


8-16-2006

Approved Minutes of the Fifth Meeting of the Governor's Ethics and Campaign Finance Reform Task Force

Governor's Task Force on Ethics Reform

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on Ethics Reform, Governor's Task Force. "Approved Minutes of the Fifth Meeting of the Governor's Ethics and Campaign Finance Reform Task Force." (2006). http://digitalrepository.unm.edu/law_service_ethicsreform/14

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APPROVED MINUTES
of the
FIFTH MEETING
of the
GOVERNOR’S ETHICS AND CAMPAIGN FINANCE REFORM TASK FORCE

August 16, 2006
State Capitol, Room 307

On August 16, 2006, the fifth meeting of the Governor’s Ethics and Campaign Finance Reform Task Force, hereinafter referred to as the “task force,” was held in Room 307 of the State Capitol.

PRESENT

Governor Garrey Carruthers, Dean, NMSU College of Business, Co-Chair
Suellyn Scarnecchia, Dean, UNM School of Law, Co-Chair
Stuart Bluestone, NM Chief Deputy Attorney General
Barbara Brazil, President, New Mexico First
Doug Brown, NM State Treasurer
Matt Brix, Executive Director, Common Cause
Maralyn Budke, Public Member
John Carey, President & CE, Association of Commerce and Industry
Dede Feldman, NM State Senator
Mary Graña, Public Member
Kathy McCoy, NM State Representative
Jim Noel, Executive Director, NM Judicial Standards Commission
Leonard Sanchez, CPA, Moss-Adams + Neff, L.L.P.
Ron Solimon, President & CEO, Indian Pueblo Cultural Center
Hilary Tompkins, Chief Counsel, Office of the Governor
Stewart Udall, Former U.S. Secretary of the Treasury
Brad Winter, Albuquerque City Councilor

ABSENT

Gay Kernan, NM State Senator
W. Ken Martinez, NM State Representative
Andrew Montgomery, Public Member

STAFF

Justin Miller, Associate General Counsel, Office of the Governor
Amy Camille Chavez, Deputy Director, New Mexico State Board of Finance
Catherine Monroe, New Mexico State Board of Finance

Report of the New Mexico State Treasurer

Doug Brown, New Mexico State Treasurer, stated his belief in the necessity of promoting honesty in the public sector. He also discussed his perception of systematic and corrupt practices of the previous state treasurer and reforms that he has implemented to improve upon those practices. He further provided several recommendations with respect to reforms that the task force might consider.

Treasurer Brown first stated his belief that the case for honesty must be sold to government officials and employees. He stated that while virtue might be its own reward to some public officials, others use public service jobs to access power and wealth. He mentioned that while political contributions to candidates for public office may provide access to the political process, at some point those contributions might permit contributors to obtain undue influence over public officials. Treasurer Brown stated that to promote honesty as a goal in the public sector, public servants should be reminded that clean government is vital to public acceptance, credibility and reputation. In addition, he stated that public officials should be aware that honesty in government is good for business and economic development, while corruption is debilitating. Moreover, when public officials adopt incorrect or unethical practices, correct and ethical practices cannot be exercised.

When he assumed the role of state treasurer following Robert Vigil's resignation, Treasurer Brown indicated that he found evidence of previous systematic, pervasive corruption in that office. Treasurer Brown indicated that the state treasurer's office often invested in inappropriate securities that produced low income, while commissions paid with respect to those securities were relatively high. In addition, Treasurer Brown indicated that state funds were invested by an unqualified broker that had not established an investment process or conducted a cash flow analysis.

According to Treasurer Brown, several important rules were not followed prior to his arrival at the state treasurer's office. He noted, for example, that the previous state treasurer often ignored Procurement Code requirements, personnel policies and information technology procedures. Building security was also compromised.

Treasurer Brown further identified the previous existence of a "rogue clique" with unfiltered access to the state treasurer. This clique, Treasurer Brown stated, was heavily engaged in re-election activities of the previous state treasurer and in soliciting donations for the Las Vegas Boys and Girls Club. According to Treasurer Brown, uncooperative employees were demoted or suffered downgraded performance ratings.

Other problems during the tenure of the previous state treasurer, as identified by Treasurer Brown, included unqualified management, non-existent documentation, insufficient computer back-ups, imbalanced checkbooks, poor building security, wire-tapped telephones and poor employee morale.

Treasurer Brown stated that an audit was performed by a Carlsbad firm, which happened to be the sole bidder for that audit in 2004. While there were significant weaknesses identified as a result of that audit, fifteen significant weaknesses were identified during an audit conducted in 2005.

Treasurer Brown discussed the practices implemented by him and his staff to correct the consequences of the actions of the previous state treasurer. First, twenty-five percent of the staff was replaced, with no impact on productivity. He hired staff members with exceptional qualifications. Over 300 revisions were made to the state treasurer's investment policy. The state treasurer's office also availed itself to the oversight by the State Board of Finance. Treasurer Brown began to hold open meetings of the State Treasurer's Investment Committee and additionally hired an internal auditor to act as a compliance officer.

