



STATE ETHICS COMMISSION

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STATE ETHICS COMMISSION **ANNUAL REPORT** | **2021**

To: New Mexico Legislature
&
Gov. Michelle Lujan Grisham

STATE of NEW MEXICO

TABLE OF CONTENTS

OPENING MESSAGE	1
COMMISSION MEMBERS	2
HISTORY OF THE STATE ETHICS COMMISSION	3
ORGANIZATION	4
Commissioners	4
Commission Staff	4
FISCAL REPORT	7
OPERATIONS	8
Administrative Complaints	8
Advisory Opinions	10
Civil Enforcement & Litigated Matters	15
Trainings	17
SPECIAL PROJECTS IN 2021	19
Citizens Redistricting Committee	19
Special Report on Jurisdiction	20
LEGISLATIVE RECOMMENDATIONS	22
Appendix 1: The Disclosure Act	26

OPENING MESSAGE

December 21, 2021

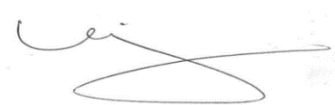
On behalf of the State Ethics Commission, I am pleased to offer the second annual report of the Commission's activities. Under statute, the State Ethics Commission "shall . . . submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor."

In 2021, the Commission continued to achieve its constitutional and statutory mandates. With staff assistance, the Commission:

- handled 36 administrative complaints newly filed in 2021;
- issued 12 formal advisory opinions and several informal letter opinions;
- amended its rules of procedure for ethics complaints and advisory opinions;
- enforced disclosures required by the Campaign Reporting Act against a "dark money" political action committee;
- commenced a civil action to enforce the "revolving door" provisions of the Governmental Conduct Act;
- prevailed in litigation challenging the Commission's subpoenas in District Court, the Court of Appeals, and the Supreme Court;
- provided continuing legal education and ethics trainings to audiences around the state;
- researched, prepared and submitted a special report on the Commission's jurisdiction for administrative cases, recommending certain additions to that jurisdiction; and
- appointed three members to the Citizen Redistricting Committee and provided staff support to that committee.

On behalf of the Commissioners, I want to thank the New Mexico Legislature and the Governor for their continued support of the Commission. Public trust takes years of work by each branch of government to build and preserve and can be too easily lost. Like those New Mexicans who worked over 40 years for the Commission's creation, we believe that the State Ethics Commission will play a central part in ensuring ethical and accountable government in New Mexico.

Respectfully,



Hon. William F. Lang (Ret.) Chair, New Mexico State Ethics Commission, on behalf of State Ethics Commissioners Jeffrey L. Baker, Stuart M. Bluestone, Hon. Garrey Carruthers, Hon. Celia Foy Castillo (Ret.), Ronald Solimon, and Judy Villanueva.

COMMISSION MEMBERS

Hon. William F. Lang, Chair

Appointing authority: Governor Michelle Lujan Grisham

Initial term expires: June 30, 2022

Jeffrey L. Baker, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: August 10, 2024

Stuart M. Bluestone, Member

Appointing authority: Speaker of the House, Brian Egolf

Initial term expires: June 30, 2023

Hon. Garrey Carruthers, Member

Appointing authority: Minority Floor Leader of the Senate, Stuart Ingle

Initial term expires: June 30, 2023

Hon. Celia Foy Castillo, Member

Appointing authority: President Pro Tempore of the Senate, Mimi Stewart

Term expires: June 30, 2025

Ronald Solimon, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: August 10, 2024

Dr. Judy Villanueva, Member

Appointing authority: Minority Floor Leader of the House, James Townsend

Term expires: June 30, 2025

Nota bene:* **Frances F. Williams's term of service as a Commissioner ended on June 30, 2021. The Commission held an event to celebrate Commissioner Williams's contributions in the summer of 2021 in Mesilla, New Mexico. This event was attended by Commissioner Bluestone, Commissioner Carruthers, former Senator Mary Kay Papen, who appointed Commissioner Williams, Representative Doreen Gallegos, and members of the Commission staff. The Commission again thanks Frances for her dedicated service to the Commission.

HISTORY OF THE STATE ETHICS COMMISSION

In the 2018 general election, New Mexicans voted to adopt Article V, Section 17 of the New Mexico Constitution, which established the independent and bipartisan State Ethics Commission. New Mexico became the 45th state to create an independent ethics commission.

The Commission is the product of over 40 years of work by Governors, state legislators, advocacy organizations, and other New Mexicans fighting for accountable government.

In 2017, the Legislature passed a joint resolution to amend the New Mexico Constitution to create an independent ethics commission. The House of Representatives unanimously passed this joint resolution (66-0), and the Senate passed it on a vote of 30-9. The legislation gave the New Mexico electorate the final decision on whether to create an independent ethics commission.

In November 2018, over 75% of New Mexican voters voting on the ballot question elected to amend the Constitution to add Article V, Section 17, creating an independent ethics commission. The new Constitutional provision provides for the Commission's seven-member composition and directs the process for the appointment of the Commissioners. N.M. Const. Art. V, § 17(A). It also empowers the Commission to adjudicate alleged violations of, and issue advisory opinions regarding, ethical standards and reporting requirements for "state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts" and for such other jurisdiction as provided by law. N.M. Const. Art. V, § 17(B). Finally, the state Constitution empowers the Commission with subpoena powers, as provided by law, and enables the Commission to "have such other powers and duties and administer or enforce such other acts as further provided by law." N.M. Const. Art. V, § 17(C).

In the following 2019 legislative session, the Legislature unanimously enacted enabling legislation, Senate Bill 668 (Laws 2019), which created the State Ethics Commission Act, providing for additional structure for the Commission and delegating to the Commission a specific set of powers. Senate Bill 668 also amended the Governmental Conduct Act, the Procurement Code, the Campaign Reporting Act, the Lobbyist Regulation Act, the Voter Action Act, the Financial Disclosure Act, and the Gift Act, delegating additional adjudicatory and enforcement powers to the Commission. Governor Michelle Lujan Grisham signed Senate Bill 668 into law on March 28, 2019.

The organizational provisions of the State Ethics Commission Act took effect on July 1, 2019, and the statute's jurisdictional provisions took effect on January 1, 2020.

ORGANIZATION

Commissioners

The State Ethics Commission is comprised of seven commissioners. The State Ethics Commission Act sets forth a procedure for appointing commissioners that ensures a bi-partisan independent commission.

The Commission has a unique appointment process. The Speaker of the House of Representatives, the Minority Floor Leader of the House, the President Pro Tempore of the Senate, and the Minority Floor Leader of the Senate each appoint one Commissioner. The four legislatively appointed Commissioners then appoint two additional Commissioners. Finally, the Governor appoints the Commission's Chair, who must be a retired judge. No more than three Commissioners may be members of the same political party. Except for the initial Commissioners' initial terms, the Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms.

There are also statutory requirements regarding who may serve as a Commissioner. To qualify, a person must be a New Mexico voter; not have changed party registration in the five years preceding appointment; and not have been in the two years preceding appointment a public official, a public employee, a candidate, a lobbyist, a government contractor, or an office holder in a political party at the federal or state level.

Commission Staff

The administrative, legal, and investigative functions of the Commission are performed by the agency's staff. The State Ethics Commission Act creates two staff positions: the Executive Director and General Counsel. The Commission hires the Director, and the Director hires the General Counsel and all other staff. Each statutorily created office is subject to limited terms. Under the Act, the Director may serve for, at most, two six-year terms; the General Counsel may serve for, at most, two five-year terms. The Commission's current staff members are as follows:

Executive Director | Jeremy D. Farris

Jeremy D. Farris is the State Ethics Commission's founding Executive Director. He previously served as General Counsel to New Mexico's Department of Finance and Administration and practiced law at litigation firms in Atlanta, Georgia and Albuquerque, New Mexico. Jeremy clerked for the Honorable Julia S. Gibbons on the United States Court of Appeals for the Sixth Circuit; the Honorable Judith K. Nakamura on the New Mexico Supreme Court; and the Honorable James O. Browning on the United States District Court for the District of New Mexico. He holds a law degree from Harvard Law School, a doctorate and master's degree from the University of Oxford, where he was a Rhodes Scholar, and a Bachelor of Science from the Georgia Institute of Technology.

General Counsel | Walker Boyd

Walker Boyd is the first State Ethics Commission General Counsel. He previously practiced law at Peifer, Hanson and Mullins, P.A., and clerked for the Honorable James A. Parker on the United States District Court for the District of New Mexico and the Honorable J.

Miles Hanisee on the New Mexico Court of Appeals. He holds a law degree from the University of New Mexico, where he served as Editor in Chief of the New Mexico Law Review, and where he currently teaches as an adjunct professor.

