

ARTICLE 16

Governmental Conduct

10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

History: 1953 Comp., § 5-12-1, enacted by Laws 1967, ch. 306, § 1; 1993, ch. 46, § 26.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, rewrote this section, which read "This act may be cited as the 'Conflict of Interest Act'".

Disclosure of disciplinary proceedings based on alleged violation of act. — An attorney's revelation to the secretary of state of the outcome of disciplinary proceedings against another attorney who had been a staff attorney for the New Mexico public utilities commission, which disciplinary proceedings were based on the disclosing attorney's letter to the secretary of state alleging a violation by the other attorney of the Governmental Conduct Act was not actionable as a public disclosure of private facts. *Fernandez-Wells v. Beuvois*, 1999-NMCA-071, 127 N.M. 487, 983 P.2d 1006.

Scope of act. — This article applies only to state agencies and that term would not include a county commission. 1969 Op. Att'y Gen. No. 69-135.

As a state agency, the retiree health care authority is subject to those provisions of this article that apply to state agencies. 1991 Op. Att'y Gen. No. 91-06.

Effect on school districts. — It would not have been necessary to enact Section 22-21-1 NMSA 1978 of the public school code if this article applied to school districts. 1969 Op. Att'y Gen. No. 69-19.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees §§ 321 to 323, 325.

67 C.J.S. Officers and Public Employees §§ 34, 89, 204.

10-16-2. Definitions.

As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

- (1) the rendition of services, including professional services;
- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;
- (5) a licensing arrangement;
- (6) a loan or loan guarantee; or
- (7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

F. "financial interest" means an interest held by an individual or the individual's family that is:

- (1) an ownership interest in business or property; or
- (2) any employment or prospective employment for which negotiations have already begun;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent.

History: 1953 Comp., § 5-12-2, enacted by Laws 1967, ch. 306, § 2; 1979, ch. 350, § 1; 1993, ch. 46, § 27; 2007, ch. 362, § 1; 2011, ch. 138, § 2.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, added definitions of "contract" and "local government agency" and included officials and employees of local governmental agencies within the definition of "public officer or employee".

The 2007 amendment, effective July 1, 2007, added Subsection D, defining "family"; deleted the definition of "person"; and added Subsection I, defining "state agency".

The 1993 amendment, effective July 1, 1993, substituted "Governmental Conduct Act" for "Conflict of Interest Act" in the introductory paragraph and in Subsection H; deleted Subsections C and D, defining "controlling interest" and "employee"; redesignated Subsections E through G as Subsections C through E; inserted "dependent" preceding "minor" in Subsection D; deleted "except the term does not mean an act of the legislature or an act of general applicability" at the end of Subsection E; added Subsections F, G, and I; and made minor stylistic changes throughout the section.

Judges excluded. — The legislature expressly chose to exclude judges from application of the Governmental Conduct Act. *State v. Maestas*, 2007-NMSC-001, 140 N.M. 836, 149 P.3d 933.

Self-dealing by non-state-employed council members does not violate the Governmental Conduct Act. — The Governmental Conduct Act does not prohibit members of the New Mexico council for purchasing from persons with disabilities (council) from voting to approve a contract subject to the State Use Act, 13-1C-1 to 13-1C-7 NMSA 1978, between a state agency or local public body and a council member or a company in which the council member has a financial interest. Most of the members of the council do not receive compensation or cost reimbursements from the state, and therefore are not subject to the Governmental Conduct Act's conflict-of-interest provisions, and although the Governmental Conduct Act prohibits a state agency from entering into a contract with a business in which a public officer or employee has a substantial interest, it is the designated central nonprofit agency that holds contracts under the State Use Act, not the council itself. 2020 Op. Ethics Comm'n No. 2020-07.

Scope of section limited. — This article did not apply to employees of school districts or other similar political subdivisions of the state. 1969 Op. Att'y Gen. No. 69-19.

Employees of school districts do not hold a "state office". 1969 Op. Att'y Gen. No. 69-19.

Members of racing commission are within purview of conflict laws as employees. 1979 Op. Att'y Gen. No. 79-15.

New Mexico municipal self-insurers' fund. — The New Mexico municipal self insurers' fund, formed under the provisions of 11-1-3 NMSA 1978, authorizing governing bodies to exercise joint powers, and Article 62, Chapter 3 NMSA 1978, governing municipal insurance, is a state agency and is, therefore, subject to audit by the state auditor under 12-6-3 NMSA 1978. 1987 Op. Att'y Gen. No. 87-65.

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

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The 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.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section [31-18-15 NMSA 1978](#).

History: 1978 Comp., § 10-16-3, enacted by [Laws 1993, ch. 46, § 28](#); [2007, ch. 362, § 2](#); [2011, ch. 138, § 3](#).

ANNOTATIONS

Repeals and reenactments. — [Laws 1993, ch. 46, § 28](#) repealed former [10-16-3 NMSA 1978](#), as enacted by Laws 1967, ch. 306, § 3, relating to gifts, and enacted a new section, effective July 1, 1993.

The 2011 amendment, effective July 1, 2011, in Subsection A, eliminated the qualification that prohibited personal benefits and private interests must be incompatible with the public interest.

The 2007 amendment, effective July 1, 2007, made grammatical changes.

Judge's conviction invalid. — The legislature expressly chose to exclude judges from application of the Governmental Conduct Act. Therefore, a judge could not be convicted of violating official acts prohibited under [10-16-3\(D\) NMSA 1978](#), and violating official acts prohibited by that section could not be used as the predicate felony to support the defendant's conviction of criminal sexual penetration during the commission of a felony. *State v. Maestas*, [2007-NMSC-001](#), [140 N.M. 836](#), [149 P.3d 933](#).

Legislative intent for willful and knowing violations. — The plain meaning of § [10-16-3 NMSA 1978](#) and § [10-16-17 NMSA 1978](#) indicates a legislative intent to provide for a misdemeanor penalty for a knowing and willful violation of the provisions of §§ 10-16-3(A) through § [10-16-3\(C\) NMSA 1978](#). *State v. Gutierrez*, [2020-NMCA-045](#), cert. granted.

