



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2021-11**

August 13, 2021<sup>1</sup>

#### **QUESTION PRESENTED<sup>2</sup>**

Does the Campaign Reporting Act, NMSA 1978, Sections 1-19-1 to -37 (1979, as amended through 2021) (“CRA”) prohibit a candidate for an office covered by the CRA from donating campaign funds to a candidate for a municipal, school board, or special district election?

#### **ANSWER**

No.

#### **ANALYSIS**

The CRA defines “candidate” as “an individual who seeks or considers an office in an election covered by the Campaign Reporting Act,” § 1-19-26(G), and

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<sup>1</sup> This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” *See* NMSA 1978, § 10-16G-8(A)(2) (2019). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On June 22, 2021, the Commission received a request for a formal advisory opinion that detailed the issues as presented herein. The request was submitted by a public official who has the authority to submit a request. *See generally* NMSA 1978, § 10-16G-8(A)(1).

defines “election” as “any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes federal, municipal, school board and special district elections[.]” § 1-19-26(K).

The CRA governs a candidate’s solicitation and receipt of contributions. *See, e.g.*, § 1-19-34.1 (prohibiting solicitation of contributions during the legislative session by certain candidates); § 1-19-34.2 (prohibiting candidates for a regulatory office from “knowingly solicit[ing] a contribution from an entity . . . that is directly regulated by the office”); § 1-19-34.7(A) (prohibiting aggregate contributions in excess of \$5,000 per election cycle).

The CRA also restricts what a candidate may do with contributions received:

It is unlawful for a candidate or the candidate’s agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:

- (1) expenditures of the campaign;
- (2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;
- (3) donations to the state general fund;
- (4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;
- (5) expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;
- (6) donations to a political committee or to another candidate seeking election to public office; or
- (7) disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

§ 1-19-29.1(A).

The request for an advisory opinion concerns Paragraph 6, which states that contributions received may be used as “donations to a political committee or to another candidate seeking election to public office.” Does Paragraph 6 of

Subsection 1-19-29.1(A) prohibit a candidate from donating contributions received to a candidate for a municipal, school board, or special district election (i.e., an election excluded from the CRA’s definition of “election”)? *See* § 1-19-26(K). For the reasons below, our answer is “No.”

We start with text because “[t]he text of a statute . . . is the primary, essential source of its meaning.” NMSA 1978, § 12-2A-19 (1997). Further:

Unless a word or phrase is defined in the statute . . . being construed, its meaning is determined by its context, the rules of grammar and common usage. A word or phrase that has acquired a technical or particular meaning in a particular context has that meaning if it is used in that context.

NMSA 1978, § 12-2A-2 (1997).

The CRA contains a special definition of “election”: “any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes federal, municipal, school board and special district elections[.]” *See* § 1-19-26(K). So the word “election” in Paragraph 6 of Subsection 1-19-29.1(A) would be accorded this definition. *See* § 12-2A-2. An appeal to a “common sense reading of the law,” *see* July 23, 2009 N.M. Att’y Gen. Advisory Letter, cannot control when the law provides a specific definition. *See* § 12-2A-2 (stating that the meaning of a word is determined by “common usage” except when “[it] is defined in the statute or rule being construed[.]”).

But that does not mean that “election” in Paragraph 6 of Subsection 1-19-29.1(A) must be accorded the definition set forth in Subsection 1-19-26(K). That is because when a term has a “particular meaning in a particular context[.]” the technical or particular meaning controls. *See* § 12-2A-2. Here, we conclude that Paragraph 6 of Subsection 1-19-29.1(A) is an instance where the word “election” must be given a different meaning than the definition set out in Subsection 1-19-26(K). Our conclusion is based on two considerations.