Deputy General Counsel | Rebecca Branch

Rebecca Branch, a native New Mexican, serves as the State Ethics Commission's Deputy General Counsel. She previously served as Deputy Director of Litigation and Deputy Director of Consumer Protection at the Office of the New Mexico Attorney General. She also was with the Office of the Superintendent of Insurance as Legal Counsel. Rebecca began her legal career at the Branch Law Firm. She holds a law degree from University of Denver, Sturm School of Law and a Bachelor of Arts in History from Alfred University.

Finance and Administration Director | Wendy George

Wendy George serves as the State Ethics Commission Director of Finance and Administration. She previously served as Budget Manager to New Mexico's Department of Finance and Administration and has over five years of governmental financial experience within the agency. She also has corporate financial and compliance experience working for Wells Fargo and Ameriprise Financial in Minneapolis, MN. She holds a Bachelor's of Science in Business Management from Cardinal Stritch University.

Special Projects Coordinator II | Michael Kiley

In 2021, Michael Kiley served as the Commission's Special Projects Coordinator, leading research that contributed to the Commission's October 1, 2021 special report on jurisdiction and providing key staff support to the Citizen Redistricting Committee. Mike specializes in organizational development and was founder and President of the Colorado Alpine Advanced Trauma Care Project, Inc. He has served in four levels of government, as Budget and Policy Analyst for Colorado and as Rescue Operations Supervisor with the California State Police, where he created a student-staffed paramedic service in central California. He was with the U.S. Postal Service and was a U. S. National Park Law Enforcement/Mountain Rescue Ranger. Mike also was the Manager for the Telluride Hospital District and worked on projects for the City of Boulder. Mike served as a paramedic for 6,000 advanced life support encounters, and hospital and clinic manager including for the Minimally Invasive Diagnostic Center of National Jewish Health in Denver. Mike trained at the University of California, earning a Ph.D in political science with specialization in public administration, public law and normative theory, at UCLA for a Masters of Public Health in hospital administration, and for bachelors and masters degrees at the University of Denver, where he was a member of the social science honor society Pi Gamma Mu. He is a fifth generation Colorado native.

Director of Communications | Sonny C. Haquani

Sonny Haquani serves as the State Ethics Commission's Communications Director. Prior to joining Commission staff, Sonny served as a Community Liaison for the City of Albuquerque's Office of Equity and Inclusion. Previously Sonny has served as Board Chairman of IBSG, an International business and global affairs think tank at the University of New Mexico's Anderson School of Management. In partnership with the Anderson School, Sonny was the Executive Editor and co-author of *Outside the Margins: The Bluebook on the Global Refugee Crisis*. Sonny holds a Bachelor's of Arts in International Studies and Political Science from the University of New Mexico.

Legal Summer Clerks | Cody Barnes, Sheyla Lopez, & Ryan Sanchez

During the summer of 2021, the Commission invited three law students from the University of New Mexico School of Law to participate in Commission's work. Cody Barnes, Sheyla Lopez, and Ryan Sanchez (all currently in their 2L year) performed various legal research and drafting projects. They attended both depositions and Commission meetings. The Commission is committed to working with the University of New Mexico School of Law to introduce successive classes of UNM Law students to the Commission's legal work through summer clerkships.

FISCAL REPORT

The following chart reflects revenues, expenditures, and changes in net position for the fiscal year ending June 30, 2021.

STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL YEAR ENDED JUNE 30, 2021
(Amounts in dollars)

	<u>Budget</u>	<u>Actual</u>	<u>Variance - Favorable (Unfavorable)</u>
Revenues:			
General Revenue			
Appropriation	\$ 947,700	\$ 947,700	\$ -
Total Revenues	<u>947,700</u>	<u>947,700</u>	<u>-</u>
Expenditures:			
Personal Services and Fringe Benefits	670,600	585,689	84,911
Contractual Services	175,000	79,611	95,389
Other Costs	102,100	83,961	18,139
Total Expenses	<u>947,700</u>	<u>749,261</u>	<u>198,439</u>
Excess (Deficiency) of Revenues Over Expenditures	<u>\$ -</u>	<u>\$ 198,439</u>	<u>\$ (198,439)</u>
Fund Reversions – 2020		<u>\$ (198,439)</u>	
Net Change in Fund Balance		<u>\$ -</u>	

In accordance with the Government Auditing Standards, CliftonLarsonAllen LLP (CLA), has completed an audit of the State Ethics Commission's financial statements ending June 30, 2021. Following approval by the Office of the State Auditor, CLA's financial statement includes an **unmodified** auditor's report confirming no material weakness(es), significant deficiency(ies), nor noncompliance material to the financial statements. In CLA's opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities and the major general fund as of June 30, 2021, the respective changes in financial position and budgetary comparison of the general fund for the year then ended in accordance with accounting principles generally accepted in the United States. The full report on the State Ethics Commission's Financial Statements and Supplementary Information can be found at www.sec.state.nm.us/transparency/#reports

OPERATIONS

The Commission has four main functions: (i) investigation and adjudication of administrative complaints filed with the Commission; (ii) issuance of advisory opinions on request; (iii) civil enforcement of New Mexico's ethics laws in state court; (iv) issuance of a model code of ethics for state agencies and the provision of ethics and governmental conduct trainings for legislators, state agencies, and local public bodies. In addition, in 2021, the Commission was also required to appoint three members to the Citizen Redistricting Committee, including that Committee's chair. The Commission also provided staff support to the Citizen Redistricting Committee under a reimbursement-based, interagency memorandum of understanding. Below is a profile of the Commission's progress in 2021 year across these functions and a report of the Commission's workload.

Administrative Complaints

Adjudication of Administrative Complaints

The Commission's adjudication of administrative complaints is divided across four roles. The Executive Director determines jurisdiction. The General Counsel determines whether the allegations of a complaint are supported by probable cause. A hearing officer decides motions to dismiss for failure to state a claim for which relief can be granted and, in appropriate cases, holds hearings and issues findings of fact and conclusions of law. The Commission sits as an appellate body, reviewing hearing officer determinations if and when appealed. The Commission currently has a Memorandum of Understanding with the Administrative Hearings Office for hearing officer services. The Commission also has a professional services contract with the Honorable Alan C. Torgerson, retired federal Magistrate Judge for the United States District Court for the District of New Mexico, for hearing officer services.

The Commission's adjudication of administrative complaints is controlled by the provisions of the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended 2021), and the Commission's rules of procedure for administrative cases, promulgated at [1.8.3 NMAC](#). The Commission has also established and maintains its [Proceedings Portal](#), a web-based case management and docketing system where parties and their attorneys may submit and view filings on the docket.

Developments in 2021

2021 saw two developments in the law controlling the Commission's adjudication of administrative complaints. First, the First Session of the Fifty-Fifth Legislature enacted House Bill 244, which the Governor signed on April 6, 2021. (See Laws 2021, Chapter 109). This legislation clarified and ordered the duties of the Commission and the Secretary of State in the adjudication of administrative complaints alleging violations of the Campaign Reporting Act, the Lobbyist Regulation Act, the Financial Disclosure Act, and the Voter Action Act. Following the enactment of HB 244, the Commission and the Secretary of State amended the joint powers agreements between the agencies to align with the new statute. The result is that administrative complaints alleging violations of the disclosure statutes are first referred to the Secretary of State, who attempts to certify voluntary compliance. If the Secretary of State does not certify voluntary compliance, the Commission proceeds with the adjudication of the administrative complaint. To review the provisions of HB 244 (2021), click [here](#). To review

the amended joint powers agreements between the Commission and the Secretary of State, click [here](#).

Second, also following the enactment of HB 244 (2021), the Commission amended its rules of procedure. These amendments streamline and improve the processes governing the investigation of complaints, the issuance and enforcement of subpoenas, and the conduct of hearings on complaints. The amendments (i) conform the Commission's rules with Laws 2021, Chapter 109, which amended the State Ethics Commission Act to delete the notarization requirement for administrative complaints; (ii) conform the Commission's administrative rules with the Commission's electronic case-management and filing system; (iii) improve the efficient and fair administration of the Commission's administrative cases by resolving several gaps and ambiguities that the Commission staff noted in the Commission's first 16 months of jurisdiction for administrative complaints, by (among other things) allowing complainants to amend their complaints, limiting complainants in the number of complaints they may file in a calendar year (to prevent vexatious litigants), enabling the Executive Director to make jurisdictional determinations more efficiently, formalizing the process by which the Commission may initiate administrative complaints, and clarifying the Commission's subpoena powers. To review the Commission's rules of administrative procedure, click [here](#). To review the Commission's rulemaking record for 1.8.3 NMAC, click [here](#).

The Commission's administrative caseload

Below is a profile of the Commission's administrative caseload in 2021, presented by quarter.

