



STATE ETHICS COMMISSION

Commission Meeting Minutes of July 26, 2024, | 9:00AM **[Subject to Ratification by Commission]**

Call to Order

Chair Lang called meeting to order at 9:01 AM.

1. Roll Call

Chair Lang called roll; the following Commissioners were present:

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

2. Approval of Agenda

Chair Lang sought motion for approval of agenda. Commissioner Castillo moved to approve agenda; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted roll call vote, and Commissioners unanimously approved agenda.

3. Approval of May 24, 2024, Commission Meeting Minutes

Chair Lang sought motion for approval of minutes of May 24, 2024 meeting. Commissioner Solimon moved to approve minutes; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted roll call vote, and Commissioners unanimously approved minutes.

Commission Meeting Items

4. Financial Disclosure Act: Compliance Update

Chief Compliance Counsel Caroline Manierre and Deputy Compliance Counsel Rebecca Branch gave an update on the Commission's ongoing work to seek compliance with the Financial

Disclosure Act. Commissioner Baker raised the question whether getting the media involved would be a helpful tool for non-complaint parties and discussion took place. No action taken.

5. **Advisory Opinion 2024-04**

Chief Compliance Counsel Caroline Manierre gave an overview of the advisory opinion which addressed the question:

This opinion presents a series of follow-up questions to the State Ethics Commission concerning Advisory Opinion No. 2024-04, wherein the Commission opined that the Procurement Code prohibited a municipality from prepaying for the purchase of 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 specifications for which the municipality bargained

1. *The first question presented here is whether Advisory Opinion No. 2024-04 specifically analyzed the applicability of Section 13-1-158(A) of the Procurement Code to only goods because that was the issue presented, or if a different analysis applies where the contemplated purchase for prepayment is for a service.*
2. *The second question asks whether, given the language in Section 13-1-158(B), partial prepayment is acceptable where the terms of the contract provide for payment of fifty percent down and the balance due at completion.*
3. *The third question asks about the term "receipt" in Section 13-1-158(A). The requester explained the agency is looking to purchase goods to assist with one of the agency's initiatives. The vendor is willing to warehouse the items (the vendor's physical location is in another state) and then drop ship them based on the agency's directive. The drop shipment dates would occur in Fiscal Year 2025. The funding available for this purchase is Fiscal Year 2024 funding and the agency would like to procure and pay for the items before June 30th. The request poses the question, since the vendor agreed to store the goods for the agency and it is in the agreement with the vendor stating as much, would this satisfy the receipt of goods requirement to pay the invoice for purpose of the procurement code or must the agency wait to certify receipt of the items until the drop ship occurs (that is, when the agency would have physical possession), which would require Fiscal Year 2025 funds for the purchase?*
4. *The final question concerns the purchasing of IT software/hardware license or service agreements (subscriptions) and poses the question of whether a multi-year license or service agreement would violate the advance payment prohibition set forth in Section 13-1-158(A). The request specifically references a quote for IT equipment that includes a service agreement for software support is a 36-month term and is approximately \$34,000.*

ANSWER

1. *The prohibition against prepayment of purchases applies to payments for services, construction, and items of tangible personal property unless Section 13-1-98 excludes the purchase from the requirements of the Procurement Code.⁷*
2. *Unless an exemption applies, partial prepayment is prohibited under Section 13-1-158(A). Section 13-1-158(B) references the timeline on how invoices, certification, and payment following notice that the requested services or construction are completed or items of tangible personal property are delivered on site and received.*
3. *Items of tangible personal property are received for purposes of Section 13-1-158(A) when the property is delivered to the agency.*
4. *While a procuring agency is permitted to prepay a contract under ten thousand dollars for web-based and electronic subscriptions, other restrictions might prohibit payment for services across multiple fiscal years. For web-based and electronic subscriptions exceeding ten thousand dollars, the agency may not prepay for such purchases, but could enter into a multi-term contract in accordance with the provisions of the Procurement Code and make payment arrangements that, while not prepaying the contract, could otherwise ameliorate the concerns of the contractor, including a purchase order or progress payments.*

Chair Lang sought a motion to approve the advisory opinion. Commissioner Solimon moved to approve the opinion; Commissioner Castillo seconded. Chair Lang conducted a roll call vote and the advisory opinion was unanimously approved.

---Begin Executive Session---

Chair Lang sought a motion to enter executive session. Commissioner Castillo moved 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 McMillan seconded the motion. Hearing no discussion, Chair Lang conducted a roll call vote, Commissioners voted unanimously to enter executive session.

6. Discussion regarding administrative matters under State Ethics Commission Act:
(Farris, Randall)
 - a. Administrative Complaint No. 2024-10
 - b. Administrative Complaint No. 2024-15
 - c. Administrative Complaint No. 2024-16
 - d. Consolidated Administrative Complaint Nos. 2024-19, 2024-20, 2024-022, 2024-024 through 2024-033
 - e. Administrative Complaint No. 2024-34
 - f. Administrative Complaint No. 2024-035

g. Administrative Complaint No. 2024-039

7. Discussion regarding current and potential litigation:
(Farris)

SEC v. TNMP, et al., 1:24-cv-00652 (D.N.M.)

---End Executive Session---

Matters discussed in closed meeting were limited to those specified in motion to enter executive session. After concluding discussion of these matters, the Commission resumed public session upon an appropriate motion pursuant to NMSA 1978, § 10-15-1(J).

8. **Action on Administrative Matters under the State Ethics Commission Act**
(Farris)

Commission considered the following motions regarding actions on Administrative Complaints:

- a. **Commission staff sought motion to approve settlement agreement Administrative Case Nos. 2024-10 (*Gallegos v. Weiner*), 2024-15 (*Kokinadis v. Republican Party of New Mexico*), and 2024-16 (*Gallegos v. Tobiassen*):** Commissioner Bluestone moved as stated above, Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted roll call vote. Commissioners and Chair voted in the affirmative, and administrative cases were settled and closed.
- b. **Commission staff sought motion of dismissal upon certification by the Secretary of State's office for voluntary compliance of Administrative Case Nos. 2024-19, 2024-20, 2024-22, 2024-24, 2024-25, 2024-26, 2024-27, 2024-28, 2024-29, 2024-30, 2024-31, 2024-32, and 2024-33:** Commissioner Bluestone moved as stated above, Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted roll call vote. Commissioners and Chair voted in the affirmative, and administrative cases were dismissed.
- c. **Commission staff sought motion of dismissal for lack of jurisdiction Administrative Case No. 2024-34:** Commissioner Castillo moved as stated above, Commissioner Baker seconded. Commissioners and Chair voted in the affirmative, and the administrative case was dismissed.
- d. **Commission staff sought motion of dismissal for lack of jurisdiction Administrative Case No. 2024-35:** Commissioner Castillo moved as stated above, Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted roll call vote. Commissioners and Chair voted in the affirmative, and the administrative case was dismissed.

- e. **Commission staff sought motion of dismissal for lack of jurisdiction**
Administrative Case No. 2024-39: Commissioner Castillo moved as stated above, Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted roll call vote. Commissioners and Chair voted in the affirmative, and the administrative case was dismissed.

9. Discussion of Next Meeting

Chair Lang confirmed next regularly scheduled meeting will take place October 4, 2024.

10. Public Comment

No public comment made.

Farewell to Commissioner Ronald Solimon

Commissioners took turns in thanking and honoring Commissioner Ronald Solimon for his service on the Commission.

11. Adjournment

Chair Lang raised the adjournment of meeting. With no objections made, the meeting adjourned at 10:50.

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