

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING

August 2, 2021

I. Call to Order

This meeting of the Santa Fe County Ethics Board was convened by Chair Carol Thompson, on the above-cited date 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

Mr. Lockhart introduced himself stating he started his employment with Santa Fe County in May 2020. He had a private practice in the Cloudcroft area and was happy to be with the County.

III. Approval of Agenda

Upon motion by Ms. Maison and second by Ms. Kaye, the agenda was unanimously approved as published.

SFC CLERK RECORDED 12/02/2022

IV. Request Approval of July 22, 2021

[Ms. Maison advised the recording secretary of a typo before the meeting.]

Mr. Rosanbalm moved to approve and Ms. Kaye seconded. The motion passed by unanimous voice vote.

A discussion ensued regarding which rendition of the Code of Conduct the employees receive upon employment. Mr. Coplans said he perused the County's HR website and a Code of Ethics was available. Staff advised that the unamended code continues to be the controlling document. Ms. Kaye suggested that the working document that appears on the public website could cause confusion.

As a point of information, Ms. Maison said the discussion that occurred regarding the misuse of County property, Section 15, that mentioned taking notebooks, post-its, etc. from the County is stealing, not misuse.

Support Materials

Assistant County Attorney Lockhart distributed the following materials:

- NMSA 1978, § 10-16-3. Ethical principles of public service; certain official acts prohibited; penalty
- NMSA 1978 § 10-16-2. Definitions, as used in Governmental Conduct Act
- NMSA 1978 § 10-16-13.3. Prohibited contributions; financial service contractors
- NMSA 1978 § 10-16-3.1. Prohibited political activities
- NMSA 1978 § 1-19-26. Definitions, as used in the Campaign Reporting Act
- NMSA 1978, § 1-19-34.7 Contribution limitations; candidates; political committees
- Court of Appeals of New Mexico. *State v. Gutierrez*, 472 P 3d 1260 (2020)
- Santa Fe County Resolution No. 2008-03: establishing rules of order for meetings of the Board of County Commissioners of Santa Fe County and for certain specified committees
- NMSA 1978 Article 15 – Open Meetings Act

Also provided were:

- Jonelle Maison's email dated 7/23/2021 to Lisa Katonah re: *State v Gutierrez*
- Santa Fe County Code of Conduct draft dated 3-7-19
- Recently edited - Santa Fe County Code of Conduct draft dated 3-7-19 [peach color edits]

[Supporting documents are listed as they are mentioned within the discussion.]

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

The recently edited draft ordinance with peach-color and crossed-out language was being used. Comments with "JM" refer to Ms. Maison and "GC9" refers to Mr. Coplans. Mr. Lockhart explained his role to review the language with an eye towards legality and whether it makes sense. He has provided suggestions; however, the document's style is the Board's responsibility.

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

Section 2. Declaration of Policy

Mr. Lockhart said the changes were not substantive and Ms. Maison's suggested edits were presented within the document.

Ms. Maison noted that candidate-related language is deferred to the Campaign Reporting Act, and the ordinance requires amendment to reflect that.

- Add (3) for the third detail
- Delete "candidates for elected office"

Mr. Rosanbalm moved to approve with the two bulleted items. Ms. Kaye seconded and the motion passed by unanimous [5-0] voice vote.

Section 3. Responsibility of Public Office and Employment

Mr. Rosanbalm moved to approve as presented and Ms. Kaye seconded. The motion passed without opposition.

Section 4. Definitions

A. Non-substantive word change

B. Administrative Adjudicatory Matter

Ms. Maison asked whether an adjudicatory matter was a discretionary act and if "adjudicatory" was appropriately used. Mr. Lockhart provided an example of an adjudicatory manner in which a permit is denied and then that decision is appealed to the BCC who will make a discretionary adjudicatory decision regarding that permit.

"Discretionary standard" refers to standards required to be met by whoever has the burden of proof of the case. "Discretionary standard" is used at a lower level as well as the adjudicatory level. Not all matters are adjudicatory but all adjudicatory matters will involve discretion.

Mr. Lockhart said he will review whatever language the Board chooses to ensure it works for legal purposes.

Ms. Maison said the section did not communicate anything.

- "Administrative adjudicatory matter" is an action that involves ~~the use of a~~ decision based on a discretionary standard, as specified in the Land Development Code or other County ordinances.

Ms. Kaye moved to approve the language as shown above. Ms. Maison seconded and the motion passed without opposition.

D. Anything of Value

NMSA 1978, § 10-16-2. Definitions, as used in Governmental Conduct Act

Mr. Lockhart referred to the state definition, and noted there was no definition for “anything of value” or “anything of benefit” in the state’s Governmental Code Of Conduct.

NMSA 1978 § 10-16-13.3. Prohibited contributions; financial service contractors

Mr. Lockhart noted that this was not included in the definition section but provides guidance in its definition of anything of value, “any money, property, service, loan or promise, but does not include food and refreshments with a value of less than \$100 consumed in a day.” This provides guidance of the \$100 amount used in the County’s definition. There is no mention of political activity as a thing of value.

