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The Honorable Pete Campos
New Mexico State Senator
500 Raynolds Avenue
Las Vegas, NM 87701

Re: Opinion Request – Applicability of the Governmental Conduct Act to New Mexico School Districts

Dear Senator Campos:

You requested our advice regarding the applicability of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2011) (hereafter, "GCA") to New Mexico school districts and clarification as to specific obligations imposed on public employees and officers under the GCA. Specifically, you asked:

(1) Does the term "local government agency," as used in NMSA 1978, Section 10-16-2(G) (2011), include New Mexico school districts?

(2) With what frequency must an employee or public officer make or update the disclosure required under NMSA 1978, Section 10-16-4.2 (2011)?

As discussed below, we conclude that (1) New Mexico school districts fall within the GCA's definition of "local government agency," and (2) public officers and employees, including those of New Mexico school districts, must disclose any outside employment when they commence employment with a state or local government agency and when contemplating or upon acceptance of outside employment.

New Mexico School Districts Are Included Within the Term "Local Government Agency"

The GCA imposes restrictions and obligations upon certain governmental entities and officials, including local government agencies and their employees. These restrictions and obligations include ethical principles and provisions intended to ensure that public officers and employees avoid conflicts of interest and treat their positions as a public trust. See,

e.g., § 10-16-3 (2011) (establishing ethical principles of public service, prohibiting certain official acts and imposing penalties for infractions thereof upon "public officers and employees"); § 10-16-3.1 (2011) (prohibiting a "public officer or employee" from engaging in certain political activities or using public property for unauthorized purposes); § 10-16-4.3 (prohibiting a local government agency employee who participates in the contracting process from becoming an employee of a person or business contracting with the local government agency); § 10-16-8(C) (2011) (prohibiting local government agencies from entering into contracts with, or taking action favorably affecting, persons or businesses assisted by certain former local government employees).

In 2011, the legislature amended the GCA to include officials and employees of a "local government agency" within the definition of "public officer or employee" and provided a definition for the term "local government agency." 2011 N.M. Laws, ch. 138, § 2; § 10-16-2(G), (I). As amended, Section 10-16-2(G) of the GCA defines "local government agency" as "a political subdivision of the state or an agency of a political subdivision of the state." Thus, whether a New Mexico school district is a local government agency for the purposes of the GCA turns upon the question of whether school districts are political subdivisions of the state.

A "political subdivision" is a "division of a state that exists primarily to discharge some function of local government." Black's Law Dictionary 1197 (8th ed. 2004). The New Mexico legislature has unmistakably and consistently characterized New Mexico school districts as political subdivisions of the state. See NMSA 1978, § 22-1-2(R) (2003) (defining "school district" to mean "an area of land established as a political subdivision of the state for the administration of public schools . . .") (emphasis added); NMSA 1978, § 6-10-1.1(E) (2008) (defining "local governing body" to mean "a political subdivision of the state, including a school district or a post-secondary educational institution") (emphasis added).

Likewise, New Mexico courts have unequivocally established that local school districts constitute political subdivisions of the state. See, e.g., Daddow v. Carlsbad Mun. Sch. Dist., 1995-NMSC-032, ¶ 24, 120 N.M. 97 (concluding that New Mexico school districts were political subdivisions and not arms of the state for purposes of Eleventh Amendment immunity from suit); Bd. of Educ. v. Standhardt, 1969-NMSC-118, 80 N.M. 543, 549 (statute of limitations ran against "political subdivisions, including school districts"); State ex rel. Stratton v. Roswell Indep. Schs., 1991-NMCA-013, ¶ 22, 111 N.M. 495 (noting that "[s]chool districts are designated 'as the political subdivision[s] of the state for the administration of public schools and segregated geographically for taxation and bonding purposes[]'" in the Public School Code).

Based upon the above legal authorities, there is little doubt that New Mexico school districts are "political subdivisions" of the State of New Mexico and are within the GCA's definition of "local government agency." Consequently, New Mexico school districts and their officials and employees are subject to, and must abide by, the provisions of the GCA pertaining to local government agencies and public officers or employees.

Public Officers' and Employees' Responsibility to Disclose Outside Employment

Section 10-16-4.2, as amended through 2011, provides:

> 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.

Because Section 10-16-4.2 does not specify the frequency with which a public officer or employee must make such disclosures, we employ rules of statutory construction to guide our interpretation of the statute and analysis of this issue. Several rules of statutory construction are applicable here. First, in construing a statute, the "goal is to give effect to the intent of the legislature." See Draper v. Mountain States Mut. Cas. Co., 1994-NMSC-002, ¶ 4, 116 N.M. 775 (citation omitted). Second, statutes are interpreted "in order to facilitate their operation and the achievement of their goals." Mutz v. Mun. Boundary Comm'n, 1984-NMSC-070, ¶ 11, 101 N.M. 694. And finally, "when a power is conferred by statute everything necessary to carry out the power and make it effective and complete will be implied." Kennecott Copper Corp., Chino Mines Div. v. Emp't Sec. Comm'n, 1967-NMSC-182, ¶ 18, 78 N.M. 398.

In 1993, the legislature enacted a new section of the GCA, Section 10-16-3, which expresses its intent concerning provisions within the GCA relating to disclosure, such as Section 10-16-4.2. See 1993 N.M. Laws, ch. 46, § 28. Subsection C of Section 10-16-3 instructs: "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." Section 10-16-3 further admonishes public officers and employees, including legislators, to "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." NMSA 1978, § 10-16-3(B). Section 10-16-4.2 requires public officers and employees to disclose their outside employment to their respective offices and employers.

In light of the rules of construction and provisions of the GCA described above, public employers and officers are entitled to obtain full and complete information pertaining to their employees' and officers' outside employment in order evaluate and take the steps necessary to address any real or potential conflicts stemming from that outside employment. See Boehner v. Anderson, 809 F.Supp. 138, 141, n.2 (D.D.C 1992) (quoting statements by the Bipartisan Task Force on Ethics of the U.S. House of Representatives[1]);

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[1] The Bipartisan Task Force on Ethics of the U.S. House of Representatives stated:

> First, substantial payments to a Member of Congress for rendering personal services to outside organizations presents a significant and avoidable potential for conflict of interest; second, substantial earnings from other

see also Davis v. Scherer, 468 U.S. 183, 191-93, (1984) (upholding a district court's decision that the appellee was properly terminated where his employer, a public employer, required that its employees obtain employer's approval of outside employment in order to avoid conflicts of interest and appellee refused to quit his outside employment), reh'g denied, 468 U.S. 1226 (1984).

To fully effectuate the intent underlying Sections 10-16-3 and 10-16-4.2, we believe that public officers and employees should disclose their outside employment at the time such employment is being contemplated, or when that employee actually engages in outside employment. Accordingly, we conclude that a reasonable interpretation of Section 10-16-4.2 requires public officers and employees, including those of New Mexico school districts, to disclose any outside employment (1) when they commence employment with the state or local government agency; and (2) when they are either contemplating acquiring outside employment or have accepted employment by an entity other than the state or local government agency by which they are employed.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you 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 public.

Sincerely,

LUIS G. CARRASCO
Assistant Attorney General

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employment is inconsistent with the concept that being a Member of Congress is a full-time job; and third, substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.