Void for vagueness analysis of Subsection A. — Section [10-16-3\(A\) NMSA 1978](#) mandates the use of the powers and resources of a legislator's, public officer's, or public employee's public office only for the benefit of the people of New Mexico, and prohibits

legislators, public officers, and public employees from exploiting their powers and resources for private gain, and to the extent the application of Subsection A requires a qualitative determination of what constitutes a public versus private interest, as a general rule, the application of a qualitative standard to real-world conduct does not render a statute unconstitutionally vague. Subsection A provides a fair opportunity for persons of ordinary intelligence to determine whether his or her conduct is prohibited, as well as sufficient guidance for enforcement of the law such that it neither permits nor encourages subjective or ad hoc application. *State v. Gutierrez*, [2020-NMCA-045](#), cert. granted.

Subsection B is unconstitutionally vague. — Although § [10-16-3](#)(B) NMSA 1978 describes behavior to which the listed officials should aspire, it does not follow with a definition or clarification of the conduct that is required to comply. To the extent the phrases "conduct themselves in a manner that justifies the confidence placed in them by the people," "maintaining the integrity," and "discharging ethically" were intended to require or prohibit certain conduct, the court is unable to ascertain with any reasonable degree of certainty the conduct the legislature intended to prohibit. Subsection B not only fails to provide persons of ordinary intelligence a fair opportunity to determine whether their conduct is prohibited, but also fails to provide minimum guidance that would preclude subjective and ad hoc application of the law; Subsection B is vague and cannot form the basis for criminal charges under § [10-16-17](#) NMSA 1978. *State v. Gutierrez*, [2020-NMCA-045](#), cert. granted.

Subsection C is unconstitutionally vague. — Section [10-16-3](#)(C) NMSA 1978 does not provide adequate guidance as to whom its requirements apply. The lack of any minimum guidance with regard to the class of persons whose conduct is governed by Subsection C renders it unconstitutionally vague because it fails to give people of ordinary intelligence a reasonable opportunity to know whether their conduct is prohibited because they have no notice as to whether they are a member of the class of persons contemplated under Subsection C, and it invites subjective and ad hoc application of the law because law enforcement officials have no guidance as to the class of persons subject to the requirements of the subsection. *State v. Gutierrez*, [2020-NMCA-045](#), cert. granted.

In four separate cases, consolidated for appeal, where each case arose from an allegation of misconduct by a government official, and where the district court in each case dismissed the charges against the defendants, finding that violations of §§ [10-16-3](#)(A) through § [10-16-3](#)(C) NMSA 1978 were not crimes but ethical considerations and therefore the indictments failed to allege the commission of a criminal offense, or that even if Subsections A through C provided for criminal offenses, they were nevertheless void for vagueness, the district courts' dismissals of the counts charging defendants under Subsection A were improper because the plain meaning of § [10-16-3](#) NMSA 1978 and § [10-16-17](#) NMSA 1978 indicates a legislative intent to provide for a misdemeanor penalty for a knowing and willful violation of Subsection A, but the dismissals of the counts charging defendants under Subsections B through C were proper because those subsections fail to provide persons of ordinary intelligence a fair opportunity to determine whether their conduct is prohibited. *State v. Gutierrez*, [2020-NMCA-045](#), cert. granted.

The Governmental Conduct Act does not prohibit a legislator from sitting on the board of a nonprofit organization that receives state contracts. — Although a legislator's unpaid membership on the board of directors of a nonprofit organization is not a financial interest subject to disclosure or regulation under the Governmental Conduct Act, a legislator who serves as a volunteer member on the board of directors of a nonprofit organization that assists victims of sexual assault and advocates on their behalf may not use the powers and resources of public office to obtain personal benefits or pursue private interests, must make full disclosure of real or potential conflicts of interest, may be required to recuse from votes that might impact the nonprofit organization and, when dealing with state agencies on behalf of the nonprofit organization, should avoid making reference to the legislator's official status, except as to matters related to scheduling, avoid communications on legislative stationery, and avoid threats or implications relating to legislative actions. [2021 Op. Ethics Comm'n No. 2021-02.](#)

The Governmental Conduct Act does not prohibit a business significantly owned by a legislator from applying for and receiving federal CARES relief funds. — The Governmental Conduct Act does not prohibit a business significantly owned by a legislator from applying for and receiving federal Coronavirus Aid, Relief, and Economic Security Act (CARES) relief funds, because a legislator is not directly responsible for the New Mexico department of finance and administration's and the New Mexico finance authority's distribution of CARES relief grants; the decision to award grant money to a business owned by the legislator has no direct connection with an exercise of the powers and responsibilities of the legislator's public office. [2021 Op. Ethics Comm'n No. 2021-03.](#)

An oversight agency does not violate the public trust by publicizing concerns about the operation of a state agency. — The New Mexico state auditor, in releasing to the public his concerns about the operation of the Martin Luther King, Jr. commission, does not violate the Governmental Conduct Act, because it is not a violation of the public trust to publicize the findings of an audit that contained numerous findings of material weaknesses and material noncompliance. [2021 Op. Ethics Comm'n No. 2021-04.](#)

A legislator or public officer does not violate the Governmental Conduct Act by submitting records requests to other state agencies. — The New Mexico state treasurer, who is a statutorily designated member of the Martin Luther King, Jr. commission (MLK commission), did not violate the Governmental Conduct Act in submitting numerous records requests to the MLK commission pursuant to the Inspection of Public Records Act, [14-2-1](#) to [14-2-12](#) NMSA 1978, given that the New Mexico legislature has declared that it is the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees, and that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees. [2021 Op. Ethics Comm'n No. 2021-04.](#)

This section does not require recusal on any vote affecting a legislator's interests. — Under this section, a legislator may not use the powers and resources of their legislative office to obtain personal benefits or pursue private interests, but this

section does not require recusal on any vote affecting a legislator's interests, and therefore a legislator who is a respondent in administrative complaints pending in the state ethics commission is not prohibited by this section from voting on proposed legislation that affects the state ethics commission. [2021 Op. Ethics Comm'n No. 2021-07](#).

