

# TOWN OF SILVER CITY

## APPLICATION TO SERVE ON A TOWN COMMISSION

Please check which Town Commission you would like to serve on. Information on each of the Commissions can be found on the Town's website at [www.townofsilvercity.org](http://www.townofsilvercity.org) or you may contact the Town Clerk's office at City Hall or by phone at 575-534-6346. Terms of office are two years. Persons are appointed to these volunteer positions by the Mayor with the Town Council's consent.

Planning and Zoning Commission

Extraterritorial Subdivision Commission

**IMPORTANT:** As a member of the Commission, you will be considered a "public officer" under the State of New Mexico Governmental Conduct Act, Section 10-16-1 Et Seq. You are encouraged to first read that Act, a copy of which is available at the office of the Town Clerk. Willful violations of that Act may result in criminal penalties.

A summary of the most relevant sections of the NM Governmental Conduct Act includes:

1. Disclosure of financial interests in matters which may come before you as a Commissioner.
2. No receiving of "honorariums" for speeches or services from any source in an amount in excess of \$100.
3. No disclosure of confidential information.
4. No actions or recommendations to contract the Town with an entity in which the Commissioner or his family has a substantial interest.
5. Limitations on the Commissioner's ability to represent or contract with the Town within one year after service on the Commission.

By signing this application and taking the Oath of Office, you are indicating acknowledgment and acceptance of the foregoing.

**APPLICATION:** Please complete the following application (2 pages) and return it to the Town Clerk at City Hall, 101 W. Broadway Avenue, Silver City. You may also mail it to the Town Clerk at P.O. Box 1188, Silver City, NM 88062 or email it to [tsctownclerk@qwestoffice.net](mailto:tsctownclerk@qwestoffice.net) or fax it to 575-534-6377.

Your full legal name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_ Cell: \_\_\_\_\_

Mailing address: \_\_\_\_\_ Email: \_\_\_\_\_

How long have you lived at this address? \_\_\_\_\_ In Grant County? \_\_\_\_\_

If less than 2 years, please provide your previous address. \_\_\_\_\_

Occupation and Employer: \_\_\_\_\_ How long? \_\_\_\_\_

Drivers License Number and State of issuance: \_\_\_\_\_

Have you served on any Town or County appointed Boards or Committees in the past 5 years? \_\_\_\_\_

If yes, which ones? \_\_\_\_\_

What Town or County civic organizations do you belong to, if any? \_\_\_\_\_

Describe any other community volunteer service in which you have been involved. \_\_\_\_\_

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Please explain why you are interested in serving on the Commission that you have selected? \_\_\_\_\_

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Briefly describe your experience(s), education, training, etc., which would assist you as a member of the Commission that you have selected. \_\_\_\_\_

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Please include any other information that is relevant to determining your fitness for the office you seek.

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**I CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION IS TRUE AND CORRECT. I UNDERSTAND THAT BY SIGNING THIS APPLICATION AND TAKING THE OATH OF OFFICE THAT I AM INDICATING ACKNOWLEDGMENT AND ACCEPTANCE THAT, IF APPOINTED, I WILL BE A "PUBLIC OFFICER" OF THE TOWN OF SILVER CITY AND MUST COMPLY WITH THE STATE OF NEW MEXICO GOVERNMENTAL CONDUCT ACT, SECTION 10-16-1 ET SEQ.**

