



STATE ETHICS
COMMISSION MEETING

April 5, 2024

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. Celia Castillo, Member
Hon. Dr. Terry McMillan, Member
Ronald Solimon, Member
Dr. Judy Villanueva, Member

April 5, 2024, 9:00 a.m. to 12:00 p.m. (Mountain Time)

Meeting Link: [HERE](#)
Meeting ID: 879 6592 3846
Passcode: Ethics123

Commission Meeting

Chair Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of February 2, 2024 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|---|-----|
| 4. Advisory Opinion 2024-02
(<i>Randall, Manierre</i>) | Yes |
| 5. Advisory Opinion 2024-03
(<i>Manierre</i>) | Yes |
| 6. Annual Open Meetings Act Resolution 2024-01
(<i>Manierre</i>) | Yes |
| 7. Resolution 2024-03
(<i>Farris</i>) | Yes |
| 8. Administrative Complaint No. 2022-27, <i>Kokinadis v. Bedonie</i> :
authorization to seek hearing subpoenas from district court | Yes |

(Farris)

9. Commissioner Bluestone op-ed on Procurement Code (Bluestone) Yes
10. Public Comment (pre-closed session) No

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

11. Discussion regarding current and potential litigation:
(Boyd)

- a. Resolution approving proposed pre-litigation settlement agreement with local government employee

12. Administrative Matters under Revised Uniform Law on Notarial Acts:
(Branch)

- a. 2023-NP-07 *In re commission of McNellis* Approval of Settlement Agreement
b. 2023-NP-08 *In re commission of Garza* Default Order
c. 2024-NP-01 *In re commission of Terrazas* Order of Dismissal and Warning Letter

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

- a. Administrative Complaint No. 2024-03

Upon applicable motion, Commission returns from executive session

14. Authorization of Civil Action: Yes
(Boyd)

- a. Resolution approving proposed pre-litigation settlement agreement with local government employee

15. Administrative matters under the Revised Uniform Law on Notarial Acts: Yes
(Branch)

- a. 2023-NP-07 *In re commission of McNellis* Approval of Settlement Agreement
b. 2023-NP-08 *In re commission of Garza* Default Order
c. 2024-NP-01 *In re commission of Terrazas* Order of Dismissal and Warning Letter

16. Administrative Matters under State Ethics Commission Act: Yes
(*Farris*)

a. Administrative Complaint No. 2024-03

17. Discussion of next meeting: No
(*Lang*)

18. Public Comment No

19. Adjournment

For inquiries or special assistance, please contact Ethics.Commission@sec.nm.gov



STATE ETHICS COMMISSION

Commission Meeting Minutes of February 2, 2024, | 9:02AM-11:20AM [Subject to Ratification by Commission]

Call to Order

Chair Lang called the meeting to Order at 9:02 AM.

1. Roll Call

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner
Stuart M. Bluestone, Commissioner
Hon. Celia Castillo, Commissioner
Hon. Dr. Terry McMillan, Commissioner
Ronald Solimon, Commissioner
Dr. Judy Villanueva, Commissioner
Hon. William F. Lang, Chair

2. Approval of Agenda

Commissioner Baker moved to strike agenda items 6 and 7. Commissioner Baker requested these items to be moved to the Commission's next regularly scheduled meeting. Commissioner Villanueva seconded. Hearing no opposition the agenda was approved unanimously with the corresponding amendments.

3. Approval of December 15, 2023, Commission Meeting Minutes

Chair Lang sought a motion for the approval of the minutes from the December 15th, 2023, Commission meeting. Commissioner Bluestone moved to approve the minutes. Commissioner Solimon seconded. Hearing no discussion or objections the minutes were approved unanimously.

Commission Meeting Items

4. Legislative Update:

Director Farris gave a legislative update on the Commission's legislative priority, House Bill 8: Changes to the Governmental Conduct Act. HB8 received a unanimous vote from the House of Representatives and is currently assigned to the Senate Judiciary Committee and the Senate Finance Committee. Director

Farris also presented House Bill 2: The General Appropriations Act, which appropriated 1.7 million dollars to the Commission.