Self-dealing by non-state-employed council members does not violate the Governmental Conduct Act. — The Governmental Conduct Act does not prohibit members of the New Mexico council for purchasing from persons with disabilities (council) from voting to approve a contract subject to the State Use Act, [13-1C-1](#) to [13-1C-7](#) NMSA 1978, between a state agency or local public body and a council member or a company in which the council member has a financial interest. Most of the members of the council do not receive compensation or cost reimbursements from the state, and therefore are not subject to the Governmental Conduct Act's conflict-of-interest provisions, and although the Governmental Conduct Act prohibits a state agency from entering into a contract with a business in which a public officer or employee has a substantial interest, it is the designated central nonprofit agency that holds contracts under the State Use Act, not the council itself. [2020 Op. Ethics Comm'n No. 2020-07](#).

The Governmental Conduct Act does not limit communications between a legislator and a lobbyist. — The Governmental Conduct Act, [10-16-1](#) to [10-16-18](#) NMSA 1978, regulates the conduct of legislators in limited circumstances, requires legislators to disclose any conflict of interest, and requires legislators to use the powers of their legislative office only to advance the public interest, but the Governmental Conduct Act does not constrain any communications between a legislator and a lobbyist employed by an entity that contracts with or employs the legislator, nor does it constrain communications between a legislator and the board members or employees of an entity that employs or contracts with the legislator. [2022 Op. Ethics Comm'n No. 2022-06](#).

Bond attorneys. — The provision of the Governmental Conduct Act that limits contributions to state officers and employees by businesses that provide financial services does not apply to lawyers who perform bond work for the state. 2007 Op. Att'y Gen. No. [07-04](#).

Holding a cabinet office and a university position. — The concurrent holding of a cabinet office and a position with a university regulated, to any degree, by the cabinet office raises the conflict of interest issues addressed by the Governmental Conduct Act and may require the cabinet officer to relinquish the officer's university position. 2007 Op. Att'y Gen. No. [07-06](#).

Free passes for racing commissioners disallowed. — When the members of the racing commission distribute free passes which the tracks must honor they are requesting a benefit for themselves or for those upon whom they wish to confer a benefit from persons who are directly affected by their official acts, which is the kind of activity this article is intended to prevent. 1979 Op. Att'y Gen. No. [79-15](#).

Public employees retirement board members could not accept expense-paid trip. — Public employees retirement board members could not accept an offer of an expense-paid trip to Columbus, Ohio to be hosted by public employees benefit services corporation. 1989 Op. Att'y Gen. No. [89-21](#).

District attorney's office may accept unconditional gifts or donations of goods, services or other in-kind benefits. — Public officers and employees are prohibited from knowingly requesting or receiving any money or thing of value that is conditioned upon or given in exchange for the promised performance of an official act, and the rules of professional conduct for lawyers prohibit a lawyer from accepting compensation from third parties unless there is no interference with the lawyer's independence of professional judgment in rendering legal services, and therefore, under these provisions, a state agency such as a district attorney's office may accept donations of goods and services for official purposes if the donations are made voluntarily and unconditionally and do not affect the office's independent and unbiased provision of prosecutorial and other legal services. *Use of Funds and Services Received from Third Parties* (1/14/19), [Att'y Gen. Adv. Ltr. 2019-01](#).

A state employee who also receives a monthly salary from a political campaign committee does not necessarily violate state ethics laws. — Although the Gift Act, [10-16B-1](#) to [10-16B-4](#) NMSA 1978, the Governmental Conduct Act, [10-16-1](#) to [10-16-18](#) NMSA 1978, the Financial Disclosure Act, [10-16A-1](#) to [10-16A-8](#) NMSA 1978, the Campaign Reporting Act, [1-19-25](#) to [1-19-36](#) NMSA 1978, and the State Ethics Commission Act, [10-16G-1](#) to [10-16G-16](#) NMSA 1978, impose certain duties on state employees and regulate certain state employees' conduct, the limited set of facts presented in this request, that a state employee, while employed and performing regular public duties, is also receiving a monthly salary from a political campaign committee or political organization, do not establish a violation of any of the foregoing statutes. [2020 Op. Ethics Comm'n No. 2020-01](#).

Cabinet secretary's teleworking accommodations do not violate the Governmental Conduct Act. — The Governmental Conduct Act, [10-16-3\(A\)](#) NMSA 1978, prohibits an out-of-state telework accommodation that either inhibits a state employee's performance of statutorily defined duties or otherwise obstructs the advancement of the public interest, but the fact that that the New Mexico secretary of education has worked from Philadelphia, Pennsylvania for several months during the 2020 public health crisis, without any information that the secretary of education's performance is inhibited in any way, does not establish a violation of the Governmental Conduct Act. [2020 Op. Ethics Comm'n No. 2020-06](#).

Paid leave for a teacher also serving as a legislator does not create an impermissible conflict of interest. — A school district's provision of compensation, including paid leave, to a school teacher or administrator serving as a legislator does not, by itself, create an impermissible conflict of interest. A disqualifying conflict would exist only if it was established that a school district provided paid leave to a school employee not as compensation for services, but to influence the employee's decisions and official actions as a legislator. *Provision of Paid Leave to Teacher Serving as Legislator* (5/31/17), [Att'y Gen. Adv. Ltr. 2017-05](#).

10-16-3.1. Prohibited political activities.

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

History: [Laws 2007, ch. 362, § 9](#); [2011, ch. 138, § 4](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, prohibited a public officer or employee from violating another office's or employee's duty not to use property of local governmental agencies.

10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section [31-18-15](#) NMSA 1978.

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

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

History: 1953 Comp., § 5-12-4, enacted by Laws 1967, ch. 306, § 4; [1993, ch. 46, § 29](#); [2007, ch. 362, § 3](#); [2011, ch. 138, § 5](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, in Subsection B, permitted public officers and employees to engage in official acts if the financial benefit of their financial interest is proportionally less than the benefit to the general public; and added Subsection C to prohibit public officers and employees from acquiring a financial interest when the interest will affect the officer's or employee's official act.