First, Paragraph 6 states that “donations to a political committee or to another candidate seeking election *to public office*” are permitted. (emphasis added). The phrase “to public office” modifies “election” and therefore supplies a “particular context” that controls over the general definition. *See* § 12-2A-2. A statute must be construed to give effect to its entire text. *See* § 12-2A-18(A)(2); *see also Rodriguez v. Williams*, 2015-NMCA-074, ¶ 15 (“In construing a statute,

we determine the Legislature’s intent by giving effect to its entire text in accordance with its objective and purpose.”) (citing § 12-2A-18). The phrase “public office” is not defined in the CRA, so it must be given the meaning accorded by context, the rules of grammar and common usage. § 12-2A-2. A public office is “[a] position whose occupant has legal authority to exercise a government’s sovereign powers for a fixed period,” *see Public Office*, Black’s Law Dictionary (11th ed. 2019), and municipal, school board, or special district offices meet this definition. Interpreting “election” in Paragraph 6 to refer only to “election” as defined in Subsection 1-19-26(K) would ignore the phrase “to public office,” which we cannot do. *See, e.g.,* § 12-2A-18(A)(2). Accordingly, Paragraph 6 of Subsection 1-19-29.1(A) permits donations of contributions received to candidates for public offices, including municipal, school-board, and special-district offices.<sup>3</sup>

Second, related statutes support interpreting “candidate seeking election to public office” in Paragraph 6 to extend beyond candidates subject to the CRA. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15 (“In interpreting statutes, we should read the entire statute as a whole so that each provision may be considered in relation to every other part.”) (internal quotation marks and citation omitted); *see also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) (explaining that statutes *in pari materia* must be construed in reference to each other). Paragraph 5 of the same subsection states that a candidate may make an expenditure of contributions received “to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the

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<sup>3</sup> We note that the Attorney General’s Office similarly has interpreted Paragraph 6 to allow expenditures of contributions received as donations to a candidate in a local election because Paragraph 6 “does not make a distinction between a federal, state or local candidate and a common sense reading of the law is that a donation to a candidate for any public office – federal, state or local is permissible.” July 23, 2009 N.M. Att’y Gen. Advisory Letter to Paula Tackett; *see also* June 17, 2020 Att’y Gen. Advisory Letter to Sen. Mark Moores (reiterating this position). This “common sense reading” is bolstered by other state statutes expressly permitting contributions in the other direction—namely, from candidates for school board offices to candidates subject to the CRA. *See* NMSA 1978, § 1-22A-10(E) (2013) (permitting “donations [of contributions received] to a political committee or to another candidate seeking election to a public office that is subject to the reporting provisions of the School District Campaign Reporting Act or the Campaign Reporting Act[.]” ) (emphasis added). This reading is also bolstered by municipal ordinances allowing candidates to receive contributions from any source—including candidates for elections covered by the CRA—except city contractors, so long as the amount does not exceed a certain percentage of the salary for the sought-after office. *See* Charter of the City of Albuquerque, art. XIII, § 4(d), (e).

candidate when seeking election to another public office *covered by the Campaign Reporting Act*[.]” See § 1-19-29.1(A)(5). The legislature’s use of the phrase “covered by the Campaign Reporting Act” to modify “public office” in Paragraph 5 of Subsection 1-19-29.1(A), but not in Paragraph 6, supports interpreting the phrase “election to public office” in Paragraph 6 to extend beyond candidates for offices covered by the CRA.

## CONCLUSION

The CRA does not prohibit a covered candidate from donating campaign funds to a candidate for a municipal, school board, or special district election.<sup>4</sup>

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**  
**JEFFREY L. BAKER, Commissioner**  
**STUART M. BLUESTONE, Commissioner**  
**CELIA FOY CASTILLO, Commissioner**  
**HON. GARREY CARRUTHERS, Commissioner**  
**RONALD SOLIMON, Commissioner**  
**JUDY VILLANUEVA, Commissioner**

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<sup>4</sup> These contributions would still be disclosed by the candidate in periodic reports. See § 1-19-31(A) (2019).