<p>Q1 (January – March) Rolled Over From 2020-Q4: 5 New Filed in 2021-Q1: 6 Closed in 2021-Q1: 3</p>	<p><u>Complaints filed in Q1</u> Campaign Reporting Act: 1 Governmental Conduct Act: 3 Other: 2</p>
<p>Q2 (April – June) Rolled Over From 2021-Q1: 8 New Filed in 2021-Q2: 3 Closed in 2021-Q2: 3</p>	<p><u>Complaints filed in Q2</u> Campaign Reporting Act: 1 Governmental Conduct Act: 1 Procurement Code: 1</p>
<p>Q3 (July – September) Rolled Over from 2021-Q2: 8 New Filed in 2021-Q3: 11 Closed in 2021-Q3: 5</p>	<p><u>Complaints filed in Q3</u> Gift Act: 1 Governmental Conduct Act: 5 Procurement Code: 3 Other: 2</p>
<p>Q4 (October – December 20) Rolled Over from 2021-Q3: 14 New Filed in 2021-Q4: 16 Closed in 2021-Q4: 3</p>	<p><u>Complaints filed in Q4</u> Governmental Conduct Act: 5 Campaign Reporting Act: 10 Procurement Code: 1</p>

<p><u>2021 Cumulative Case Data</u> Total Rolled Over from 2020: 5 Total Filed in 2021: 36 Total Closed in 2021: 14 Total Pending on Dec. 21, 2021: 22</p>	
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Advisory Opinions

The State Ethics Commission may issue advisory opinions requested in writing by “a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer.” NMSA 1978, § 10-16G-8(A)(1). Under the State Ethics Commission Act, requests for advisory opinions are confidential and not subject to disclosure under the Inspection of Public Records Act. Additionally, advisory opinions are binding on the Commission in any subsequent administrative proceeding concerning a person who acted in good faith and in reasonable reliance on an advisory opinion.

The Commission has adopted two special rules regarding advisory opinions. First, the Commission allows persons subject to the Governmental Conduct Act to submit a request for an informal advisory letter to the Director or General Counsel. Such requests are also confidential, but informal advisory letters are not binding on the Commission unless and until the Commission votes to adopt the informal advisory letter as an advisory opinion. Second, the Commission allows any Commissioner to request that any legal determination made in a confidential administrative proceeding be converted into an advisory opinion.

Further, in 2021, the Commission worked with the New Mexico Compilation Commission to publish all of the Commission’s advisory opinions on NMSOneSource.com, the free, online public access to the master database of official state laws.

Below is a profile of the advisory opinions the Commission issued in 2021.

STATE ETHICS COMMISSION ACT

Advisory Opinion 2021-12 (Dec. 3, 2021)

Question: Does the State Ethics Commission have jurisdiction to adjudicate an administrative complaint alleging that a Member of the Legislature violated the Governmental Conduct Act by (i) introducing a bill, (ii) making comments related to a bill in a legislative committee or on the Member’s respective floor, or (iii) voting on a bill?

Conclusion: No. [Read the full opinion.](#)

CAMPAIGN REPORTING ACT

Advisory Opinion 2021-05 (Feb. 5, 2021)

Question: May a member of the legislature who is also a candidate for United States representative solicit contributions for their campaign for federal office during a legislative session?

Conclusion: Yes. [Read the full opinion.](#)

Advisory Opinion 2021-11 (Aug. 13, 2021)

Question: Does the Campaign Reporting Act (“CRA”), NMSA 1978, Sections 1-19-1 to -37 (1979, as amended through 2021) prohibit a candidate for an office covered by the CRA from donating campaign funds to a candidate for a municipal, school board, or special district election?

Conclusion: No. [Read the full opinion.](#)

FINANCIAL DISCLOSURE ACT

Advisory Opinion 2021-10 (Aug. 13, 2021)

Question: Who is included in NMSA 1978, Section 10-16A-3(C)’s classification “state agency head” and, therefore, must file an annual financial disclosure statement?

Conclusion: Under Subsection 10-16A-3(C), a “state agency head” is the person or persons who are ultimately responsible for exercising the powers of a state agency’s official acts or expending the agency’s appropriated funds. Every state entity that receives an annual appropriation in section 4 of the General Appropriations Act or the “feed bill” is a “state agency” for the purposes of Subsection 10-16A-3(C), and their respective “heads” must file annual financial disclosure statements. [Read the full opinion.](#)

GOVERNMENTAL CONDUCT ACT & ARTICLE IV, SECTION 28

Advisory Opinion 2021-01 (Feb. 5, 2021)

Questions: Where a newly-elected legislator owns a construction company and before the legislator was elected to office, the state purchasing agent awarded to statewide prices agreements to the construction company that will expire within the year after the legislator assumes legislative office, (1) may state agencies purchase goods and services from the construction company under the statewide price agreement; and (2) may the state purchasing agent enter another statewide prices agreement with the construction company while the legislator holds legislative office?

Conclusions: (1) Yes, but only if the legislator first discloses to the procuring state agency the legislator’s ownership interest in the construction company. (2) Yes, but only if the legislator first discloses to the state purchasing agent the legislator’s ownership interest in the construction company. [Read the full opinion.](#)

Advisory Opinion 2021-02 (Feb. 5, 2021)

Questions: (1) The requester is a member of the legislature and serves as a volunteer member of the board of directors of a nonprofit organization that assists victims of sexual assault and advocates on their behalf. The nonprofit organization receives contract and grant money from federal, state, and local governments. How should the requester and the non-profit organization “handle any [of the nonprofit’s] applications for state funds?” (2) Additionally, the requester asks whether a legislator may vote on legislation on sexual assault laws and appropriations for programs helping victims of sexual assault.

Conclusions: (1) The Governmental Conduct Act does not prohibit a legislator from sitting on the board of a nonprofit organization that receives state contracts or grants. Article IV, Section 28 of the New Mexico Constitution, however, prohibits the nonprofit organization from seeking a contract with the state during the legislator’s term and for one year after the end of the legislator’s term if the contract is authorized by legislation passed during the legislator’s term. (2) As a general matter, yes, the requester may vote on legislation on sexual assault laws and appropriations for programs handling victims of sexual assault.

[Read the full opinion.](#)

Advisory Opinion 2021-03 (Feb. 5, 2021)

Question: May a business significantly owned by a legislator apply for and receive a grant from the Department of Finance and Administration and the New Mexico Finance Authority for economic hardship suffered as a result of the COVID-19 pandemic?

Conclusion: Yes. [Read the full opinion.](#)

Advisory Opinion 2021-04 (Feb. 5, 2021)

Questions: (1) Does it violate the Governmental Conduct Act for the State Auditor to make public statements that threaten to “apply pressure” on the Martin Luther King, Jr. Commission? (2) Does it violate the Governmental Conduct Act for a Senator to make public statements about lawsuits that the Senator, in their capacity as a private attorney, filed on behalf of clients against the Martin Luther King, Jr. Commission? (3) Does it violate the Governmental Conduct Act for a Senator and the State Treasurer, who is also a member of the Martin Luther King, Jr. Commission, to send a total of nine separate requests under the Inspection of Public Records Act to the Martin Luther King, Jr. Commission’s sole employee?

Conclusions: (1) No. (2) No. (3). No. [Read the full opinion.](#)

Advisory Opinion 2021-07 (Apr. 2, 2021)

Question: May legislators who are respondents to administrative complaints pending in the State Ethics Commission vote on proposed legislation that affects the State Ethics Commission?

Conclusion: Yes. [Read the full opinion.](#)

Advisory Opinion 2021-08 (Jun. 4, 2021)

Questions: (1a) May a legislator or legislator’s family apply for or receive state funds following passage of legislation making such funds available? (1b) If a legislator or their family may not apply for or receive state funds made available by a statute, does a member who recuses from the vote on that legislation obviate the prohibition? (2) May a legislator or a legislator’s family apply for a small business loan made available by the Small Business Recovery Act of 2020, Laws 2020 (1st S.S.), Chapter 6, Sections 1-7? (3) May a legislator or a legislator’s family apply for “recovery grant” funds made available by Laws 2021, Chapter 3, Sections 10-13?

Conclusion: (1a) Whether a legislator or their family members may benefit from state funds made available by statute depends on how the state agencies, to whom the funds are appropriated, make those funds available through grants or contracts. (1b) Recusal does not obviate any constitutional or statutory limitations on a legislator’s interest in a contract with a state agency. (2) No. If a legislator was a member of the Fifty-Fourth Legislature, then the legislator (and the legislator’s business or nonprofit corporation) may not receive a small business loan made available by the Small Business Recovery Act of 2020. Further, the legislator’s immediate family members may not receive a small business loan where the legislator has an interest in the family business. (3) Yes. A business owned by a legislator or the legislator’s family members may apply for “recovery grant” funds made available by Laws 2021, Chapter 3, Sections 10-13. [Read the full opinion.](#)

Advisory Opinion 2021-09 (Jun. 4, 2021)

Question: May a legislator or a business a legislator owns apply for a small business recovery loan made available by the Small Business Recovery Act of 2020, Laws 2020 (1st S.S.), Chapter 6, Sections 1 through 7 (“2020 Act”), and the Small Business Recovery and Stimulus Act, Laws 2021, Chapter 5, Sections 1 through 8 (“2021 Act”)?

