

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING

August 19, 2021

I. Call to Order

This meeting of the Santa Fe County Ethics Board was convened by Chair Carol Thompson, on the above-cited dated at approximately 1:30 at the Santa Fe County Administrative Complex, 100 Catron Street in the Johnson Street Conference Room, Santa Fe, NM 87501

II. Roll Call

Roll call indicated the presence of a quorum as follows:

Member Present:

Carol Thompson, Chair
Michael "Rosey" Rosanbalm, Vice Chair
Greg Coplans
Judith Kaye
Jonelle Maison

Members Absent:

None

Others Present:

Lisa Katonak, Manager's Office
Kevin Lockhart, Assistant County Attorney

III. Approval of Agenda

This item was acted upon following the minutes. Upon motion by Mr. Rosanbalm and second by Ms. Maison, the agenda was unanimously approved as published.

IV. Request Approval of August 2, 2021 Meeting Minutes

The following corrections were noted:

Page 9, Section 10. A. missing quotation mark

Page 9, the word "ensued" occurs twice in a sentence, delete the second one.

Page 2, last sentence under section IV, "...from the County is stealing, not misuse."

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Page 4, first sentence should say shown not show.

With those corrections, Ms. Maison moved to approve as corrected. Ms. Kaye seconded. The motion passed by unanimous voice vote.

V. Review and Possible Approval of Amendments to the Santa Fe County Code of Conduct Ordinance, including Public Trust; Conduct Avoiding Impropriety; Campaign Financing; Political Activity; Property Uses of Campaign Funds; Prohibited Uses of Campaign Funds and Disbursement of Surplus Campaign Funds

[For clarity purposes motions are prefaced as Action.]

The Committee worked from a draft ordinance watermarked “ETHICS BD DRAFT 3-7-19” with recommended language/questions in blue and purple ink. This draft is the consolidated, most recent copy provided by former Assistant County Attorney Cristella Valdez plus suggestions from the current Ethics Board.

Non-substantive word changes were noted and accepted without discussion.

Section 11. *Ex Parte* Communications.

- Delete the subsection “A” designation
- Change 1, 2, and 3 to A, B, and C
- Flip (2) B and (3) C

Action: Ms. Maison moved the above three bullets. Mr. Rosanbalm seconded and the motion passed by unanimous [5-0] voice vote.

Changes agreed upon at the August 2, 2021 meeting have not been incorporated into the sections the committee will be reviewing today.

As a reminder, all defined terms will be in bold throughout the ordinance and only proper nouns will be capitalized. Ms. Maison offered to make those corrections throughout the document.

No decision was made on italicizing “*ex parte*.”

Section 12. Conflicts of Interest, Disclosure.

Ms. Maison said while a voting member of a body may have an unavoidable conflict of interest, he/she may be able to vote the public’s interest rather than personal interest or recuse oneself. Mr. Coplans noted that many times people don’t recognize a conflict of interest and argue that they don’t have one. The proposed language is to ensure one raises a perceived conflict with the Ethics Board. Mr. Lockhart said “affirmative duty” is a defined term (4.C) within the definitions and an unavoidable conflict of interest may

not provide time for the voter to meet with the Ethics Board before taking action. “Unavoidable” could imply not realizing the conflict until after the act. There is an affirmative duty to disclose.

Ms. Katonak noted that a request for an advisory opinion of this Board is appropriate an request.

A. Exchange “or” to “and.”

B. Mr. Coplans asked about using language from the Employee Handbook regarding nepotism which states, “No person shall be considered for employment in a position in which they would be subject to supervision by a person related by consanguinity, blood, or affinity, marriage, by domestic partnership or by a step-relation within the third degree. The employment of immediate relatives in the same department or office is strongly discouraged so as to avoid interpersonal conflicts or favoritism.” Mr. Lockhart said without going beyond the Employee Handbook, he was not concerned.

The definition of family was changed at the last meeting.

B includes “friends or political supporters or hinder or punish enemies and opponents.” And is broader than the Employee Handbook.

B was accepted as presented.

C. Ms. Kaye asked about ending the subsection at “ideas.” She championed the concept of the simpler the language the better.

Action: Ms. Kaye moved to delete all of the language after “ideas.” Mr. Coplans seconded and the motion passed by majority [3-2] voice vote with Ms. Maison and Chair Thompson voting against.

D. Mr. Rosanbalm said at the previous meeting, “personal benefit” was removed as a definition, however, with its use throughout the document he recommended reinstating it.

Action: Mr. Rosanbalm moved to reinstate 4.Z Personal Benefits, in definitions. Ms. Maison seconded and the motion passed by unanimous [5-0] voice vote.

E. Ms. Maison brought up the use of “and” and “or” throughout the document when there is a list of elected official, appointed official, etc., and said “or” holds the concept of and/or while “and” holds the concept of inclusivity. She wanted consistency in this regard. There was consensus to use “and” throughout.

