



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2024-05

October 5, 2024¹

QUESTION PRESENTED

With election day only weeks away, a legislator would like to launch a get-out-the-vote campaign, with the intent to motivate higher election turnout in the district and county that the legislator represents. The legislator explains that in 2022, only 14,037 out of 36,986 eligible voters exercised their right to vote and the legislator believes that residents can do better if they believe in our election system and if they believe their vote counts. The legislator recently hired a district legislative aide (“DLA”) and would like the DLA to be involved in this effort from a non-partisan standpoint. The request asks for guidance on whether a non-partisan get-out-the-vote campaign (including mailers, town halls, rallies, etc.) would be appropriate for a DLA.

ANSWER

A DLA may engage in non-partisan townhalls and provide constituent services at the local level and therefore may participate in a “get-out-the-vote” campaign, so long as the campaign does not constitute electioneering and the DLA uses the powers and resources of office to advance the public interest and not to pursue private interests.

¹ This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C).

ANALYSIS

I. Background

During the Second Session of the 56th Legislature, the Legislature passed, and the Governor signed, the General Appropriation Act of 2024, which included the following authorization:

The general fund appropriation to the legislature includes six million dollars (\$6,000,000) to provide for legislative district staff, including salaries and benefits, information technology equipment and software, furniture, supplies, office space and other necessary support, contingent on approval of the legislative council adopting staffing patterns, policies, procedures and other guidelines for the staff and adopt administrative support guidelines for legislative council service.²

On June 24, 2024, the Legislative Council adopted “a policy for new legislative district offices” (“Policy”) which “includes hiring, compensation, supervision and duties of district legislative aides and district office liaisons; locations and leasing of district offices; prohibitions on nepotism and electioneering; and administrative and logistical support and training by the LCS for district legislative aides.”³

² 2024 N.M. Laws, Ch. 69, § 4(A) (available at <https://nmonesource.com/nmos/nmsl/en/item/18972/index.do#c69s4>).

³ Minutes of the Four-Hundred-Twentieth Meeting of the Legislative Council, at 2–3 (June 24, 2024) (available at <https://www.nmlegis.gov/minutes/ALCminJun24.24.pdf>); Laws and Policies of the Legislative Council, Policy 27–Legislative District Offices (available at <https://www.nmlegis.gov/handouts/ALC%20062424%20Item%203%20Policy%20No.%2027.Legislative%20District%20Offices.pdf>).

II. DLAs are permitted to assist a legislator in activities for a nonpartisan “get-out-the-vote campaign” including nonpartisan town halls, rallies, and mailers.

The request implicates Section 10-16-3(A)⁴ and Section 10-16-3.1⁵ of the Governmental Conduct Act. Each of these sections applies to DLAs because they are “public employees” for purposes of the Governmental Conduct Act.⁶ Section 10-16-3(A) provides:

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.

Section 10-16-3.1 states:

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;

⁴ NMSA 1978, § 10-16-3(A) (2011).

⁵ NMSA 1978, § 10-16-3.1 (2011).

⁶ NMSA 1978, §§ 10-16-1 to -18 (1993, as amended through 2023). *See* NMSA 1978, § 10-16-2(I) (2011) (defining “public employee” to mean any “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”); Policy 27(L) (“A district legislative aide may be hired at classification E, at no more than 75% of the maximum for that classification’s compensation range. The aide is eligible for the same state employee benefits as other legislative employees of the legislative council service.”).

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.⁷

These provisions are further informed by the New Mexico Legislative Staff Code of Conduct which includes:

Use of State Resources: Legislative employees recognize that state resources, including employees' work time, are public resources intended to benefit the public good. Therefore, legislative employees shall use state resources only to conduct state business, except for the occasional and incidental use of state resources that does not interfere with the employee's duties, including providing assistance at the direction of a legislator necessary to manage the legislator's other obligations while performing legislative duties as a citizen-legislator. Legislative employees respect the distinction between legislative and political activity and strive to assist legislators and other staff in recognizing that distinction.⁸

The request indicates that the DLA would be "involved in this effort from a non-partisan standpoint" with "the intent to motivate higher election turnout in the district and county" It further specifies several types of support a DLA might

⁷ NMSA 1978, § 10-16-3.1 (2011).

⁸ New Mexico Legislative Staff Code of Conduct, § 3 (Jan. 29, 2023).

provide with relation to “get-out-the vote” campaigns, “including Mailers, Town Halls, Rallies, etc.” By the terms of the request, it is plain that Subsections 3.1(A) and 3.1(B) do not apply: the posited facts suggest neither the conduct prohibited by these Subsections nor the intent.⁹

The question remaining then is whether the proposed actions by a DLA are permissible under Subsection 10-16-3(A) or Subsection 10-16-3.1(C). Taken together, these Sections present two considerations: whether the DLA is using state property for authorized purposes and whether the DLA is using the powers and resources of public office to advance the public interest. While the request generally asks whether it would be appropriate for a DLA to participate in a “get-out-the-vote” campaign, the conduct referenced suggests two types of activities that merit separate analysis—namely, mailers, and attendance at nonpartisan town halls and rallies.

