



STATE ETHICS
COMMISSION MEETING

August 5, 2022

PUBLIC MATERIALS

PUBLIC MATERIALS
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STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
Jeffrey L. Baker, Member
Stuart M. Bluestone, Member
Hon. Garrey Carruthers, Member
Hon. Celia Foy Castillo, Member
Ronald Solimon, Member
Dr. Judy Villanueva, Member

Friday, August 5, 2022, 9:00 a.m. to 12:00 p.m. (Mountain Time)

Public Meeting (via Zoom)

Join Zoom through internet browser:

<https://us02web.zoom.us/j/89602594515?pwd=ZllnSDFFbXV5eExkaFJGQWZmbUNOZz09>

Meeting ID: 896 0259 4515

Dial In Number: (646 931 3860 US)

Password: Ethics!

One-tap Dial in Number: 3126266799,,89602594515#,,,,*7187969#

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of June 10, 2022 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|---|-----|
| 4. Advisory Opinion 2022-07
(Farris) | Yes |
| 5. Advisory Opinion 2022-08
(Farris) | Yes |

6. Advisory Opinion 2022-09 (Boyd) Yes
7. Approval of settlement agreement in *Whitlock v. Dow*, No. 2020-031 (Boyd) Yes

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

8. Discussion regarding current and potential litigation:
 - a. *State Ethics Comm'n v. Vargas & Double Eagle Real Estate LLC*, D-202-CV-2021-06201 (2d Jud. Dist. Ct.)
 - b. *In re State Ethics Commission Petition for Issuance of a Subpoena Duces Tecum Pursuant to NMSA 1978, 10-16G-10(J)*, No. A-1-CA-39841 (N.M. App.), and *Dow v. Martin*, No. S-1-SC-38928 (N.M.)
9. Discussion of administrative matters under the State Ethics Commission Act subject to settlement approval:
 - a. Administrative Complaint No. 2021-026
 - b. Administrative Complaint No. 2022-008
10. Discussion regarding administrative matters under Revised Uniform Law on Notarial Acts:
 - a. *In re notary public commission of Hyatt*, 2022-NP-01
 - b. *In re notary public commission of Ratigan*, 2022-NP-11
 - c. *In re notary public commission of Fulfer*, 2022-NP-14
11. Discussion regarding administrative matters under State Ethics Commission Act
 - a. Administrative Complaint No. 2021-017
 - b. Administrative Complaint Nos. 2021-038 & 2022-007 (*consolidated*)
 - c. Administrative Complaint No. 2022-006
 - d. Administrative Complaint No. 2022-011
 - e. Administrative Complaint No. 2022-014
 - f. Administrative Complaint No. 2022-015
 - g. Administrative Complaint No. 2022-016
 - h. Administrative Complaint No. 2022-017
 - i. Administrative Complaint No. 2022-018
 - j. Administrative Complaint No. 2022-021
 - k. Administrative Complaint No. 2022-022
 - l. Administrative Complaint No. 2022-023
 - m. Administrative Complaint No. 2022-024
 - n. Administrative Complaint No. 2022-025
 - o. Administrative Complaint No. 2022-026
 - p. Administrative Complaint No. 2022-028

Upon applicable motion, Commission returns from executive session

12. Actions on Administrative Complaints Yes
(*Farris*)

Administrative Matters under State Ethics Commission Act:

- a. Administrative Complaint No. 2021-017
- b. Administrative Complaint Nos. 2021-038 & 2022-007 (*consolidated*)
- c. Administrative Complaint No. 2022-006
- d. Administrative Complaint No. 2022-011
- e. Administrative Complaint No. 2022-014
- f. Administrative Complaint No. 2022-015
- g. Administrative Complaint No. 2022-016
- h. Administrative Complaint No. 2022-017
- i. Administrative Complaint No. 2022-018
- j. Administrative Complaint No. 2022-021
- k. Administrative Complaint No. 2022-022
- l. Administrative Complaint No. 2022-023
- m. Administrative Complaint No. 2022-024
- n. Administrative Complaint No. 2022-025
- o. Administrative Complaint No. 2022-026
- p. Administrative Complaint No. 2022-028

Administrative Matters under Revised Uniform Law on Notarial Acts:

- a. *In re notary public commission of Hyatt, 2022-NP-01*
- b. *In re notary public commission of Ratigan, 2022-NP-11*
- c. *In re notary public commission of Fulfer, 2022-NP-14*

13. Discussion of next meeting: October 14, 2022 No
(*Lang*)

14. Public Comment No

15. Adjournment

For inquires or special assistance, please contact Suha Musa at Ethics.Commission@state.nm.us

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



Hon. William F. Lang
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Hon. Celia Foy Castillo
Ronald Solimon
Judy Villanueva

STATE ETHICS COMMISSION

Commission Meeting Minutes of June 10, 2022 | 9:00AM-12:30PM

Virtually Via Zoom

[View Recording Here](#)

[Subject to Ratification by Commission]

1. Call to Order

Chairman Lang Calls the Meeting to Order at 9:02 AM.