Action: Noting that “Anything of Value” has been defined, Mr. Rosanbalm moved to remove “gifts, personal benefits, favors, gratuities or political or charitable contributions or” from the second sentence. Mr. Coplans seconded. The motion passed by unanimous [5-0] voice vote.

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E. & F.

Action: Mr. Coplans moved to accept the changes. Ms. Kaye seconded and the motion passed by unanimous [5-0] voice vote.

G.

Action: On the third line, Mr. Rosanbalm moved to amend it as follows: "...acceptance of any Anything of Value from a person, business or other ..." Ms. Maison seconded and the motion passed without opposition.

Action: Mr. Rosanbalm moved to approve the remaining underlined changes reflected in G. Ms. Kaye seconded and the motion carried without opposition.

Section 13. Confidential Information and Misuse of Non-Public Information.

[See Section 17, page 6]

The sole paragraph under 13 should be designated as "A."

A discussion ensued regarding "proper prior written authorization" and whether a companion process was required. Protection of Personal Identifiable Information rules was mentioned.

Mr. Rosanbalm said confidential information should never be released. Ms. Kaye agreed and recommended reducing the paragraph and removing "for personal benefit."

Mr. Lockhart referred to the County Handbook 6.7, which referred to confidential information.

Reducing the section to a single declarative statement that one cannot disclose confidential information, period, and no exceptions. It should be the County Manager who determines whether something can be disclosed. Ms. Katonak said IPRA requests go through the Legal Department and there are times the Manager's Office collaborates with the Legal Department.

Who determines whether the information is confidential and who has the authority to authorize release of information? Without knowing, how can it be abided by?

Mr. Lockhart offered to determine who within the County can give that authorization and the process for releasing.

Ms. Katonak mentioned several scenarios that would be considered confidential having to do with the County's correctional facility, i.e., an inmate at the hospital or a case at the Sheriff's Office.

Mr. Coplans championed the authorization being written so there is no question.

Ms. Kaye introduced the following language: “An Elected Official..., shall not disclose or use Confidential Information maintained by the County without proper authorization by X,” as a motion which did not obtain a second.

Action: Mr. Rosanbalm moved to delete the language after “prior written authorization.” Ms. Maison seconded and the motion passed by [5-0] voice vote.

Section 14. Duty to Report Improper Offers.

“Gift or” was removed for consistency.

Ms. Kaye recommended removing “appears to have been intended to improperly influence...” and reinforce the prohibition.

How is it determined that the “Anything of Value” was meant to improperly influence someone? The Code of Conduct was simple in prohibiting the acceptance of any gift.

Action: Ms. Kaye introduced the following language: Elected Officials, who receive an offer of or Anything of Value shall firmly and unequivocally reject the offer and shall report it to the appropriate authorities. Mr. Coplans seconded. [reconsidered and overturned]

Under discussion, Mr. Rosanbalm lamented that this prohibition could apply to Girl Scout cookies. Mr. Coplans said gifts of little value, i.e., pens, are not captured within the prohibition. A de minimus thing is not considered anything of value.

The motion passed by majority [3-2] voice vote with Mr. Rosanbalm and Ms. Maison voting against.

Mr. Coplans moved to reconsider the action above. Mr. Rosanbalm seconded and the motion to reconsider passed by majority [4-1] voice vote with Chair Thompson voting against.

The notion of anything of value offered as a quid pro quo to influence the decision and whether it was captured with Section 14 came up.

The section is narrow and refers to duty to report improper offers.

Action: Mr. Coplans moved to combine 14. A and B into one paragraph as follows: “An Elected Official... who receive an improper offer ~~or~~ of Anything of Value shall firmly and unequivocally reject the offer and shall report the same to the appropriate authorities.” Ms. Kaye seconded. [A friendly amendment included in above language]

Mr. Rosanbalm said intent has not been addressed. Ms. Kaye proffered that intent was subjective.

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Mr. Rosanbalm requested that it read “an improper offer of Anything of Value.” Mr. Coplans and Ms Kaye accepted that change as a friendly amendment.

The motion carried by majority [4-1] voice vote. Ms. Maison voted against.

Section 15. Misuse of County Property and Resources for Private Gain or Personal Advantage.

Action: Ms. Kaye moved to delete the language following “resource” on the fourth line of A. as well as A.1, 2, and 3. Mr. Rosanbalm seconded.

Ms. Maison said the section as written appears equivalent to state law.

Ms. Kaye provided an example of using a County-owned vehicle to run a quick personal errand as a misuse of County property. Mr. Rosanbalm agreed with imposing a blanket prohibition.

The Employee Handbook stipulates County property cannot be used for personal use.