Conclusion: No. The 2020 Act and the 2021 Act authorize small business loans, which are contracts. As a result, Article IV, Section 28 of the New Mexico Constitution prohibits a legislator from being directly or indirectly interested in any small business loan authorized by the 2020 Act or the 2021 Act for the duration of the legislator’s term and for one year after their term expires. [Read the full opinion.](#)

PROCUREMENT CODE

Advisory Opinion 2021-06 (Apr. 2, 2021)

Question: At least thirty days before the state purchasing agent or a central purchasing office awards a sole source procurement contract, NMSA 1978, Section 13-1-126.1(A) (2013, as amended 2019) requires the state purchasing agent or central purchasing office to post notice of its intent to award the contract on their website, identifying the parties to the proposed contract; the nature and quantity of the service, construction or item of tangible personal property being contracted for; and the contract amount. Similarly, under NMSA 1978, Section 13-1-128 (1984, as amended 2013), before awarding a sole source procurement contract, the state purchasing agent or central purchasing office must provide information about the contract to the Department of Information Technology (“DoIT”) for posting on the sunshine portal. Where the state purchasing agent or central purchasing office has allowed a state agency to enter a sole source procurement contract, the state agency has entered a sole source

contract, and the state agency and the contractor subsequently seek to amend the terms of the sole source contract, do the notice provisions of sections 13-1-126.1 and 13-1-128 apply to the amended contract? In other words, when a sole source contract is amended, does notice of the amendment need to be posted on the state purchasing agent's or central purchasing office's website and the sunshine portal?

Conclusion: Yes. [Read the full opinion.](#)

Civil Enforcement & Litigated Matters

In addition to its quasi-judicial power to adjudicate administrative matters and issue advisory opinions, the Commission also has a discretionary executive power to pursue civil enforcement actions in state court to remedy violations of New Mexico’s ethics laws. Under State Ethics Commission Resolution 2020-04, when the Commission receives referrals from other state agencies such as the Office of the Attorney General and the Secretary of State’s Office, or receives allegations from others, the Commission reviews and assess those matters to determine whether to proceed with a civil enforcement action. In 2021, the Commission was involved in the following litigated or civil enforcement matters:

(1) *State v. Gutierrez, et al.*

The State Ethics Commission filed a motion to participate as a friend of the court (“amicus curiae”) and submitted an amicus brief with the New Mexico Supreme Court in *State v. Gutierrez, et al.*, S-1-SC-38367 and S-1-SC-38368. The Commission’s amicus brief argues that Section 10-16-3 of the Governmental Conduct Act creates constitutionally enforceable duties on legislators, public officials, and public employees that prohibit them from using the powers and resources of public office to obtain personal benefits and from abusing their public offices. The Governmental Conduct Act also requires legislators, public officials, and public employees to disclose real and potential conflicts of interest and to avoid undue influence while in public service. The Commission’s amicus brief explains (i) why Section 10-16-3 should be upheld from constitutional challenges; (ii) how, over time, the Commission will apply and clarify the Governmental Conduct Act through administrative proceedings; and (iii) how the Governmental Conduct Act plays a critical role in efforts across the state to address and deter public corruption and official misconduct.

The *Gutierrez* case involves four consolidated criminal appeals related to Section 10-16-3 of the Governmental Conduct Act. These four cases involve a former Doña Ana County Treasurer, the Sixth Judicial District Attorney, a former San Juan County magistrate judge, and a former Secretary of the New Mexico Taxation and Revenue Department. (In the last case, *State v. Padilla*, the Commission also filed an amicus brief in the Court of Appeals.) After the Court of Appeals consolidated the four cases and issued a single ruling, both the Office of the Attorney General and several of the defendants petitioned for the Supreme Court’s review. The Supreme Court agreed to review the case, briefing has concluded, and the Supreme Court has set oral arguments for Friday, January 14, 2022.

The Commission hopes that the Supreme Court will clarify that Subsections 10-16-3(A) through (C) of the Governmental Conduct Act create constitutionally enforceable duties for legislators, public officials, and public employees, thereby vindicating New Mexico’s public corruption laws. The Commission participates in this case as a friend of the court and takes no position on the truth of the allegations in the criminal charges against the four defendants in the consolidated proceedings.

- [Read the Commission’s amicus brief, filed with the Supreme Court in State v. Gutierrez, et al.](#)
- [Read the Commission’s amicus brief filed with the Court of Appeals in State v. Padilla.](#)

(2) *State Ethics Commission v. Council for a Competitive New Mexico.*

On December 11, 2020, the Commission filed a civil complaint in the Second Judicial District Court against the Council for a Competitive New Mexico (“CCNM”) to enforce the disclosure provisions of the Campaign Reporting Act. CCNM had filed independent expenditure reports disclosing that it paid more than \$130,000.00 to the Lincoln Strategy Group, LLC for campaign advertisements and advocacy calls related to four contested elections in the 2020 Democratic primary, but repeatedly refused to disclose who ultimately paid for those independent expenditures. After concluding settlement negotiations, in exchange for the Commission’s voluntarily dismissal of the suit, CCNM agreed to disclose contribution information for the election cycle running from January 1, 2019 to December 31, 2020. During that election cycle, CCNM received two contributions from PNM Resources totaling \$470,000. On March 11, 2020, PNM Resources contributed \$250,000 to CCNM. On April 25, 2020, PNM Resources contributed \$220,000 to CCNM. Having received these disclosures and delivered the same to the Office of the Secretary of State, the Commission voluntarily dismissed its Campaign Reporting Act enforcement action on February 12, 2021.

(3) *State Ethics Commission v. Gabriel Vargas & Double Eagle Real Estate LLC.*

On October 27, 2021, the Commission filed a civil complaint in the Second Judicial District Court against Gabriel Vargas, a former commercial appraiser in the Sandoval County Assessor’s Office, and Double Eagle Real Estate LLC, doing business as Double Eagle Property Tax Consultants, to enforce the revolving-door provisions of the Governmental Conduct Act, Sections 10-16-8(B) and 10-16-8(D), NMSA 1978 (2011).

The Commission’s lawsuit alleges that from 2012 to August 30, 2019, Mr. Vargas was a commercial appraiser with the Sandoval County Assessor’s Office. During this time, Mr. Vargas was personally and substantially involved in assessing the valuations of hundreds of commercial properties in Sandoval County, including annual valuations of Presbyterian Healthcare Services’ Rust Medical Center. On January 1, 2019, using the cost-based method Mr. Vargas had applied in prior tax years, the Sandoval County Assessor’s Office assessed the taxable value of Rust Medical Center at \$22,290,864. Double Eagle, on behalf of Presbyterian, protested that valuation. In August 2019, Mr. Vargas negotiated with Scott Clark, Double Eagle’s owner, to settle the total taxable value of Rust Medical Center at \$14,103,498.

In the spring of 2020, Mr. Vargas joined Double Eagle. Within one year of leaving the Sandoval County Assessor’s Office and working as a Double Eagle employee, Mr. Vargas represented tax protestants before the Sandoval County Assessor’s Office. Furthermore, shortly after Mr. Vargas joined Double Eagle, Double Eagle, assisted by Mr. Vargas, represented Presbyterian Healthcare Services in its protest of Sandoval County’s 2020 valuation of Rust Medical Center. In the protest, Double Eagle represented that the value of Rust Medical Center was \$7,051,749—less than a third of the \$22,290,864 that the Sandoval County Assessor’s Office, with Mr. Vargas’s personal and substantial participation, had originally assessed for 2019. After learning of Mr. Vargas’s involvement in numerous 2020 tax protests, the Sandoval County Attorney sent a cease-and-desist letter to Double Eagle and Mr. Clark, apprising Double Eagle of the prohibitions that Section 10-16-8 imposes on former government employees.

On September 1, 2020, Mr. Vargas and Mr. Clark represented Presbyterian Healthcare Services before the Sandoval County Valuations Protest Board, despite Mr. Vargas’s personal and

substantial participation in the valuation of Rust Medical Center and despite the Sandoval County Attorney’s cease-and-desist letter. Mr. Clark directed Mr. Vargas to represent Presbyterian and controlled the manner that Mr. Vargas conducted that representation. In exchange for representation, including Mr. Vargas’s unlawful representation, Presbyterian Healthcare Services paid a fee to Double Eagle.

On October 1, 2021, the State Ethics Commission authorized a civil action to remedy violations of the Governmental Conduct Act’s revolving door provisions. Through its suit, the Commission seeks civil fines, injunctive relief, corporate vicarious liability as to Double Eagle, and equitable relief requiring Double Eagle to disgorge the fee that Presbyterian Healthcare Services paid Double Eagle.