Mr. Lockhart said he reviewed federal guidance and the Justice Department does not prohibit endorsements.

“Anything of value” appears in the Code in Section 12. E. and F. and Mr. Rosanbalm pointed out it does not forbid a quid pro quo.

There was consensus that Mr. Coplans’ proposed language: “however, political endorsement, support in a political campaign or a promise of an endorsement, political activities, or political support; or meals and non-alcoholic beverages of any value offered as a quid pro quo to influence a decision in favor of the person or entity making the same is prohibited” addressed the concerns of the board.

NMSA 1978, § 10-16-3. Ethical principles of public service; certain official acts prohibited; penalty

Mr. Lockhart noted that Section D uses the language: “thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.” And, although “anything of value” was not within the definitions of the Governmental Conduct Act, “Official Act” is defined with the use of discretionary authority. When the state does address it, they do not talk about political action. The County’s definition appears much tougher than that of the state.

As a code to drive ethical behavior the language should be more restrictive than that of the state.

Nothing in the Government Conduct Act prohibits local government from adopting more stringent rules. However, what has been made expressly legal cannot be prohibited.

Mr. Coplans said when he was in the private sector, Transparency International published a corruption index. His firm had limits for gifts and entertainment in a day for the

different countries and the U.S. was \$35.

- Anything of value: any money, property, service, loan or promise, but does not include food and refreshment with a value of less than \$50 consumed in a day no more often than once a week; [Directly from 10.16.3]

Perhaps a thing of value or promise of a thing of value that is conditioned upon or given in exchange for promised performance of any act done by virtue of one's office could be included within Section 8, Conduct Avoiding Impropriety, or Section 6, Public Trust.

The code needs to spell out that a candidate cannot promise anything that they cannot ethically deliver.

Address quid pro quo in a later section.

Mr. Rosanbalm moved to amend D, to read as bulleted above. Ms. Maison seconded and the motion passed by unanimous voice vote.

4. E. Non-substantive word change

4. F. No change

4. G. & H. [covered by state law]

Ms. Maison moved to delete G and H. Ms. Kaye seconded and that motion passed by unanimous voice vote.

Ms. Katonak reminded the Board that only elected officials', appointed officials' and volunteers' ethic issues would come before them. At this point, no complaints have come forward. There have been employee-related complaints referred to Human Resources.

4. J. Conflict of Interest

The new language was approved upon motion by Mr. Coplans, second by Mr. Rosanbalm and unanimous voice vote.

4. K. Contract

NMSA 1978, § 10-16-2. Definitions, as used in Governmental Conduct Act

There was discussion that the state defined a contract as having a monetary value over \$1,000. Operation of law implies an expressed contract, an agreement condensed to writing that is signed. There was discussion about MOUs and side letters and it was determined they should not be used in this definition.

- Contract means an agreement between two or more parties, whether express or arising by operation of law. [delete proposed second sentence.]

Ms. Kay moved to approve the above language. Mr. Rosanbalm seconded and the

motion passed unanimously.

4.L. Campaign Contribution

Mr. Rosanbalm moved to delete L in its entirety. Ms. Maison seconded and the motion passed by unanimous voice vote.

4.M.– No change

4.N. Non-substantive word change. CCEO should not be parenthetical

4.O. Donor

Ms. Maison moved to delete O and Mr. Rosanbalm seconded. The motion passed unanimously.

4.P. Non-substantive word change

4.Q. Non-substantive word change

4.R. Non-substantive word change

Also agreed upon:

- County has been defined thus “Santa Fe” can be dropped.

Ms. Maison introduced a motion that defined terms would be in bold and only proper nouns capitalized. Mr. Coplans seconded and the motion passed unanimously.

4.S. Family & 4.V. Immediate Family

NMSA 1978, § 10-16-2. Definitions, as used in Governmental Conduct Act

Mr. Lockhart referred to the state’s definition of family: “means an individual’s spouse, parents, children or siblings, by consanguinity or affinity.” The definition as proposed is already more restrictive than the state’s version.

- For consistency in the code, use “person” rather than “individual”

There was agreement to use “3rd degree of consanguinity” and to eliminate 4.V.

- Family, mean a person’s spouse, domestic partner and other relatives within the 3rd degree of consanguinity or affinity and persons living within the household.

Ms. Maison moved to approve the bulleted language above and Mr. Rosanbalm seconded. The motion passed by unanimous voice vote.

4.T. Financial Interest - Non-substantive word changes

4.U. General Election

Mr. Rosanbalm moved to eliminate U. Ms. Maison seconded and the motion passed

without opposition.

4.V. Immediate Family

Mr. Rosanbalm moved to eliminate V. Ms. Kaye seconded and the motion passed without opposition.

4.W. – Clarifying language

4.X. – No changes

4.Y. – No changes

4.Z. Personal Benefit

This item is covered under 8.C. as “personal advantage” and several other places.

Upon motion by Mr. Rosanbalm and second by Ms. Maison this item was unanimously deleted.

4.AA. Primary Election - Deleted because it is covered by State Act.