2. Roll Call

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner
Stuart M. Bluestone, Commissioner
Hon. Garrey Carruthers, Commissioner
Hon. Celia Foy Castillo, Commissioner
Ronald Solimon, Commissioner
Judy Villanueva, Commissioner
Hon. William Lang, Chair

3. Approval of Agenda

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

4. Approval Of May 11, 2022 Commission Meeting Minutes

Chair Lang sought a motion to approve the minutes of the May 11, 2022 Commission meeting. Commissioner Carruthers moved to approve the minutes; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the minutes unanimously.

Commission Meeting Items

5. Introduction of New Staff

Director Farris introduced Suha Musa as the new Communications and Administrative Manager, along with summer law externs Xaveria Mayerhofer and Miguel Quintana.

6. Advisory Opinion 2022-06

Deputy General Counsel Rebecca Branch provided an overview of advisory opinion 2022-06, which addresses the following question:

1. *During legislative sessions, are there any limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?*
2. *Outside of legislative sessions, are there limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?*
3. *Are there limitations on communications between a legislator and the board members or employees of an entity that either contracts with or employs the legislator?*

(To read the full opinion following its issuance, visit www.NMOnesource.com)

Commissioners Baker asked for clarification, which Ms. Branch provided. Commissioner Bluestone suggested the inclusion of a footnote related to disclosures under the Financial Disclosure Act.

Chair Lang sought a motion to adopt Advisory Opinion 2022-06 with the footnote addition. Commissioner Bluestone moved to adopt the opinion; Commissioner Foy Castillo seconded. After a discussion on the merits of the opinion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2022-06 unanimously.

7. Advisory Opinion 2022-07

Director Farris provided an overview of advisory opinion 2022-07, which addresses the following question:

Under what circumstances is a contribution to a candidate or a candidate's campaign committee by a limited liability company, partnership, corporation, or other business entity attributable to an individual under Section 1-1934.7(D) of the Campaign Reporting Act?

After discussion, Chair Lang sought a motion to adopt Advisory Opinion 2022-07. Commissioner Baker moved to adopt the opinion Commissioner Carruthers seconded. After discussion, Chair Lang conducted a roll-call vote. Commissioners Baker, Carruthers, Solimon, Villanueva, and Chair Lang voted in the affirmative; Commissioners Bluestone and Foy Castillo voted in the negative. The motion failed for lack of consent of “at least two members of the largest political party in the state and two members of the second largest political party in the state” under NMSA 1978, Section 10-16G-3(H).

Commissioner Bluestone moved to direct the staff to revise the opinion to limit its answer to conduit contributions. Commissioner Foy Castillo seconded. After a discussion, Chair Lang conducted a roll-call vote. Commissioners Bluestone and Foy Castillo voted in the affirmative.

Commissioners Baker, Carruthers, Solimon, Villanueva, and Chair Lang voted in the negative. The motion failed for lack of consent of “at least two members of the largest political party in the state and two members of the second largest political party in the state” under NMSA 1978, Section 10-16G-3(H). No version of the draft advisory opinion was adopted.

8. Overview of 2022 Financial Disclosure Filings

Director Farris provided an update on compliance with the Financial Disclosure Act, noting that out of approximately 700 individuals who are required to file annual financial disclosure statements, 155 individuals have yet to do so—despite repeated attempts at voluntary compliance.

