

**STATE OF NEW MEXICO
COUNTY OF GRANT COUNTY**

RESOLUTION NO. R-16-52

GRANT COUNTY GOVERNMENTAL CONDUCT POLICY

ARTICLE I – GENERAL PROVISIONS

Section 1.1 Short Title

This policy shall be known as the Grant County Governmental Conduct Policy

Section 1.2 Purpose

The purpose of this policy is to establish guidelines for ethical standards of conduct for elected officials and employees of Grant County as required and authorized under the Governmental Conduct Act, NMSA (1978) 10-16-1, et seq.; NMSA (1978) 13-1-195; and NMSA (1978) 4-44-21.

ARTICLE II – DEFINITIONS

Section 2.1 Definitions

Business: means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business.

Confidential information: means information that by law or practice is not available to the public.

Contract: means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

- a. the rendition of services, including professional services;
- b. the furnishing of any material, supplies or equipment;
- c. the construction, alteration or repair of any public building or public work;
- d. the acquisition, sale or lease of any land or building;
- e. a licensing arrangement;
- f. a loan or loan guarantee; or
- g. the purchase of financial securities or instruments.

Employment: means rendering of services for compensation in the form of salary as an employee.

Family: means an individual's spouse, parents, children or siblings, by consanguinity or affinity.

Financial interest: means an interest held by an individual or the individual's family that is:

- a. an ownership interest in business or property; or
- b. any employment or prospective employment for which negotiations have already begun.

Local government agency: means a political subdivision of the state (Grant County) or an agency of a political subdivision of the state.

Official act: means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.

Public officer or employee: means any elected or appointed official or 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.

State agency: means any branch, agency, instrumentality or institution of the state.

Substantial interest: means an ownership interest that is greater than twenty percent.

ARTICLE III – ETHICAL PRINCIPLES OF PUBLIC SERVICE; CERTAIN OFFICIAL ACTS PROHIBITED; PENALTY

Section 3.1

A public officer or employee shall treat the public officer's or employee's government position as a public trust. The 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 3.2

Public officers and employees shall 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.

Section 3.3

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 3.4

No public officer or employee may request or receive, and no person may offer a public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

ARTICLE IV – PROHIBITED PRACTICES

Section 4.1 Prohibited Political Activities

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;
- 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.

Section 4.2 Official Act for Personal Financial Interest Prohibited

- a. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
- b. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.
- c. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or 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.

Section 4.3 Honoraria Prohibited

No public officer or employee may request or receive an honorarium for a speech or 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.

Section 4.4 Prohibited Employment

- a. It is unlawful for an 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.
- b. 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.
- c. Contemporaneous employment prohibited: It is unlawful for any state agency or local public body employee who is participating directly or indirectly in the procurement 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.

Section 4.5 Confidential Information

No public officer or employee shall use or disclose confidential information acquired by virtue of the public officer's or employee's position with Grant County for the public officer's or another's private gain.

Section 4.6 Contracts Involving Public Officers or Employees

- a. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, Grant County shall not enter into a contract with a public officer or employee of Grant County, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.
- b. Subsection "a" of this section does not apply to a contract of official employment with Grant County. A person negotiating or executing a contract on behalf of Grant County shall exercise due diligence to ensure compliance with the provisions of this section.

Section 4.7 Contracts Involving Former Public Officers or Employees; Representation of Clients After Government Service

- a. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.
- b. Grant County shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
 - (1) represented personally in the matter by a person who has been a public officer or employee of Grant County within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or
 - (2) assisted in the transaction by a former public officer or employee of Grant County whose official act, while in employment with Grant County, directly resulted in the County's making that contract or taking that action.

- c. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before Grant County.

Section 4.8 Prohibited Bidding

Grant County shall not accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf Grant County shall exercise due diligence to ensure compliance with this section.