As to mailers, DLAs are specifically authorized by the Policy to “provide support to include . . . correspondence [and] constituent services at the local level[.]”¹⁰ But such authorization cannot provide a *carte blanche* use of state property and resources. For example, the Gift Act¹¹ would likely prohibit a DLA from providing support for correspondence that solicits donations to fund a private, nonprofit organization’s event (even if it includes voter registration efforts) using official letterhead or a state e-mail address that would suggest to the recipient that the request is being made in the performance of the DLA’s official duties or at the legislator’s behest.¹² Similarly, correspondence for which a DLA provides support

⁹ Indeed, DLAs are further prohibited by the Policy from “engag[ing] in electioneering. For purposes of this policy, ‘electioneering’ means an activity directed toward a desired electoral outcome for a particular candidate, party or ballot issue, including: attending and participating in campaign events and activities; fundraising for campaigns; displaying or distributing campaign materials in any medium; and soliciting votes for or against a candidate, party or ballot issue.” Policy 27(O).

¹⁰ Policy 27(N)(1), (4).

¹¹ NMSA 1978, §§ 10-16B-1 to -5 (2007, as amended through 2019).

¹² See NMSA 1978, § 10-16B-3(C) (2007); State Ethics Comm’n Adv. Op. 2024-03, at 2 (May 24, 2024) (available at <https://nmonesource.com/nmos/secap/en/18975/1/document.do>) (“Legislators are permitted to use an official legislative email address to email contacts about an event, including speakers and sponsors, in order to address general administration and logistics

that primarily functions to serve a legislator's private interests, such as personal correspondence or political correspondence, would be prohibited.¹³ But a DLA would be permitted to provide support to a legislator in sending out mailers informing local constituents how to register to vote and providing logistical information concerning election day, so long as those mailers do not constitute electioneering or otherwise violate applicable policies,¹⁴ because such support would constitute the use of "the powers and resources of public office to advance the public interest and not to obtain personal benefits or pursue private interests."¹⁵

DLAs are also authorized to organize nonpartisan town halls and therefore they would not engage in an unauthorized use of state property or resources, including their time, by organizing a nonpartisan town hall. LCS Policy specifically authorizes DLAs to "provide support to include: . . . organization of nonpartisan town halls[.]"¹⁶ While "organization of" is not defined, it is reasonable to conclude that this provision allows for a DLA's participation in a nonpartisan town hall. Similarly, a nonpartisan "rally" is likely sufficiently akin to a "town hall" to be permitted under the DLA authority to provide support for "other duties as assigned by the legislator[.]"¹⁷ Because these activities are specifically

of the event. But the use of a legislative email address to contact sponsors for the purpose of soliciting donations to a charity is likely prohibited by the Gift Act").

¹³ See, e.g., Law and Policies of the Legislative Council, Policy 14 (House and Senate Chief Clerks) (available at [https://www.nmlegis.gov/Publications/handbook/Laws and Policies.pdf](https://www.nmlegis.gov/Publications/handbook/Laws%20and%20Policies.pdf)) ("General correspondence" shall not be construed to mean correspondence of a personal nature, newsletters, mass mailings or correspondence related to a legislator's election campaign or any partisan political matter.").

¹⁴ For example, in addition to Policy 14, Policy 10 (Mailings) in the Law and Policies of the Legislative Council provides: "Except for lists of legislators and legislative candidates, notices of meetings and dates, minutes of the council, session publications and the biennial report of the council, no bulk mailing or mass emailing shall be made by the council service either to legislators or to private citizens without prior approval of the council." While it is not clear that these provisions would apply directly to a DLA, they provide additional context on the authorized use of the legislative mailing system and reinforce that state resources should be used only for the public good and not to serve private interests.

¹⁵ § 10-16-3(A).

¹⁶ Policy 27(N)(5).

¹⁷ Policy 27(N)(6).

authorized uses of state resources, a DLA would not violate Section 10-16-3.1(C) by organizing and participating in a nonpartisan town hall or rally—so long as these events have a nonpartisan purpose. And for the same reasons discussed above as it relates to mailers, so long as a DLA is using the powers and resources of public office to advance the public interest and not a private interest, the DLA would be permitted under Section 10-16-3(A) to organize and participate in nonpartisan town halls and rallies.

CONCLUSION

A district legislative aide may participate in nonpartisan activities related to a get-out-the-vote campaign so long as the campaign does not constitute electioneering, any use of state property is authorized, and the district legal aide uses the powers and resources of office only to advance the public interest. Permitted activities could include providing support for correspondence that meets LCS applicable policies and organizing nonpartisan town halls and rallies.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFFREY L. BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. CELIA CASTILLO, Commissioner

HON. GARY L. CLINGMAN, Commissioner

HON. DR. TERRY MCMILLAN, Commissioner

DR. JUDY VILLANUEVA, Commissioner