The 2007 amendment, effective July 1, 2007, deleted Subsection C, which permitted the governor to make an exception to the requirement that a public officer or employee be disqualified from engaging in an official act.

The 1993 amendment, effective July 1, 1993, rewrote the catchline, which read "Disqualification"; added current Subsection A; redesignated Subsections A and B as Subsections B and C; rewrote Subsection B, which read "An employee shall disqualify himself from participating in any official act directly affecting a business in which he has a financial interest"; and, in, Subsection C, substituted "to Subsection B of this section" for "from this section", inserted "public officer or" in two places, and made minor stylistic changes.

Propriety of vote or abstention. — A legislator should follow Chapter [10](#), Article [16](#) NMSA 1978 and his legislative body's code of ethics in deciding when it is proper to vote or abstain on a matter in front of the body. 2003 Op. Att'y Gen. No. [03-01](#).

A public official is prohibited from participating in an official act that would increase the wages paid to the official's spouse. — The Governmental Conduct Act prohibits a public official from taking an official action that directly benefits a financial interest held by the public official or the public official's family, and therefore, a public official employed by or serving on the governing board of a public post-secondary educational institution that is considering a decision to approve a contract that would increase wages paid to the institution's employees, one of whom is the public official's spouse, would be prohibited from participating in the review and approval of the contract. [2022 Op. Ethics Comm'n No. 2022-09](#).

The disqualification provision of this section does not apply to legislators. — Legislators are expressly excluded from the definition of a "public officer or employee" and therefore a legislator who is a respondent in administrative complaints pending in the state ethics commission is not prohibited by this section from voting on proposed legislation that affects the state ethics commission. [2021 Op. Ethics Comm'n No. 2021-07](#).

State transportation authority member should recuse himself when a conflict arises between the authority's official acts and his own financial interests. When the public interest requires the participation of a member who has a conflict of interest with the particular official act, the member should ask the governor for a specific exception. If the public interest so requires, the governor should grant the exception. 1987 Op. Att'y Gen. No. [87-71](#).

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes acts affecting personal financial interest within meaning of 18 USCS § 208(a), penalizing participation by government employees in matters in which they have personal financial interest, 59 A.L.R. Fed. 872.

10-16-4.1. Honoraria prohibited.

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

History: [Laws 1993, ch. 46, § 38.](#)

10-16-4.2. Disclosure of outside employment.

A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.

History: [Laws 2007, ch. 362, § 10;](#) [2011, ch. 138, § 6.](#)

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, required public officers and employees to report outside employment to their office or employer.

10-16-4.3. Prohibited employment.

It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

History: [Laws 2011, ch. 138, § 1.](#)

ANNOTATIONS

Effective dates. — [Laws 2011, ch. 138, § 15](#) made [Laws 2011, ch. 138, § 1](#) effective July 1, 2011.

10-16-5. Repealed.

ANNOTATIONS

Repeals. — [Laws 1993, ch. 46, § 58](#) repealed [10-16-5](#) NMSA 1978, as enacted by Laws 1967, ch. 306, § 5, relating to acquiring financial interest, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

10-16-6. Confidential information.

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.

History: 1953 Comp., § 5-12-6, enacted by Laws 1967, ch. 306, § 6; [1993, ch. 46, § 30](#); [2007, ch. 362, § 4](#); [2011, ch. 138, § 7](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, prohibited legislators and public officers and employees from disclosing confidential information acquired from their position with a local government agency.

The 2007 amendment, effective July 1, 2007, prohibited the disclosure of confidential information.

The 1993 amendment, effective July 1, 1993, inserted "public officer".

A legislator, in providing legal services in a private capacity, did not violate the Governmental Conduct Act by asserting claims against a public agency. — A legislator, in providing services as a private attorney, did not violate the Governmental Conduct Act when the legislator filed three separate discrimination and public-records lawsuits against the Martin Luther King, Jr. commission (MLK commission), spoke about these lawsuits with the media, and made six requests for public records under the Inspection of Public Records Act, because under these sets of facts, there was nothing to suggest the legislator received, much less disclosed, confidential information about the MLK commission that the legislator acquired through his or her office as a member of the New Mexico legislature. [2021 Op. Ethics Comm'n No. 2021-04](#).

10-16-7. Contracts involving public officers or employees.

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.

History: 1953 Comp., § 5-12-7, enacted by Laws 1967, ch. 306, § 7; 1983, ch. 90, § 1; 1989, ch. 264, § 26; [1993, ch. 46, § 31](#); [2007, ch. 362, § 5](#); [2009, ch. 66, § 11](#); [2011, ch. 138, § 8](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, in Subsection A, required public notice of a public officer's or employee's substantial interest in a contract with a state agency and eliminated the exemption for contracts made under the University Research and Economic Development Act and the New Mexico Research Applications Act; added Subsection B to prohibit local government agencies from entering into a contract with a public officer or employee or their family unless the officer or employee has disclosed their substantial interest in the contract and the contract is awarded through competitive bidding; and added Subsection C to exempt contracts of official employment with political subdivisions from the prohibition of Subsection B.

The 2009 amendment, effective April 2, 2009, added "and Economic Development Act" after "University Research Park" and added "or the New Mexico Research Applications Act".

The 2007 amendment, effective July 1, 2007, prohibited contracts with the family of a public officer or employee or with a business in which the family of a public officer or employee has a substantial interest unless the interest has been disclosed; provided that public officers and employees and their families are not eligible for sole source or small purchase contracts; and required persons who negotiate contracts for a state agency to use due diligence to ensure compliance with this section.

The 1993 amendment, effective July 1, 1993, inserted "public officers or" in the section heading and inserted "public officer or" in three places; substituted the language beginning "substantial interest unless" and ending at the beginning of the proviso for "controlling interests involving services or property of a value in excess of one thousand dollars (\$1,000) when the employee has disclosed his controlling interest unless the contract is made after public notice and competitive bidding"; and made a minor stylistic change.

