



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2026-01**

February 13, 2026<sup>1</sup>

### **The Governmental Conduct Act does not regulate legislators' votes**

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

Given the provisions contained in Section 10-16-3(A) of the Governmental Conduct Act, would it constitute a violation of the Governmental Conduct Act for practicing attorneys serving as legislators (who have personally benefited from and stand to further benefit from lawsuits alleging medical malpractice) to vote on measures related to caps on judgments and/or settlements stemming from such lawsuits?

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<sup>1</sup> 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) (2019).

<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[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). On January 19, 2026, the Commission received a request for an advisory opinion that detailed the issues as presented herein. "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. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

## ANSWER

No. While a legislator's conflicted vote might constitute a violation of a rule of procedure of the legislator's respective house, it does not make out a violation of the Governmental Conduct Act.<sup>3</sup>

## ANALYSIS

We are asked to opine whether a legislator would violate the Governmental Conduct Act by voting on legislation that, if enacted or defeated, might affect the legislator's personal interests. At the outset, we observe that the Commission's relationship to this question is purely advisory. A Commission advisory opinion is binding on the Commission in subsequent Commission administrative proceedings concerning persons who act in good faith and in reasonable reliance on the advisory opinion.<sup>4</sup> However, there can be no subsequent Commission proceeding involving an administrative complaint against a legislator alleging violations of the Governmental Conduct Act for voting on legislation in which they have a direct personal or pecuniary interest. The Speech or Debate Clause of Article IV, Section 13 of the New Mexico Constitution provides that Members "shall not be questioned *in any other place* [apart from their respective houses] for any speech or debate or for any vote cast in either house."<sup>5</sup> As we have concluded in prior opinions, "any other place" includes adjudications by the State Ethics Commission, and, therefore, administrative complaints against legislators alleging violations based on conflicted votes are subject to dismissal for lack of jurisdiction.<sup>6</sup>

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<sup>3</sup> NMSA 1978, §§ 10-16-1 to -18 (1967, as amended 2023).

<sup>4</sup> § 10-16G-8(C).

<sup>5</sup> N.M. Const. art. IV, § 13 (emphasis added).

<sup>6</sup> In 2021, the State Ethics Commission issued an advisory opinion concluding that Article IV, Section 13 limits the Commission's jurisdiction to review an administrative complaint alleging a statutory violation based on any legislative act by a legislator, such as a legislator introducing a bill that would result in personal benefits to the legislator, making comments related to the bill in a legislative committee or on the floor, or voting on the bill. *See* State Ethics Comm'n Adv. Op. No. 2021-12 (Dec. 3, 2021), <https://nmonesource.com/nmos/secap/en/item/18250/index.do>. Not everything a legislator might do through their office, however, is a legislative act. *See id.* at 4 & n.5 (collecting cases). For example, the Speech or Debate Clause does not bar jurisdiction for complaints alleging violations of NMSA 1978, Section 10-16-3(D) (2011), which prohibits legislators from requesting or receiving anything of value or promise thereof in exchange for a vote. *See* State Ethics Comm'n Adv. Op. No. 2021-12, at 4 & n.5. In that circumstance, the

In previous advisory opinions, we have opined that the Governmental Conduct Act does not require a legislator to refrain from voting on legislation that implicates a conflict of interest.<sup>7</sup> We maintain that view today, for at least three reasons.

First, Section 10-16-4(B) of the Governmental Conduct Act is the provision that disqualifies public officers from engaging in official acts, including casting votes, due to a conflict of interest.<sup>8</sup> The statute provides that “a public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer’s or employee’s financial interests . . . [that is not] proportionately less than the benefit to the general public.”<sup>9</sup> Section 10-16-4(B)’s disqualification requirement, however, does not apply to legislators because legislators are expressly excluded from the definition of a “public officer or employee.”<sup>10</sup> Accordingly, the Governmental Conduct Act provision that expressly requires recusal (including from voting) on a conflicted matter does not apply to legislators.

Second, reading Section 10-16-3(A) alongside Section 10-16-4(B), we doubt that the former imposes an obligation on legislators to refrain from voting on pending legislation. Both Section 10-16-3(A) and Section 10-16-4(B) create prohibitions against a self-dealing use of government power to benefit a personal interest. Section 10-16-3(A) frames that prohibition at a higher level of generality

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prohibited conduct is not the vote, but the solicitation or the *quid pro quo* transaction, which obviously is not itself a legislative act. In this formal advisory opinion, we address only the question of a vote where a legislator might have a personal or pecuniary interest in the legislation. Nothing in the request asks that we consider the circumstance of a *quid pro quo* solicitation or exchange.