9. Executive Session

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

---Beginning of Executive Session---

The following matters were discussed in executive session:

- Discussions regarding litigated matters:
 - *State Ethics Comm’n v. Vargas & Double Eagle Real Estate LLC*, D-202-CV-2021-06201 (2d Jud. Dist. Ct.)
 - *In re State Ethics Commission Petition for Issuance of a Subpoena Duces Tecum Pursuant to NMSA 1978, 10-16G-10(J)*, No. A-1-CA-39841 (N.M. App.), and *Dow v. Martin*, No. S-1-SC-38928 (N.M.)
 - Following the Secretary of State’s referral under NMSA 1978, Section 10-16A-6(D), potential civil action(s) to enforce the Financial Disclosure Act

Administrative Matters under Revised Uniform Law on Notarial Acts:

- a. 2022-NP-03, *In re notary public commission of Samaniego*
- b. 2022-NP-05, *In re notary public commission of Perez*
- c. 2022-NP-08, *In re notary public commission of Bratcher f/k/a Stevenson*

- Discussions regarding administrative complaints:

Administrative Matters under State Ethics Commission Act:

- a. Administrative Complaint No. 2022-001
- b. Administrative Complaint No. 2022-004
- c. Administrative Complaint No. 2022-009
- d. Administrative Complaint No. 2022-012
- e. Administrative Complaint No. 2022-013

f. Administrative Complaint No. 2022-019

g. Administrative Complaint No. 2022-020

h. Administrative Complaint No. 2021-012

*Commissioner Bluestone noted his concerns with the scope of the investigation in 2021-012.

- 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 appropriate motion.

---End of Executive Session---

10. Actions on Administrative Complaints Nos. 2022-001, 2022-004, 2022-009, 2022-012, 2022-013, 2022-019, 2022-020

Director Farris asked the Commission for the following motions on the following administrative cases:

- **In administrative case 2022-001, motion to approve the settlement agreement between General Counsel and the Respondent:**
Commissioner Foy Castillo moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-004, motion for a 90-day extension to continue the investigation:**
Commissioner Carruthers moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang recused from the vote and conducted a roll-call vote. All other Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-009, motion for an order of dismissal due to a lack of jurisdiction:**
Commissioner Baker moved as stated above; Commissioner Foy Castillo seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-012, motion for an order of dismissal due to the Secretary of State certifying voluntary compliance:**
Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-013, motion for an order of dismissal due to the Secretary of State certifying voluntary compliance:**
Commissioner Foy Castillo moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-019, motion for an order of dismissal due to a lack of jurisdiction and to refer the case to the Administrative Office of the Courts:**
Commissioner Baker moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-020, motion for an order of dismissal due to a lack of jurisdiction and refer the case to the Children, Youth and Families Department:**
Commissioner Foy Castillo moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

11. Administrative Matters Under Revised Uniform Law on Notarial Acts (RULONA), Case Nos. 2022-NP-03, 2022-NP-05, and 2022-NP-08

Deputy General Counsel Rebecca Branch sought motions on the following cases under the Revised Uniform Law on Notarial Acts:

- a. **In 2022-NP-03, *In re notary public commission of Samaniego*, motion to issue a default order revoking Ms. Samaniego’s notary public commission:**
Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- b. **In 2022-NP-05, *In re notary public commission of Perez*, motion to issue a Notice of Contemplated Action revoking Ms. Perez’s notary public commission:**
Commissioner Bluestone moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- c. **In 2022-NP-08, *In re notary public commission of Bratcher*, motion to issue a default order barring Ms. Bratcher’s application for a notary public commission until she has addressed her Notice of Contemplated Action:**
Commissioner Carruthers moved as stated above; Commissioner Bluestone seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

12. Resolutions Related to Commission Authorization of Demand and Civil Enforcement Actions

Director Farris sought a motion to authorize the commission staff (i) to send demand letters to the 155 individuals who have not submitted financial disclosures after discussion with the Governor's office and (ii) to proceed with civil enforcement actions as necessary:

Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

13. Selection of Next Meeting

Chair Lang confirmed that the next meeting would take place on August 05, 2022. Chair Lang clarified that the Commission would aim to hold its August meeting in person, with final decision and details forthcoming.

14. Public Comments

- a. Tony Ortiz: *Kudos to the Commission on following up with FDA disclosure statements and non-compliance.*
- b. Chris Mechels: *Comments that boards and commissions should have to hold their board members accountable to file their disclosures to avoid noncompliance. Believes that if someone does not disclose, they should not be allowed to hold office, as provided by law.*
- c. Monet Silva, Common Cause NM: *Disappointed in the Commission decision to not adopt Advisory Opinion 2022-07. Offered explanation of her organization's involvement for advocating for changes in how campaign donations work.*
- d. Cliff Rees: *Thank you for the work being done.*

No additional public comments were offered.

15. Adjournment

Chair Lang raised adjournment of the meeting. With no objections made, the meeting was adjourned at 12:05 PM.