Self-dealing by non-state-employed council members does not violate the Governmental Conduct Act. — The Governmental Conduct Act does not prohibit members of the New Mexico council for purchasing from persons with disabilities (council) from voting to approve a contract subject to the State Use Act, [13-1C-1](#) to [13-1C-7](#) NMSA 1978, between a state agency or local public body and a council member or a company in which the council member has a financial interest. Most of the members of the council do not receive compensation or cost reimbursements from the state, and therefore are not subject to the Governmental Conduct Act's conflict-of-interest provisions, and although the Governmental Conduct Act prohibits a state agency from entering into a contract with a business in which a public officer or employee has a substantial interest, it is the designated central nonprofit agency that

holds contracts under the State Use Act, not the council itself. [2020 Op. Ethics Comm'n No. 2020-07](#).

10-16-8. Contracts involving former public officers or employees; representation of clients after government service.

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.

History: 1953 Comp., § 5-12-8, enacted by Laws 1967, ch. 306, § 8; 1983, ch. 90, § 2; [1993, ch. 46, § 32](#); [2011, ch. 138, § 9](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, added a new Subsection C to provide limitations on contracting by local government agencies with former public officers and employees; and relettered the succeeding subsection.

The 1993 amendment, effective July 1, 1993, rewrote the section heading, which read "Contracts involving former employees"; inserted the subsection designation "A" at the beginning, redesignated Subsections A and B as Paragraphs (1) and (2), and added Subsections B and C; and, in Subsection A, inserted "public officer or" in three places and made minor stylistic changes.

Subsection C [now Subsection D] not unconstitutional regulation of law practice. — The application of Subsection C [D] to former executive branch attorneys is not an attempt by the legislature to regulate the practice of law and the provision does not violate separation of powers. *Ortiz v. Taxation & Revenue Dep't*, [1998-NMCA-027](#), [124 N.M. 677](#), [954 P.2d 109](#).

Construction with Rule 16-111 NMRA. — Subsection C [now Subsection D] and Rule [16-111](#) NMRA, prohibiting an attorney in private practice from representing a client in a matter in which the attorney participated personally and substantially while a public officer or employee, prohibit different types of conduct and are not in conflict. *Ortiz v. Taxation & Revenue Dep't*, [1998-NMCA-027](#), [124 N.M. 677](#), [954 P.2d 109](#).

Restrictions on former public lawyer's representation of a third-party in dealings with the government. — It is a violation of the Governmental Conduct Act, [10-16-1](#) to [10-16-8](#) NMSA 1978, for a lawyer, formerly employed with the New Mexico environment department (NMED), to represent a third party seeking to enforce a consent order that he had a personal and substantial role in negotiating, drafting, executing and enforcing while employed with the NMED, and where NMED is an adverse party in the litigation, because [10-16-8\(B\)](#) NMSA 1978 prohibits a former public officer or employee from representing a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee. [2020 Op. Ethics Comm'n No. 2020-02](#).

10-16-9. Contracts involving legislators; representation before state agencies.

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code [[13-1-28](#) to [13-1-199](#) NMSA 1978], except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the

conduct of their professions and, in those instances, the legislator shall refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

History: 1953 Comp., § 5-12-9, enacted by Laws 1967, ch. 306, § 9; 1989, ch. 143, § 1; [1993, ch. 46, § 33](#); [2007, ch. 362, § 6](#).

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, prohibited contracts with a legislator's family or a business in which the legislator's family has a substantial interest; provided that legislators and their families are not eligible for sole source or small purchase contracts; and required persons who negotiate contracts for a state agency to use due diligence to ensure compliance with this section.

The 1993 amendment, effective July 1, 1993, inserted "Representation Before State Agencies" in the section heading; designated the undesignated provisions as Subsection A and added Subsection B; and, in Subsection A, substituted the language beginning "has a substantial interest" for "has controlling interest in excess of one thousand dollars (\$1,000) where the legislator has disclosed his controlling interest unless the contract is made after public notice and competitive sealed bidding or competitive sealed proposal in accordance with the provisions of the Procurement Code."

School districts are "state agencies" covered by the Conflict of Interest Act [now Governmental Conduct Act]. 1989 Op. Att'y Gen. No. [89-34](#).

Contracts with nonprofit organizations. — The Conflict of Interest Act [now Governmental Conduct Act] does not disqualify or restrict a nonprofit organization's ability to enter into contracts with state agencies managed by a board of directors having as one of its members a state legislator. 1990 Op. Att'y Gen. No. [90-17](#).

Contracts with nonprofit organizations. — New Mexico Const., art. IV, § 28 precludes a nonprofit organization from entering into a contract with the state or a state agency if the organization, within one year of entering the contract, had as a director a member of the legislature and the contract was authorized during that member's term. 1990 Op. Att'y Gen. No. [90-17](#).

Legislator is subject to restrictions when he sells products. — A legislator can sell products to a state agency on an open account or collect-on-delivery basis only under contracts of less than \$1,000.00. In addition, a legislator would remain subject to [N.M. Const., art. IV, § 28](#), so that he could not make any sales during his term or one year afterwards if the sales were authorized by law during his term. 1989 Op. Att'y Gen. No. [89-34](#).

Legislator may bid on state contracts, if there was public notice of the bid and the bidding was competitive. 1967 Op. Att'y Gen. No. [67-133](#).

Company owned by legislator may bid on state contracts. — Unless otherwise prohibited by [N.M. Const., art. IV, § 28](#), a company owned by a legislator may bid on contracts to supply state agencies with materials and supplies under the competitive bid process set forth in the Procurement Code. 1989 Op. Att'y Gen. No. [89-34](#).

A legislator's company can bid as general contractor on state construction projects only if the project was not authorized during, or within one year of, his service in the legislature. If the contract on which the legislator's company bids is one authorized by statutes enacted more than one year before his service in the legislature and is worth more than \$1,000, then he must give public notice of his bid, and the state agency must comply with the special procedures contained in the Conflict of Interest Act [now Governmental Conduct Act]. 1989 Op. Att'y Gen. No. [89-34](#).