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

## NEW MEXICO GOVERNMENTAL CONDUCT ACT OVERVIEW EFFECTIVE JULY 2011

- Expands the definition of “public officer or employee” to include municipal, county & other local government officials and employees, thereby subjecting them, like their state government counterparts, to the requirements of the Governmental Conduct Act.
- Establishes ethical principles of public service for officers and employees of the state and political subdivisions.
- Prohibits public officers and employees from receiving any item of value in exchange for performance or promised performance of an official act.
- Restricts public officers and employees from coercing or prohibiting political activity by fellow or subordinate officers/employees.
- Prohibits and penalizes public officers/employees who take official acts that enhance their own financial interests, with certain exceptions.
- Prohibits public officers/employees from accepting honoraria for speeches or services related to their public duties.
- Requires universal disclosure of all outside employment by public officers/employees.
- Prohibits disclosure of confidential information acquired by public officers/employees obtained by virtue of their public employment for private gain.
- Places significant restrictions on contracts involving former public officers/employees.
- Places significant restrictions on when a former public officer/employee may represent clients before government agencies.
- Prohibits government agencies from accepting bids by certain public officers/employees.
- Requires certain officials to educate persons with duties under the Governmental Conduct Act and to seek voluntary compliance before civil enforcement efforts begin.
- Prohibits public officers, employees, and their relatives from entering into sales transactions with the governmental agencies at which they are employed unless a competitive bidding process is followed.
- Prohibits public officers/employees from profiting from sales to subordinate employees or persons who are regulated by that officer/employee.
- Prohibits a public officer/employee from accepting employment from or providing contractual services to persons over whom the officer/employee has regulatory authority.
- Prohibits financial services contractors from making contributions to public officers/employees responsible for investing public money or issuing bonds and prohibits those public officers/employees from accepting the contributions.
- Prohibits employees from accepting employment with a person or business that contracts with their public employer.
- Spells out procedures for enforcement of the Governmental Conduct Act by the attorney general and district attorneys.
- Provides both civil and criminal penalties for violations of the Act.

## ARTICLE 16

### Governmental Conduct

#### Section

- 10-16-1 Short title.
- 10-16-2 Definitions.
- 10-16-3 Ethical principles of public service; certain official acts prohibited; penalty.
- 10-16-3.1 Prohibited political activities.
- 10-16-4 Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.
- 10-16-4.1 Honoraria prohibited.
- 10-16-4.2 Disclosure of outside employment.
- 10-16-4.3 Prohibited employment.
- 10-16-5 Repealed.
- 10-16-6 Confidential information.
- 10-16-7 Contracts involving public officers or employees.
- 10-16-8 Contracts involving former public officers or employees; representation of clients after government service.
- 10-16-9 Contracts involving legislators; representation before state agencies.
- 10-16-10 Repealed.
- 10-16-11 Codes of conduct.
- 10-16-11.1 State agency or local government agency authority.
- 10-16-12 Repealed.
- 10-16-13 Prohibited bidding.
- 10-16-13.1 Education and voluntary compliance.
- 10-16-13.2 Certain business sales to the employees of state agencies and local government agencies prohibited.
- 10-16-13.3 Prohibited contributions; financial service contractors.
- 10-16-14 Enforcement procedures.
- 10-16-15 Repealed.
- 10-16-16 Recompiled.
- 10-16-17 Criminal penalties.
- 10-16-18 Enforcement; civil penalties.

#### 10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

**History:** 1953 Comp., § 5-12-1, enacted by Laws 1967, ch. 306, § 1; 1993, ch. 46, § 26.

**The 1993 amendment**, effective July 1, 1993, rewrote this section, which read "This act may be cited as the 'Conflict of Interest Act'".

### ANNOTATIONS

**Disclosure of disciplinary proceedings based on alleged violation of act.** — An attorney's revelation to the secretary of state of the outcome of disciplinary proceedings against another attorney

who had been a staff attorney for the New Mexico public utilities commission, which disciplinary proceedings were based on the disclosing attorney's letter to the secretary of state alleging a violation by the other attorney of the Governmental Conduct Act was not actionable as a public disclosure of private facts. *Fernandez-Wells v. Beuvois*, 1999-NMCA-071, 127 N.M. 487, 983 P.2d 1006 (1999).

**Scope of act.** — This article applies only to state agencies and that term would not include a county commission. 1969 Op. Att'y Gen. No. 69-135.

As a state agency, the retiree health care authority is subject to those provisions of this article that apply to state agencies. 1991 Op. Att'y Gen. No. 91-06.

**Effect on school districts.** — It would not have been necessary to enact 22-21-1 NMSA 1978 of the public school code if this article applied to school districts. 1969 Op. Att'y Gen. No. 69-19.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees §§ 321 to 323, 325.

67 C.J.S. Officers and Public Employees §§ 34, 89, 204.

## 10-16-2. Definitions.

As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

- (1) the rendition of services, including professional services;
- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;
- (5) a licensing arrangement;
- (6) a loan or loan guarantee; or
- (7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

F. "financial interest" means 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;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent.

History: 1953 Comp., § 5-12-2, enacted by Laws 1967, ch. 306, § 2; 1979, ch. 350, § 1; 1993, ch. 46, § 27; 2007, ch. 362, § 1; 2011, ch. 138, § 2.

**The 2011 amendment**, effective July 1, 2011, added definitions of "contract" and "local government agency" and included officials and employees of local governmental agencies within the definition of "public officer or employee".

