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November 20, 2007

The Honorable Bernadette M. Sanchez
New Mexico State Senator
c/o Doris Faust - Legislative Council Service
State Capitol Building, Room 411
Santa Fe, NM 87501

Re: Opinion Request – Senate Bill 1066 and Article IV, Section 16

Dear Senator Sanchez:

You have requested our opinion whether a law is void, or may be corrected, when the title does not accurately reflect the text. According to your letter, the 2007 legislature approved Senate Bill 1066, the legislative staff enrolled and engrossed it, and the legislative leaders signed it in open session. The title of the enrolled and engrossed version stated “Extending the Repeal Date of the Hospitality Fee Act” and provided for this extension in section one of the text. The version also deleted reference to “Reallocating Revenue from the Hospitality Fee Act” from the title, based on a House Taxation and Revenue Committee amendment, but did not similarly delete this substantive provision from section two of the text. As a result, the title of the enrolled and engrossed bill does not describe the entire text of the bill. Section 16 of Article IV of the New Mexico Constitution states that the title of the bill must include the subject of the bill. Based on our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that the legislature’s attempt to extend the repeal date in section one of Senate Bill 1066 is valid, but its attempt to amend Section 3-38A-3(B) regarding the hospitality fee proceeds in section two violates the constitution and is void.

It is our understanding that you sponsored Senate Bill 1066 in the 2007 legislative session. Its original title was:

Relating to Municipalities: Extending the Repeal Date of the Hospitality Fee Act;
Amending Laws 2003, Section 13.

The text of the bill struck the date of July 1, 2013 and replaced it with July 1, 2038. On March 1, 2007, the Senate Public Affairs Committee (“SPAC”) amended the title in a minor manner to include a reference to a statutory chapter:

Relating to Municipalities; Extending the Repeal Date of the Hospitality Fee Act; Amending Laws 2003, Chapter 417, Section 13.

SPAC also amended the date in the text of the bill to "July 1, 2028." On March 6, 2007, the full Senate considered Senate Floor Amendment Number 1, which had two sections of further changes. Section 1 of the floor amendment changed the title:

Relating to Municipalities; Extending the Repeal Date of the Hospitality Fee Act; Reallocating Revenue Derived From the Hospitality Fee Act, Amending Laws 2003, Chapter 417, Section 13.

Section 2 of the floor amendment added language to the text regarding NMSA 1978, Section 3-38A-3, which is the section of law governing the mandatory percentages for allocation of the proceeds from the hospitality fee. This proposed section read:

B. Proceeds from the hospitality fee shall be used as follows:

- (1) fifty percent of the proceeds shall be used to equip and furnish a municipal convention center; ~~and~~
- (2) ~~fifty~~ twenty-five percent of the proceeds shall be used by the municipality to contract to purchase advertising that publicizes and promotes tourist-related attractions, facilities and events in the municipality and the county and tourist facilities or attractions within the area; and
- (3) twenty-five percent of the proceeds shall be used to extinguish debt incurred by a municipality for a metropolitan court facility

The Senate adopted the floor amendment and passed the bill by a vote of 36-1.

On March 9, 2007, the House Taxation and Revenue Committee voted to "strike Senate Floor Amendment 1." The amended bill went sent to the House of Representatives and that body passed the bill 63-0. The bill returned to the Senate where the Senate voted to concur with the House's version of the bill. However, legislative staff erred in enrolling and engrossing the final version of the bill and left section 2 of the floor amendment in the bill. The final title read:

Relating to Municipalities; Extending the Repeal Date of the Hospitality Fee Act; Amending Laws 2003, Chapter 417, Section 13.

Yet, the text of the bill included the extended repeal date and the new allocation percentages listed in section two of the floor amendment. According to your letter, legislative staff might have been confused between deleting "floor amendment 1" and "section 1 of the floor amendment." Regardless, the officers of the Senate and House signed the enrolled and engrossed bill and Governor Richardson signed the bill into law on April 2, 2007.

The Honorable Bernadette M. Sanchez

November 20, 2007

Page 3

Section 16 of Article IV (the "Title Clause") of the New Mexico Constitution states that the subject of every bill must be expressed in its title and that no bill can have more than one subject matter:

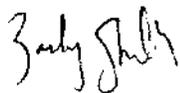
The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void.

"In our opinion, the true test of the validity of a statute under this constitutional provision is: Does the title fairly give such reasonable notice of the subject matter of the statute itself as to prevent the mischief intended to be guarded against?" State v. Ingalls, 18 N.M. 211, 219, 135 P. 1177 (1913). Based on the specific facts described above, it does not appear the title gives reasonable notice of the text. The title does not discuss or give any notice regarding the issue of the percentages for allocation of the proceeds from the hospitality fee. Rather, it is very limited in its reference to the repeal date of the Hospitality Fee Act. In the event that some item was not mentioned or was improperly omitted from the title of an act, "the saving clause in this constitutional provision, that only so much of the act as is not mentioned in the title shall be void, would save the act." Crothwait v. White, 55 N.M. 71, 78, 226 P.2d 477 (1951). Therefore, the specific section of the bill regarding the percentages for allocation of the proceeds from the hospitality fee violates Section 16 of Article IV of the New Mexico Constitution and should be considered void. The remainder of the bill, however, is permissible.

Your letter also asks whether legislative staff may fix this problem pursuant to Section 20 of Article IV (the "Enrollment and Engrossment Clause") of the New Mexico Constitution. Since our response regarding Section 16 of Article IV resolves the issue, we conclude that the second question does not need to be addressed here.

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,



ZACHARY SHANDLER
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General