5. Advisory Opinion 2024-01

Executive Director Farris gave an overview of the advisory opinion which addressed the question:

“Following the State Ethics Commission’s issuance of Advisory Opinion 2023-07, in which the Commission opined that the Procurement Code, NMSA 1978, § § 13-1-28 to -199 (1984, as amended through 2023), applies to the selection of contracts for legal services on a contingent-fee basis, on December 12, 2023, the Commission received a related request for an advisory opinion regarding the procurement of contracts for outside counsel. The request explains:

Based in part on staffing limitations and the extensive resources needed for certain cases and types of litigation, [the Attorney General’s Office (“AGO”)] frequently requires the assistance of outside law firms to represent the State. This is particularly true for complex affirmative civil litigation in the subject areas of consumer protection, environmental protection, civil rights, securities, antitrust, and fraud against tax payers. In some cases, [the AGO] may become aware of claims on its own and seek outside assistance; in others, private law firms bring claims or theories of recovery to [the AGO] based on their independent investigation or other proprietary information. Also, at times, the State may need to act quickly to file an action in order to avoid the running of a statute of limitations, a statute of repose, or other filing deadline. For example, a lead plaintiff motion in securities case must be filed within sixty days of the complaint, much of which can elapse before [the AGO] even learns of a fund’s eligibility for lead plaintiff status. These circumstances can make it challenging to establish a uniform procurement process.

Considering that context, the request poses two questions regarding the application of the Procurement Code to the AGO’s procurement of contracts for legal services:

1. *Would the AGO be in compliance with the Procurement Code if it (a) generates a list of approved law firms by issuing a request for proposals (“RFP”) for legal representation on any affirmative AGO litigation in which the services of outside counsel are needed without reference to a specific case or subject area and (b) later selects one of the approved law firms to represent the State in specific matters as they arise without using*

an additional, separate procurement process under the Code for each matter?

2. Is there a method for an emergency procurement of legal services when compliance with the normal procurement methods in the Procurement Code, would cause the State to lose a claim due to the expiration of a statute of limitations or filing deadline?"

ANSWERS

1. Yes.
2. Likely no.

Chair Lang sought a motion to adopt Advisory Opinion 2024-01. Commissioner Bluestone recommended including a note about the maximum contract period for these contracts. Commissioner Castillo moved to adopt the opinion; Commissioner Villanueva seconded. The advisory opinion, with edits discussed, was approved unanimously.

~~6. State Ethics Commission Media Policy Resolution 2024-01~~

~~7. Procurement Code Op-Ed~~

8. Public Comment (pre-closed session)

No public comments were made.

---Beginning of Executive Session---

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(2) (limited personnel matters), 10-15-1(H)(3) (administrative adjudicatory proceedings), and 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Bluestone moved to enter executive session; Commissioner Baker seconded. Hearing no discussion, the Commission entered executive session.

9. Discussion regarding current and potential litigation:

(Boyd)

- a. Authorization of civil action to enforce Sections 10-16-3.1 of the Governmental Conduct Act.

10. Administrative Matters under Revised Uniform Law on Notarial Acts:

(Branch)

- a. 2023-NP-02 *In re commission of Nava* Default Order.

11. Discussion regarding administrative matters subject to settlement approval:
(Farris)

- a. Administrative Complaint No. 2023-025
- b. Administrative Complaint No. 2023-036

12. Discussion regarding administrative matters under State Ethics Commission Act:
(Lang)

Extensions for further investigations of administrative complaints:

- a. Administrative Complaint No. 2023-027

Dismissals of administrative complaints:

- b. Administrative Complaint No. 2023-034
- c. Administrative Complaint No. 2023-047
- d. Administrative Complaint No. 2023-048
- e. Administrative Complaint No. 2023-049
- f. Administrative Complaint No. 2023-050
- g. Administrative Complaint No. 2023-051
- h. Administrative Complaint No. 2023-052
- i. Administrative Complaint No. 2023-053
- j. Administrative Complaint No. 2023-055
- k. Administrative Complaint No. 2023-056
- l. Administrative Complaint No. 2023-057
- m. Administrative Complaint No. 2023-058
- n. Administrative Complaint No. 2023-059
- o. Administrative Complaint No. 2023-060
- p. Administrative Complaint No. 2023-061
- q. Administrative Complaint No. 2024-001
- r. Administrative Complaint No. 2024-002

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---

13. Authorization of civil action to enforce Section 10-16-3.1 of the Governmental Conduct Act:
Commissioner Solimon moved as stated above, Commissioner Castillo seconded. All Commissioners and the Chair voted affirmative and authorized a civil action to enforce the Governmental Conduct Act.

14. Action on Administrative matters under the Revised Uniform Law on Notarial Acts:
(Branch)

- a. **Commission sought motion to approve Default Order 2023-NP-02 *In re commission of Nava:*** Commissioner Solimon moved as stated above,

Commissioner Castillo seconded. All Commissioners and the Chair voted affirmative and approved the settlement agreement.