The motion passed by majority [4-1] with Ms. Maison voting against.

Paragraphs B and C were accepted.

Section 16. Misuse of County Property or Resources for Political Purposes.

Action: Ms. Maison moved to eliminate Section 16 in its entirety and Mr. Rosanbalm seconded. The motion passed by unanimous [5-0] voice vote.

Section 17. Use of Confidential Information for Private Gain.

Ms. Maison noted that “Volunteers” appeared to have been inadvertently left off the beginning list.

A discussion about combining 13 (Confidential Information and Misuse of Non-Public Information) and 17 ensued.

Action: Mr. Coplans moved to combine sections 17 and 13 as two subsections A and B and direct Mr. Lockhart craft the language. Mr. Rosanbalm seconded and the motion passed without opposition.

Section 18. Misuse of Title or Prestige of Office for Private Gain or Personal Advantage.

Mr. Lockhart read the language of NMSA 1978, Section 10-16-4.3 to clarify contracting.

There were no issues with 18.

Section 19. Campaign Funding.

Action: Ms. Maison moved to delete Section 19 and Ms. Kaye seconded. The motion passed by unanimous [5-0] voice vote.

Section 20. Political Activity.

Ms. Maison recommended that the section refer to any employee rather than differentiating and state that, “An Employee shall not serve as a paid ...”

Ms. Kaye asked whether there was a process in which County employees and officials can submit a form for outside activities. Mr. Lockhart said outside employment is not specifically addressing political activity in the handbook, although 6.9, in the HR Handbook deals with political participation. Campaigning for political office is forbidden during scheduled work hours and campaign material and literature shall not be dispensed on County premises, through County equipment or out of County vehicles and shall not be created using County property. Employees are also prohibited from campaigning in County facilities while off duty. There was additional information when working for an elected official. The handbook does not speak to the same activities as Section 20. The handbook identifies what cannot be done on County property and on County time.

Mr. Lockhart offered to review the Campaign Reporting Act.

Employee conduct can be addressed in this Code of Conduct as long as it is not more restrictive and does not require a re-negotiating of the Employee Handbook. Any employee violations having to do with this Code of Conduct will not come before this Board.

Chair Thompson recalled that Section 20 language has been in the Code since she has worked on it.

A:

- “An ~~no~~ employee with contract management or land use authority shall not serve...” And “city” was changed to “municipal.”

C:

- Add “another” between Appointed Official, another Employee

The grammatical changes were accepted without opposition.

F: A political activity may include a GO Bond that would benefit a department, i.e., the Fire Department seeking to obtain new apparatuses.

G: An undue threat is language to impose a reasonable standard.

H: To define the \$250 is “a total of” and \$250 “per campaign.”

Action: Mr. Coplans introduced language to read: “...in excess of a total of \$250 per campaign ...” Mr. Rosanbalm seconded and the motion passed without opposition.

Section 21. Disclosure.

A and B: The changes suggested were stylistic and grammatical and accepted.

C.2. Ms. Katonak confirmed the \$7,500 was within the employee conflict of interest financial disclosure form.

C.3.

Action: Noting “Family” was a defined term, Ms. Maison moved that the fourth line read, “...a gift from a Family member other than an unrelated household member; provided that the person making the gift...” Mr. Coplans seconded and the motion passed by unanimous [5-0] voice vote.

D and E changes are cleanup and there were no issues.

Section 22. Proper Use of Campaign Funds.

Action: Ms. Maison moved to delete the section. Ms. Kaye seconded and the motion passed by unanimous [5-0] voice vote.

Section 23. Coercion.

A. Cleanup language: Replaced the “No” with “A”: A candidate.... shall not...”

B. Last line “...or providing ~~a~~ Anything of Value... eliminate the “a.”

C. Accepted in its entirety with cleanup language

Section 24. Reporting and Resolving Alleged Ethics Violations.

A.B. and B.1 changes were accepted as cleanup.

A discussion regarding un-sworn complaints not being forwarded to the ~~CCDO~~ ^{CCFO} occurred. Mr. Lockhart stated that it is to avoid spurious accusations without merit and is taken from the New Mexico Administrative Code, at 1.8.3.9.(2).e. [Copy was provided].

Mr. Coplans said he would reluctantly accept the notion because it is state law, but that makes it very difficult to obtain complaints. He remarked that his Board has never received a complaint. There is a lot of fear in coming forward with a complaint and just stating “no retaliation” is not enough to protect the complainant. He said it was analogist to voter suppression.

Committee members Coplans and Kaye noted for the record their strong objection to sworn complaints as it is too limiting.

B.2. Action: Mr. Coplans moved to change the period for a complaint to be submitted two (2) years after a violation and then at the end of the clause to include a two (2) year limitation. Mr. Rosanbalm seconded and the motion passed by unanimous [5-0] voice vote.