When business owned by legislator acts as subcontractor. — If a business owned by a legislator bids on a contract with the state as a subcontractor and is a party to the contract, then the business is subject to the same limitations that apply when it acts as general contractor. If, however, the business only contracts with the general contractor and does not enter into any contract with the state, then the restrictions of this section no longer control. However, even though a subcontractor may not be subject to the Conflict of Interest Act [now Governmental Conduct Act], it still may be indirectly interested in a state contract and subject to the prohibition contained in [N.M. Const., art. IV, § 28](#). 1989 Op. Att'y Gen. No. [89-34](#).

A legislator must disclose ownership interest when contracting with state agencies under a purchase agreement. — Under the Governmental Conduct Act, a state agency may procure services from a construction company that is owned by a legislator and that has been awarded a statewide purchase agreement by the state purchasing agent, provided the legislator discloses the legislator's ownership interest in the construction company. Likewise, the state purchasing agent may award a subsequent price agreement to the legislator's construction company, provided that the legislator discloses the legislator's ownership interest in the construction company to the state purchasing agent when the company submits its bid or proposal. [2021 Op. Ethics Comm'n No. 2021-01](#).

A legislator must disclose the legislator's interest when contracting with an independent subdivision of the state, even if the contract is federally funded. — Subsection [10-16-9\(A\)](#) NMSA 1978 of the Governmental Conduct Act prohibits state agencies from entering into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract, and therefore a member of the New Mexico house of representatives who has contracted to do federally funded project work through his local soil and water conservation district (SWCD), an independent subdivision of the state authorized by the Soil and Water Conservation District Act, §§ [73-20-25](#) to [73-20-48](#) NMSA 1978, and as such, a "state agency" under the Governmental Conduct Act, must disclose his interest in the contract to the SWCD, and the SWCD must award the contract pursuant to the requirements of the Procurement Code, without resorting to the Procurement Code provisions allowing for the award of sole-source or small-purchase contracts. This subsection's requirements apply even where the SWCD's contract is funded with federal dollars. [2022 Op. Ethics Comm'n No. 2022-01](#).

The department of transportation may contract with a legislator's family member as long as the legislator discloses the legislator's interest and otherwise complies with the Governmental Conduct Act. — Subsection [10-16-9\(A\)](#) NMSA 1978 of the Governmental Conduct Act prohibits state agencies from entering into contracts for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest, the contract is awarded in accordance with the provisions of the Procurement Code, and the contract is not a sole source or small purchase contract, and therefore the department of transportation may enter into a contract for right-of-way fencing with the son of a member of the New Mexico house of representatives, or a fencing and welding business in which the legislator's son has a substantial interest, as long as the legislator has disclosed any substantial interest that the legislator might have in the family member's business, the state agency awards the contract in accordance with the provisions of the Procurement Code, and the state agency does not award the contract to the legislator's son or the son's business as either a sole source or a small purchase contract. [2022 Op. Ethics Comm'n No. 2022-03](#).

The Governmental Conduct Act does not prohibit a legislator's family member from bidding on government projects offered by local government agencies. — Subsection [10-16-9\(A\)](#) NMSA 1978 of the Governmental Conduct Act imposes constraints on contracts between a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest, but does not impose constraints on contracts between a legislator or the legislator's family members and local government agencies, and therefore the son of a legislator's spouse may bid on projects issued by political subdivisions such as counties, school districts, or other local governments. [2022 Op. Ethics Comm'n No. 2022-03](#).

The Governmental Conduct Act does not prohibit a legislator from sitting on the board of a nonprofit organization that receives state contracts. — Although a legislator's unpaid membership on the board of directors of a nonprofit organization is not a financial interest subject to disclosure or regulation under the Governmental Conduct Act, a legislator who serves as a volunteer member on the board of directors of a nonprofit organization that assists victims of sexual assault and advocates on their behalf may not use the powers and resources of public office to obtain personal benefits or pursue private interests, must make full disclosure of real or potential conflicts of interest, may be required to recuse from votes that might impact the nonprofit organization and, when dealing with state agencies on behalf of the nonprofit organization, should avoid making reference to the legislator's official status, except as to matters related to scheduling, avoid communications on legislative stationery, and avoid threats or implications relating to legislative actions. [2021 Op. Ethics Comm'n No. 2021-02](#).

The Governmental Conduct Act does not prohibit a business significantly owned by a legislator from applying for and receiving federal CARES relief funds. — The Governmental Conduct Act does not prohibit a business significantly owned by a legislator from applying for and receiving federal Coronavirus Aid, Relief, and Economic Security Act (CARES) relief funds, because the limitations that this section imposes,

does not apply to CARES relief grant awards; a CARES relief grant, a payment of an allocation of federal funds to New Mexico businesses to lessen the impact from the public health orders issued by the secretary of health and related to the coronavirus disease 2019 public health emergency, is not a contract for services, construction, or items of tangible personal property. Subsection B of this section, however, prohibits a legislator from appearing on behalf of a business or otherwise assisting a business in a matter before a state agency, and therefore the application for the CARES relief grant may not be accomplished by a legislator, but may be accomplished by someone other than the legislator who has an interest in the business. [2021 Op. Ethics Comm'n No. 2021-03](#).

This section does not prohibit a business owned by a legislator or a legislator's family from applying for "recovery grant" funds. — This section does not prohibit a business owned by a legislator or a legislator's family from applying for or receiving a recovery grant authorized by the Local Economic Development Act (LEDA) to help New Mexico businesses weather the economic hardship due to the COVID-19 pandemic, because the limitations regarding a legislator's interest in contracts with state agencies do not apply to recovery grants authorized by the LEDA. Recovery grants under the LEDA are not loan contracts, nor are they contracts for services, construction, or items of tangible personal property; rather, they are grant payments by a state agency of an allocation of an appropriation of general fund dollars to private businesses. [2021 Op. Ethics Comm'n No. 2021-08](#).

