

Opinion No. 87-71

December 31, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Sarah Alley, Assistant Attorney General

TO: Charles Hunter, Chairman, State Transportation Authority, P.O. Box 1028, Santa Fe, NM 87504-1028

QUESTIONS

May the Code of Conduct of the State Transportation Authority (the "Authority") make an exception to the Conflict of Interest Act, which would allow members of the Authority to vote on official matters when such members have a financial interest in a business to which the official matter pertains?

CONCLUSIONS

No.

ANALYSIS

Section 10-16-11 of the Conflict of Interest Act, Sections 10-16-1 through 10-16-15 NMSA 1978 ("Act"), provides:

[T]he head of every executive agency shall draft a code of conduct for all employees of the agency which should prescribe standards **in addition** to those set forth in the conflict of interest act [10-16-1 to 10-16-15 NMSA 1978] which are peculiar or appropriate to the function and purpose for which the agency or institution was created or exists.

(emphasis added). A statute is to be read and given effect as written, and the words used in a statute are to be given their ordinary and usual meaning unless a different intent is indicated clearly. *State ex rel. Maloney v. Sierra*, 82 N.M. 125, 134, 477 P.2d 301, 310 (1970). Moreover, if language in a statute is unambiguous, legislative intent must be ascertained primarily from the face of the statute, and the legislature must be understood as meaning what it expressly declared. *Southern Union Gas Co. v. New Mexico Pub. Serv. Comm'n*, 82 N.M. 405, 407, 482 P.2d 913, 915 (1971). Section 10-16-11's language is clear: the legislature intended a code of conduct to supplement the strictures of the Act, rather than except from them.

The State Transportation Authority Board members are subject to the Act. Section 10-16-2D broadly defines an "employee" as "any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of

salary or is eligible for per diem or mileage." Our state's courts long have held that "an administrative body has such authority and only such authority as given by law." *Vermejo Club v. French*, 43 N.M. 45, 49, 85 P.2d 90, 93 (1938). It also is well established that the legislature may not delegate authority to a board or commission to adopt rules or regulations that abridge, enlarge, extend, or modify a statute creating a right or imposing a duty. *State ex rel. McColloch v. Ashby*, 73 N.M. 267, 271, 387 P.2d 588, 590 (1963).

Section 10-16-4 provides:

A. An employee shall disqualify himself from participating in any official act directly affecting a business in which he has a financial interest.

B. If the public interest so requires, the governor may make an exception from this section for an employee, by expressing the exception and reasons for it in writing. The exception shall be effective when the employee files this writing with the Secretary of State.

As framed by the question presented, the Authority's proposed Code of Conduct would violate Sections 10-16-4 and 10-16-11. Instead of supplementing the Conflict of Interest Act as section 10-16-11 requires, it would circumvent the Act by providing a blanket exemption to section 10-16-4.

Section 10-16-4(B) requires the governor to specify the public interest that requires an Authority member's participation in an official act when the member has a direct financial interest that the official act affects. To justify the exception, the governor must be apprised of the specific circumstances of the official matter and the Authority member's interest. The governor could not justify an exception without considering each conflict's particular circumstances. Section 10-16-4(B) therefore authorizes the governor to grant exceptions from Section 10-16-4(A) only on a case-by-case basis.

In conclusion, the legislature intended that an 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.

ATTORNEY GENERAL

HAL STRATTON Attorney General