Section 4.9 Certain Business Sales to the Employees of Grant County Prohibited

- a. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.
- b. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.
- c. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.
- d. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

Section 4.10 Prohibited Contributions; Financial Service Contractors

- a. A business that contracts with Grant County to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of Grant County who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

- b. A public officer or employee of Grant County that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with Grant County to provide financial services involving the investment of public money or issuance of bonds for public projects.
- c. For the purposes of this section:
 - (1) Anything of value: means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and
 - (2) Contribution: means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

Section 4.11 Prohibited Dealings in Procurement

- a. Public officers and employees shall be cognizant of the fact that under the New Mexico Criminal Code it is either a misdemeanor or a fourth-degree felony to commit “unlawful interest in a public contract,” in other words, the receipt of anything of value, directly or indirectly, from either a seller or a seller’s agent, or a purchaser or a purchaser’s agents in connection with the sale or purchase by the County of securities, goods, leases, land, or anything of value.
- b. Public officers and employees shall not participate directly or indirectly in any County matter when they know that they or a member of their immediate family has a financial interest in the organization seeking or obtaining a contract, absent a waiver issued pursuant to NMSA § 13-1-194.
- c. Public officers and employees shall not participate directly or indirectly in a County procurement process and contemporaneously seek employment with or become an employee of the person contracting or seeking to contract with the County, absent a waiver issued pursuant to NMSA § 13-1-194.

ARTICLE V — ENFORCEMENT AND PENALTIES

Section 5.1

The policies set forth above are taken directly from the Governmental Conduct Act, NMSA (1978) § 10-16-1, et seq. and the Procurement Code, NMSA (1978) § 13-1-1, et seq. and are subject to criminal and civil penalties pursuant to those laws. NMSA (1978) §§ 10-16-17, 10-16-18, 13-1-196 and 13-1-199.

Section 5.2

Violation of the provisions of the Governmental Conduct Act [10-16-1 NMSA 1978] by a public officer or employee is grounds for discipline, including dismissal, demotion or suspension.

The secretary of state may refer suspected violations of the Governmental Conduct Act [10-16-1 NMSA 1978] to the attorney general, district attorney or appropriate state agency or legislative body for enforcement.

Section 5.4

Subject to the provisions of this section, the Governmental Conduct Act [10-16-1 NMSA 1978] may be enforced by the attorney general or the district attorney in the county where a person resides or where a violation occurred.

ARTICLE VI – STATE AGENCY OR LOCAL GOVERNMENT AGENCY AUTHORITY

Section 6.1

Nothing in the Governmental Conduct Act [10-16-1 NMSA 1978] shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

ARTICLE VII – ADDITIONAL STANDARDS FOR ELECTED OFFICIALS AND ADMINISTRATION

Section 7.1 General Responsibilities of Public Office

- a. No individual member of the Board of County Commissions has the authority to make representations, assurances, admissions, or waivers on behalf of the Board of County Commissioners without a formal grant of authority.
- b. Public officers shall conduct themselves in a manner that justifies the confidence placed in them by the people of Grant County and the State of New Mexico, at all times maintaining the highest degree of integrity in discharging their public responsibilities ethically.
- c. Public officers shall not disclose privileged information acquired in a closed session (or other confidential meeting or discussion) without the explicit authorization of the County Body after consultation with the County Attorney.
- d. Public officers shall not engage in any activity that would compromise the fulfillment of their responsibilities or create an appearance of impropriety when dealing with public policy.
- e. Public officers shall treat each other with the utmost respect, decorum, and fairness at all times, including during public discourse of conflicting views. Public officers shall not make any allegations of misconduct by elected officials or employees, unless they provide, at the time they make the allegation of misconduct or in response to requests by those responsible for the investigation, factual basis for their allegations, including

provide, at the time they make the allegation of misconduct or in response to requests by those responsible for the investigation, factual basis for their allegations, including information as to the source of such information. Failure to provide specific factual information including the source of such information shall be a violation of this Policy.