<sup>7</sup> See, e.g., State Ethics Comm’n Adv. Op. No. 2021-07, at 2 (Apr. 2, 2021), available at <https://nmonesource.com/nmos/secap/en/item/18160/index.do> (“The Governmental Conduct Act does not require a legislator to recuse from a vote on legislation that implicates a conflict of interest.”).

<sup>8</sup> NMSA 1978, § 10-16-4(B) (2011).

<sup>9</sup> *Id.*

<sup>10</sup> NMSA 1978, § 10-16-2(I) (2011) (defining “public officer or employee” to mean “any elected or appointed official or employee of a state agency or local government agency . . . but excludes legislators”).

and applies to a broader set of government actors: legislators, public officers, and public employees may not use public powers and resources to obtain personal benefits. Section 10-16-4(B), by contrast, articulates a more specific prohibition, applying to public officers and employees only and requiring disqualification from engaging in any official act that would directly and disproportionately affect a financial interest. Ordinarily, where one statute deals with a subject in general terms, and another deals with part of the same subject in a more detailed way, only the latter applies and is enforceable.<sup>11</sup> Accordingly, considering the more specific articulation of a recusal duty in Section 10-16-4(B), we doubt that Section 10-16-3(A) operates also to impose a recusal requirement for not only public officers and employees but also legislators.

Third, and most fundamentally, Article IV, Sections 11 and 13 of the New Mexico Constitution suggest that any prohibition on any vote by a legislator and the enforcement of such a prohibition are subject matters regulated exclusively by each legislative chamber for their own members.<sup>12</sup> Section 11 provides that “[e]ach house may determine the rules of its procedure, [and] punish its members or others for contempt or disorderly behavior in its presence[.]”<sup>13</sup> Further, as we have observed above and before, the Speech or Debate Clause of Article IV, Section 13 provides that the only available forum to address any question, claim, or challenge arising from any vote is the legislator’s respective house.<sup>14</sup> These constitutional provisions commit to each chamber the exclusive power to enact and to enforce regulations for its respective members regarding their votes.<sup>15</sup>

Each chamber has enacted rules for voting. For example, while there is a general rule that every legislator must vote on a proposal before them, both the New Mexico House of Representatives and the New Mexico Senate have adopted

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<sup>11</sup> See *State v. Cleve*, 1999-NMSC-017, ¶ 17, 127 N.M. 240 (citing 2B Norman J. Singer, *Sutherland Statutory Construction* § 51.05 (5th ed.1992), and *Wilburn v. Territory*, 10 N.M. 402, 408, 62 P. 968, 971 (1900), *overruled sub silencio on other grounds*, *Tais v. Territory*, 14 N.M. 399, 402–03, 94 P. 947, 948–49 (1908)).

<sup>12</sup> See N.M. Const. art. IV, §§ 11, 13.

<sup>13</sup> N.M. Const. art. IV, § 11.

<sup>14</sup> See N.M. Const. art. IV, § 13; State Ethics Comm’n Adv. Op. No. 2021-12 (Dec. 3, 2021).

<sup>15</sup> See *Mason’s Manual of Legislative Procedure*, § 2, ¶ 3 (Nat’l Conference of State Legislatures, rev. ed. 2020) (“A house of a state legislature has complete authority concerning its procedure, so far as it is not limited by constitutional provisions.”).

rules allowing a member's excusal from the general duty to vote.<sup>16</sup> In the New Mexico House of Representatives, a member cannot simply refrain from voting; rather, the member must request excusal and that request must be approved by a majority of the members present.<sup>17</sup> House Rule 7-5 provides that "[e]very member of the house shall vote on each question or motion coming up before the house when requested to do so by the speaker, unless excused by a majority vote of those members present."<sup>18</sup> The New Mexico Senate, by contrast, allows its members to refrain from voting without requesting excusal if that member has a direct conflict involving a personal or pecuniary interest.<sup>19</sup> Senate Rule 7-5 provides that "[e]very member shall vote on each question stated from the chair, unless the senator has a direct personal or pecuniary interest in the event of such question. If any senator refuses to vote, unless excused by the senate or unless such interest exists, refusal to vote shall be deemed a contempt of the senate."<sup>20</sup>

While members of the New Mexico House of Representatives and the New Mexico Senate *may* refrain from voting on legislation in which they have a direct personal or pecuniary interest, it is less clear if they *must* do so. Neither House Rule 7-5 nor Senate Rule 7-5 expressly states that duty. Those rules rather create an exception to the general duty to vote, allowing a member not to vote on a question stated by a presiding legislative officer.

Other legal material, however, suggests legislators have an affirmative duty not to vote on proposals in which a legislator has a direct personal or pecuniary interest. First, we look to *Mason's Manual of Legislative Procedure*. Section 522, Paragraph 1 of that manual provides:

It is the general rule that no members can vote on a question in which they have a direct personal or pecuniary interest. The right of members to represent their constituencies is of such major importance that members

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<sup>16</sup> See New Mexico House of Representatives Rule 7-5; New Mexico Senate Rule 7-5 (Jan. 21, 2025).

