request its staff to appoint a working group to look at broader ethics legislative reform, including:
 - o Enacting a “public ethics code”, similar to other ethics legislation already in NM statutory law, such as the Children’s Code, Election Code, Motor Vehicle Code, and the Insurance Code.
 - o Including within a proposed public ethics code a “Public Contracts Ethics Act (SB 372 introduced but not passed in the 2019 legislature) combining the ethics provisions in the Governmental Conduct Act (GCA) and the Procurement Code.
 - o Updating the GCA per recommendations made by Paul Biderman and Mr. Rees in the GCA Attorney General’s compliance guide published in 2013 and in accordance with the likely ruling by the NM Supreme Court in the pending consolidated cases (*State v. Gutierrez, et al.*).
- **Jim Harrington (State Chair of Common Cause):** Stated that he would support comments made by Sydney Tellez later in the meeting if needed and thanked the Commission and staff for their work.
- **Kathleen Sabo (New Mexico Ethics Watch):** Stated that the New Mexico Ethics Watch (NMEW) board is of two minds with respect to strategies for recommending amendments to the state’s ethics laws during the upcoming legislative session in 2021. Ultimately, the NMEW board defers to the Commission on which specific recommendations to make to the legislature. Ms. Sabo also thanked the Commission and staff for their work and wished the Commission luck with respect to recommending legislative amendments.
- **Lilly Irvin-Vitela (New Mexicans for Ethics Coalition):** Echoed concerns raised by Common Cause New Mexico in their public comments regarding legislative recommendations in the upcoming 2021 legislative session and cautioned only making recommendations that are critical and reserve other legislative recommendations for a period when necessary public discussion is possible.
- **Paul Biderman:** Thanked the Commission for approving the proposed model code and explained that the proposed code does contribute to clarity on the state’s ethics laws. Additionally, Mr. Biderman echoed the points raised by Mr. Cliff Rees and thanked the Commission and staff for its work.

- **Rikki-Lee Chavez (Capital Council and Consulting):** Thanked the Commission and staff for their work and transparency.
- **Sydney Tellez (Associate Director, Common Cause New Mexico):** Thanked the Commissioners and staff for their work during its first year and shared concerns regarding recommendations to the State Ethics Commission Act and Campaign Reporting Act. Ms. Tellez noted that Common Cause New Mexico supports proposing limited amendments and refraining from most others for the purpose of ensuring transparency on any related discussion during the legislative process.
- **Tony Ortiz:** Thanked the Commission and staff for their work and wished everyone a happy and safe holiday season.
- **Chris Mechels:** Noted his efforts to advise the board members of the Law Enforcement Academy Board and other boards and commissions of the duty to file financial disclosures. Mr. Mechels concluded that board and commission members should be advised of their responsibility to file financial disclosures.
- No additional public comments were offered.

13. AUTHORIZATIONS REGARDING SPECIFIC LEGISLATION

- Director Farris invited feedback from the Commissioners on the legislative recommendations section of the annual report.
- Commissioner Bluestone stated his approval of staff proposing recommendations in a measured and strategic way using a two-tiered system. Commissioner Bluestone moved that Commission staff should amend the annual report to reflect the following within the second tier of legislative recommendations which would not be actively pursued by the Commission but would be supported by the Commission if proposed during the 2021 legislative session:
 - o The Commission recommends that Campaign Reporting Act should require funds raised on the premise that they will not be used for independent expenditures be deposited into segregated bank accounts.
 - o The Commission recommends requiring lobbyists to make two additional disclosures: The first due a week after the start of a legislative session, and a second report due one week after the bill introduction deadline, both indicating (i) what bills the lobbyist is taking a position; and (ii) whether they are supporting or opposing them, including the specific items they are supporting or opposing within those bills.
 - o The Commission recommends delegating to the Secretary of State’s Office rulemaking authority in both the Lobbyist Regulation Act and the Financial Disclosure Act.
- Commissioner Williams seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the motion was approved unanimously.

14. LETTER FROM THE COMMISSIONERS TO STAFF

- Chair Lang read a letter drafted by Commissioner Williams and signed by all of the Commissioners thanking Director Farris and the staff for their achievements in the Commission’s first year.

15. DETERMINATION OF NEXT MEETING

- The Commissioners agreed to meet next on Friday, February 5, 2021.

16. ADJOURNMENT

- Chair Lang moved to adjourn. Hearing no discussion, the meeting was adjourned.

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