



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2022-06

June 10, 2022¹

QUESTIONS PRESENTED²

1. During legislative sessions, are there any limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?
2. Outside of legislative sessions, are there limitations on communications between a legislator and a lobbyist employed by an entity that either contracts with or employs the legislator?
3. Are there limitations on communications between a legislator and the board members or employees of an entity that either contracts with or employs the legislator?

¹ 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) (2019).

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” 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.

ANSWERS AND ANALYSIS

No, to each question.

New Mexico’s ethics statutes, including the Lobbyist Regulation Act (“LRA”), NMSA 1978, §§ 2-11-1 to -10 (1977, as amended through 2021), and the Governmental Conduct Act (“GCA”), NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2019), do not constrain any communications between a legislator and a lobbyist employed by an entity that contracts with or employs the legislator.³ Nor do the ethics statutes constrain communications between a legislator and the board members or employees of an entity that employs or contracts with the legislator.

While the ethics statutes do not limit communications between legislators and lobbyists, board members, or employees of entities that employ or contract with legislators, we nevertheless observe that a legislator’s employment or contract relationship with an entity might give rise to a potential conflict of interest if the legislator is called to take legislative action that would affect the entity. The GCA address conflicts of interest and regulates the conduct of legislators in limited circumstances. Subsection 10-16-3(A), for example, provides that “[a] legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interest.” NMSA 1978, § 10-16-3(A) (2011).

As we have counseled in Advisory Opinion 2021-07 (Apr. 2, 2021), and Advisory Opinion 2021-08 (June 4, 2021), the GCA does not require that legislators recuse from a vote on legislation that implicates a conflict of interest, such as a bill that would affect the financial health of an entity that employs or contracts with a legislator. A legislator’s *voluntary* recusal on matters affecting a legislator’s interest, however, would likely defeat a Subsection 10-16-3(A) claim that a legislator used the powers of their office to obtain personal gain. Separate from the issue of recusal, Section 10-16-3 indicates that a legislator should disclose

³While the LRA does not limit communications between lobbyists and members of the legislature, it provides a framework requiring registration of lobbyists and disclosure of expenditures from lobbyists to legislators. *See, e.g.*, NMSA 1978, § 2-11-6 (2019) (requiring lobbyists or lobbyist employers to report expenditures made in connection with lobbying).

any conflict of interest. *See* NMSA 1978, § 10-16-3(C) (2011); *accord* House Rule 26-1(A).⁴

CONCLUSION

No ethics statute requires any limitations on communications between a legislator and the lobbyists, board members, or employees of an entity that employs or contracts with the legislator. Under the LRA, lobbyists must make required disclosures. And, under the GCA, legislators must disclose any conflict of interest and use the powers of their legislative office only to advance the public interest.

SO ISSUED.

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

⁴We reaffirm what we counseled in Advisory Opinion 2021-08. Ideally, the disclosure contemplated by Subsection 10-16-3(C) should occur before the legislator votes on the legislation. Subsection 10-16-3(C) of the GCA does not specify how legislators, public officials and employees should disclose conflicts of interests. Accordingly, the Commission encourages each legislative chamber to adopt additional rules regarding the timing and content of disclosures of conflicts of interest. The Commission also encourages each chamber to adopt rules relating to the filing of statements of interests with the respective clerk of each legislative chamber.

With respect to disclosures, we further observe that the annual financial disclosure statement, required by the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended through 2021), provides a vehicle for legislators to disclose interests that might give rise to potential conflicts of interests. A legislator must annually disclose their employer; sources of gross income of more than \$5,000.00, identified by general category descriptions; and New Mexico business interests not otherwise listed of \$10,000.00 or more in a New Mexico business or entity. *See* NMSA 1978, § 10-16A-3(D)(1)–(3) (2021). If a legislator is aware of an additional source of a potential conflict of interest, the legislator may disclose the interest giving rise to the potential conflict in the general information/memo field of their annual financial disclosure statement. *See* 1.10.31.8(O) NMAC (“General information/memo field (Section 14). The filer may provide further details regarding any financial or business interests not otherwise disclosed on the FDS.”).