The litigation is ongoing. [Read the Commission’s press release related to this civil enforcement action.](#) [Read the Commission’s complaint.](#)

(4) *In re: State Ethics Commission petition for issuance of subpoena duces tecum pursuant to NMSA 1978, § 10-16G-10(J)* (D-307-ET-2020-01 / No. A-1-CA-39403)

Following the General Counsel’s investigation of an administrative complaint, the Commission petitioned the District Court for a subpoena. After the District Court granted the Commission’s petition, the subpoena target moved to quash. The District Court denied that motion, and the subpoena target appealed. Both the district court and appellate court proceedings are sealed. The litigation is ongoing.

(5) *In re: State Ethics Commission petition for issuance of subpoena duces tecum pursuant to NMSA 1978, § 10-16G-10(J)* (D-307-ET-2021-01 / Nos. A-1-CA-39841, A-1-CA-39959 / S-1-SC-38929)

Following the General Counsel’s investigation of an administrative complaint, the Commission petitioned the District Court for a subpoena. After the District Court granted the Commission’s petition, the subpoena target moved to quash and the Commission moved to compel. The District Court denied the target’s motion to quash and granted the Commission’s motion to compel. After the target refused to comply with the District Court’s order, the Commission moved for and was awarded sanctions. The subpoena target noticed five appeals in the Court of Appeals and petitioned the Supreme Court for extraordinary writs. The Supreme Court denied the petition, and the target stipulated to a dismissal of four of the five appeals. Appellate litigation is ongoing. Proceedings in the District Court, the Court of Appeals, and the Supreme Court are sealed. The litigation is ongoing.

Trainings

Under the Governmental Conduct Act, the State Ethics Commission shall advise and seek to educate all persons required to perform duties under the Governmental Act—that is, all legislators and all elected or appointed officials or employees of a state agency or a local government agency who receives compensation or per diem—of those duties. Under the Governmental Conduct Act, the Commission has a biennial responsibility to develop and provide to all legislators a minimum of two hours of ethics continuing education. Similarly, under the State Ethics Commission Act, the Commission is authorized to offer annual ethics trainings to public officials, public employees, government contractors, lobbyists and other

interested persons. The Commission has developed presentations that Commission staff can offer to government agencies around the state. Also, during 2021, Commission staff have offered several trainings regarding the ethics laws, as detailed below. For more information on trainings, visit: www.sec.state.nm.us/transparency/

- **January 14, 2021** – Ethics Presentation to the Curry County Commissioners (Director Farris and General Counsel Boyd).
- **January 15, 2021** – Ethics Presentation to Leadership New Mexico (Director Farris)
- **January 21, 2021** – Ethics Presentation to the Village of Los Ranchos (Deputy General Counsel Branch)
- **March 11, 2021** – Presentation to League of Women Voters (Director Farris)
- **March 24, 2021** – Ethics Presentation to the Board of Regents of Eastern New Mexico University (Director Farris and General Counsel Boyd)
- **April 19, 2021** – Ethics Presentation to Leadership New Mexico (Director Farris)
- **May 4, 2021** – Ethics Presentation at annual New Mexico Society of Certified Public Accountants (CE credit) (Director Farris)
- **June 9, 2021** – Ethics Presentation to the Regulation and Licensing Department and Boards and Commissions under RLD’s purview (Deputy General Counsel Branch)
- **July 14, 2021** – Ethics Presentation to the Regulation and Licensing Department and Boards and Commissions under RLD’s purview (Deputy General Counsel Branch)
- **July 16, 2021** – Ethics Presentation to the Regulation and Licensing Department Senior Staff (Deputy General Counsel Branch)
- **August 11, 2021** – Ethics Presentation to Boards and Commissions (Deputy General Counsel Branch)
- **September 8, 2021** – Ethics Presentation to Boards and Commissions (Deputy General Counsel Branch)
- **September 9, 2021** – Ethics Presentation to the New Mexico Municipal League’s Municipal Officials Leadership Institute (Director Farris)
- **September 20, 2021** – Ethics Presentation to the First Judicial District Bar Association (Attorney CLE) (General Counsel Boyd)
- **October 4, 2021** – Ethics Presentation to the Village of Tijeras (General Counsel Boyd and Deputy General Counsel Branch)
- **October 13, 2021** – Ethics Presentation to the Regulation and Licensing Department and Boards and Commissions under RLD’s purview (Deputy General Counsel Branch)
- **October 15, 2021** – State Bar of New Mexico, Public Law Section, Procurement Institute (Attorney CLE credit) (Director Farris)
- **October 20, 2021** – Presentation to New Mexico Public Procurement Association Annual Meeting (Director Farris)
- **November 17, 2021** – Presentation to Department of Finance and Administration, Local Government Division, Annual Budget Conference (General Counsel Boyd and Deputy General Counsel Branch)
- **December 2, 2021** – Presentation to Municipal Attorneys Association (Attorney CLE Credit) (Director Farris)
- **December 13, 2021** – Ethics Training for Albuquerque Metropolitan Arroyo Flood Control Authority Staff (General Counsel Boyd)

SPECIAL PROJECTS IN 2021

In 2021, the Commission undertook two special projects that are separate from the Commission's ordinary operations. First, the Commission appointed three members to the Citizen Redistricting Committee and then staffed that committee during its limited tenure. Second, the Commission prepared a statutorily-required special report on the Commission's jurisdiction for administrative complaints, which the Commission submitted to the Legislature on October 1, 2021.

Citizen Redistricting Committee

Appointments

In 2021, the First Session of the Fifty-Fifth Legislature enacted the Redistricting Act (Laws 2021, Chapter 79, Sections 2 through 10), which created the seven-member Citizen Redistricting Committee. The Redistricting Act required the State Ethics Commission to appoint three members to the Citizen Redistricting Committee, including the Chair, who must be a retired Justice of the New Mexico Supreme Court or a Retired Judge of the New Mexico Court of Appeals, and two members who are not members of either of the two largest political parties in the state. The Commission undertook an open and competitive selection and interview process. To that end, the Commission received 69 applications for the three member positions that the Commission appointed. Of these 69 applications, the Commission interviewed approximately ten candidates in open interviews. On June 4, 2021, the commission appointed the Honorable Edward L. Chávez as Chair, and Joaquín Sanchez and Robert Rhatigan as Members.

Staff Support

The Commission also provided staff support to the Citizen Redistricting Committee, which lacked an employee staff, through a reimbursement/refund-based memorandum of understanding. State Ethics Commission staff undertook to: (i) draft rules of procedure; (ii) launch and maintain a website; (iii) plan and book, host, moderate, and record and post minutes for two-dozen hybrid (virtual and in-person) committee meetings; (iv) liaison with the Metric Geometry and Gerrymandering Group Research Lab at Tufts University on the application of MGGG's public-mapping tool, Districtr, for use by the Committee in New Mexico; (v) draft contract scopes of work for Committee contractors, including Real Time Solutions (for the Committee's website), Research and Polling (for mapping work), Vox Optima (for advertising and public relations), Dr. David Cottrell (for an evaluation of the Committee's maps for partisan fairness); (vi) advise the Chair on the application of the Procurement Code and the Open Meetings Act; and (vii) draft the Committee's final report for submission to the Legislature. In short, the State Ethics Commission's staff maintained *two* state agencies during much of 2021. The Commission's Director of Communications, Sonny Haquani; its Special Projects Coordinator II, Mike Kiley; and its Executive Director, Jeremy Farris are to be credited for their work to support the Citizen Redistricting Committee.

To learn more about the Citizen Redistricting Committee, visit www.nmredistricting.org.

[Read the Citizen Redistricting Committee's final report, which was submitted to the Legislature.](#)

Report on Jurisdiction (Oct. 1, 2021)

In 2019, when the Legislature enacted the State Ethics Commission's enabling legislation, the Legislature required the State Ethics Commission to prepare a report addressed to whether the Legislature should extend the Commission's jurisdiction. *See* Laws 2019, Ch. 86, § 37(A). On October 1, 2021, the Commission submitted its report, recommending the following expansions of the Commission's jurisdiction with respect to the Commission's administrative proceedings:

- Expand the Commission's subject matter jurisdiction to include those provisions of the New Mexico Constitution that limit emoluments, extra compensation, and legislative interests in civil offices and in contracts—namely, Article IV, Section 27; Article IV, Section 28; Article V, Section 12; and Article XX, Section 9 of the New Mexico Constitution. These constitutional provisions are at the center of the state's ethics laws and naturally fall within the State Ethics Commission's constitutional mandate and competence.
- Expand the Commission's personal jurisdiction to include jurisdiction for public agencies, as NMSA 1978, Section 10-16G-2(J) defines that term. Personal jurisdiction for both entity and individual respondents would enable the Commission to issue remedies against state agencies and state instrumentalities that would remain effective even if the official or employee who is directly responsible for a violation separates from the agency or from state service altogether.