State legislator as employee of private contractor. — A private entity, either for-profit or nonprofit, that has a state legislator within its organization may enter into a contract with the state provided that the contracting process is conducted in accordance with constitutional and statutory requirements. 2003 Op. Att'y Gen. No. [03-01](#).

A legislator who complies with legislative rules is entitled to receive his legislative per diem. His private sector employer is free to determine whether it should also compensate him for that day's work. 2003 Op. Att'y Gen. No. [03-01](#).

Public defenders. — New Mexico Const., art. IV, § 28 would prohibit contract between public defender department and legislator if the legislator was in office in 1968 when the original Indigent Defense Act was passed, regardless of whether public notice and competitive bidding are used. 1979 Op. Att'y Gen. No. [79-23](#).

Public defenders. — The public defender's office may not award state representatives professional service contracts unless solicitation for competitive bids is done, in accordance with the Procurement Code. 1987 Op. Att'y Gen. No. [87-67](#).

Legislator is not prevented from serving as member of peanut commission by this section. 1979 Op. Att'y Gen. No. [79-34](#).

Conflict of interest is not affected if bond proceeds involved. — Any potential conflict of interest is not affected if a contract or project is funded with local bond proceeds rather than state money. 1989 Op. Att'y Gen. No. [89-34](#).

Damages. — A legislator and other directors of a nonprofit organization may be found liable for damages for breach of fiduciary duty if they intentionally enter into a contract which is invalid under [N.M. Const., art. IV, § 28](#). 1990 Op. Att'y Gen. No. [90-17](#).

Propriety of vote or abstention. — A legislator should follow Chapter [10](#), Article [16](#) NMSA 1978 and his legislative body's code of ethics in deciding when it is proper to vote or abstain on a matter in front of the body. 2003 Op. Att'y Gen. No. [03-01](#).

10-16-10. Repealed.

ANNOTATIONS

Repeals. — [Laws 1993, ch. 46, § 58](#) repealed [10-16-10](#) NMSA 1978, as enacted by Laws 1967, ch. 306, § 10, relating to disclosures, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

10-16-11. Codes of conduct.

A. Each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to the officer's control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the state ethics commission and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director, biennially.

History: 1953 Comp., § 5-12-11, enacted by Laws 1967, ch. 306, § 11; 1969, ch. 93, § 1; [1993, ch. 46, § 34](#); [2003, ch. 33, § 1](#); 2019, ch. 86, 23.

ANNOTATIONS

The 2019 amendment, effective January 1, 2020, required codes of conduct to be filed with the state ethics commission, and required that the ethics continuing education and training that each legislator must attend biennially be developed by the state ethics commission or a national state legislative organization and approved by the director of the legislative council service; in Subsection A, deleted "By January 1, 1994"; in Subsection C, after "All codes shall be filed with the", deleted "secretary of", and after "state", added "ethics commission"; and in Subsection E, after "education and training", added "developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director".

The 2003 amendment, effective June 20, 2003, in Subsection E, substituted "two hours" for "one hour" following "attend a minimum of" near the middle and substituted "biennially" for "annually" at the end.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

School districts not affected. — School districts do not come within this provision of the Conflict of Interest Act [now Governmental Conduct Act]. 1969 Op. Att'y Gen. No. [69-19](#).

10-16-11.1. State agency or local government agency authority.

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

History: [Laws 2011, ch. 138, § 13](#).

ANNOTATIONS

Effective dates. — [Laws 2011, ch. 138, § 15](#) made [Laws 2011, ch. 138, § 1](#) effective July 1, 2011.

10-16-12. Repealed.

ANNOTATIONS

Repeals. — [Laws 1993, ch. 46, § 58](#) repealed [10-16-12](#) NMSA 1978, as enacted by Laws 1967, ch. 306, § 12, relating to disclosure for person on retainer or contract, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

10-16-13. Prohibited bidding.

No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A

person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.

History: 1953 Comp., § 5-12-13, enacted by Laws 1967, ch. 306, § 13; [2007, ch. 362, § 7](#); [2011, ch. 138, § 10](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, prohibited local government agencies from accepting bids from persons who participated in the preparation of the specifications, qualifications or evaluation criteria of the bid.

The 2007 amendment, effective July 1, 2007, prohibited political subdivisions from accepting bids or proposals from a person who participated in the preparation of qualifications or evaluation criteria and requires persons who accepts bids or proposals for a state agency or political subdivision to use due diligence to ensure compliance with this section.

School district not state agency. — "State agency" as used in the Conflict of Interest Act [now Governmental Conduct Act] does not apply to school districts. 1969 Op. Att'y Gen. No. [69-19](#).

Section not violated. — If the state purchasing agent secures free technical assistance from a supplier in order to aid in preparing specifications, this act is not violated. 1967 Op. Att'y Gen. No. [67-118](#).

Scope of "person". — "Person" as used in this section includes any person, corporation, partnership or other legal entity. 1967 Op. Att'y Gen. No. [67-118](#).

10-16-13.1. Education and voluntary compliance.

A. The state ethics commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The state ethics commission shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: 1978 Comp., § 10-16-13.1, enacted by [Laws 1993, ch. 46, § 35](#); [2019, ch. 86, § 24](#).

ANNOTATIONS

The 2019 amendment, effective January 1, 2020, removed from the secretary of state, and provided the state ethics commission with, the duty of advising and seeking to educate all persons required to perform duties under the Governmental Conduct Act and the duty of seeking to ensure voluntary compliance with the provisions of the Governmental Conduct Act; and in Subsections A and B, after "The", deleted "secretary of", and after "state", added "ethics commission".

10-16-13.2. Certain business sales to the employees of state agencies and local government agencies prohibited.

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

History: [Laws 2007, ch. 362, § 8](#); [2011, ch. 138, § 11](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, eliminated the provision that prohibits public officers and employees from purchasing good and services from their family or business in which they have a substantial interest and eliminated the exceptions to the prohibition.