15. Action on Administrative Matter subject to settlement approval Nos. 2023-025 and 2023-036:

(Boyd, Randall)

- a. **Commission staff sought motion to approve settlement agreement in administrative complaint No. 2023-025:** Commissioner Castillo moved as stated above, Commissioner Bluestone seconded. All Commissioners and the Chair voted affirmative and approved the settlement agreement.
- b. **Commission staff sought motion to approve settlement agreement in administrative complaint No. 2023-036:** Commissioner Bluestone moved as stated above, Commissioner Solimon seconded. All Commissioners and the Chair voted affirmative and approved the settlement agreement unanimously.

16. Action on Administrative Complaints Nos. 2023-027, 2023-034, 2023-047, 2023-048, 2023-049, 2023-050, 2023-051, 2023-052, 2023-053, 2023-055, 2023-056, 2023-057, 2023-058, 2023-059, 2023-060, 2023-061, 2024-001, 2024-002

(Manierre)

The Commission considered the following motions regarding actions on Administrative Complaints:

- a. **Commission staff sought motion for 90-day extension on Administrative Complaint No. 2023-027:** Commissioner Baker moved as stated above, Commissioner Bluestone seconded. All Commissioners and the Chair voted in the affirmative and the matter was approved for a 90-day extension.
- b. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-034:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- c. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-047:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- d. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-048:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.

- e. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-049:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- f. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-050:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- g. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-051:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- h. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-052:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- i. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-053:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- j. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-055:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- k. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-056:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- l. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-057:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- m. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-058:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.

- n. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-059:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- o. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-060:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- p. **Commission staff sought motion of dismissal of Administrative Complaint No. 2023-061:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- q. **Commission staff sought motion of dismissal of Administrative Complaint No. 2024-001:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.
- r. **Commission staff sought motion of dismissal of Administrative Complaint No. 2024-002:** Commissioner Solimon moved as stated above, Commissioner Bluestone seconded. All other Commissioners and the Chair voted in the affirmative and the matter was dismissed.

17. Discussion of Next Meeting

Chair Lang confirmed that the next regularly scheduled meeting will take place virtually, April 5th, 2024, at 9:00 AM.

18. Public Comment

No public comments were made.

19. Adjournment

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting was adjourned at 11:20 AM.

For inquiries or special assistance, please contact Ethics.Commission@sec.nm.gov



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2024-02

April 5, 2024¹

QUESTION PRESENTED²

May a legislator use campaign funds to pay for registration and travel to conferences and courses designed to make them a better legislator, including educational conferences and professional development courses?

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

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). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On May 2, 2023, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commissioner Baker requested that the advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1) (2019); 1.8.1.9(A)(1) NMAC.

ANSWER

Yes, the Campaign Reporting Act³ allows for the expenditure of campaign funds by a legislator that are reasonably related to performing the duties of the office held, which may include training and travel expenditures.

ANALYSIS

The Campaign Reporting Act provides an exhaustive list of permissible uses of campaign funds, and expressly prohibits purchases made for personal use.⁴ Included among the list of permitted uses of campaign account moneys are “[e]xpenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to service constituents, but excluding personal and legislative session living expenses. . . .”⁵ The request asks whether campaign funds may be used to pay for registration and travel expenses to educational conferences and professional development courses “designed to make [the individual] a better legislator.” The Campaign Reporting Act permits such expenditures where the courses and associated travel for professional development are “reasonably related” to performing the legislator’s duties.⁶

³ NMSA 1978, §§ 1-19-1 to -37 (1979, as amended through 2021).

⁴ NMSA 1978, § 1-19-29.1(A)(1)–(7) (2009). *See also Dann v. Ohio Elections Comm.*, 973 N.E.2d 285 (Ohio Ct. App. 2012) (concluding the attorney general of Ohio violated campaign finance law by using excess campaign funds to install security cameras in his home, where statute only permits campaign funds for “legitimate and verifiable ordinary and necessary expenses incurred in connection with duties of public office” (citing Oh ST § 3517.13(O)(2))).

⁵ NMSA 1978, § 1-19-29.1(A)(2).

⁶ The Campaign Reporting Act does not define “reasonably related,” but “[u]nless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage.” NMSA 1978, § 12-2A-2 (1997). *See State v. Farish*, 2021-NMSC-030, ¶ 11, 499 P.3d 622 (explaining that in interpreting any statute, the primary goal of the Court must be to give effect to the intent of the Legislature, and in doing so first look to the ordinary and plain meaning unless a different intent is clearly indicated). *See also State v. Adams*, 2019-NMCA-043, ¶ 26, 447 P.3d 1142 *aff’d*, 2022-NMSC-008 (noting that when ascertaining the ordinary and plain meaning of a statutory term, Courts frequently will look to dictionary definitions).