C. Cleanup language was accepted.

D. Mr. Lockhart explained the seven calendar day County appeal process.

Action: Mr. Coplans introduced the following language After seven (7) calendar days, insert "from the date on which the complaining Party receives the notice of dismissal." Mr. Rosanbalm seconded and the motion passed by unanimous [5-0] voice vote.

E. Cleanup language was accepted.

F. Cleanup language was accepted.

F.1. Remove the language in parenthesis.

The County contracts with outside counsel to serve as the CCEO.

The standard of proof is in the state statute as 1.8.3.13.(m) where the hearing officer finds by a preponderance of the evidence.

F.2.G. was discussed as giving the respondent an additional opportunity after the case has been dismissed. Ms. Katonak recalled this item was discussed in detail and she appreciated this re-review of the clause.

Mr. Lockhart said F.2.G appears to be part of the process for recommendation for dismissal. If the case was recommended by the CCEO for dismissal because there was no probable cause or merit and notice of that is given and then appealed within the seven days, then the County Attorney shall refer the appeal to the Ethics Board. After that referral, the Ethics Board may reverse a dismissal of the complaint if it determines that the CCEO's dismissal was erroneous based on the issues. If the complaint is not recommended for dismissal it will be forwarded to the Ethics Board. If it is recommended for dismissal and it's appealed it will again come to the Ethics Board. The Ethics Board can still dismiss the case based on the CCEO's recommendation.

There was agreement that G did not make sense.

Action: Ms. Kaye moved to delete G in its entirety. Mr. Rosanbalm seconded and the motion passed by unanimous [5-0] voice vote.

Mr. Lockhart offered to review the materials looking for a flow chart that outlines the

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Jonelle
not familiar if it is 1 or 10
NM Admin's Code 10.8
looks like regulation and not statute
-those need to be dashes

process of a complaint.

The remainder of 24 contained only cleanup language.

Section 25. County Ethics Board.

A – D were cleanup suggestions and were accepted.

E. Maintain the second sentence, deleting the first one.

The procedures are found in Resolution 2008-3 which discusses adjudicatory proceedings.

Action: Mr. Coplans moved to eliminate the first sentence and maintain the second one. Ms. Maison seconded and passed by unanimous [5-0] voice vote.

G. Change the one year to two (2) years.

I. Mr. Rosanbalm said the Board has never submitted a report to the BCC. Mr. Coplans said we shouldn't have it as a requirement unless we do it.

Action: Ms. Maison moved the following language: "On a quarterly basis, the County Attorney shall provide the Board of County Commissioners a report stating the number of ... " Ms. Kaye seconded.

Mr. Lockhart said he would check with his department about providing the report to the BCC.

The motion carried without opposition.

Remainder of the changes were cleanup.

Section 26. Right of Appeal.

Cleanup language.

Section 27. Non-Retaliation.

Mr. Coplans withdrew his questions provided on the draft.

A. In the past, everything was directed through the County Attorney's Office and the board agreed that was the right path.

Action: There was consensus the bottom of the last sentence to read: " should submit a sworn complain† to the County Attorney's Office," and eliminate the remainder of the sentence.

Section 28. Restrictions on the Board of County Commissioners: Administration of the Personnel System Management.

It was emphasized that no employee complaints will ever come before this Board.

Section 29. Penalties.

Ms. Maison said the ordinance is not consistent in how it cites state law.

A-C was cleanup language.

D. Requires Three Hundred to be spelled out and \$300 in parenthesis and Ninety spelled out with 90 in parenthesis. [Spell the number and follow it with numerical in parenthesis.]

There were no other questions or comments.

VI. Matters from the Board

A Special Meeting would be scheduled after Labor Day on Thursday, September 9th at 1:30. Mr. Lockhart said he would get a clean draft out the Friday before Labor Day.

At the next meeting, the board will determine how and by whom the code will be presented to the BCC. Ms. Katonak assumed the presentation would occur in October, 2021.

VII. Matters from the Public – None were present

VIII. Adjourn

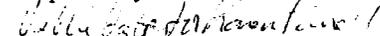
With no further business and having completed the agenda, Mr. Rosanbalm moved to adjourn and Ms. Kaye seconded. The motion carried and the meeting was adjourned at 5:10 p.m.

Approved by:



Carol Thompson
Ethics Board President

Respectfully submitted:


Karen Farrell, Wordswork

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

ETHICS BOARD MINUTES
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I Hereby Certify That This Instrument Was Filed for
Record On The 2ND Day Of December, 2022 at 09:25:58 AM
And Was Duly Recorded as Instrument # **2002361**
Of The Records Of Santa Fe County

Deputy *Destiny Romero* Witness My Hand And Seal Of Office
Katharine E. Clark
County Clerk, Santa Fe, NM