According to Treasurer Brown, investments of the state treasurer's office are also performing favorably. For instance, the local government investment pool yield has increased from \$3.2 million to \$5.2 million. General fund earnings have increased from \$5 million to \$11 million. The bond proceeds investment pool also acquired a Standard and Poor's AAA rating. Treasurer Brown further reported that the state checkbook is currently in balance and that brokerage commissions have been cut by fifty percent.

Treasurer Brown made several recommendations for consideration by the task force. He first advocated the adoption of campaign contribution limits. He also stated his support for policy changes against conflicts of interest and workplace solicitation. He further suggested the enforcement of competitive compensation rates for skilled managers and the requirement of certain minimum qualifications for officers, such as the state auditor and state treasurer. He further recommended that the positions of state treasurer and state auditor become appointed, rather than elected positions.

Treasurer Brown opened up the discussion to questions and comments from the task force members. Task force members expressed concern over the practices that occurred in the state treasurer's office prior to Treasurer Brown's arrival. Some task force members asked how an ethics commission might prevent unethical practices from occurring. Others agreed with Treasurer Brown's recommendation to change the position of state treasurer to an appointed position as an effective prevention measure. They further agreed with Treasurer Brown's recommendation to require minimum qualifications for those that serve as state treasurer or state auditor. Governor Carruthers suggested that a subcommittee of the task force be formed to address those recommendations. Task force members also explored the possibility of re-introducing legislation that permitted the State Board of Finance to oversee certain activities of the state treasurer.

Some task force members inquired about the role that the State Treasurer's Investment Committee plays in overseeing state treasurer's office practices. Treasurer Brown explained that the State Board of Finance is the oversight agency for the state treasurer's office.

Gifts Subcommittee Report

Matt Brix and Dean Suellyn Scarnecchia presented a report compiled by the gifts subcommittee of the task force. Mr. Brix first acknowledged that the giving of gifts as a symbol of appreciation is a tradition in New Mexico. He stated, however, that the provision of gifts to public officials by persons with special interests might have a corrupting influence.

Mr. Brix stated that New Mexico law requires registered lobbyists to report gifts to legislators and other officials. Despite that requirement, Mr. Brix pointed out that there is no specific prohibition, bright line test or rule for gifts from other persons. In addition, a lobbyist may avoid reporting a gift by asking the lobbyist's client to make a gift directly, rather than through the lobbyist. Mr. Brix also stated that the legal requirement to report all campaign contributions is easily avoided. He indicated that a donor can hide a contribution to a candidate from public view by stating that the contribution is a gift given as a token of the donor's esteem and in exchange for the recipient's goodwill toward the donor.

Options for reform, Mr. Brix indicated, should be very specific. He stated that options for reform might first include an outright ban on gifts, not including reported campaign contributions. Another option might include a bright line test, which would permit gifts of up to a certain monetary value. Mr. Brix stated that the task force might alternatively consider recommending full disclosure on all gifts.

Mr. Brix discussed the pros and cons of each option for reform. With respect to a possible ban on gifts, Mr. Brix stated that option could be comprehensive and understandable for both officials and the public and further inspire confidence in the political process. On the other hand, a complete ban would not allow for the exchange of even the smallest gifts, although those gifts do not necessarily have a corrupting influence.

With respect to a bright line test for gifts, Mr. Brix indicated that such a test might be sensitive to the role that small gifts play in the political process. However, the bright line test might not prevent the corrupting influence that could result from the same donor providing several small gifts over time.

Mr. Brix also discussed the benefits and shortfalls of requiring full disclosure of all gifts. While he stated that full disclosure would promote the provision of full information to the public, full disclosure would not prevent the exchange of large, potentially corrupting gifts. He additionally stated that full disclosure would require timely reporting.

Mr. Brix and Dean Scarnecchia reported the recommendations of the gifts subcommittee. The subcommittee first recommended the implementation of a comprehensive definition of a gift. Along with a comprehensive definition of a gift, the subcommittee recommended that the task force consider endorsing a hybrid of the

options previously discussed by Mr. Brix. The first recommended option would require disclosure by a public official of that official's receipt of all gifts with a fair market value greater than \$100. The second recommended option included a bright line test prohibiting a public official from receiving an individual gift with a fair market value greater than \$250. The subcommittee also recommended prohibiting public officials from accepting gifts with a fair market value greater than \$100 during the course of any legislative session. Finally, the subcommittee recommended fall and spring reporting dates for public officials who receive gifts, and regular reporting during campaign cycles. The subcommittee previously agreed that each of those restrictions should apply to both candidates for public office and serving public officials.

Members of the task force asked several questions with respect to the gift subcommittee's report. Some task force members stated their preference to subject all interested campaign contribution and gift donors, not only lobbyists, to reporting requirements. Other task force members expressed a desire to change the culture in which the receipt of gifts is acceptable. Task force members also expressed concern over the cumulative influential effect that that might result from the provision of several gifts under \$100 of value to the same public official. They further expressed concern over the use of public resources to solicit donations for nonprofit charities and the lack of penalties for ethical rule violations concerning gifts. Some members of the task force raised concerns that some of the restrictions on gifts might inadvertently be over burdensome, especially with respect to the purchase of food for public officials during working lunches or dinners. They also mentioned the unintentional consequences of banning or limiting gifts exchanged between relatives.