[Subject to Ratification by Commission]



STATE ETHICS COMMISSION

[Draft] ADVISORY OPINION NO. 2022-07

August 5, 2022¹

QUESTION PRESENTED²

At the May 16, 2022, Albuquerque City Council meeting, the Council passed Floor Amendment No. 13 to the City’s operating budget bill. According to an “explanation” contained in the amendment and to an official press release, the amendment added “\$250,000 for a Council directed sponsorship to Planned Parenthood of New Mexico.” The operating budget bill was passed and then signed by Mayor Tim Keller.

The questions presented to the State Ethics Commission are:

1. Does the ‘Council-directed sponsorship to Planned Parenthood of New Mexico,’ a private corporation, violate Article IX, Section 14 of the Constitution?

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” *See* NMSA 1978, § 10-16G-8(A)(2) (2019). On June 3, 2022, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(A) NMAC. The request was submitted by a public official with authority to request an opinion. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC.

2. Does the ‘Council-directed sponsorship to Planned Parenthood of New Mexico’ violate the Procurement Code?

ANSWER

No, to each question.

ANALYSIS

I.

A.

The Anti-Donation Clause provides “Neither the State nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation[.]” N.M. Const., art. IX, § 14. Except where an exception applies, the Anti-Donation Clause prohibits two types of transactions. *See City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1147 (D.N.M. 2008) (Browning, J.) (citing N.M. Att’y Gen. Op. 85-27, at 3 (Oct. 22, 1985)). First, the Anti-Donation Clause prohibits a governmental entity from pledging its credit to benefit a private enterprise. *See, e.g., Hutcheson v. Atherton*, 1940-NMSC-001, 44 N.M. 144 (invalidating a statute purporting to authorize counties to issue bonds for construction of auditoriums to be used by the New Mexico Fourth Centennial Coronado Corporation, a private entity). Second, and more relevant to the question presented, the Anti-Donation Clause prohibits “donations” of property or money by a government entity to a private person for which the government entity receives nothing of value in return. *See, e.g., State ex rel. Mechem v. Hannah*, 1957-NMSC-065, 63 N.M. 110 (invalidating state-backed certificates issued to cattle ranchers to defray cost of hay during drought). If the governmental entity receives something of value in exchange for its provision of public funds—which, in the language of contract law, is called “consideration”—then there is no donation and, thus, no application of Article IX, Section 14. *See City of Raton*, 600 F. Supp. 2d at 1161 (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for a real product.”); *State ex rel. Office of State Engineer v. Lewis*, 2007-NMCA-008, ¶¶ 50-52, 141 N.M. 1 (appropriation to

purchase and retire water rights not a violation of the Anti-Donation Clause because the state received water rights in return for payment).³

The Anti-Donation Clause, however, does not prohibit all donations of public funds from a governmental entity to a private person. Article IX, Section 14 enumerates six categories of transfers of public funds that Anti-Donation Clause does not prohibit. For example, Article IX, Subsection 14(A) provides “Nothing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.” N.M. Const., art. IX, § 14(A). We observe two, well-established points regarding the application of this exception.

First, for a governmental entity to direct aid to a private person, the Constitution does not require the targeted recipient to be both sick *and* indigent; the targeted recipient need only be “sick” *or* “indigent.” *See* N.M. Att’y Gen. Op. 83-04 (July 29, 1983) (“A donation for the care and maintenance of either the sick or the indigent is not prohibited.”); N.M. Att’y Gen. Op. 58-135 (June 23, 1958) (quoting N.M. Att’y Gen. Op. 57-26 (Feb. 14, 1957) (“It is our view that such care and maintenance be extended to those who are either sick *or* indigent. It would not seem necessary that a person, in order to secure such assistance, be both sick *and* indigent.” (emphasis original))).

Second, whether a person is “indigent” within a meaning of Article IX, Subsection 14(A) depends on a current understanding of indigence and not the standard of indigence extant in 1912, when the exception came into effect. In *Humana of New Mexico v. Board of County Commissioners*, the New Mexico Supreme Court reviewed the constitutionality of the Indigent Hospital Claims Act, NMSA 1953, §§13-2-12, *et seq.* (Repl. 1976), and concluded that the statute’s definition of “indigent patient” was consistent with the meaning of “indigent persons” in Article IX, Subsection 14(A). *See* 1978-NMSC-036, ¶ 15, 92 N.M. 34. In reaching its holding, the Supreme Court rejected an interpretation of “indigent” that anchored its application to the standard of indigence prevalent in 1912. *See* 1978-NMSC-036, ¶¶ 12–14. Rather, the Court made clear that the meaning of “indigent” floats with the “passage of time.” *Id.* ¶ 14.