While the request does not detail the specifics about the courses the legislator wishes to attend, the request makes clear that the trainings are educational conferences and professional development courses intended to make the individual a “better legislator.” And courses designed towards improving the individual’s skills as a legislator to better serve constituents would be reasonably related to performing the duties of legislative office.⁷ The associated travel to those courses is also likely a permitted expenditure under Section 1-19-29.1(A)(2) so long as that travel is necessary for attendance at the courses.⁸

In sum, Section 1-19-29.1(A) of the Campaign Reporting Act permits a candidate to expend campaign funds on expenses for attending courses or conferences that are reasonably related to a legislator’s legislative duties, but prohibits use of campaign funds for travel for personal reasons such as vacation or visiting family. Whether a given expenditure of campaign funds is or is not permitted under the Campaign Reporting Act turns on facts and context not presented in the request. An example of a permissible expenditure might be attendance and travel to the National Conference of State Legislatures, or trainings directly tied to the legislative committees on which the individual serves, such as a course on environmental legislation. If the purpose of a given course or conference is obviously related to legislative service, then expenditures of campaign funds to attend the course or conference would likely be a permissible expenditure under Section 1-19-29.1(A)(2).

On the other hand, expenditures to attend a course or conference with only some tangential relation to the individual’s duties as a legislator may be more difficult to justify: for example, attending the Santa Fe International Literary Festival. So too expenditures in satisfaction of an obligation the legislator would have incurred even if the individual were not a member of the legislature, such as expenditures on a cruise to Alaska with their family, would likely not be

⁷ Additionally, the analogous Federal Election Campaign Act (“FECA”), 52 USCA §§ 30101–30145 (1971 as amended through 2018), permits a candidate or individual to use contributions for “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.” 52 USCA §30114(a).

⁸ Regulations of the Federal Labor Standards Act (“FLSA”) generally require employers to compensate their employees for attendance at lectures, meetings, and training programs so long as the courses are directly related to the employee’s job. *See* 29 CFR § 785.27.

permissible.⁹ Such an expenditure would be more difficult to justify as an expenditure reasonably related to the individual's legislative service, since it would appear that the cruise trip is more in the nature of a family vacation, even if the cruise offers courses on talking to difficult people or office management.

CONCLUSION

The Campaign Reporting Act permits the use of excess campaign funds to be used for expenses reasonably related to the legislator's elected office. Such expenses may include trainings and travel associated with attending trainings, but those courses must be reasonably related to the elected office. "Reasonably related" requires some degree of meaningful connection between the training and the office held, and the use of campaign funds cannot be used for personal use, which includes the use of campaign funds for personal travel, or travel associated with a training that is so broad or generalized it is not directly connected to the position of the elected office held.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner
RONALD SOLIMON, Commissioner
DR. JUDY VILLANUEVA, Commissioner

⁹ See 1.10.13.25(B)(2) NMAC (identifying a non-exhaustive list of items under New Mexico law that are considered to be per se personal use, including "a vacation"). FECA imposes similar restrictions for use of campaign funds for personal use and provides a non-exhaustive list of examples of prohibited "conversion of campaign funds for personal use," which similarly includes the use of campaign contributions for the purposes of "a vacation or other noncampaign-related trip." 52 U.S.C.A §30114 (b)(2).



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2024-03

April 5, 2024¹

QUESTION PRESENTED²

This opinion presents a follow-up question to State Ethics Commission Advisory Opinion No. 2023-04,³ where the Commission opined that the Procurement Code⁴ prohibited a municipality from prepaying for the purchase of a firetruck and that the municipality could only pay for the truck after the municipality's central purchasing office certified that the truck had been received and met the specifications the municipality bargained for. The question presented here is whether Advisory Opinion No. 2023-04 specifically analyzed the

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

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). "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On February 19, 2024, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commissioner Bluestone requested that the advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1) (2019); 1.8.1.9(A)(1) NMAC.

³ State Ethics Comm'n Adv. Op. 2023-04 (June 2, 2023), *available at* <https://nmonesource.com/nmos/secap/en/18776/1/document.do>.

⁴ NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023).

applicability of Section 13-1-158(A)⁵ of the Procurement Code to only goods because that was the issue being researched, or if there might be a difference of opinion if the purchase were for a service.