Governor Carruthers asked the gifts subcommittee to research some of the concerns expressed by the task force and to discuss means of addressing those concerns in order to refine the subcommittee recommendations to the task force by the next meeting.

Legislative Compensation Subcommittee Report

Governor Carruthers provided the task force with an overview of the issues considered by the legislative compensation subcommittee in forming its recommendations. First, he noted that Section 1-19-29.1 NMSA 1978 allows legislators to use campaign funds for expenditures "reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses." Governor Carruthers indicated that allowing campaign funds for performance of duties of the office might encourage legislators to become dependent upon funds provided by third parties with special interests. However, he noted that a larger issue of fairness to "citizen legislators" also requires attention. He stated that there is no reason for legislators to spend their own funds or receive funds from special interests just to perform their duties.

To address concerns that legislators might become unduly influenced by those that provide campaign contributions and indirectly fund legislative expenses, Governor

Carruthers reported that the subcommittee discussed an option to repeal the section of law that permits legislators to use campaign funds for legislative purposes. He indicated that the subcommittee also discussed a possible limitation on gifts that may be received by public officials. The subcommittee also discussed options to amend the constitution to permit legislative compensation or expense accounts.

Governor Carruthers discussed the possible advantages of permitting a stipend of \$24,000 per year for legislators. First, New Mexico could join the majority of states, which currently provide some legislative compensation. Governor Carruthers added that cities and counties in New Mexico are permitted to pay salaries to elected county commissioners and city council members. He also stated that an appropriate salary might encourage a greater citizen interest in seeking legislative office. A salary could also defray part of the expense of being away from one's profession during legislative sessions. Governor Carruthers indicated that the provision of some salary should reduce the need for individual, lobbyist or corporate contributions to sustain public service duties.

Despite the potential benefits of providing legislative salaries, Governor Carruthers indicated that the option might be unpopular among voters, who would need to approve a constitutional amendment to permit legislative compensations.

Another option for reform considered by the subcommittee included amendment to the New Mexico Constitution to permit an expense allowance of up to \$1,000 per month for legislative expenses with the requirement that those funds could not be used for campaign purposes. Governor Carruthers listed the potential benefits of providing legislative expense accounts. He indicated that New Mexico would join the majority of states, which provide for such accounts. The expense accounts, he added, would provide for the expenses incurred by legislators as they serve their constituents. He indicated that this is especially critical in a rural state like New Mexico, where travel distances are great.

Governor Carruthers also warned of the potential costs of the provision of legislative expense accounts. He stated that the fiscal impact to the state could reach an amount up to \$1.34 million per year. He also indicated that the voters might not approve the constitutional amendment necessary to provide for the expense accounts. Despite the potential obstacles, the subcommittee members ultimately concluded that the expense accounts would alleviate the need for campaign funds to be used for legislative purposes and would remove from legislators the personal burden of funding legislative activities.

Governor Carruthers reported the following as recommendations of the subcommittee:

- repeal Section 1-19-29.1 NMSA 1978 and prohibit the use of campaign funds for any expenditure that is not a campaign expenditure;
- require disqualification from candidacy, removal from office, or retirement benefit forfeiture for violation of restrictions on the use of campaign funds; and

- submit a constitutional amendment to the voters permitting legislators to receive up to \$1,000 per month for expenses to support legislative service; provided that the funds cannot be used for campaign purposes.

Governor Carruthers opened his presentation to questions and comments from the task force members. The task force members indicated some interest in providing for legislative staff throughout the year. Other task force members discussed the opportunities for reform inherent in the provision of legislative compensation.

The task force members voted on their preferences with respect to the options presented by Governor Carruthers, including preferences to explore the provision of salaries, legislative expense accounts or both to legislators. The majority of the task force members voted to provide both. Governor Carruthers stated that the subcommittee members would conduct research on states that provide both salaries and expense accounts to legislators and report the results of that research to the subcommittee.

Public Comment

The co-chairs of the task force opened the task force discussions to public comment. Terry Riley, Democracy for New Mexico, expressed approval of work of the task force and encouraged the task force members to continue consideration of a recommendation to limit gifts to public officials. He also expressed that the provision legislative salaries might be an effective tool to combat undue influence in the legislature.

James Templeton stated that he hoped that the news media would provide information to the public regarding the work of the task force. He also indicated his interest in a cap on campaign expenditures and encouraged the task force members to produce bold recommendations.

Jack Taylor, Chair, Common Cause New Mexico, expressed his encouragement by the recommendations produced by the gifts subcommittee. He added that small gifts should also be limited due to the cumulative effect and overall influence that they might ultimately have on public servants.

The task force adjourned at approximately 2:30 p.m.