



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2025-02**

June 6, 2025<sup>1</sup>

#### **The Governmental Conduct Act and Outside Employment**

#### **QUESTION PRESENTED<sup>2</sup>**

Does the Governmental Conduct Act prohibit an employee from having a second paying job?

#### **ANSWER**

The Governmental Conduct Act does not prohibit a public employee from having a second paying job so long as the employee discloses the job to the employee's employer, the employee is not being paid for

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<sup>1</sup> 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).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). On April 7, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein. Commissioner Bluestone requested that the advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1) (2019); 1.8.1.9(A)(1) NMAC. "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

work already performed as a public employee, and there is no conflict between the employee's public employment and secondary employment such that the positions are otherwise incompatible.

## ANALYSIS

As a general matter, the Governmental Conduct Act does not prohibit a state employee from accepting private employment in addition to their state employment.<sup>3</sup> While the request does not elaborate on the details of proposed employment, despite this general principle, there may exist specific restrictions on certain employment offers and negotiations for employment. Under the Governmental Conduct, the only express restriction on dual employment is contained in Section 10-16-4.3, which provides “[i]t is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.”<sup>4</sup> Similarly, Section 10-16-13.2 provides that a public “employee shall not accept from a person over whom the public . . . employee has regulatory authority an offer of employment . . . .”<sup>5</sup> The Governmental Conduct Act also prohibits a public employee from “acquir[ing] a financial interest when the public . . . employee believes or should have reason to believe that the new financial interest will be directly affected by the officer’s or employee’s official act”;<sup>6</sup> because “financial interest” includes “any employment or prospective employment for which negotiations have already begun[,]”<sup>7</sup> this

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<sup>3</sup> See State Ethics Comm’n Adv. Op. 2020-01 (Feb. 7, 2020) (available at <https://nmonesource.com/nmos/secap/en/18163/1/document.do>) (concluding that a state employee who receives a monthly salary from a political campaign committee does not necessarily violate the state’s ethics laws). See also NMSA 1978, § 10-6-3 (recognizing that, subject to limitation, state public officials and employees may “accept private employment for compensation”).

<sup>4</sup> NMSA 1978, § 10-16-4.3 (2011).

<sup>5</sup> NMSA 1978, § 10-16-13.2(D) (2011).

<sup>6</sup> NMSA 1978, § 10-16-4(C) (2011).

<sup>7</sup> NMSA 1978, § 10-16-2(F)(2) (2011).

section too would limit a public employee from seeking outside employment which would be “directly affected” by the employee’s official acts.

Furthermore, a state employee may not receive compensation from a private employer in exchange for actions that the state employee undertakes as part of their public duties.<sup>8</sup> Section 10-16-4.1 of the Governmental Conduct Act provides that

No legislator, public officer or employee may request or receive an honorarium for a speech *or a service rendered that relates to the performance of public duties*. For the purposes of this section, ‘honorarium’ means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.<sup>9</sup>

If a public employee were to receive a payment of money or any other thing of value in excess of one hundred dollars specifically for those services, the public employee would violate this provision of the Governmental Conduct Act.

Other laws may contain additional restrictions on a state employee’s ability to accept secondary private employment, depending on the circumstances. For example, under NMSA 1978, Section 10-6-3, a public official or state employee may not accept private employment if the private position “physically interfere[s]” with the duties of the . . . public position during ordinary working hours[.]”<sup>10</sup> For

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<sup>8</sup> See NMSA 1978, § 10-16-4.1 (1993).

<sup>9</sup> § 10-16-4.1 (1993) (emphasis added). *Cf also* Article IV, § 27 (“No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution.”); Article XX, § 9 (“No officer of the state who receives a salary, shall accept or receive to his own use any compensation, fees, allowance or emoluments for or on account of his office, in any form whatever, except the salary provided by law.”).

<sup>10</sup> NMSA 1978, § 10-6-3 (1953). *See also* State Ethics Comm’n Adv. Op. 2025-03 (discussing whether a district legislative aide may simultaneously hold employment with another state agency).

attorneys serving as public officers or public employees, the Rules of Professional Conduct have additional restrictions regarding their acceptance of additional, non-state employment.<sup>11</sup> These laws do not provide an exhaustive list of restrictions that may affect a public employee's ability to accept a second paying job, but rather highlight that while at a high level the Governmental Conduct Act does not generally restrict a public employee from accepting another job, specific circumstances and other laws may limit that ability.

As a final note, the Governmental Conduct Act requires that public employees who take on outside employment "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."<sup>12</sup>

## **CONCLUSION**

While the Governmental Conduct Act generally does not prohibit a public employee from holding a second paying job, it may limit the kind of employment a public employee may seek or the official acts the public employee may take. Further, other restrictions may affect whether a public employee may accept certain outside employment.

**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**

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<sup>11</sup> See, e.g., Rule 16-111(C) NMRA ("Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person."); Rule 16-113(G) NMRA (requiring an attorney representing an organization to obtain consent from "an appropriate official" when also representing a director, officer, employee, member, shareholder or other constituent when the representation involves a potential conflict of interest).

<sup>12</sup> NMSA 1978, § 10-16-4.2 (2011).

**DR. JUDY VILLANUEVA, Commissioner**