<sup>17</sup> New Mexico House of Representatives Rule 7-5.

<sup>18</sup> *Id.*

<sup>19</sup> See New Mexico Senate Rule 7-5 (Jan. 21, 2025).

<sup>20</sup> *Id.*

should be barred from voting on proposals of direct personal interest only in clear cases and when the proposal is particularly personal. This rule is obviously not self-enforcing and, unless the vote is challenged, members may vote as they choose. A member may vote on a proposal when other members are included with that member in the motion, even though that member has a personal or pecuniary interest in the result, or the member may vote to increase salaries of all of the members.<sup>21</sup>

*Mason's Manual* is not an ordinary treatise. To the contrary, both the New Mexico House of Representatives and the New Mexico Senate have adopted the rules and parliamentary practice as set forth in *Mason's Manual* in all cases not inconsistent with their respective standing rules and orders.<sup>22</sup> It is certainly arguable that House Rule 7-5 nor Senate Rule 7-5, which allows excusals from voting, is not inconsistent with the general rule requiring members to refrain from voting on matters in which they have a direct personal or pecuniary interest. Nor does it seem that a rule that allows excusals occupies the field of regulations concerning votes, thereby precluding any rule imposing an affirmative duty not to cast a self-interested vote. In *Mason's Manual*, for example, the two rules live harmoniously next door to each other.<sup>23</sup>

Next, the Speech or Debate Clause of Article IV, Section 13 of the New Mexico Constitution implies that members may be questioned for votes in their

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<sup>21</sup> *Mason's Manual of Legislative Procedure*, § 522, ¶ 1; see also Paul Mason, *Mason's Manual of Legislative Procedure for Legislative and Other Governmental Bodies*, § 522, ¶¶ 1, 4 (1953) (same).

<sup>22</sup> See New Mexico House of Representatives Rule 24-2; New Mexico Senate Rule 24-2; see also *Mason's Manual of Legislative Procedure*, § 32, ¶ 1 (“When a legislative body in its rules adopts a specified manual for the government of its procedure and no other provision is made on that subject in the rules, the manual specified controls the procedure of the legislative body.”); § 31, ¶ 2 (“A manual manifestly can state only general rules. Any special rules desired by the body should be stated in the rules adopted by the body. These special rules supersede the rules stated in the manual where conflict exists, *leaving the manual to govern only when no special rules have been adopted.*” (emphasis added)).

<sup>23</sup> Compare *Mason's Manual of Legislative Procedure*, § 521 (providing rules regarding excusal), with § 522 (providing rules prohibiting self-interested voting).

respective houses.<sup>24</sup> This constitutional provision, we think, necessarily implies that there are occasions that members' votes may be questioned.<sup>25</sup> One such occasion, according to *Mason's Manual*, is when a member votes on a proposal in which the member has a direct personal or pecuniary interest. Section 522, Paragraph 1 of *Mason's Manual*, quoted in full *supra*, cross references Section 231, Paragraph 6, which provides that “[t]he proper time to raise a point of order questioning the right of a member to vote because of a direct personal or pecuniary interest is after the vote has been recorded and before the result is announced.”<sup>26</sup>

Yet, we are also aware that neither the House Rules nor the Senate Rules, apart from adopting *Mason's Manual*, expressly state a duty not to vote on a matter. Nor do those rule sets expressly provide for a specific procedure by which members might challenge another member's allegedly conflicted vote.<sup>27</sup> Relatedly, we observe that in the federal Congress, while “no member has a right to vote on any proposal in which the member is immediately or particularly interested, . . . the uniform present practice is to permit all members to be the judge of their own personal interest.”<sup>28</sup>

We stop our inquiry there. The interaction of *Mason's Manual* and a legislative rule set is a subject better suited for a parliamentarian, the presiding legislative officer with authority to rule on points of order, and, ultimately, the

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<sup>24</sup> N.M. Const. art. IV, § 13.

<sup>25</sup> See *Mason's Manual of Legislative Procedure*, § 2, ¶ 2 (“Each house of a state legislature is controlled in its procedure by any provision of the constitution that directly, or by necessary implication, governs its procedure.” (citing *Atkins v. Philips*, 8 So. 429 (Fla. 1890); *Wheeler v Kentucky*, 32 S.W. 259 (Ky. 1895); *Witherspoon v. Mississippi ex rel. West*, 103 So. 134 (Miss. 1925)).

<sup>26</sup> *Mason's Manual of Legislative Procedure*, § 522, ¶ 1; *id.* § 231, ¶ 6. For those less accustomed to parliamentary practice, “[a] ‘point of order’ is the parliamentary device that is used to require a legislative body to observe its own rules and to follow established parliamentary practice.” *Id.* § 230, ¶ 1.