ANSWER

The prohibition against prepayment of purchases applies to payments for services, construction, and items of tangible personal property unless the purchase is excluded by Section 13-1-98 from the requirements of the Procurement Code.⁶

ANALYSIS

In Advisory Opinion 2023-04, the Commission reviewed the specific question of whether certain goods fall under the prohibition against prepayment. While the Commission's opinion focused exclusively on goods, Section 13-1-158(A) of the Procurement Code also includes services, construction, or items of tangible personal property in the prohibition:

No warrant, check or other negotiable instrument shall be issued in payment for *any purchase of services, construction or items of tangible personal property* unless the central purchasing office or the using agency certifies that *the services, construction or items of tangible personal property* have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.⁷

⁵ NMSA 1978, § 13-1-158(A) (1997).

⁶ NMSA 1978, § 13-1-98 (2019).

⁷ NMSA 1978, § 13-1-158(A) (emphasis added).

Statutes are interpreted using specific principles of construction.⁸ The “guiding principle when construing statutes is to determine and give effect to legislative intent. To discern the Legislature’s intent, [courts] rely on the classic canons of statutory interpretation and look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.”⁹ Further, courts “will not read the plain language of the statute in a way that is absurd, unreasonable, or contrary to the spirit of the statute, and will not read any provision of the statute in a way that would render another provision of the statute null or superfluous.”¹⁰ “Statutory language that is clear and unambiguous must be given effect.”¹¹

Here, each subsection of Section 13-1-158 governing payment for purchases, including the prohibition on prepayment, specifically references “services” in addition to construction or items of tangible personal property.¹² While Advisory Opinion 2023-04 dealt with a specific tangible good, there is nothing in the statute that would suggest a different analysis applies to services: Section 13-1-158(A) includes services, construction, and items of tangible personal property. Therefore, the payment for the purchase of services may not be made until the central purchasing office or using agency certifies the services have been received and meet specifications. (Normally, this certification occurs through the receipt and review of invoices.) This is not to say that *all* services fall under the prohibition against prepayment; Section 13-1-158 allows for the prepayment of services where permitted by Section 13-1-98 as an exclusion of the purchase from the Procurement Code. Section 13-1-98 in turn identifies specific exclusions related to

⁸ See, e.g., NMSA 1978, § 12-2A-18(A) (1997) (“A statute or rule is construed, if possible, to: (1) give effect to its objective and purpose; (2) give effect to its entire text; and (3) avoid an unconstitutional, absurd or unachievable result.”).

⁹ *Fowler v. Vista Care*, 2014-NMSC-019, ¶ 7, 329 P.3d 630 (cleaned up).

¹⁰ *Id.*

¹¹ *Id.*

¹² See NMSA 1978, § 13-1-158(A) (“ . . . for any purchase of services, construction or items of tangible personal property . . .”), -158(B) (“ . . . written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received . . .”), -158(C) (“ . . . upon certification by the central purchasing office or the using agency that the services, construction or items of tangible personal property have been received and accepted . . .”), -158(D) (“If the central purchasing office or the using agency finds that the services, construction or items of tangible personal property are not acceptable . . .”).

services, including, for example, subscriptions, conference registration fees, “and other similar purchases where prepayments are required[.]”¹³

CONCLUSION

The question before the Commission in Advisory Opinion 2023-04 was whether a firetruck constitutes tangible personal property such that it falls under the Procurement Code’s prohibition on prepayment of purchases; the opinion was not intended to limit the prohibition to *only* tangible personal property. A central purchasing office or using agency is also prohibited from prepaying for the purchase of *any* service or construction unless prepayment is authorized by exclusion of the purchase under Section 13-1-98.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner
RONALD SOLIMON, Commissioner
DR. JUDY VILLANUEVA, Commissioner

¹³ NMSA 1978, § 13-1-98(J) (2019).



STATE ETHICS COMMISSION

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

RESOLUTION NO. 2024-01: State Ethics Commission Annual Open Meetings Resolution

WHEREAS, THE STATE ETHICS COMMISSION met in virtually in regular session, as required by law, on Friday, April 5, 2024, at 9:00 a.m. via video teleconference; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 10-15-1 to -4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the State Ethics Commission to determine annually what notice for a public meeting is reasonable;

NOW, THEREFORE, BE IT RESOLVED by the State Ethics Commission that:

1. All meetings shall be held at the place and time as indicated in the meeting notice.

2. Unless otherwise specified, regular meetings may be held every other month subject to the call of the Chair of the State Ethics Commission. Notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice. The notice will include a copy of the agenda or information on how a copy of the agenda may be obtained. If not included in the notice, the agenda will be available to the public at least seventy-two hours before the meeting and posted on the State Ethics Commission's website at <https://www.sec.nm.gov/>.