**The 2007 amendment**, effective July 1, 2007, added Subsection D, defining "family"; deleted the definition of "person"; and added Subsection I, defining "state agency".

**The 1993 amendment**, effective July 1, 1993, substituted "Governmental Conduct Act" for "Conflict of Interest Act" in the introductory paragraph and in Subsection H; deleted Subsections C and D, defining "controlling interest" and "employee"; redesignated Subsections E through G as Subsections C through E; inserted "dependent" preceding "minor" in Subsection D; deleted "except the term does not mean an act of the legislature or an act of general applicability" at the end of Subsection E; added Subsections F, G, and I; and made minor stylistic changes throughout the section.

## ANNOTATIONS

**Judges excluded.** — The legislature expressly chose to exclude judges from application of the Governmental Conduct Act. *State v. Maestas*, 2007-NMSC-001, 140 N.M. 836, 149 P.3d 933.

**Scope of section limited.** — This article did not apply to employees of school districts or other similar political subdivisions of the state. 1969 Op. Att'y Gen. No. 69-19.

**Employees of school districts do not hold a "state office."** 1969 Op. Att'y Gen. No. 69-19.

**Members of racing commission are within purview of conflict laws as employees.** 1979 Op.

Att'y Gen. No. 79-15.

**New Mexico municipal self-insurers' fund.** — The New Mexico municipal self insurers' fund, formed under the provisions of 11-1-3 NMSA 1978, authorizing governing bodies to exercise joint powers, and Article 62, Chapter 3 NMSA 1978, governing municipal insurance, is a state agency and is, therefore, subject to audit by the state auditor under 12-6-3 NMSA 1978. 1987 Op. Att'y Gen. No. 87-65.

**10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.**

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The 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 interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full 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.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. 46, § 28; 2007, ch. 362, § 2; 2011, ch. 138, § 3.

**Repeals and reenactments.** — Laws 1993, ch. 46, § 28 repealed former 10-16-3 NMSA 1978, as enacted by Laws 1967, ch. 306, § 3, relating to gifts, and enacted a new section, effective July 1, 1993.

**The 2011 amendment,** effective July 1, 2011, in Subsection A, eliminated the qualification that prohibited personal benefits and private interests must be incompatible with the public interest.

**The 2007 amendment,** effective July 1, 2007, made grammatical changes.

**ANNOTATIONS**

**Judge's conviction invalid.** — The legislature expressly chose to exclude judges from application of the Governmental Conduct Act. Therefore, a judge could not be convicted of violating official acts prohibited under Section 10-16-3(D) NMSA 1978, and violating official acts prohibited by that section could not be used as the predicate felony to support the defendant's conviction of criminal sexual penetration during the commission of a felony. *State v. Maestas*, 2007-NMSC-001, 140 N.M. 836, 149 P.3d 933.

**Bond attorneys.** — The provision of the Government Conduct Act that limits contributions to state officers and employees by businesses that provide financial services does not apply to lawyers who perform bond work for the state. 2007 Op. Att'y Gen. No. 07-04.

**Holding a cabinet office and a university position.** — The concurrent holding of a cabinet office and a position with a university regulated, to any degree, by the cabinet office raises the conflict of interest issues addressed by the Governmental Conduct Act and may require the cabinet officer to relinquish the officer's university position. 2007 Op. Att'y Gen. No. 07-06.

**Free passes for racing commissioners disallowed.** — When the members of the racing commission distribute free passes which the tracks must honor they are requesting a benefit for themselves or for those upon whom they wish to confer a benefit from persons who are directly affected by their official acts, which is the kind of activity this article is intended to prevent. 1979 Op. Att'y Gen. No. 79-15.

**Public employees retirement board members could not accept expense-paid trip.** — Public employees retirement board members could not accept an offer of an expense-paid trip to Columbus, Ohio to be hosted by public employees benefit services corporation. 1989 Op. Att'y Gen. No. 89-21.

#### **10-16-3.1. Prohibited political activities.**

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

History: Laws 2007, ch. 362, § 9; 2011, ch. 138, § 4.

**The 2011 amendment**, effective July 1, 2011, prohibited a public officer or employee from violating another office's or employee's duty not to use property of local governmental agencies.