³ The focus is whether the government receives consideration in exchange for its transfer. Donations—again, transfers without consideration—do not escape constitutional prohibition simply because the donation furthers a public purpose. *See State ex rel. Sena v. Trujillo*, 1942-NMSC-044, ¶ 30, 46 N.M. 361 (“The constitution makes no distinction as between ‘donations’, whether they be for a good cause or a questionable one. It prohibits them all.”).

B.

In view of the foregoing, well-established interpretations of Article IX, Section 14, we conclude that the facts presented by the request do not constitute a violation of the Anti-Donation Clause.

At the outset, we are unsure whether an explanation to a floor amendment to a municipal budget in and of itself constitutes an act by which a municipality “make[s] any donation to or in aid of any person, association or public or private corporation[.]” N.M. Const., art. IX, § 14. The request for the advisory opinion attaches the May 16, 2022 City Council Floor Amendment No. 13 to C/S R-22-24.⁴ The amendment increases the appropriation for “Health and Human Services” by \$250,000 and includes an “explanation” that the amendment adds \$250,000 “for a Council directed sponsorship to Planned Parenthood of New Mexico.” *See* City Council of the City of Albuquerque, Floor Amendment No. 13 to C/S R-22-24 (May 16, 2022). The explanation to the floor amendment appears separately and below the amendment itself; as such, it is not clear that the explanation in the floor amendment binds the Mayor’s discretion in the expenditure of the appropriated funds. Furthermore, the explanation accompanying the floor amendment is not replicated in the resolution that comprises the City of Albuquerque’s budget. *Compare* City Council of the City of Albuquerque, Floor Amendment No. 13 to C/S R-22-24 (May 16, 2022), *with* City of Albuquerque, C/S R-22-24, Enactment No. 2022-036 (June 1, 2022), *available at* <https://tinyurl.com/4ecy5xde>. And it is “[t]he annual operating budget appropriation resolution . . . [that] constitute[s] the city’s operating budget for the ensuing fiscal year.” Albuquerque, N.M., Rev. Ordinances of Albuquerque § 2-11-12(A) (1974, amended 1995). It is not certain, therefore, that the explanation accompanying the May 16, 2022 Floor Amendment No. 13 to C/S R-22-24 constitutes an act by which a municipality “make[s] any donation” to a private person or corporation. N.M. Const., art. IX, § 14.

Prescinding from the question whether the explanation in the floor amendment binds the expenditure of City funds, and assuming *arguendo* that the City expends the \$250,000 consistent with the floor amendment’s explanation for a sponsorship of Planned Parenthood of New Mexico, the request presents no additional facts that suggest that such an expenditure necessarily violates the Anti-Donation Clause. The constitutional question depends on the details of the

⁴ Without disclosing the request or the identity of the requester, we attach the May 16, 2022 City Council Floor Amendment No. 13 to C/S R-22-24. *See* Attachment 1 hereto.

sponsorship. If, through grant conditions effectuating the sponsorship, the City of Albuquerque provided city funds to Planned Parenthood of New Mexico “for the care and maintenance” of sick persons or indigent persons, then the sponsorship would not violate the constitutional prohibition. *See* Article IX, §14(A). Or, if under a grant agreement, the City of Albuquerque received a commitment or some other thing of value in exchange for the provision of city funds which constitutes “true consideration” under the law of contracts, then, again, the sponsorship would not violate the constitution. *City of Raton*, 600 F. Supp. 2d at 1161. The request for an advisory opinion does not provide or posit any details regarding the City of Albuquerque’s potential expenditure of funds for a sponsorship of Planned Parenthood of New Mexico. Accordingly, under the facts presented, we do not conclude that the sponsorship to Planned Parenthood of New Mexico violates Article IX, Section 14 of the New Mexico Constitution.

II.

The request for an advisory opinion also asks the Commission to opine on whether the Council-directed sponsorship to Planned Parenthood of New Mexico violates the Procurement Code. It does not. The Procurement Code “shall not apply to . . . municipalities having adopted home rule charters and having enacted their own purchasing ordinances[.]” NMSA 1978, § 13-1-98(K) (2019); *see also* N.M. Const. art X, § 6(D) (stating that a municipality “which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter”). The City of Albuquerque has adopted a home rule charter. *See* City of Albuquerque Charter Art. I (Adopted at Special Election, June 29, 1971). The City’s own procurement ordinance therefore “govern[s] all purchasing transactions of the city and shall serve to exempt the city from all provisions of the New Mexico Procurement Code” Albuquerque, N.M., Rev. Ordinances of Albuquerque § 5-5-1 (1974, amended 1998). Accordingly, the Procurement Code does not apply to any purchase of goods or services by the City of Albuquerque and, hence, is not implicated by a transaction between the City of Albuquerque and Planned Parenthood of New Mexico.