3. Notice of regular meetings other than those described in Paragraph 2 will be given ten days in advance of the meeting date. Notice requirements for such meetings are met if notice of the date, time, and place is available to the public and posted on the website of the State Ethics Commission. Notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice. The notice will include a copy of the agenda or information on how a copy of the agenda may be obtained. If not included in the notice, the agenda will be available to the public at least seventy-two hours before the meeting and posted on the State Ethics Commission's website.

4. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. The State Ethics Commission will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chair or a quorum of members with twenty-four hours' prior notice, unless threat of personal injury or property damage requires less notice. Notice requirements for such meetings are met if notice of the date, time, and place is available to the public and posted on the website of the State Ethics Commission. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within ten days of taking action on an emergency matter, the State Ethics Commission will notify the Attorney General's Office.

5. In addition to the information specified above, all notices shall comply with the Americans with Disabilities Act concerning individuals seeking accommodations to attend or participate in Commission meetings.

6. The State Ethics Commission may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Section 10-15-1 of the Open Meetings Act. (a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of members taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting. (b) If a

closed meeting is conducted when the Commission is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public.

(c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure. (d) Except as provided in Section 10-15-1 of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Commissioners in an open public meeting.

Adopted by the State Ethics Commission this 5th day of April, 2024.

The Hon. William F. Lang
New Mexico State Ethics Commission, Chair



STATE ETHICS COMMISSION

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

**RESOLUTION NO. 2024-03:
Authorizing the Executive Director to represent the Commission**

WHEREAS, THE STATE ETHICS COMMISSION met virtually in regular session, on Friday, April 5, 2024, at 9:00 a.m. via video teleconference;

WHEREAS, under NMSA 1978, Section 2-11-2(E)(2) (1994), the definition of “lobbyist” in the Lobbyist Regulation Act, NMSA 1978, §§ 2-11-1 to -10 (1977, as amended through 2021), excludes “any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his [or her] official capacity;”

WHEREAS, from time to time, considering the nature of the Commission’s business and its interests, an individual must represent the Commission or speak on the Commission’s behalf in ways that are not already provided for in the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended through 2023) or 1.8.1.8 NMAC (providing the duties and powers of the director);

WHEREAS, under NMSA 1978, Section 10-16G-6(B)(6) (2019), the Executive Director shall perform “other duties as assigned by the [C]ommission;” and

WHEREAS, under 1.8.1.8(Q) NMAC; the Executive Director shall “perform other duties as may be assigned from time to time by the [C]ommission;”

NOW, THEREFORE, BE IT RESOLVED by the State Ethics Commission that:

1. The Executive Director may speak in any matter that relates to legislative activity, including providing commentary on a bill or joint resolution, a request for a

gubernatorial message or veto, or any other statement or request regarding legislative activity.

2. Whenever the Commission is named as the deponent subject to Rule 1-030(B)(6) NMRA, the Commission designates the Executive Director to testify on the Commission's behalf. The Executive Director may also designate another individual to testify on the Commission's behalf.
3. The Commission hereby ratifies the Executive Director testifying on the Commission's behalf in prior Rule 1-030(B)(6) depositions of the State Ethics Commission.
4. Whenever the Commission authorizes the Executive Director to petition a district court for a subpoena related to the general counsel's investigation of an administrative matter, pursuant to 1.8.3.12 NMAC, if that matter is set for a hearing, then the Commission also authorizes the Executive Director to petition a district court for a subpoena to compel the presence of witnesses at a hearing pursuant to 1.8.3.14(J)(1) NMAC.

Adopted by the State Ethics Commission this 5th day of April, 2024.

The Hon. William F. Lang
New Mexico State Ethics Commission, Chair



STATE ETHICS COMMISSION

Jessica Randall, Deputy General Counsel
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
505. 859. 9625 | Jessica.Randall@sec.nm.gov

Hon. William F. Lang (Chair)
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Celia Foy Castillo
Hon. Dr. Terry McMillan
Ronald Solimon
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

March 25, 2024

Via e-mail correspondence only
Jeremy Farris, Executive Director
State Ethics Commission
E-mail: jeremy.farris@sec.nm.gov

Re: *Kokinadis v. Bedonie*, SEC Case No. 2022-27: Request for petition to district court to issue subpoenas

Dear Executive Director Farris:

Pursuant to NMSA 1978, § 10-16G-12(C)(2019) and 1.8.3.14(J)(1) NMAC (2021), I am requesting you to request the Commission's authority to petition a district court to compel the presence and examination of witnesses called by the general counsel at the public hearing for *Kokinadis v. Bedonie*, SEC Case No. 2022-27.