#### **10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.**

A. It 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 employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is

guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. 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.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

History: 1953 Comp., § 5-12-4, enacted by Laws 1967, ch. 306, § 4; 1993, ch. 46, § 29; 2007, ch. 362, § 3; 2011, ch. 138, § 5.

**The 2011 amendment**, effective July 1, 2011, in Subsection B, permitted public officers and employees to engage in official acts if the financial benefit of their financial interest is proportionally less than the benefit to the general public; and added Subsection C to prohibit public officers and employees from acquiring a financial interest when the interest will affect the officer's or employee's official act.

**The 2007 amendment**, effective July 1, 2007, deleted Subsection C, which permitted the governor to make an exception to the requirement that a public officer or employee be disqualified from engaging in an official act.

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline, which read "Disqualification"; added current Subsection A; redesignated Subsections A and B as Subsections B and C; rewrote Subsection B, which read "An employee shall disqualify himself from participating in any official act directly affecting a business in which he has a financial interest"; and, in Subsection C, substituted "to Subsection B of this section" for "from this section", inserted "public officer or" in two places, and made minor stylistic changes.

## ANNOTATIONS

**Propriety of vote or abstention.** — A legislator should follow Chapter 10, Article 16 NMSA 1978 and his legislative body's code of ethics in deciding when it is proper to vote or abstain on a matter in front of the body. 2003 Op. Att'y Gen. No. 03-01.

**State transportation authority member** should recuse himself when a conflict arises between the authority's official acts and his own financial interests. When the public interest requires the participation of a member who has a conflict of interest with the particular official act, the member should ask the governor for a specific exception. If the public interest so requires, the governor should grant the exception. 1987 Op. Att'y Gen. No. 87-71.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes acts affecting personal financial interest within meaning of 18 USCS § 208(a), penalizing participation by government employees in matters in which they have personal financial interest, 59 A.L.R. Fed. 872.

#### **10-16-4.1. Honoraria prohibited.**

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

**History:** Laws 1993, ch. 46, § 38.

#### **10-16-4.2. Disclosure of outside employment.**

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.

**History:** Laws 2007, ch. 362, § 10; 2011, ch. 138, § 6.

**The 2011 amendment**, effective July 1, 2011, required public officers and employees to report outside employment to their office or employer.

#### **10-16-4.3. Prohibited employment.**

It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

**History:** Laws 2011, ch. 138, § 1.

**Effective dates.** — Laws 2011, ch. 138, § 15 made Laws 2011, ch. 138, § 1 effective July 1, 2011.

#### **10-16-5. Repealed.**

**Repeals.** — Laws 1993, ch. 46, § 58 repealed 10-16-5 NMSA 1978, as enacted by Laws 1967, ch. 306, § 5, relating to acquiring financial interest, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on New Mexico One Source of Law .

#### **10-16-6. Confidential information.**

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency

or local government agency for the legislator's, public officer's or employee's or another's private gain.

History: 1953 Comp., § 5-12-6, enacted by Laws 1967, ch. 306, § 6; 1993, ch. 46, § 30; 2007, ch. 362, § 4; 2011, ch. 138, § 7.

**The 2011 amendment**, effective July 1, 2011, prohibited legislators and public officers and employees from disclosing confidential information acquired from their position with a local government agency.

**The 2007 amendment**, effective July 1, 2007, prohibited the disclosure of confidential information.

**The 1993 amendment**, effective July 1, 1993, inserted "public officer".

#### **10-16-7. Contracts involving public officers or employees.**

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.

History: 1953 Comp., § 5-12-7, enacted by Laws 1967, ch. 306, § 7; 1983, ch. 90, § 1; 1989, ch. 264, § 26; 1993, ch. 46, § 31; 2007, ch. 362, § 5; 2009, ch. 66, § 11; 2011, ch. 138, § 8.

**The 2011 amendment**, effective July 1, 2011, in Subsection A, required public notice of a public officer's or employee's substantial interest in a contract with a state agency and eliminated the exemption for contracts made under the University Research and Economic Development Act and the New Mexico Research Applications Act; added Subsection B to prohibit local government agencies from entering into a contract with a public officer or employee or their family unless the officer or employee has disclosed their substantial interest in the contract and the contract is awarded through competitive bidding; and added Subsection C to exempt contracts of official employment with political subdivisions from the prohibition of

Subsection B.

**The 2009 amendment**, effective April 2, 2009, added "and Economic Development Act" after "University Research Park" and added "or the New Mexico Research Applications Act".