After receiving the views of local governments across New Mexico and consulting with other state ethics commissions, the Commission did not recommend that, in the 2022 legislative session, the Legislature expand the Commission's personal jurisdiction in administrative proceedings to include the officials and employees of county and municipal governments, special districts, or school districts. While the Commission recognizes the high importance of enforcing the state's ethics laws at the local government level, the Commission is not ready for such a significant expansion to its jurisdiction at this time. Through FY22, the Commission has appropriated funds for only 5 FTE, which is insufficient to undertake a large expansion of the Commission's adjudicatory role to investigate and decide administrative complaints. Moreover, the Commission already has extant authority and responsibilities with respect to local governments—including the responsibilities to provide trainings and the discretionary authority to file civil enforcement actions to remedy violations of the Governmental Conduct Act, the Procurement Code, the Anti-Donation Clause, and the Campaign Reporting Act. These current responsibilities and powers, which are separate from the Commission's jurisdiction to decide administrative complaints, enable the Commission, in its opening years, to further New Mexico's ethics laws as they apply to the county and local governments as resources permit. Once the Commission has grown in capacity, the Commission might recommend an expansion of personal jurisdiction, after further consultation with New Mexico's county and municipal governments.

In lieu of a large expansion of jurisdiction in the Commission's adjudicatory role, the Commission recommended two policy changes with respect to local governments:

- Amend NMSA 1978, Section 10-16G-8 (2019) to allow the Commission to receive requests for advisory opinions from the officials or employees of local governments,

special districts and school districts and to issue advisory opinions in response to those requests. Currently, the Commission is not authorized to receive a request for an advisory opinion from an official or employee at the local government level. If the Commission were able to render advice to the officials and employees of local governments, the Commission could provide a needed service, particularly in counties and municipalities that might lack in-house counsel.

- Require the county and municipal governments to appoint the clerk or manager as the local government’s “chief ethics officer,” who shall have the ability to request advisory opinions and shall also have a bi-annual reporting requirement to the Commission for any ethics issues that arise related to the Governmental Conduct Act, the Procurement Code, the Anti-Donation Clause, and the Campaign Reporting Act (as it applies to county elected officials). These reports would inform the Commission of ethics issues at the local level. The chief ethics officer could also liaison with the Commission to receive trainings related to the state’s ethics laws as they apply to local governments.

[Read the State Ethics Commission’s October 1, 2021 Report on Jurisdiction.](#)

LEGISLATIVE RECOMMENDATIONS

The Commission offers the following recommendations for the Second Session of the Fifty-Fifth Legislature. The Commission offers these recommendations in full awareness of the constraints that Article 4, Section 5(B) of the New Mexico Constitution imposes on the upcoming session. If a bill making one or more of the following amendments was drawn and introduced pursuant to a special message of the Governor, the Commission would express its support.

(1) Recommendations for Amendments to the Lobbyist Regulation Act and the Campaign Reporting Act

The Commission recommends the following amendments to the Lobbyist Regulation Act and the Campaign Reporting Act. The Commission's recommendations for amendments to these disclosure laws are as follows:

First, to slow the revolving door between government service and lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

- A. A former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary shall not accept compensation as a lobbyist for a period of two calendar years after the conclusion of service as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.
- B. A lobbyist's employer shall not compensate a former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary as a lobbyist for a period of two calendar years after the person served as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.
- C. A person who violates a provision of this section is subject to a civil penalty of five thousand dollars (\$5,000) for each violation.

Second, to allow for transparency when the family member of a legislator is lobbying for a bill, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

- A. A legislator shall, before voting on a bill, disclose that the legislator's family member is lobbying on a bill on which the legislator must vote.
- B. As used in this section, "family member" means a spouse, daughter, son, parent or sibling.

Third, to increase transparency of lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

A lobbyist or lobbyist's employer that is required to file an expenditure report, pursuant to the provisions of Section 2-11-6 NMSA 1978, shall file two additional reports with the

secretary of state indicating (i) what bills the lobbyist or lobbyist's employer is taking a position on; and (ii) whether the lobbyist or lobbyist's employer is supporting or opposing those bills, including the specific items in the bills that the lobbyist or lobbyist's employer is supporting or opposing. These additional reports are due to the secretary of state both one week after the start of the legislative session and one week after the bill introduction deadline.

The Commission's recommendations for amendment to the Lobbyist Regulation Act align, to some extent, with [Senate Bill 311](#) and [Senate Bill 314](#), introduced by Senator Steinborn in the First Session of the Fifty-Fifth Legislature. Those bills did not receive a committee hearing.

Fourth, to confirm and make clear that the Campaign Reporting Act disallows persons making independent or coordinated expenditures from concealing the identity of contributors who contribute more than five thousand dollars (\$5,000) during an election cycle, where (i) the contributor requested in writing that that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee and (ii) the person making independent expenditures nevertheless used the contributor's contributions for independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee, the Commission would support amending Section 1-19-27.3(D)(2) of the Campaign Reporting Act to provide:

(2) if the expenditures were made in whole or in part from funds other than those described in Paragraph (1) of this subsection, report the name and address of, and the amount of each contribution made by, each contributor who contributed more than five thousand dollars (\$5,000) during the election cycle to the person making the expenditures; provided, however, that a contribution is exempt from reporting pursuant to this paragraph if:

(a) the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee; and

(b) the contribution is deposited in a segregated bank account which shall not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.

The Commission's recommendations for amendment to the Campaign Reporting Act align with [Senate Bill 387](#) introduced by Senator Wirth in the First Session of the Fifty-Fifth Legislature. Senate Bill 387 passed the Senate on a vote 35 to 3 and was referred to the House Judiciary Committee, which gave the bill a "do pass" recommendation. The bill, however, was not voted on by the House of Representatives.

(2) Recommendations for the State Ethics Commission Act following the Commission's October 1, 2021 special report on jurisdiction

On October 1, 2021, the Commission submitted the report on jurisdiction required by Laws 2019, Ch. 86, § 37(A). In its report, the Commission recommended two limited expansions of the Commission's jurisdiction with respect to the Commission's administrative proceedings: First, the Commission recommended expansion of its subject matter jurisdiction to include those provisions of the New Mexico Constitution that limit emoluments, extra compensation,

and legislative interests in civil offices and in contracts—constitutional provisions that are at the center of the state’s ethics laws and naturally fall within the State Ethics Commission’s constitutional mandate and competence. Second, the Commission recommended expansion of its personal jurisdiction to include jurisdiction for public agencies, because personal jurisdiction for both entity and individual respondents would enable the Commission to issue remedies against state agencies and state instrumentalities that would remain effective even if the official or employee who is directly responsible for a violation separates from the agency or from state service altogether. To enact these recommendations, the Commission would support an amendment to NMSA 1978, Section 10-16G-9(A) as follows:

The commission has jurisdiction to enforce the applicable civil compliance provisions for public agencies, public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyist employers of:

- (1) the Campaign Reporting Act;
- (2) the Financial Disclosure Act;
- (3) the Gift Act;
- (4) the Lobbyist Regulation Act;
- (5) the Voter Action Act;
- (6) the Governmental Conduct Act;
- (7) the Procurement Code;
- (8) the State Ethics Commission Act;
- (9) the Revised Uniform Law on Notarial Acts; ~~and~~
- (10) Article 9, Section 14 of the constitution of New Mexico;
- (11) Article IV, Section 27 of the constitution of New Mexico;
- (12) Article IV, Section 28 of the constitution of New Mexico;
- (13) Article V, Section 12 of the constitution of New Mexico; and
- (14) Article XX, Section 9 of the constitution of New Mexico.

(3) Recommendations for the Disclosure Act

The Commission proposes a “Disclosure Act” as a replacement for the Financial Disclosure Act. As the American Law Institute has reported:

Disclosure by public servants of financial and other information is a key component of most government ethics systems. Disclosure reminds public servants of ethics principles, detects and deters conflicts of interests, facilitates enforcement of ethics rules, and promotes public confidence in government. Transparency is one of the most important principles underlying a representative democracy, and ethics rules that enhance transparency not only improve the quality of government and the ethical commitments of public servants but also reinforce public confidence in government. Public confidence in government in turn is critical to the continued public support that is the ultimate foundation of our representative democracy.

