



## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 2026-06

April 17, 2026<sup>1</sup>

### **Holding Dual Roles as a State Board Supervisor and Secretary of State Under the Governmental Conduct Act**

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

Under the Governmental Conduct Act and other ethics laws within the Commission's jurisdiction: Is it permissible for an individual to simultaneously hold the positions of a state board supervisor and New

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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).

<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 4, 2026, the Commission received a request for an advisory opinion that detailed the issues as presented herein and Commission staff issued an informal advisory opinion letter in response. *See* 1.8.1.9(B) NMAC. Commissioner Bluestone requested that this 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); 1.8.1.9(A)(1) NMAC. "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." N.M. 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.

Mexico Secretary of State?<sup>3</sup> If so, what safeguards (including recusals, disclosures, or other measures) are necessary to ensure compliance and maintain public trust? If not, what specific statutory or ethical provisions render the offices incompatible?

## ANSWER

The Governmental Conduct Act<sup>4</sup> would not prohibit one individual from holding the dual roles of a state board supervisor and Secretary of State, so long as the individual is able to adhere to the duties of loyalty and care inherent in holding each position as a public trust. Further, as to whether the positions are “incompatible” under New Mexico law, it is unlikely from the facts provided that there is an inconsistency in the functions of the two offices which would result from one person attempting to faithfully and impartially discharge the duties of each position.

## ANALYSIS

### **I. The Governmental Conduct Act would not prohibit the dual roles.**

The Governmental Conduct Act provides guidance on the disclosure and recusal requirements applicable to a public officer or employee where the individual’s official acts enhance or directly affect a financial interest.<sup>5</sup> Section 10-16-4(A) provides that “[i]t is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer’s or

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<sup>3</sup> The request notes that the state board “is a governmental subdivision of the state focused on [...]” The requester explains that the role is a non-compensated role with a four-year statutory term, and that the position involves part-time duties. Additionally, the request notes that the state board’s act does not expressly prohibit dual office holding. If the requester is elected as Secretary of State, the requester would assume that role while serving the remainder of the requester’s state board term.

<sup>4</sup> NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023).

<sup>5</sup> See also State Ethics Comm’n Adv. Op. 2025-02 (June 6, 2025) (concluding that as a general matter the Governmental Conduct Act does not prohibit a public employee from having secondary employment).

employee's financial interest or financial position.”<sup>6</sup> Section 10-16-4(B) separately 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 interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.”<sup>7</sup> A financial interest is defined as “an interest held by an individual or the individual's family that is: (1) an ownership interest in business or property; or (2) any employment or prospective employment for which negotiations have already begun[.]”<sup>8</sup> While employment as Secretary of State would constitute a financial interest, the position as a state board supervisor would not. Because the requester does not have a financial interest in the position as a state board supervisor, Sections 10-16-4(A) and (B) would not require disqualification in the role of Secretary of State. Further, because the state board supervisor position does not include taking official acts that would affect the role of Secretary of State, Section 10-16-4(A) and (B) are unlikely to apply.

The Governmental Conduct Act, however, further provides that “[a] public officer or employee shall treat the . . . public officer's or employee's government position as a public trust.”<sup>9</sup> Additionally, “[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.”<sup>10</sup> The statutory language in Section 10-16-3(C) requiring public officers and employees to avoid “undue influence and abuse of office in public service”<sup>11</sup> is informed by the common law fiduciary duties that

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<sup>6</sup> NMSA 1978, § 10-16-4(A) (2011).

<sup>7</sup> § 10-16-4(B).

<sup>8</sup> NMSA 1978, § 10-16-2(F) (2011).

<sup>9</sup> NMSA 1978, § 10-16-3(A) (2011).

<sup>10</sup> § 10-16-3(C).

<sup>11</sup> *Id.*

public officers owe the public.<sup>12</sup> Indeed, the Legislature has confirmed that a public officer's and employee's government position is "a public trust," reinforcing that, by virtue of their government positions, public officers have fiduciary duties to the public.<sup>13</sup> Accordingly, a public officer or employee engages in the "abuse of office in public service" in violation of Section 10-16-3(C) when that officer or employee uses their government office in a way that breaches a fiduciary duty owed to their public employer (and, derivatively, to public).<sup>14</sup>

Here, if the requester were to be elected Secretary of State and maintain the position as a state board supervisor, the requester would owe both entities a respective duty to fairly and impartially effectuate each position. The requester must be able to perform both positions faithfully and impartially, but this is not to say that Section 10-16-3(C) prohibits the holding of both roles. To the extent the requester encounters a situation where the obligations as a state board supervisor conflict with the obligations of the Secretary of State, the requester should disclose the conflict and decline to take action which would breach the public trust for either position.

Additionally, the Governmental Conduct Act requires that "[a] public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency."<sup>15</sup> The requester would be required to report employment as Secretary of State to the state board. But because "employment" is defined as "rendering of

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<sup>12</sup> See *Sims v. Sims*, 1996-NMSC-078, ¶ 23, 122 N.M. 618 ("[W]hen determining the meaning of a statute, courts will often construe the language in light of the preexisting common law." (citing 2A Norman J. Singer, *Sutherland Statutes & Statutory Construction* § 45.02 (1992))).

<sup>13</sup> See § 10-16-3(A).

<sup>14</sup> See *Abuse*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/abuse> (defining "abuse" to mean "to put [something] to a wrong or improper use").