**The 2007 amendment**, effective July 1, 2007, prohibited contracts with the family of a public officer or employee or with a business in which the family of a public officer or employee has a substantial interest unless the interest has been disclosed; provided that public officers and employees and their families are not eligible for sole source or small purchase contracts; and required persons who negotiate contracts for a state agency to use due diligence to ensure compliance with this section.

**The 1993 amendment**, effective July 1, 1993, inserted "Public Officers or" in the section heading and inserted "public officer or" in three places; substituted the language beginning "substantial interest unless" and ending at the beginning of the proviso for "controlling interests involving services or property of a value in excess of one thousand dollars (\$1,000) when the employee has disclosed his controlling interest unless the contract is made after public notice and competitive bidding"; and made a minor stylistic change.

**10-16-8. Contracts involving former public officers or employees; representation of clients after government service.**

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.

History: 1953 Comp., § 5-12-8, enacted by Laws 1967, ch. 306, § 8; 1983, ch. 90, § 2; 1993, ch. 46, § 32; 2011, ch. 138, § 9.

**The 2011 amendment**, effective July 1, 2011, added a new Subsection C to provide limitations on contracting by local government agencies with former public officers and employees; and relettered the succeeding subsections.

**The 1993 amendment**, effective July 1, 1993, rewrote the section heading, which read "Contracts Involving Former Employees"; inserted the subsection designation "A" at the beginning, redesignated Subsections A and B as Paragraphs (1) and (2), and added Subsections B and C; and, in Subsection A, inserted "public officer or" in three places and made minor stylistic changes.

## ANNOTATIONS

**Subsection C not unconstitutional regulation of law practice.** — The application of Subsection C to former executive branch attorneys is not an attempt by the legislature to regulate the practice of law and the provision does not violate separation of powers. *Ortiz v. Taxation & Revenue Dep't*, 1998-NMCA-027, 124 N.M. 677, 954 P.2d 109.

**Construction with Rule 16-111 NMRA.** — Subsection C and Rule 16-111 NMRA, prohibiting an attorney in private practice from representing a client in a matter in which the attorney participated personally and substantially while a public officer or employee, prohibit different types of conduct and are not in conflict. *Ortiz v. Taxation & Revenue Dep't*, 1998-NMCA-027, 124 N.M. 677, 954 P.2d 109.

### 10-16-9. Contracts involving legislators; representation before state agencies.

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code [13-1-28 NMSA 1978], except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

History: 1953 Comp., § 5-12-9, enacted by Laws 1967, ch. 306, § 9; 1989, ch. 143, § 1; 1993, ch. 46, § 33; 2007, ch. 362, § 6.

**The 2007 amendment**, effective July 1, 2007, prohibited contracts with a legislator's family or a business in which the legislator's family has a substantial interest; provided that legislators and their families are not eligible for sole source or small purchase contracts; and required persons who negotiate contracts for a state agency to use due diligence to ensure compliance with this section.

**The 1993 amendment**, effective July 1, 1993, inserted "Representation Before State Agencies" in the section heading; designated the undesignated provisions as Subsection A and added Subsection B; and, in Subsection A, substituted the language beginning "has a substantial interest" for "has controlling interest in excess of one thousand dollars (\$1,000) where the legislator has disclosed his controlling interest unless the contract is made after public notice and competitive sealed bidding or competitive sealed proposal in accordance with the provisions of the Procurement Code."

## ANNOTATIONS

**School districts are "state agencies"** covered by the Conflict of Interest Act. 1989 Op. Att'y Gen. No. 89-34.

**Contracts with nonprofit organizations.** — The Conflict of Interest Act does not disqualify or restrict a nonprofit organization's ability to enter into contracts with state agencies managed by a board of directors having as one of its members a state legislator. 1990 Op. Att'y Gen. No. 90-17.

**Contracts with nonprofit organizations.** — New Mexico Const., art. IV, § 28 precludes a nonprofit organization from entering into a contract with the state or a state agency if the organization, within one year of entering the contract, had as a director a member of the legislature and the contract was authorized during that member's term. 1990 Op. Att'y Gen. No. 90-17.

**Legislator is subject to restrictions when he sells products.** — A legislator can sell products to a state agency on an open account or collect-on-delivery basis only under contracts of less than \$1,000.00. In addition, a legislator would remain subject to N.M. Const., art. IV, § 28, so that he could not make any sales during his term or one year afterwards if the sales were authorized by law during his term. 1989 Op. Att'y Gen. No. 89-34.