10-16-13.3. Prohibited contributions; financial service contractors.

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the

investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

History: [Laws 2007, ch. 362, § 11](#); [2011, ch. 138, § 12](#).

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, prohibited contribution by business to public officers and employees of local government agencies and the acceptance of contributions by such officers and employees.

Bond attorneys. — Subsection A of Section [10-16-3.3](#) NMSA 1978, which limits contributions to state officers and employees by businesses that provide financial services, does not apply to attorneys who provide legal services to the state in connection with its bond offerings. 2007 Op. Att'y Gen. No. [07-04](#).

10-16-14. Enforcement procedures.

A. The state ethics commission may investigate suspected violations of the Governmental Conduct Act and forward its findings and evidence to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the state ethics commission, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the state ethics commission determines that there is sufficient cause to file a complaint to remove from office a public officer removable only by impeachment, the commission shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally

declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the state ethics commission shall make public the nature of the charges but shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules. Complaints against employees subject to the State Ethics Commission Act may also be filed with the state ethics commission, which shall determine whether to forward a complaint to the appropriate state agency or investigate the complaint on its own.

E. Subject to the provisions of this section, the provisions of the Governmental Conduct Act may be enforced by the state ethics commission. Except as regards legislators, state employees or statewide elected officials, a district attorney in the county where a person who allegedly violated the provisions resides or where an alleged violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

History: 1953 Comp., § 5-12-14, enacted by Laws 1967, ch. 306, § 14; [1993, ch. 46, § 36](#); [2019, ch. 86, § 25](#).

ANNOTATIONS

The 2019 amendment, effective January 1, 2020, provided the state ethics commission with the authority to investigate suspected violations of the Governmental Conduct Act and forward its findings to the appropriate agency for enforcement, provided the state ethics commission with the duty to refer certain complaints to the house of representatives of the legislature, provided that complaints against employees subject to the State Ethics Commission Act may also be filed with the state ethics commission, and provided that the provisions of the Governmental Conduct Act may be enforced by the state ethics commission; in Subsection A, after "The", deleted "secretary of", after "state", added "ethics commission", after "may", deleted "refer" and added "investigate", after "Governmental Conduct Act", added "and forward its findings and evidence", after "involves the office of the", deleted "secretary of", and after "state", added "ethics commission"; in Subsection C, after "If the", deleted "attorney general" and added "state ethics commission", after "file a complaint", deleted "against" and added "to remove from office", after "hearings on the complaint", deleted "attorney general" and added "state ethics commission"; in Subsection D, added the last sentence; and in Subsection E, after "may be enforced by the", deleted "attorney general" and added "state ethics commission", after "regards legislators", added "state employees", and after "county

where a person", added "who allegedly violated the provisions", and after "resides or where", deleted "a" and added "an alleged".

The 1993 amendment, effective July 1, 1993, added Subsections A and B and redesignated former Subsections A and B as Subsections C and D; substituted "a public officer" for "a legislator or an employee" in the first sentence of Subsection C; rewrote the first sentence of Subsection D, which read "Violation of the provisions of the Conflict of Interest Act by any employee, other than those covered by Subsection A of this section, is grounds for dismissal, demotion or suspension"; added the second and third sentences in Subsection D; added Subsection E; and made minor stylistic changes in Subsection C.

10-16-15. Repealed.

ANNOTATIONS

Repeals. — [Laws 1993, ch. 46, § 58](#) repealed [10-16-15](#) NMSA 1978, as enacted by Laws 1967, ch. 306, § 15, relating to standing in court, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

10-16-16. Recompiled.

ANNOTATIONS

Recompilations. — [Laws 1997, ch. 112, § 10](#) recompiled [10-16-16](#) NMSA 1978, relating to medicaid and department of human services employees, as [27-2-12.7](#) NMSA 1978, effective June 20, 1997.

10-16-17. Criminal penalties.

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

History: [Laws 1993, ch. 46, § 37](#).

ANNOTATIONS

Legislative intent for willful and knowing violations. — The plain meaning of § [10-16-3](#) NMSA 1978 and § [10-16-17](#) NMSA 1978 indicates a legislative intent to provide for a misdemeanor penalty for a knowing and willful violation of the provisions of §§ 10-16-3(A) through § [10-16-3](#)(C) NMSA 1978. *State v. Gutierrez*, [2020-NMCA-045](#), cert. granted.

In four separate cases, consolidated for appeal, where each case arose from an allegation of misconduct by a government official, and where the district court in each case dismissed the charges against the defendants, finding that violations of §§ 10-16-3(A) through § [10-16-3](#)(C) NMSA 1978 were not crimes but ethical considerations and

therefore the indictments failed to allege the commission of a criminal offense, or that even if Subsections A through C provided for criminal offenses, they were nevertheless void for vagueness, the district courts' dismissals of the counts charging defendants under Subsection A were improper because the plain meaning of § [10-16-3](#) NMSA 1978 and § [10-16-17](#) NMSA 1978 indicates a legislative intent to provide for a misdemeanor penalty for a knowing and willful violation of Subsection A, but the dismissals of the counts charging defendants under Subsections B through C were proper because those subsections fail to provide persons of ordinary intelligence a fair opportunity to determine whether their conduct is prohibited. *State v. Gutierrez*, [2020-NMCA-045](#), cert. granted.

10-16-18. Enforcement; civil penalties.

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

History: [Laws 1995, ch. 153, § 23](#); [2019, ch. 86, § 26](#).

ANNOTATIONS

The 2019 amendment, effective January 1, 2020, authorized the state ethics commission to refer violations of the Governmental Conduct Act to the attorney general or a district attorney for enforcement; and provided the state ethics commission with the authority to institute a civil action in district court regarding violations of the Governmental Conduct Act; in Subsection A, after "If the", deleted "secretary of", after "state", added "ethics commission", after "Governmental Conduct Act, the", deleted "secretary of", and after "state", deleted "shall" and added "ethics commission may"; and in Subsection B, after "The", added "state ethics commission may institute a civil action in district court or refer a matter to the".