<sup>15</sup> NMSA 1978, § 10-16-4.2 (2011). While there is conceivably an argument that this provision does not require disclosure of "service to a state agency or local government agency[.]" such an argument runs counter to the common sense reading of the statute.

services for compensation in the form of salary as an employee[.]”<sup>16</sup> the requester would not be required to report to the Office of the Secretary of State the position on the state board. As noted above, however, disclosure is still required under Section 10-16-3(C) if there is an actual or potential conflict of interest.

## **II. Under New Mexico law, a public officer is prohibited from holding another public office that is functionally incompatible with the first office.**

Under New Mexico law, the analysis of whether a public employee may hold two public positions turns on whether the positions are “incompatible.” Incompatibility of positions takes two forms. Two positions may have “physical incompatibility,” that is, whether accepting another public employment interferes with the employee’s performance of the duties of the original employment. They may also have incompatibility of duties, that is, whether there is an inconsistency in the functions of two offices caused by one individual holding both positions.

First, Section 10-6-3 provides that a public employee who accepts “any public office or employment, . . . for which a salary or compensation is authorized” is “deemed to have resigned from and to have permanently abandoned his public office and employment” if the employee “fail[s] for a period of thirty successive days or more to devote his time to the usual and normal extent during ordinary working hours to the performance of the duties of such public office and employment[.]”<sup>17</sup> But the facts posited in the request indicate that the position of state board supervisor “involves part-time duties.” So long as the requester meets the requirements of the position of Secretary of State or otherwise seeks appropriate accommodations to permit leave, it is unlikely these positions would be considered physically incompatible.

It is also unlikely the positions would be considered functionally incompatible. In *Haymaker v. State*,<sup>18</sup> the court reviewed a case where one individual was elected to a local board of education and was also appointed as

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<sup>16</sup> NMSA 1978, § 10-16-2(D) (2011).

<sup>17</sup> NMSA 1978, §§ 10-6-3 (1953); 10-6-5 (1979).

<sup>18</sup> 1917-NMSC-005, 22 N.M. 400.

clerk of the same board. The court relied in part on a New Hampshire case, where “the plaintiff was elected to the school board, and was thereafter chosen as auditor, the court holding that by the acceptance of an incompatible office he had vacated his membership on the board” and quoted “[t]he duties of an auditor are to examine the accounts of the prudential committee, and their vouchers, and report whether they are properly cast and supported, and whether the money has been legally expended. If the same person could hold both offices, he would in fact sit in judgment on his own acts.”<sup>19</sup> The *Haymaker* court determined the positions of local board of education member and clerk were incompatible, noting that the relevant inquiry is whether there “is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.”<sup>20</sup>

In *Amador v. N.M. State Bd. of Educ.*,<sup>21</sup> the court reviewed whether the positions of schoolteacher and a member of the State Board of Education are incompatible. The court explained that “[t]he State Board only has jurisdiction over a school teacher in the instance where the teacher appeals to that Board from an adverse ruling by the local board of education[.]”<sup>22</sup> Therefore, the court concluded that “[t]he fact that a teacher who is also a member of the State Board might appeal from the action of the local board presents no serious problem. The teacher would simply refrain from acting as a member of the Board in his case just as would a member of any other trade or profession who appealed to the board of which he was a member.”<sup>23</sup>

Applying this framework to the request, the prohibition against holding two incompatible offices would likely not prevent the requester from holding the two

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<sup>19</sup> *Id.* ¶ 12 (quoting *Cotton v. Phillips*, 56 N.H. 220).

<sup>20</sup> *Id.* ¶ 9 (quotation marks omitted) (quoting *People v. Green*, 58 N.Y. 295).

<sup>21</sup> 1969-NMSC-076, 80 N.M. 336.

<sup>22</sup> *Id.* ¶ 7.

<sup>23</sup> *Id.*

positions.<sup>24</sup> As noted above, the courts have identified functional incompatibility where one office is subordinate to the other.<sup>25</sup> Here, the position of Secretary of State is not subordinate to the position of a state board supervisor, or vice versa.

The courts have also identified functional incompatibility “where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.”<sup>26</sup> Given that the two positions have essentially no overlap, it is doubtful that “a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties” of both positions. Under the facts provided, the only potential concern would be if the requester were to run in an election while holding the position of Secretary of State. *Haymaker* cautions against a situation where “[i]f the same person could hold both offices, he would in fact sit in judgment on his own acts.”<sup>27</sup> But critically, as noted in *Amador*, the positions are not incompatible where the individual can refrain from acting on matters implicating the secondary position. Therefore, so long as the positions permit the requester to faithfully fulfill the responsibilities as Secretary of State without taking action where the requester’s impartiality might be objectively questioned, for example, by recusing from matters involving the requester’s election to the state board, the requester is not necessarily precluded from holding both positions.

## CONCLUSION

The Governmental Conduct Act would not prohibit an individual from holding the dual roles of a state board supervisor and Secretary of State, so long as the individual is able to adhere to the duties of loyalty and care inherent in holding each position as a public trust. It is also unlikely from the facts provided that there

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<sup>24</sup> See also State Ethics Comm’n Adv. Op. 2025-03 (discussing whether a district legislative aide may simultaneously hold employment with another state agency).

<sup>25</sup> *Haymaker*, 1917-NMSC-005, ¶ 9.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* ¶ 12 (quoting *Cotton v. Phillips*, 56 N.H. 220).

is an inconsistency in the functions that would lead to physical or functional incompatibility.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**

**JEFFREY L. BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. CELIA CASTILLO, Commissioner**

**HON. GARY L. CLINGMAN, Commissioner**

**HON. DR. TERRY MCMILLAN, Commissioner**

**DR. JUDY VILLANUEVA, Commissioner**