**Legislator may bid on state contracts**, if there was public notice of the bid and the bidding was competitive. 1967 Op. Att'y Gen. No. 67-133.

**Company owned by legislator may bid on state contracts.** — Unless otherwise prohibited by N.M. Const., art. IV, § 28, a company owned by a legislator may bid on contracts to supply state agencies with materials and supplies under the competitive bid process set forth in the Procurement Code. 1989 Op. Att'y Gen. No. 89-34.

**A legislator's company can bid as general contractor on state construction projects** only if the project was not authorized during, or within one year of, his service in the legislature. If the contract on which the legislator's company bids is one authorized by statutes enacted more than one year before his service in the legislature and is worth more than \$1,000.00, then he must give public notice of his bid, and the state agency must comply with the special procedures contained in the Conflict of Interest Act. 1989 Op. Att'y Gen. No. 89-34.

**When business owned by legislator acts as subcontractor.** — If a business owned by a legislator bids on a contract with the state as a subcontractor and is a party to the contract, then the business is subject to the same limitations that apply when it acts as general contractor. If, however, the business only contracts with the general contractor and does not enter into any contract with the state, then the restrictions of this section no longer control. However, even though a subcontractor may not be subject to the Conflict of Interest Act, it still may be indirectly interested in a state contract and subject to the prohibition contained in N.M. Const., art. IV, § 28. 1989 Op. Att'y Gen. No. 89-34.

**State legislator as employee of private contractor.** — A private entity, either for-profit or nonprofit, that has a state legislator within its organization may enter into a contract with the state provided that the contracting process is conducted in accordance with constitutional and statutory requirements. 2003 Op. Att'y Gen. No. 03-01.

A legislator who complies with legislative rules is entitled to receive his legislative per diem. His private sector employer is free to determine whether it should also compensate him for that day's work. 2003 Op. Att'y Gen. No. 03-01.

**Public defenders.** — New Mexico Const., art. IV, § 28 would prohibit contract between public defender department and legislator if the legislator was in office in 1968 when the original Indigent Defense Act was passed, regardless of whether public notice and competitive bidding are used. 1979 Op. Att'y Gen. No. 79-23.

**Public defenders.** — The public defender's office may not award state representatives professional service contracts unless solicitation for competitive bids is done, in accordance with the Procurement Code. 1987 Op. Att'y Gen. No. 87-67.

**Legislator is not prevented from serving as member of peanut commission** by this section. 1979 Op. Att'y Gen. No. 79-34.

**Conflict of interest is not affected if bond proceeds involved.** — Any potential conflict of interest is not affected if a contract or project is funded with local bond proceeds rather than state money. 1989 Op. Att'y Gen. No. 89-34.

**Damages.** — A legislator and other directors of a nonprofit organization may be found liable for damages for breach of fiduciary duty if they intentionally enter into a contract which is invalid under N.M. Const., art. IV, § 28. 1990 Op. Att'y Gen. No. 90-17.

**Propriety of vote or abstention.** — A legislator should follow Chapter 10, Article 16 NMSA 1978 and his legislative body's code of ethics in deciding when it is proper to vote or abstain on a matter in front of the body. 2003 Op. Att'y Gen. No. 03-01.

### **10-16-10. Repealed.**

**Repeals.** — Laws 1993, ch. 46, § 58 repealed 10-16-10 NMSA 1978, as enacted by Laws 1967, ch. 306, § 10, relating to disclosures, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on New Mexico One Source of Law.

### **10-16-11. Codes of conduct.**

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a

general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training biennially.

**History:** 1953 Comp., § 5-12-11, enacted by Laws 1967, ch. 306, § 11; 1969, ch. 93, § 1; 1993, ch. 46, § 34; 2003, ch. 33, § 1.

**The 2003 amendment,** effective June 20, 2003, in Subsection E, substituted "two hours" for "one hour" following "attend a minimum of" near the middle and substituted "biennially" for "annually" at the end.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

## ANNOTATIONS

**School districts not affected.** — School districts do not come within this provision of the Conflict of Interest Act. 1969 Op. Att'y Gen. No. 69-19.

### 10-16-11.1. State agency or local government agency authority.

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

History: Laws 2011, ch. 138, § 13.