BACKGROUND

On July 20, 2022, Complainant Brett Kokinadis submitted an administrative complaint with the Commission. In pertinent part, Kokinadis' administrative complaint alleges that Respondent Karen Bedonie failed to report coordinated expenditures on billboard advertisements as contributions to her campaign; and that she failed to ensure that those billboards and other social media advertisements contained the required disclaimer identifying who had paid for an authorized those advertisements.

After investigating the administrative complaint, the general counsel found probable cause to conclude that Bedonie violated the Campaign Reporting Act. Notice of Probable Cause (#28).

Following the Notice of Probable Cause, the case was assigned to a hearing officer. On October 26, 2023, the general counsel requested to intervene as a party in SEC Case No. 2022-27, pursuant to 1.8.3.14(G) NMAC (2021). Request to Intervene (#32). The hearing officer entered an order granting the request on October 30, 2023. Order Granting General Counsel's Request to Intervene (#34).

A pre-trial conference in this matter was held on March 18, 2024. At the pre-trial conference, the original hearing of April 2-3, 2024 was vacated and the hearing continued until May 13-14, 2024 in order for the parties to obtain subpoenas to compel the attendance of witnesses.

BASIS AND SCOPE OF REQUEST TO ISSUE AND SERVE SUBPOENAS

I. Legal Basis for Request

Under the State Ethics Commission Act, NMSA 1978, Sections 10-16G-1 through -16 (2019), at a public hearing on a complaint, “[t]he parties may present evidence and testimony, request the director to compel the presence of witnesses and examine and cross-examine witnesses.” Section § 10-16G-12(C) (2019). Additionally, the hearing “shall be pursuant to the rules of evidence that govern proceedings in the state’s courts and procedures established by the commission.” *Id.* The applicable Commission regulations state that:

Parties who appear at the hearing may:

- (1) request the director to request the commission’s authority to petition a district court to compel the presence of witnesses. Subpoenas may be requested by the commission from a district court in the same manner as provided for in Subsection J of Section 10-16G-10 NMSA 1978 and Subsections C and D of 1.8.3.11 NMAC;
- (2) present evidence and testimony;
- (3) examine and cross-examine witnesses; and
- (4) introduce evidentiary material developed by the general counsel. . . .

1.8.3.14(J) NMAC (2021). NMSA 1978, Section 10-16G-10(J), in turn provides:

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

NMSA 1978, § 10-16G-10(J) (2021).

II. Scope and request for subpoenas

Having intervened as a party, the general counsel is authorized by law to present evidence and testimony, as well as to request you compel the presence of witnesses for examination and cross-examination.

Executive Director Farris, State Ethics Commission

Kokinadis v. Bedonie, No. 2022-27

March 25, 2024

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In the absence of a stipulation by the parties as to the admission of deposition testimony and in order to present evidence sufficient for the hearing officer to decide whether Bedonie has violated the Campaign Reporting Act, the general counsel has determined that subpoenas may be required to compel the presence and examination of witnesses at the public hearing in this matter. Such witnesses may be necessary for a full presentation of relevant evidence, including authentication of evidence relating to Bedonie's violations. I am therefore requesting you request the Commission to petition the district court for leave to issue subpoenas for witnesses the general counsel identifies as necessary for the presentation of evidence and testimony at the hearing.

Sincerely,

Jessica Randall

Procurement Code Ethics An Important Protection Against Public Corruption in New Mexico

The recently enacted State Budget includes record-setting amounts of hundred of millions of dollars that will be awarded through public contracts. Public procurement ethics is an important part of governmental ethics in New Mexico that should be noted now before new contracts are awarded.

In a thorough study eight years ago, government officials estimated that about \$13 Billion of all public money spent in our State each year is devoted to procuring goods and services. (See Program Evaluation: Obtaining Value in State Procurement and Issues with Non-Competitive Methods, LFC Program Evaluation Report #16-09, October 27, 2016.) And the State budget has grown substantially since then. With so much public money being spent, maintaining the highest ethical standards in public procurement is critically important.

The New Mexico Procurement Code, and contract-related provisions of the New Mexico Governmental Conduct Act, provide important protections against public corruption and the misuse of taxpayer dollars. The public and all government officials and employees should be well aware of the Code and honor both the letter and the spirit of the law to ensure ethical and fair dealings when contracting for the expenditure of public funds to provide services to New Mexicans.