The current Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended 2021) seeks to balance the public interest in disclosure against public servants' privacy interests by giving public servants significant discretion in deciding whether to make a disclosure and what they must disclose. The Commission believes that this approach to disclosure is flawed in at least two respects:

First, the Financial Disclosure Act is vague and undemanding as to what must be disclosed. It requires public servants to disclose sources of gross income in excess of \$5,000, but does not require disclosure of the specific source of the income. Instead, a public servant need only disclose the “general category descriptions that disclose the nature of the income source . . . [in] broad categories.” § 10-16A-3(D)(2) (2021). But requiring disclosure only of “broad category descriptions” does not suffice to alert the public of whether a public servant is subject to a financial conflict of interest. Take as an example a state legislator who receives income by selling pesticides to farms, and another state legislator who makes more than \$5,000 from the sale of organic produce. While legislation proposing a partial ban on the use of pesticides would have different effects on these financial interests, both legislators are required only to report income from “farming and ranching” on their financial disclosure statements. § 10-16A-3(D) (2021). As a result, the Financial Disclosure Act does not remind the disclosing senators of their potential obligations under the state's ethics laws, and the public is not able to determine what (if any) conflicts of interest might affect the legislators' votes.

Second, the Financial Disclosure Act contains significant omissions in several categories of reporting requirements—*e.g.*, the identification of specific sources of income, the identification of ownership assets, business-entity relationships, liabilities, membership and other positions in non-profit organizations, and gifts. Because Financial Disclosure Act omits these requirements, it does not do enough to inform the public whether officials in state government are engaged in self-dealing, are subject to conflicts of interest, and are in compliance with the duties that the Governmental Conduct Act and other statutes impose. In short, it is not a very effective disclosure law.

Over the past two years, the Commission and its staff have received input from organizations in New Mexico that have bemoaned the Financial Disclosure Act's shortcomings. The Commission staff have also carefully reviewed the American Law Institute's *Principles of Law: Government Ethics*, Tentative Draft No. 3 (April 9, 2021), which includes principles relating to disclosure in government.

As a result, the Commission proposes a new statute—“the Disclosure Act”—to replace the current Financial Disclosure Act as a more comprehensive and more effective approach to disclosure in government. The Disclosure Act is attached to this report as Appendix 1.

1 **SECTION 1. SHORT TITLE--DISCLOSURE ACT**--Chapter 10,
2 Article 16A NMSA 1978 may be cited as the "Disclosure
3 Act".

4 **SECTION 2. DEFINITIONS.**--As used in the Disclosure
5 Act:

6 A. "beneficially owned" means a beneficiary's
7 interest in trust property;

8 B. "business" means a corporation, partnership, sole
9 proprietorship, firm, organization or individual carrying
10 on a business;

11 C. "controlled" means the ability of a person,
12 through share ownership or other means, either alone or in
13 coordination with others, to make changes in the
14 management of a business entity or to appoint persons who
15 will control the management of that entity;

16 D. "disclosure statement" means a statement on a
17 form prepared by the secretary of state for purposes of
18 compliance with this Act;

19 E. "employer" means a person or organization that
20 hires or pays another person in exchange for work;

21 F. "employment" means providing work to another
22 person in exchange for compensation;

Appendix 1 to the New Mexico State Ethics Commission's 2021 Annual Report
The Disclosure Act (Dec. 21, 2021)

1 G. "income" means the money or other form of payment
2 that a person receives from, for example, employment,
3 business, contracts, services or goods rendered and
4 investments;

5 H. "office" means a position of duty, trust, or
6 authority, including a position of employment;

7 I. "person" means an individual or entity;

8 J. "public agency" means any department, commission,
9 council, board, committee, agency or institution of the
10 executive or legislative branch of government of the state
11 or any political subdivision of the state and any
12 instrumentality of the state or any political subdivision
13 of the state;

14 K. "professional license" means an official process,
15 administered by state-level authority, that is required by
16 law for an individual to practice or work in a regulated
17 profession;

18 L. "reporting individual" means a person who has a
19 duty to file a disclosure statement with the secretary of
20 state under the terms of this Act; and

21 M. "voluntary compliance" means a reporting
22 individual's correction of all violations alleged upon
23 notification from the secretary of state.

1 **SECTION 3. WHEN DISCLOSURES ARE REQUIRED--WHO MUST**
2 **FILE.--**

3 A. The following persons are required to file with
4 the secretary of state a disclosure statement within
5 thirty days of appointment, during the month of January
6 every year thereafter that the person holds the office,
7 and upon leaving the office:

8 (1) A person holding an elected office in the
9 legislative or executive branch of state government;

10 (2) A state agency head;

11 (3) A person whose appointment to a board or
12 commission is subject to confirmation by the senate;

13 (4) A member of the insurance nominating
14 committee or a member of the state ethics commission; and

15 (5) A candidate for legislative or statewide
16 elected office who has not already filed a disclosure
17 statement with the secretary of state in the same calendar
18 year. The candidate shall file with the secretary of
19 state a disclosure statement at the time of filing a
20 declaration of candidacy.

21 B. A person who files to be a candidate for a
22 legislative or statewide office who fails or refuses to
23 file a financial disclosure statement required by this

1 section before the final date for qualification of the
2 person as a candidate as provided for in the Election Code
3 shall not be qualified by the secretary of state as a
4 candidate.

5 C. For a state agency head, an official whose
6 appointment to a board or commission is subject to
7 confirmation by the senate, a member of the insurance
8 nominating committee or a member of the state ethics
9 commission, the filing of the disclosure statement
10 required by this section is a condition of entering upon
11 and continuing in state employment or holding an appointed
12 position.

13 **SECTION 4. DISCLOSURE OF EMPLOYMENT.**--The disclosure
14 statement shall include for any reporting individual
15 identified in Subsection A of Section 3 of this Act the
16 following information related to employment for the prior
17 calendar year:

18 A. The full name of the reporting individual and
19 their spouse; and

20 B. The name and address of any employer employing
21 the reporting individual or their spouse, the title or
22 position held and a brief description of the nature of the
23 business or occupation.

1 **SECTION 5. DISCLOSURE OF ASSETS AND INCOME.**--The

2 disclosure statement shall include for any reporting
3 individual identified in Subsection A of Section 3 of this
4 Act the following information related to assets and income
5 for the prior calendar year:

6 A. The identity, location, and use of real property,
7 owned by the reporting individual, the reporting
8 individual's spouse, or the reporting individual's
9 dependent children; provided that, for personal residences
10 only the zip code or, in the absence of a zip code, the
11 county of situs need be disclosed;

12 B. The identity of assets of more than fifty
13 thousand (\$50,000) dollars directly or beneficially owned
14 by the reporting individual, the reporting individual's
15 spouse, or the reporting individual's dependent children;
16 provided that, in determining whether an asset has a value
17 of more than fifty thousand (\$50,000) dollars, the value
18 should not be reduced by any indebtedness secured by the
19 asset, such as a mortgage or other secured loan, and a
20 good faith estimate of the fair market value of an asset
21 is permitted if the exact value is neither known or easily
22 obtainable. The disclosure of assets shall include:

1 (1) commodities, including the type of
2 commodity;

3 (2) investments in stocks, bonds, futures
4 contracts, options, derivatives, currency, real estate
5 investment trusts, mutual funds, private-equity funds and
6 exchange-traded funds; provided that, if the investment is
7 or forms part of a fund, the reporting individual need
8 only identify the fund and the fund manager and not the
9 underlying holdings of the fund; and

10 (3) contractual rights that are reasonably
11 likely to generate future income, such as royalties and
12 intellectual property, the names of the contracting
13 parties and the purpose of the contract;

14 C. The source of income of more than six hundred
15 dollars (\$600) directly or indirectly accrued by the
16 reporting individual, the reporting individual's spouse,
17 or the reporting individual's dependent children,
18 including:

19 (1) the identity of the source of earned
20 income; provided that, if the source of earned income is
21 owed a legal or professional duty of confidentiality and
22 the identity of the source of the income has not been
23 disclosed to a public agency, the reporting individual may

1 identify the source as "confidential" and describe the
2 duty of confidentiality that prevents disclosure of the
3 source of the earned income; and

4 (2) the identity of sources of unearned income,
5 including taxable interest, capital gains, dividends,
6 annuities, trust distributions; rents from real property;
7 and insurance policies.

8 **SECTION 6. DISCLOSURE OF LIABILITIES.--**The

9 disclosure statement shall include for any reporting
10 individual identified in Subsection A of Section 3 of this
11 Act the following information related to liabilities for
12 the prior calendar year:

13 A. All liabilities of more than five thousand
14 dollars (\$5,000) owed by:

15 (1) the reporting individual, the reporting
16 individual's spouse, or the reporting individual's
17 dependent children; and

18 (2) a trust of which the reporting individual,
19 the reporting individual's spouse, or the reporting
20 individual's dependent children are beneficiaries.

21 B. For any liability that Subsection (A) of Section
22 6 requires identification, the reporting individual must
23 disclose:

1 (1) the identity of the person who owes the
2 debt or liability;

3 (2) the person to whom the debt or liability is
4 owed;

5 (3) the amount of the debt or liability; and

6 (4) any payments on the debt or liability
7 during the previous calendar year.