Ms. Kaye moved to delete and Mr. Rosanbalm seconded. The motion passed by unanimous voice vote.

4.BB. – No change

4.CC. Special Election - Deleted because it is covered by State Act.

Mr. Rosanbalm moved to delete and Ms. Kaye seconded. The motion passed by unanimous voice vote.

4. DD. - Non-substantive word changes. Staff will check whether “can” should be replaced with “may.”

4.EE. – No changes.

Section 5 - Non-substantive word changes.

Section 6. Public Trust

Court of Appeals of New Mexico. *State v. Gutierrez*, 472 P 3d 1260 (2020)

NMSA 1978, § 10-16-3. Ethical principles of public service; certain official acts prohibited; penalty

Mr. Lockhart referred to Ms. Maison’s question regarding the court case cited above and interpreted provision of 10-16-3. The case looked at the provisions of the statute to determine whether they were unconstitutionally vague. The term “public trust” is mentioned under provision A and was found to be constitutional; B and C were found to be unconstitutionally vague. Section 6.A. within the proposed ordinance compares to 10-16-3 B and has many similarities in the wording. A reasonable person standard is used in

law, i.e., negligence cases.

The court established that 10-16-3 A. clearly defines that a legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

There was agreement that the ‘highest principles of democratic democracy’ in the draft code was vague and problematic.

Ms. Maison moved to eliminate 6.A. and B. and insert 10-16-3A. Mr. Rosanbalm seconded and the motion passed by unanimous voice vote.

Section 7. Recusal

The format was changed for consistency and defined terms bolded. Under 2, “family” was agreed upon.

3. “or current” was accepted

The remainder of the changes were cleanup.

Section 8. Conduct Avoiding Impropriety

Mr. Rosanbalm recommended removing “knowingly.” Mr. Lockhart said he would talk about “knowingly” with others in his department because it appears to change a legal standard. Mr. Coplans noted this board was working on ethical standards and can be more restrictive than legal standards.

Mr. Coplans moved to strike “knowingly” from 8.B. subject to legal review. Mr. Rosanbalm seconded and the motion passed without opposition. [Ms. Maison was not present for this action.]

Mr. Rosanbalm said Section 8 could capture the quid pro quo concerns. The following wording was recommended:

- Political endorsements, support in a political campaign or a promise of an endorsement, political activities, or political support; or meals and non-alcoholic beverages of any value offered as a quid pro quo to influence a decision in favor of the person or entity making the same is prohibited.

Mr. Rosanbalm moved approval of the above bulleted language as 8.D. and Ms. Kaye seconded. The motion passed by unanimous [5-0] voice vote.

Section 9. Limitation on Employment

This section cites the Governmental Conduct Act and Ms. Maison advised that the law lives in the eternal present, so even amended, it applies.

There was consensus to remove “which was made applicable to local” in the introductory sentence.

There was consensus to add “or any business entity” as recommended in the draft.

Side letters are not used in government contracts.

By consensus, 9.C. was amended as follows: Santa Fe County shall not enter into a contract, memorandum of understanding or other action...

9.C.2. Proofing changes accepted

Section 10. Prohibited Financial Interest in County Business

A. “Except as otherwise provided in the Santa Fe County Code of Conduct ...”

Ms. Maison moved to add the language above and Mr. Rosanbalm seconded and the motion passed without opposition.

A discussion ensued regarding disclosure of financial interest (4.T) and the County’s conflict of interest statement. Disclosure, Section 21, C 1 through 3 mirrors the conflict of interest statement. T was further discussed and accepted as written.

A typo was noted in 10.B, it should be Section 21 not 12 of the Code.

Ms. Maison moved approval of the changes to Section 10.B. as shown in the draft and Mr. Rosanbalm seconded. The motion passed without opposition.

General Comments

Consistency throughout the document was championed.

Ms. Maison pointed out that the board will have to explain restrictions that are more stringent than state law to the governing body.

Mr. Lockhart said the Government Code of Conduct could be applied to County officials. Theoretically, it could be as simple as saying, our County official are held to all the rules in the Government Code of Conduct. He said it was important to have justification for any deviation.

Mr. Lockhart addressed a question Mr. Coplans raised regarding 24.B.2, which provides a small window of time, one year, to bring forward a complaint. The State Ethics Commission is charged with enforcing the Government Conduct Act and in their code they have a two-year statute of limitations for an administrative hearing with that board. The board discussed expanding that timeline to two or three years.

VI. Matters from the Board

Next Meeting – August 19th at 1:30 p.m.

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 5:00 p.m.

Approved by:

Carol Thompson

Ethics Board President
Carol Thompson

Respectfully submitted:

Karen Farrell
Karen Farrell, Wordswork

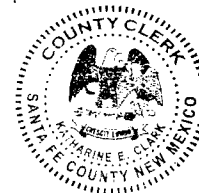
COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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 09:25:57 AM
And Was Duly Recorded as Instrument # 2002360
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark

Deputy *Dorothy Romero* County Clerk, Santa Fe, NM



SFC CLERK RECORDED 12/02/2022