The key purposes of the Code are stated in the law's own words, right at the beginning of the statute: "The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity." Section 13-1-29 NMSA 1978.

In the nuts and bolts of the law, what this means is that once a decision is made to use either the competitive sealed bid or proposal process for public funds to be spent on goods or services, there has to be fair dealing by the government at each and every step of the way. The integrity of the public process has to be strictly adhered to; the public's money should never be spent in a way a public official or employee wants simply to benefit a friend, colleague, relative, campaign contributor or anyone for any reason other than as the Procurement Code allows. And what the Code requires is a fair, competitive sealed bid or proposal evaluation process that picks winners based solely on the merits of their bid or proposal and track record of performance, with limited exceptions for small purchases, emergencies, sole source and contracts between public agencies.

The Procurement Code sets up a process to ensure that bids and proposals to win the right to provide goods or services to the public are determined in a fair, merit-based system. It is unlawful for a public official or employee to arrange for a contract to go to a certain person or entity without regard to the objective, fair decision-making process the Code directs. And this applies up-and-down at every level of government in our State. As a general rule it applies to all state agencies, local school boards and municipalities; all County Commissioners; and all State elected and appointed public officials and employees, including the Governor, Lt. Governor, Attorney General, State Land Commissioner, State Auditor, State Treasurer and every Cabinet Secretary and Agency head throughout New Mexico.

Even before an announcement is made that public funds are available to be spent on a certain project, there can be no hidden agenda or “inside games” played. No public official can tell his or her employees before a bid or proposal is put out to spend certain public money that he or she wants to see the winner be person or company X, Y or Z. They cannot allow the public competitive bidding or proposal processes to be a sham.

And they cannot short-circuit the Procurement Code’s requirements. After the Code’s evaluation committee process selects a winning contractor, the committee members’ “higher-ups” cannot lawfully later order them to change their decision and give the contract to someone else. As the New Mexico Supreme Court has stated, “The Procurement Code protects against the evils of favoritism, nepotism, patronage, collusion, fraud, and corruption in the award of public contracts.” Planning & Design Solutions v. City of Santa Fe (1994). All public officials and employees, and the public, should know and follow that directive to ensure there is always fair dealing when it comes to the expenditure of public funds.

Our New Mexico Procurement Code stands as a bulwark against corruption. It is true at our local and state level, and our federal government leaders have confirmed that the fight against corruption is also a core United States National Security interest. See, for example, the United States Strategy on Countering Corruption, pursuant to the National Security Study Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, December 2021, which states: “When government officials abuse public power for private gain, they do more than simply appropriate illicit wealth. Corruption robs citizens of equal access to vital services, denying the right to quality healthcare, public safety, and education. It degrades the business environment, subverts economic opportunity, and exacerbates inequality. . . . As a fundamental threat to the rule of law, corruption hollows out institutions, corrodes public trust, and fuels popular cynicism toward effective, accountable governance.”

The New Mexico Procurement Code is an important tool to fight corruption in our State.

To: NM State Ethics Commissioners

From: Stuart Bluestone, State Ethics Commissioner

Subj: Revised Proposed Procurement Code Op ed

Date: March 22, 2024

Consistent with the NM State Ethics Commission role to help keep the public and public officials and employees well informed about governmental ethics matters in our State, I offer this Procurement Code Op ed for your review and approval. I think it is important to get the message out now about the importance of complying with the Procurement Code as New Mexico begins in earnest to award contracts for the expenditure of hundreds of millions of dollars in public projects and services that were enacted into law this year.

I believe it can be distributed for publication throughout the State soon, and it could be helpful to educate the public, officials, employees and bidders about the importance of the Procurement Code's key provisions and help ensure compliance with them. You have seen previous drafts of this, and I have revised it further to make it more generally worded for broad understanding and application. I hope you agree.

I plan to make a motion for the Commission to approve the Op ed at our upcoming meeting on April 5, 2024.

If the Commission as a body does approve it, subject of course to any changes made and adopted at the meeting, then I believe it can be distributed one of two ways:
(1) simply as a piece written by the New Mexico State Ethics Commission; or
(2) as a piece I have written that has been approved by the State Ethics Commission.

We can discuss and decide how best to proceed at our April 5 meeting.

I should add that if for any reason the Commission would prefer not to have the piece released as written or approved by the Commission, then I intend to distribute it on my own behalf as an individual and not as a member of the Commission. But my preference is that it be endorsed and approved by the Commission, and that is why I am pleased to submit it to you first.

Thank you for your time and consideration. I look forward to discussing this with you at our April 5 meeting.