CONCLUSION

For the foregoing reasons and under the facts presented, the sponsorship of Planned Parenthood of New Mexico noted in in the explanation section of City Council Floor Amendment No. 13 to C/S R-22-24 (May 16, 2022) violates neither the Anti-Donation Clause nor the Procurement Code.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFFREY L. BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. GARREY CARRUTHERS, Commissioner

HON. CELIA FOY CASTILLO, Commissioner

RON SOLIMON, Commissioner

JUDY VILLANUEVA, Commissioner

THIS AMENDMENT PASSED 6-3.
For: Benton, Peña, Bassan, Davis, Fiebelkorn, Jones
Against: Lewis, Sanchez, Grout

**CITY COUNCIL
of the
CITY OF ALBUQUERQUE**

May 16, 2022

FLOOR AMENDMENT NO. 13 TO C/S R-22-24

AMENDMENT SPONSORED BY COUNCILOR Fiebelkorn

1. On page 3, line 27 entitled "Affordable Housing" reduce the amount by \$500,000.
2. On page 3, line 33 entitled "Health and Human Services" increase the amount by \$250,000.

Explanation: This amendment removes the amount in Family and Community Services designated for the Family Promise project. It is the Council's intent to appropriate \$500,000 from the second tranche of American Rescue Plan Act (ARPA) for this project. The amendment also adds \$250,000 for a Council directed sponsorship to Planned Parenthood of New Mexico.



STATE ETHICS COMMISSION

[Draft] ADVISORY OPINION NO. 2022-08

August 5, 2022¹

QUESTION PRESENTED²

May a political committee make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question?

ANSWER

Yes.

ANALYSIS

I.

This advisory opinion concerns a political committee that pays for advertisements advocating for candidates and ballot questions in New Mexico elections. The political committee engages in both coordinated expenditures and independent expenditures. In so doing, the political committee says that it separates its coordinated expenditure campaigns from its independent expenditure

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” NMSA 1978, § 10-16G-8(A)(2) (2019). On July 5, 2022, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(A) NMAC. The request was submitted by a person with authority to request an opinion. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC.

campaigns, so that the staff and money used for one type of expenditure is not used on the other, and vice versa. The political committee also uses segregated bank accounts to fund its coordinated expenditure campaigns and its independent expenditure campaigns, respectively.

The 2022 general election involves each of New Mexico's statewide elected officials and seats in the New Mexico House of Representatives. The election also includes a ballot question proposing to amend Article IX, Section 14 of the New Mexico Constitution. In anticipation of the upcoming general election, the political committee plans to send advertisements to non-members listing the political committee's endorsements. The political committee intends to send the advertisement through its coordinated expenditure arm and to fund the advertisement with funds it uses for coordinated expenditures.

In its advertisement, the political committee will endorse its favored candidates. The political committee also would like to endorse the constitutional amendment in the same advertisement and to pay for that advertisement using funds it uses for coordinated expenditures. The political committee has requested an advisory opinion from this Commission as to whether or not it may do so.

II.

Apart from requiring certain, limited disclaimers, the Campaign Reporting Act, NMSA 1978, §§ 1-19-26 to -37 (1976, as amended through 2021), generally does not purport to regulate the contents of a political committee's advertisements. *See, e.g.*, NMSA 1978, § 1-19-26.4 (2019) (regarding disclaimers in advertisements). However, depending on whether the political committee's advertisement is coordinated or independent, the Act imposes different expenditure limitations and disclosure requirements. Accordingly, we review the distinction between a "coordinated expenditure" and an "independent expenditure" in the Campaign Reporting Act.

A political committee makes a "coordinated expenditure" if it makes an expenditure

- (2) at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party; and

- (3) for the purpose of:
 - (a) supporting or opposing the nomination or election of a candidate; or
 - (b) paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot[.]

NMSA 1978, § 1-19-26(I)(2)–(3) (2019); *see also generally* 1.10.13.28(D) NMAC (providing factors to be considered when determining coordination); State Ethics Comm’n Adv. Op. 2022-05, at 7–9 (Apr. 1, 2022) (discussing instances of coordination between political committees and candidates). Coordinated expenditures are “contributions” under the Campaign Reporting Act, Section 1-19-26(H)(2), and, as such, are subject to the contribution limits set forth in NMSA 1978, Section 1-19-34.7 (2019).³ Political committees must also regularly report coordinated expenditures as provided by Sections 1-19-27(A), 1-19-29, and 1-19-31, and the rules promulgated by the Secretary of State, 1.10.13 NMAC. *See generally* 1.10.13.28 NMAC (coordinated expenditures).