- f. Public officers shall protect and conserve County property and shall not use said property for other than authorized purposes.
- g. Public officers shall comply with the requirements of the Open Meetings Act.

Section 7.2 County Operations

- a. The Board of County Commissioners employs a County Manager to handle the day-to-day business and general management of the County. All County Elected Officials shall generally follow the established chain of command; however, it is recognized that for informational purposes, dialogue between other elected officials and Board members may be necessary. The Board shall encourage the development, implementation, and enforcement of responsible policies and procedures for efficient operation by the County management staff.
- b. Commissioners shall not direct the hiring, disciplining, or work-related matters of employees of the County except through policy that is established by ordinances and/or resolutions adopted by the Board of County Commissioners. It is the responsibility solely of the County Manager to address personnel matters and carry out the personnel policies of the County. It is recognized that only the County Manager; and, at times, the County Attorney, report directly to the Board of County Commissioners.
- c. The Board of County Commissioners has adopted policies, resolutions, and a union contract that govern County personnel matters. It is recognized that these formal acts of the Board of County Commissioners and any union contract entered into by the Board of County Commissioners establish the procedures for addressing personnel discipline and grievances. It is a violation of this policy for a Commissioner to interfere with these procedures or attempt to influence the outcome of the processes. It is a violation of this policy for a Commissioner to seek information concerning a specific personnel matter except when it is appropriately discussed in closed session of the Board of County Commissioners. It is not a violation of this policy for the County Assessor, County Clerk, County Treasurer, or the Sheriff to participate, as necessary in the personnel processes when the involved personnel is an employee of the elected official's office. It is not a violation of this policy for an elected official, if he/she desires, to appear as a witness in the personnel disciplinary or grievance processes.
- d. Public officers shall recognize that the Board of County Commissioners operates as a body politic and corporate and that one public officer cannot bind the County without specific delegation of authority by the Board.

- e. The Commissioner who serves as the Board's Chairperson has certain duties and authority distinct from the other Commissioners. These are: to open all meetings of the Board, call the members to order, announce all business on the agenda and put same to a vote when required to maintain/enforce order and decorum among members of the Board; to sign documents on behalf of the Board; to administer oaths to any person concerning any matter submitted to the Board or connected with its powers and duties; and to sign all orders on the County Treasury and County documents, as authorized by a majority of the Board. Unless specifically delegated to the Chairperson of the Board, the Chairperson has no more authority than any other member.
- f. The selection of the Chairperson and Vice Chairperson shall be made at the first meeting in January of each year.
- g. The Board of County Commissioners shall conduct meetings in an orderly manner with decorum and respect to all participants under the process of the Open Meetings Act; and, as set forth in the annual open Meetings Act Resolution. Should issues of procedure arise that cannot be resolved by agreement among the Commission, the issue(s) will be held in abeyance until the County Attorney can research the procedure issue and propose a way to resolve the procedure question as set forth in the Annual Open Meetings Act Resolution.
- h. Any County Commissioner may place a matter on the agenda through the County Manager, for the Board of County Commissioners meetings subject to the processes of the Open Meetings Act, NMSA (1978) § 10-15-1, et seq.
- i. Any item that is suggested for discussion in a closed session must be reviewed by the County Attorney for conformity with the Open Meetings Act, NMSA (1978) §10-15-1(H) prior to placement on the Agenda.
- j. Elected Officials, Department heads, and the County Manager shall build and maintain a culture of compliance with laws and rules.

Section 7.3 Avoidance and Disclosure of Conflicts of Interest


- a. Full disclosure of real or potential conflicts of interest shall be the guiding principle for determining appropriate conduct. At all times, diligent effort shall be made to avoid undue influence and abuse of office in public service.
- b. When acting in a quasi-judicial role, any public officer shall disqualify himself/herself from any official act, including discussion or vote, directly affecting a financial interest or any other interests which would impair the public officer's ability to decide fairly and impartially the matter before him/her. