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Governmental Conduct


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GOVERNMENTAL CONDUCT

GOVERNMENTAL CONDUCT

- Gifts
- Nepotism
- Lobbying
- Conduct of government officials
 - Official acts for private gain
 - Misuse of confidential information
 - Misuse of government property
 - Misuse of official time
 - Conflicts of interest

GIFTS

New Mexico Law

- No general prohibition of gifts or requirement for disclosure.
- No legislator, public officer, or employee may request or receive any thing of value **in exchange for performance of an official act.**
NMSA § 10-16-3.

Other state approaches to gifts

1. Zero tolerance- no gifts

- Very few states
- Exceptions to definition of gift allows for giving things of de minimis value, food, beverages, etc.

2. Restrictions by donor

- No gifts from a lobbyist, any person interested in official action

Other state approaches

3. Bright line tests

- Found in a majority of states (31)
- No gifts of more than specified dollar amount, from a single donor, in a fixed period
- Most common: no gifts over \$100 (14 states)
- Exceptions: family, travel reimbursement, food and beverages
- **New Mexico is in the minority**

Federal extortion law

Hobbs Act

- Unlawful to obtain property from another through force, violence, fear, or **under color of official right.**” 18 USC § 1951.
 - Requires a “quid pro quo” between the donor and the public official.
 - Quid pro quo = a thing of value in exchange for the performance of an official act.

Options and issues

- Ban gifts to all public officials and employees.
- Require disclosure of all gifts, gifts of money, or gifts over a certain dollar value.
- Prohibit gifts of over a certain dollar value.
- Regulate gifts from prohibited individuals, i.e. lobbyists, regulated persons, or persons known to be interested in or affected by the official act or legislation.
- Conform New Mexico law to criminal standards.

NEPOTISM

New Mexico

- Elected or appointed officials may not hire as “clerk, deputy, or assistant” relatives within the 3rd degree. NMSA § 10-1-10.
 - except if first approved by the appropriate official,
 - or the position pays \$600 or less per year.

Other states

- 23 states treat nepotism as a general ethical consideration in policy.
- 21 states regulate nepotism by statute.
- 2 states exempt legislators from statutory regulations.
- 4 states regulate nepotism only through state hiring policy.

Options and issues

- Expand coverage of NM law beyond elected and appointed officials.
- Broaden the “clerk, deputy, or assistant” language.
- Goal: hire based on merit rather than personal relationships.
- Maintain flexibility to hire best person.
- Hidden benefits to nepotism?

LOBBYING

New Mexico law

- “Lobbyist” = person compensated for or designated by an organization to attempt to influence legislation or official action.
- Each lobbyist must pay \$25 annual fee per employer, file a registration statement.
- Lobbyists and lobbyist employers must file a report of expenditures and political contributions.

Other states- lobbying

- All states regulate lobbyists.
- Annual fees are typically higher than in NM, sometimes more than \$1000.
- States split between flat fee per session or fee per employer.
- Most require more detailed reports.
- Most require or allow electronic filing.

Other states- lobbying

- A focus of attention in recent years.
 - Approximately ½ of states have amended lobbying laws since 2003.
- Most common changes:
 - Electronic filing.
 - Increased detail in expenditure reports.
 - Closing the revolving door.

Options and issues

- Require electronic reporting.
- Prohibit funneling contributions through lobbyists.
- Require more detailed and more frequent reporting.
- Increase registration fees.
- Increase penalties (civil and criminal).
- Require the Secretary of State to investigate a representative percentage of lobbyist reports.

CONDUCT OF GOVERNMENT OFFICIALS AND EMPLOYEES

1. Official acts for private gain.
2. Misuse of confidential information.
3. Misuse of government property.
4. Misuse of official time.
5. Conflicts of interest.

Official acts for private gain

New Mexico

- Public officers and employees may not take an official act for the primary purpose of enhancing their own financial interest. NMSA § 10-16-4.
- Public officers and employees must disqualify themselves from any official action which directly affects their financial interest. NMSA § 10-16-4.
 - Governor may make an exception to disqualification when it is in the public interest.

Other approaches

- Official acts for private gain are universally prohibited.
 - Definition of corruption: use of public office or position to procure a benefit personally or for someone else.
- Federal rule
 - Executive employee may not use public office for personal private gain, endorsement of private interests, or private gain of friends and relatives. 5 C.F.R. § 2635.702.

Misuse of nonpublic, confidential information

- New Mexico
 - No legislator, public officer, or employee shall use confidential information for private gain. NMSA 10-16-6.
- Federal rule
 - Employee shall not use nonpublic information to further private interest by advice, recommendation, or disclosure. 5 C.F.R. § 2635.703.

Misuse of government property

- New Mexico- indirect
 - Legislators, public officers, and employees shall use resources of public office only to advance the public interest and not to obtain personal benefits. NMSA § 10-16-3.
- Federal rule- direct
 - Employee has duty to protect and conserve government property and shall not use or allow such property to be used for other than authorized purposes. 5 C.F.R. § 2635.

Misuse of official time

- New Mexico
 - NM law does not directly address time, but time could be considered a “resource” under NMSA 10-16-3.
- Federal rule
 - Employee shall use official time (their own and time of subordinates) in an honest effort to perform official duties. 5 C.F.R. § 2635.705.

Conflicts of interest

New Mexico

- Full disclosure of real or potential conflicts of interest shall be a **guiding principle**. NMSA § 10-16-3.
- Several agency specific statutes (NM Expo Authority, NM Lottery, Indian Gaming Compact).
- Candidates, elected officials, and appointed officials must file a financial disclosure statement. NMSA 10-16A-3.
- Procurement Code now requires prospective contractors to disclose certain campaign contributions to public officials.

Conflict of interest-other states

- More comprehensive, consolidated approach.
- Example: Massachusetts
 - Conflict of Interest statute covers financial interests and conflicts of interest,
 - PLUS gifts, public contracting, post government employment work, and other areas.

Options and issues

- Amend the Governmental Conduct Act to apply to more than just public officers and employees.
- Consolidate existing law and adopt single law on conflicts of interest.
- Require periodic training in ethics law and policy.
- Enact new laws to prohibit unlawful use of state property and time.