By contrast, a political committee makes an “independent expenditure” if it makes an expenditure that is:

- (2) not a coordinated expenditure as defined in the Campaign Reporting Act; and
- (3) made to pay for an advertisement that:

³ The Campaign Reporting Act limits the amounts persons may contribute to candidates, candidates’ campaign committees, and political committees to \$5,200 during a primary election cycle and \$5,200 during a general election cycle. *See* NMSA 1978, § 1-19-34.7(A)(1). The contribution limits are doubled for candidates seeking election to the office of governor, *see* § 1-19-34.7(B), and the contribution amounts increase over time in step with inflation. *See* § 1-19-34.7(F). The per-election contribution limit is currently \$5,200. *See* New Mexico Secretary of State, Campaign Contribution Limits, <https://www.sos.state.nm.us/candidate-and-campaigns/how-to-become-a-candidate/campaign-contribution-limits/> (last accessed July 11, 2022).

- (a) expressly advocates the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question;
- (b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot question; or
- (c) refers to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election at which the candidate or ballot question is on the ballot;

NMSA 1978, § 1-19-26(N)(2)–(3) (2019). The Campaign Reporting Act imposes no limitations on the amount a political committee may either expend on independent expenditures or receive for the purpose of making independent expenditures. *See* NMSA 1978, § 1-19-34.7(I); *see also generally* *Republican Party of N.M. v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013) (holding that, under the First Amendment, the Campaign Reporting Act’s contribution limits do not apply to contributions that are “to be used solely for independent expenditures”). The Act, however, carries specific reporting requirements for persons who make independent expenditures. *See* NMSA 1978, § 1-19-27.3 (2019).

We observe that the definition of “independent expenditure” includes advertisements referring to a “ballot question,” while the definition of “coordinated expenditure” does not. *Compare* § 1-19-26(N)(3)(c), *with* § 1-19-26(I)(3). We understand that this difference might raise questions for persons subject to the Campaign Reporting Act and, likely, gave rise to the instant request. And, so, we clarify that whether or not an advertisement refers to a ballot question is immaterial to its classification as a coordinated or independent expenditure.

If a political committee funds and creates an advertisement in consultation or concert with a candidate or political party, and if the advertisement is for the purpose of supporting the candidate’s election, then the political committee has made a coordinated expenditure. *See* § 1-19-26(I). It is plausible that an advertisement that a political committee coordinates with a candidate or political party might refer to a ballot question: the candidate or political party with which the political committee is coordinating might publicly support or even be closely aligned with the ballot question. But, irrespective of whether the advertisement

refers to a ballot question, if the advertisement satisfies the elements of Section 1-19-26(I), then the advertisement is a coordinated expenditure.

Conversely, an advertisement's reference to a ballot question does not automatically convert it into an independent expenditure. By definition, independent expenditures necessarily exclude coordinated expenditures. *See* § 1-19-26(N)(2). An advertisement that advocates for the passage or defeat of a ballot question is a coordinated expenditure if the advertisement satisfies the elements of Section 1-19-26(I). Such an advertisement, because it is a coordinated expenditure, would not be an independent expenditure—whether or not it makes mention of a ballot question. *See* § 1-19-26(N)(2).

A political committee may disseminate an advertisement publicizing the political committee's endorsements—both as to candidates and positions on ballot questions. If, on the one hand, the advertisement satisfies the elements of Section 1-19-26(I), then the advertisement is a coordinated expenditure. For that expenditure, the political committee would be subject to contribution limits and disclosure requirements of Sections 1-19-27(A), 1-19-29, and 1-19-31. If, on the other hand, the advertisement does not meet the elements of Section 1-19-26(I), then the advertisement is likely an independent expenditure. *See* § 1-19-26(N). For that expenditure, the political committee would be subject to the disclosure requirements of Section 1-19-27.3.

CONCLUSION

A political committee may make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. GARREY CARRUTHERS, Commissioner
HON. CELIA FOY CASTILLO, Commissioner
RON SOLIMON, Commissioner
JUDY VILLANUEVA, Commissioner



STATE ETHICS COMMISSION

[Draft] ADVISORY OPINION NO. 2022-09

August 5, 2022¹

QUESTION PRESENTED²

An individual serves as an appointed officer of a public post-secondary educational institution. The individual's spouse is an employee of the institution. May the officer participate in the review and approval of a contract that will increase the wages paid to the officer's spouse?

