



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2024-03

May 24, 2024¹

QUESTION PRESENTED²

A legislator is a key organizer in a nonpartisan conference coordinated by a 501(c)(3) non-profit organization. The legislator helps to organize this event for what the legislator believes is an important responsibility of being a legislator – bringing education to colleagues and the public on an important issue to the forefront in a nonpartisan manner. The legislator often emails contacts about the event, including speakers and sponsors, and wants to know whether the legislator is allowed to send those emails using the official legislative email address (nmlegis.gov).

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

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 Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (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 March 28, 2024, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commissioners Baker and Bluestone requested that the advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1) (2019); 1.8.1.9(A)(1) NMAC.

ANSWER

Legislators are permitted to use an official legislative email address to email contacts about an event, including speakers and sponsors, in order to address general administration and logistics of the event. But the use of a legislative email address to contact sponsors for the purpose of soliciting donations to a charity is likely prohibited by the Gift Act.³

ANALYSIS

The request indicates that the legislator helps organize the event and often emails contacts, including speakers and sponsors. These categories of emails potentially have different implications under the law. The request states that the legislator's work with the event is an important responsibility of being a legislator, that is, educating other legislators and the public on an important issue in a nonpartisan manner. Given the connection between the conference and the requester's role as a legislator, using a legislative email address for organization of the event would be reasonably related to the legislative office, and therefore the use of a legislative email address to coordinate logistics and administration of the event is likely permitted. This would include emails from a legislator using a legislative email address to contact sponsors concerning the logistics or administration in organizing the event. Where, however, emails to sponsors are used to solicit donations, the Gift Act likely prohibits a legislator from using a legislative email address to do so.

The Gift Act addresses restrictions on a legislator's solicitation of donations for a charity. In relevant part, Section 10-16B-3(C) provides:

A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner *that it appears* that the purpose of the donor

³ NMSA 1978, §§ 10-16B-1 to -5 (2007, as amended through 2019).

in making the gift is to influence the state officer or employee *in the performance of an official duty*.⁴

The use of a legislative email address to contact sponsors for the purpose of soliciting donations raises the appearance of impropriety that is prohibited by Section 10-16B-3(C). That is because the recipient of the email may reasonably conclude that the legislator is making that request in connection with legislative duties, or in a way that might affect the legislator's performance of legislative duties. Given the restriction in the Gift Act, a legislator is likely prohibited from using a legislative email address to solicit donations for a charity. The Interim Legislative Ethics Committee has previously determined "The legislative email system (as denoted by the 'nmlegis.gov' domain) is a state resource made available to members of the legislature for official business."⁵ That committee determined that "As such, and similar to [the] committee's opinion in 1996 concerning the use of legislative stationery, its use 'should be limited to matters that relate to the conduct of legislative business.'"⁶

It does not matter whether a legislator *intends* the use of a legislative email address to suggest a connection between the legislator's official duties and the legislator's work organizing a conference. Under the Gift Act, it is an *appearance* of a connection between the legislative office and charitable fundraising activities that matters.⁷ Nor could the problem be cured, for example, with the use of a

⁴ NMSA 1978, § 10-16B-3(C) (2007) (emphasis added). The Gift Act includes a legislator in its definition of "state officer" which means "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." NMSA 1978, § 10-16B-2(E) (2007).

⁵ Interim Legislative Ethics Comm. Adv. Op. 08-02 (Jan. 9, 2009) (available at https://nmlegis.gov/Sessions/InterimCommittees/LEC/Advisory_Opinions_And_Letters/ILEC-08-02,%20Inclusion%20of%20personal%20web%20address%20in%20legislative%20email.pdf).

⁶ *Id.* (quoting Interim Legislative Ethics Comm. Adv. Op. No. 96-1).

⁷ This section of law extends beyond the prohibition contained in Section 10-16-3(D) of the Governmental Conduct Act which prohibits a legislator from *actually* "request[ing] or receiv[ing] . . . any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act." NMSA 1978, § 10-16-3(D) (2011). Section 10-16B-3(C) of the Gift Act goes further in the specific situation of soliciting donations for charity to prohibit even the *appearance* of influencing a state officer in the performance of an

disclaimer; further mention of legislative status, even if only to disclaim any connection between legislative office and private fundraising activities, only serves to emphasize the appearance of a connection between the legislative office and charitable fundraising activities that is prohibited by the Gift Act.

Reviewing the Gift Act in conjunction with the restrictions on the use of legislative email addresses contained in Subsection 10-16-9(C) of the Governmental Conduct Act⁸ supports this conclusion.⁹ While the prohibitions contained in Subsections 10-16-9(B) and (C)¹⁰ do not apply directly to the situation because there is no indication the event or the organization are “a state agency,” Subsection 9(C) is instructive here as it relates to the use of legislative email. That Subsection provides that a legislator who is an attorney or other professional may appear for, represent, or assist an individual for pay in a matter before a state agency so long as the legislator does not “use legislative stationery, legislative

official duty. There are no facts contained in the request suggesting Section 10-16-3(D) is implicated here.

⁸ NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023).

⁹ *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).

¹⁰ NMSA 1978, § 10-16-9(B), (C) (2023). These Subsections provide:

B. Except as provided in Subsection C of this section, a legislator shall not appear for, represent or assist another person in a matter before a state agency, unless that appearance, representation or assistance is provided without compensation.

C. A legislator may appear for, represent or assist another person in a matter before a state agency when the legislator is an attorney or other professional who is making that appearance or providing that representation or assistance while engaged in the conduct of that legislator's profession. That legislator shall not:

(1) make references to the legislator's legislative capacity except as to matters of scheduling; or

(2) use legislative stationery, legislative email or any other indicia of the legislator's legislative capacity.

email or any other indicia of the legislator’s legislative capacity.”¹¹ Neither Subsection 9(C) of the Governmental Conduct Act nor 3(C) of the Gift Act outright prohibit legislators from serving private interests, whether in the form of representing clients in a professional capacity or soliciting charitable contributions. Both statutes, however, prohibit the appearance of impropriety created by the use of legislative stationery or email in connection with these efforts. As applied here, the Gift Act permits legislators to solicit donations for charity, but prohibits a legislator from doing so in a manner that suggests the request is made in an official capacity or is related to the performance of an official duty, which may be implied by the use of a legislative email address.

This analysis tracks the House Committee on Ethics for the U.S. House of Representative’s Ethics Manual on the solicitation of funds or other items of value by members of the U.S. House, which explains that legislative members are permitted to solicit on behalf of organizations qualified under § 170(c) of the Internal Revenue Code (which includes § 501(C)(3) charitable organizations), but that the legislative member may not use official resources in the solicitation and “No official endorsement by the House of Representatives may be implied. Thus, no letterhead or envelope used in a solicitation may bear the words ‘Congress of the United States, ‘House of Representatives,’ or ‘Official Business,’ nor may the letterhead or envelope bear the Seal of the United States, the Congress, or the House.”¹²

CONCLUSION

Given the foregoing, a legislator is likely permitted to use his or her legislative email address to email contacts about a fundraising event, so long as the legislator does not use the email to solicit donations.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner

¹¹ NMSA 1978, § 10-16-9 (C) (2023).

¹² House Committee on Ethics, House Ethics Manual at 355–56 (Dec. 2022) (available at <https://ethics.house.gov/sites/ethics.house.gov/files/documents/Dec%202022%20House%20Ethics%20Manual%20website%20version.pdf>).

HON. CELIA CASTILLO, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner
RONALD SOLIMON, Commissioner
DR. JUDY VILLANUEVA, Commissioner