<sup>27</sup> Compare *Mason's Manual of Legislative Procedure*, § 560, ¶ 10 (“Notwithstanding a member's right to participate, practices in some of the states require a member to be recused from participating in a question involving the right of that member to a seat.”).

<sup>28</sup> *Id.* § 522, ¶ 2.

body itself.<sup>29</sup> What is clear to us is that, pursuant to the powers conferred by Article IV, Section 11, each legislative body not only has drawn regulations concerning excusals from votes, but also has adopted *Mason's Manual*—arguably thereby including (i) the general rule stated therein prohibiting votes on legislation in which members have direct personal or pecuniary interest, and (ii) the procedure of raising a point of order to challenge such a vote. Because “[t]he constitutional right of each house of a state legislature to control its own procedure cannot be withdrawn or restricted by statute,”<sup>30</sup> we doubt that, by enacting Section 10-16-3(A), the Legislature intended to impose an (additional) prohibition on a member’s right to vote on legislation. This doubt is reinforced by our interpretation of the Governmental Conduct Act as a whole, particularly reading Section 10-16-3(A) alongside Section 10-16-4. Accordingly, if legislators have a duty to refrain from voting on an item in which they have a personal interest, the source of that duty is not Section 10-16-3(A) of the Governmental Conduct Act. Rather, its source is the rules of procedure of the legislator’s respective house—the only body that, under the New Mexico Constitution, may enact such a rule and enforce compliance with it.<sup>31</sup>

Finally, we observe that the facts set forth in the request would not allow an opinion as to whether a legislator has a “direct personal or pecuniary interest” in the legislation the request describes.<sup>32</sup> The request frames the “specific set of

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<sup>29</sup> See Op. Att’y Gen. No. 70-21 (Feb. 16, 1970) (“It must be recognized at the outset that the Senate of the State of New Mexico is the ultimate judge of its own rules” (citing N.M. Const. Art. IV, § 11)); see also Senate Rule 4-3; House Rule 4-3.

<sup>30</sup> *Mason’s Manual of Legislative Procedure*, § 2, ¶ 4 (“The constitutional right of each house of a state legislature to control its own procedure cannot be withdrawn or restricted by statute; however, statutes may control procedure insofar as they do not conflict with the rules of the houses or with the rules contained in the constitution.” (citation omitted)); see also *id.* § 2, ¶ 3 (“A house of a state legislature has complete authority concerning its procedure, so far as it is not limited by constitutional provisions.”); N.M. Const. art. IV, § 11 (“Each house may determine the rules of its procedure . . .”).

<sup>31</sup> As in previous opinions, we reiterate that apart from whether a legislator has an affirmative duty to refrain from voting on a matter of direct personal interest, a legislator may, subject to the rules of the legislator’s respective chamber, *voluntarily* refrain from participating in matters of direct personal interest. Again, subject to the rules of procedure of the legislator’s respective house, this option is available to legislators to demonstrate that they are not using the powers of legislative office for private gain. See, e.g., State Ethics Comm’n Adv. Op. No. 2021-07, at 3.

<sup>32</sup> See New Mexico Senate Rule 24-2; *Mason’s Manual of Legislative Procedure for Legislative and Other Governmental Bodies*, § 522, ¶ 1.

circumstances” it presents to suggest that legislators who are attorneys practicing in the area of medical malpractice might be personally affected by legislation that limits a party’s recovery on a medical malpractice claim.<sup>33</sup> The request does not posit additional facts that would detail *how* the legislation might directly affect the legislator. For example, the request provides no factual assumptions regarding who a legislator might represent in a lawsuit involving a medical malpractice claim, the basis for the legislator’s fee when conducting that representation, the limitations on recovery provided for by the legislation at issue, or otherwise how limitations on a party’s recovery directly affect the legislator’s pecuniary interests.

Such facts, among others, are necessary to determine whether a duty to refrain from voting is required under applicable rules. For the reasons set forth above, however, that duty to refrain would sound only in the rules of each chamber, not in Section 10-16-3(A) of the Governmental Conduct Act.

## **CONCLUSION**

While a legislator’s vote on legislation in which the legislator has a direct personal or pecuniary interest might constitute a violation of a rule of procedure of the legislator’s respective house, it does not make out a violation of the Governmental Conduct Act.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**  
**JEFFREY L. BAKER, Commissioner**  
**STUART M. BLUESTONE, Commissioner**  
**HON. CELIA CASTILLO, Commissioner**  
**HON. DR. TERRY MCMILLAN, Commissioner**  
**DR. JUDY VILLANUEVA, Commissioner**

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<sup>33</sup> § 10-16G-8(A)(2).