ANSWER

No.

ANALYSIS

The Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1993, as amended through 2019) prohibits a public official from taking an official action that directly benefits a financial interest, including a financial interest held by the official's spouse. Accordingly, the Governmental Conduct Act prohibits an appointed official of a public post-secondary educational institution from taking or

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

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue." NMSA 1978, § 10-16G-8(A)(2) (2019). On July 6, 2022, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(A) NMAC. The request was submitted by a person with authority to request an opinion. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC.

participating in an official act that would increase the wages paid to the official's spouse.

The Governmental Conduct Act defines “public officer or employee” as “any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators[.]” *See* § 10-16-2(I). A member of the governing body of a post-secondary educational institution is eligible to receive per diem and mileage reimbursements, *see* NMSA 1978, §§ 10-8-4(A) (2021), and therefore is a “public officer or employee” subject to the Governmental Conduct Act.

The facts set forth in the request implicate Section 10-16-4 of the Governmental Conduct Act. Section 10-16-4 provides:

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony. . . .

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

The Governmental Conduct Act defines “financial interest” to include “any employment or prospective employment for which negotiations have already begun,” and includes any financial interest so defined that is held by the official or

the official's family. *See* NMSA 1978, §§ 10-16-2(E), (F) (2011).³ Accordingly, to the extent an official act would directly enhance a public officer's financial interest or a financial interest held by the public officer's family, Subsections A and B of Section 10-16-4 of the Governmental Conduct Act would prohibit and disqualify the public officer from engaging in the official act.

Applying this rule to the facts set out in the request, when a public official employed by or serving on the governing board of a public post-secondary institution is considering a decision to approve a contract that would increase wages paid to the institution's employees, the decision is an "official act" governed by the Governmental Conduct Act. *See* § 10-16-2(H) (defining "official act" as "an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority"). If the public officer's spouse is an employee of the public post-secondary institution whose wages would be increased by the decision, Section 10-16-4 of the Governmental Conduct Act prohibits the official from participating in the matter.

Finally, Section 10-16-4 does not disqualify a public official "from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public." *See* § 10-16-4(B). But the official actions described in the request benefit university employees, not the general public. Accordingly, this safe harbor is likely unavailable to a public official participating in the decision to increase wages paid to the institution's employees.

CONCLUSION

When the spouse of an appointed officer of a public post-secondary educational institution is an employee of the institution, the officer may not participate in the review and approval of a contract that will increase the wages paid to the officer's spouse.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner

³ The Governmental Conduct Act defines "family" as the "spouse, parents, children or siblings, by consanguinity or affinity," of a public official or employee. NMSA 1978, § 10-16-2(E) (2011).

STUART M. BLUESTONE, Commissioner
HON. GARREY CARRUTHERS, Commissioner
HON. CELIA FOY CASTILLO, Commissioner
RON SOLIMON, Commissioner
JUDY VILLANUEVA, Commissioner



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June 29, 2022

Rebecca Dow
c/o Lucas Williams
Hinkle Shanor LLP
Post Office Box 10
Roswell, NM 88202-0010

Via email only: lwilliams@hinklelawfirm.com

Re: *Whitlock v. Dow*, No. 2020-031: offer of settlement

Dear Ms. Dow:

Under NMSA 1978, § 10-16G-10(F) (2019) and 1.8.3.12(C) NMAC (2020), I am authorized to enter a settlement agreement with a respondent to an administrative complaint. Accordingly, pursuant to Rule 11-408 NMRA, I offer to settle this matter on the following terms:

1. You agree to pay a \$500 civil penalty to the State Ethics Commission for two violations of NMSA 1978, Section 10-16-9(B) within seven (7) days of the Commission’s vote approving this agreement; and
2. You agree to move to dismiss your pending appeals before the Court of Appeals, Nos. A-1-CA-39841 and A-1-CA-39959, within seven (7) days of the Commission’s vote approving this agreement.

If you accept my offer and the Commission approves our agreement, the Commission will enter an order dismissing and closing this administrative matter. Pursuant to 1.8.3.12(C)(1) NMAC (2020), I consulted with the complainant about this agreement, and she agrees it is an appropriate resolution of this matter. Please note that this agreement is subject to approval by the hearing officer and the Commission before it is effective.

Sincerely,

Walker Boyd

I ACCEPT:

REBECCA DOW

DATE:

6/29/2022