8 C. The disclosure statement need not include
9 disclosure of:

10 (1) ordinary consumer debt;

11 (2) mortgage debt on the primary residence of
12 the reporting individual, the reporting individual's
13 spouse, or the reporting individual's dependent children;

14 (3) student loans; and

15 (4) liabilities owed to parents, grandparents,
16 children or siblings of the reporting individual, the
17 reporting individual's spouse, or the reporting
18 individual's dependent children.

19 **SECTION 7. DISCLOSURE OF INFORMATION AND ASSETS OF**
20 **BUSINESS ENTITIES.**--The disclosure statement shall include
21 for any reporting individual identified in Subsection A of
22 Section 3 of this Act the following information related to
23 any privately-held business entity controlled by the

1 reporting individual, the reporting individual's spouse or
2 the reporting individual's dependent children:

3 A. The name of the business entity, a brief
4 description of the nature of its activities and its
5 geographic location (city and state); and

6 B. For a privately-held business entity that was
7 formed for the purpose of holding investments:

8 (1) assets of more than fifty thousand
9 (\$50,000) dollars or which generated more than \$600 in
10 income directly or beneficially owned by the business
11 entity, provided that, in determining whether an asset has
12 a value of more than fifty thousand (\$50,000) dollars, the
13 value should not be reduced by any indebtedness secured by
14 the asset, such as a mortgage or other secured loan; and

15 (2) any liability of more than fifty thousand
16 dollars (\$50,000) of the business entity, including:

17 (a) the identity of the business entity
18 that owes the debt or liability;

19 (b) the person to which the debt or
20 liability is owned;

21 (c) the amount of the debt or liability;

22 and

1 (d) any payments on the debt or liability
2 during the previous calendar year.

3 **SECTION 8. DISCLOSURE OF PROFESSIONAL LICENSES AND**
4 **MEMBERSHIPS.**--The disclosure statement shall include for
5 any reporting individual identified in Subsection A of
6 Section 3 of this Act the following information related to
7 professional licenses, memberships and offices for the
8 prior calendar year:

9 A. all professional licenses held by the reporting
10 individual or the reporting individual's spouse;

11 B. all board memberships, offices, or other
12 positions held by the reporting individual and the
13 reporting individual's spouse in:

14 (1) corporations, partnerships, trusts, or
15 other for-profit business entities; and

16 (2) non-profit organizations, educational
17 organizations, political organizations, or any other non-
18 governmental organization.

19 **SECTION 9. DISCLOSURES OF GIFTS.**--The disclosure
20 statement shall include for any reporting individual
21 identified in Subsection A of Section 3 of this Act the
22 following information related to gifts for the prior
23 calendar year:

1 A. any gift received by the reporting individual,
2 the reporting individual's spouse, or the reporting
3 individual's dependent children of a market value greater
4 than fifty dollars (\$50) from a restricted donor, a
5 lobbyist registered with the secretary of state, a
6 lobbyist's employer, a government contractor, or a person
7 that has responded to a request for proposals or an
8 invitation to bid issued by the agency which the reporting
9 individual serves.

10 B. As used in Subsection (A) of Section 8 of this
11 Act, "gift" and "restricted donor" have the same meanings
12 as in the Gift Act.

13 **SECTION 10. DISCLOSURES RELATED TO PUBLIC AGENCIES.-**

14 -The disclosure statement shall include for any person
15 identified in Subsection A of Section 3 of this Act the
16 following information related to public agencies for the
17 prior calendar year:

18 A. each public agency that was sold goods or
19 services in excess of five thousand dollars (\$5,000)
20 during the prior calendar year by the reporting
21 individual, the reporting individual's spouse or a
22 business entity controlled by the reporting individual or
23 the reporting individual's spouse; and

1 B. each public agency, other than a court, before
2 which the reporting individual or the reporting
3 individual's spouse represented or assisted clients in the
4 course of employment during the prior calendar year.

5 **SECTION 11. RETENTION AND PUBLIC INSPECTION OF**
6 **DISCLOSURE STATEMENTS.--**

7 A. The secretary of state will retain for ten years
8 from the date of filing any disclosure statement filed by
9 any reporting individual under Subsection A of Section 3
10 of this Act and shall make the same available to the state
11 ethics commission.

12 B. The secretary of state will make available for
13 public inspection, without request, disclosure statements
14 filed by persons under Paragraphs (1) and (5) of
15 Subsection A of Section 3 of this Act.

16 C. The secretary of state will make available for
17 public inspection, upon written request, disclosure
18 statements filed by persons under Paragraphs (2) through
19 (4) of Subsection A of Section 3 of this Act; provided
20 that:

21 (1) the secretary of state will inform the
22 reporting individual whose disclosure statement is the

1 subject of a written request of the request and the
2 identity of the requester; and

3 (2) the secretary of state shall not make
4 available for public inspection any address of personal
5 residence of any reporting individual, the reporting
6 individual's spouse, or the reporting individual's
7 dependent children.

8 **SECTION 12. EDUCATION AND VOLUNTARY COMPLIANCE.--**

9 A. The secretary of state shall advise and seek to
10 educate all persons required to perform duties under the
11 Disclosure Act of those duties. This includes providing
12 timely advance notice of the required disclosure statement
13 and preparing forms that are clear and easy to complete.

14 B. The secretary of state shall refer violations of
15 the Disclosure Act to the state ethics commission after
16 first seeking to ensure voluntary compliance with the
17 provisions of the Disclosure Act. The secretary of state
18 shall give a person who violates any provision of the
19 Disclosure Act ten days' notice to correct the matter
20 before the secretary of state refers the violation to the
21 state ethics commission.

22 **SECTION 13. RULEMAKING AUTHORITY.--**The secretary of
23 state may promulgate rules to implement the provisions of

1 the Disclosure Act. In promulgating the rules, the
2 secretary of state shall comply with the provisions of the
3 State Rules Act.

4 **SECTION 14. INVESTIGATIONS--FINES--CIVIL**
5 **ENFORCEMENT.--**

6 A. The state ethics commission may conduct
7 examinations of disclosure statements and initiate
8 complaints and investigations to determine whether the
9 Disclosure Act has been violated. The state ethics
10 commission may also receive, investigate and adjudicate
11 complaints alleging violations of the Disclosure Act
12 subject to the provisions of the State Ethics Commission
13 Act.

14 B. The state ethics commission may institute a civil
15 action in district court or refer a matter to the attorney
16 general or a district attorney to institute a civil action
17 in district court if a violation has occurred or to
18 prevent a violation of any provision of the Disclosure
19 Act. Relief may include a permanent or temporary
20 injunction, a restraining order or any other appropriate
21 order, including an order for a civil penalty of up to one
22 thousand dollars (\$1,000) for each violation not to exceed
23 twenty thousand dollars (\$20,000).

1 C. Any person identified in Subsections A and B of
2 Section 3 of this Act who files a report after the
3 deadline imposed by the Disclosure Act is additionally
4 liable for a penalty of fifty dollars (\$50.00) per day for
5 each regular working day after the time required for the
6 filing of the disclosure statement until the report is
7 filed, not to exceed five thousand dollars (\$5,000).
8 Penalties collected pursuant to this subsection shall be
9 remitted to the secretary of state.

10 D. If the secretary of state or the state ethics
11 commission reasonably believes that a person committed, or
12 is about to commit a violation of the Disclosure Act that
13 is subject to criminal penalties, the secretary of state
14 or the state ethics commission may refer the matter to the
15 attorney general or a district attorney for criminal
16 enforcement.

17 **SECTION 15. CRIMINAL PENALTIES.—**

18 A. Any person who knowingly and willfully violates
19 any of the provisions of the Disclosure Act is guilty of a
20 misdemeanor and shall be punished by a fine of not more
21 than one thousand dollars (\$1,000) or by imprisonment for
22 not more than one year or both.

1 B. Notwithstanding the provisions of Subsection C of
2 Section 30-1-8, NMSA 1978, a person shall not be
3 prosecuted, tried or punished in any court of this state
4 for knowingly and willfully violating any of the
5 provisions of the Disclosure Act unless the indictment is
6 found or information or complaint is filed within five
7 years from the time the violation was committed.

8 **SECTION 16. REPEAL.**--Sections 10-16A-1 through 10-
9 16-9 NMSA 1978 (being Laws 1993, Chapter 46, Sections 39
10 through 45, Laws 1995, Chapter 153, Sections 24 through 25,
11 Laws 1997, Chapter 112, Sections 8 through 9, Laws 2015,
12 Chapter 11, Section 1, Laws 2019, Chapter 86, Sections 27
13 through 30, Chapter 212, Section 214, Laws 2021, Chapter 109,
14 Sections 12, 13, and 21) are repealed.

15 **SECTION 17. EFFECTIVE DATE.**--The effective date of
16 the provisions of this act is January 1, 2023.