**Effective dates.** — Laws 2011, ch. 138, § 15 made Laws 2011, ch. 138, § 1 effective July 1, 2011.

### **10-16-12. Repealed.**

**Repeals.** — Laws 1993, ch. 46, § 58 repealed 10-16-12 NMSA 1978, as enacted by Laws 1967, ch. 306, § 12, relating to disclosure for person on retainer or contract, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on New Mexico One Source of Law.

### **10-16-13. Prohibited bidding.**

No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.

History: 1953 Comp., § 5-12-13, enacted by Laws 1967, ch. 306, § 13; 2007, ch. 362, § 7; 2011, ch. 138, § 10.

**The 2011 amendment,** effective July 1, 2011, prohibited local government agencies from accepting bids from persons who participated in the preparation of the specifications, qualifications or evaluation criteria of the bid.

**The 2007 amendment,** effective July 1, 2007, prohibited political subdivisions from accepting bids or proposals from a person who participated in the preparation of qualifications or evaluation criteria and requires persons who accepts bids or proposals for a state agency or political subdivision to use due diligence to ensure compliance with this section.

## **ANNOTATIONS**

**School district not state agency.** — "State agency" as used in the Conflict of Interest Act does not apply to school districts. 1969 Op. Att'y Gen. No. 69-19.

**Section not violated.** — If the state purchasing agent secures free technical assistance from a supplier in order to aid in preparing specifications, this act is not violated. 1967 Op. Att'y Gen. No. 67-118.

**Scope of "person".** — "Person" as used in this section includes any person, corporation, partnership or other legal entity. 1967 Op. Att'y Gen. No. 67-118.

**10-16-13.1. Education and voluntary compliance.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

**History:** 1978 Comp., § 10-16-13.1, enacted by Laws 1993, ch. 46, § 35.

**10-16-13.2. Certain business sales to the employees of state agencies and local government agencies prohibited.**

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

History: Laws 2007, ch. 362, § 8; 2011, ch. 138, § 11.

The **2011 amendment**, effective July 1, 2011, eliminated the provision that prohibits public officers and employees from purchasing good and services from their family or business in which they have a substantial interest and eliminated the exceptions to the prohibition.

### **10-16-13.3. Prohibited contributions; financial service contractors.**

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

History: Laws 2007, ch. 362, § 11; 2011, ch. 138, § 12.

The **2011 amendment**, effective July 1, 2011, prohibited contribution by business to public officers and employees of local government agencies and the acceptance of contributions by such officers and employees.

## **ANNOTATIONS**

**Bond attorneys.** — Subsection A of Section 10-16-3.3 NMSA 1978, which limits contributions to state officers and employees by businesses that provide financial services, does not apply to attorneys who provide legal services to the state in connection with its bond offerings. 2007 Op. Att'y Gen. No. 07-04.

### **10-16-14. Enforcement procedures.**

A. The secretary of state may refer suspected violations of the Governmental Conduct Act to the attorney general, district attorney or appropriate state agency or legislative body for

enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act [10-9-1 NMSA 1978]. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.

E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

**History:** 1953 Comp., § 5-12-14, enacted by Laws 1967, ch. 306, § 14; 1993, ch. 46, § 36.

**The 1993 amendment**, effective July 1, 1993, added Subsections A and B and redesignated former Subsections A and B as Subsections C and D; substituted "a public officer" for "a legislator or an employee" in the first sentence of Subsection C; rewrote the first sentence of Subsection D, which read "Violation of the provisions of the Conflict of Interest Act by any employee, other than those covered by Subsection A of this section, is grounds for dismissal, demotion or suspension"; added the second and third sentences in Subsection D; added Subsection E; and made minor stylistic changes in Subsection C.

### **10-16-15. Repealed.**

**Repeals.** — Laws 1993, ch. 46, § 58 repealed 10-16-15 NMSA 1978, as enacted by Laws 1967, ch. 306, § 15, relating to standing in court, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on New Mexico One Source of Law.

**10-16-16. Recompiled.**

**Recompilations.** — Laws 1997, ch. 112, § 10 recompiled 10-16-16 NMSA 1978, relating to medicaid and department of human services employees, as 27-2-12.7 NMSA 1978, effective June 20, 1997.

**10-16-17. Criminal penalties.**

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

**History:** Laws 1993, ch. 46, § 37.

**10-16-18. Enforcement; civil penalties.**

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

**History:** Laws 1995, ch. 153, § 23.