

**August 1, 2007 The 2007 Gift Act as Applied to Legislator's Attendance at
Regional Conference of Women in Government**

The Honorable Mary Jane García
New Mexico State Senate
PO Box 22
Doña Ana, NM 88032

Re: Opinion Request — The 2007 Gift Act as Applied to Legislator's Attendance at Regional Conference of Women in Government

Dear Senator García:

You have requested our advice regarding the application of the New Mexico Gift Act, 2007 N.M. Laws, Ch. 226 (the "Act"), to your attendance at an out-of-state regional conference on July 9 through July 11, 2007. We understand that you serve as the Western Region Director of Women in Government, a national, non-profit bi-partisan organization of women state legislators.¹ We further understand that as regional director, you are required to attend Women in Government's 10th Annual Regional Conference July 9th through July 11th in Anchorage, Alaska. We are assuming for purposes of this analysis that the organization will be paying for all or part of the travel, food and lodging expenses associated with your attendance at the conference. Based on our examination of the relevant constitutional, statutory and case law authorities, and the information available to us at this time, we conclude that Women in Government's payment of your reasonable expenses to attend the regional conference and your acceptance of said payment does not constitute a violation the Act.

As a preliminary matter, there are several rules of statutory construction that guide our analysis. First, in construing a statute, our goal is to give primary effect to legislative intent, which intent is evidenced primarily through the statute's language. See Souter v. Ancae Heating and Air Conditioning, 2002-NMCA-078, 132 N.M. 608, 611. Second, under the plain meaning rule, we give statutory language its ordinary and plain meaning unless the Legislature indicates a different interpretation is necessary. See Cooper v. Chevron, 2002-NMSC-020, 132 N.M. 382, 388.

The Gift Act states, in pertinent part:

A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor...and a restricted donor shall not knowingly donate to a state officer or employee...a gift of a market value greater than two hundred fifty dollars (\$250).

2007 N.M. Laws, Ch. 226, § 3(A). The Act generally defines "restricted donor" as a person who (1) is or is seeking to be a party to a sale, purchase, lease or contract with the donee's agency, (2) will be directly and substantially affected financially by one of the donee's official acts in a way that is greater than the effect on the public generally,

(3) has a matter pending before a regulatory agency where the donee has discretionary authority over an aspect of the matter, or (4) is a lobbyist with respect to matters within the donee's jurisdiction.² See id. at § 2(D).

The restrictions of the Act apply to gifts to legislators and other state officers from "restricted donors." According to its website, Women In Government was founded in 1988 as a bi-partisan, non-profit educational association for women elected to state government office. Its primary purpose is to provide a neutral platform for bringing women policymakers together to share information and seek solutions to timely issues before federal, state and local governments, and it provides leadership opportunities, networking, expert forums, and educational resources to address and resolve complex public policy issues. See http://www.womeningovernment.org/home/about_main.asp. Women in Government's programs appear to be educational and to provide helpful training and information to its membership. It does not appear that Women in Government is or seeks to be a party to any sale or any other transaction with the Legislature, will receive any direct and substantial benefit from your official acts as a legislator, is a lobbyist or otherwise constitutes a restricted donor. Therefore, Women in Government may pay and you may accept payment from Women in Government for your reasonable expenses to attend the regional conference.

Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,

SALLY MALAVÉ
Assistant Attorney General

cc: Gary K. King, Attorney General
Albert J. Lama, Chief Deputy Attorney General
Elizabeth Glenn, Civil Division Director

[1] See <http://www.womeningovernment.org>.

[2] The Act also generally defines a "gift" as any donation of money, property or any other thing of value "including food, lodging, transportation and tickets for entertainment or sporting events," but does not include, "the reasonable expenses for a bona fide education program that is directly related to the state officer's or employee's official duties." See 2007 N.M. Laws, Ch. 226, § 2 (B).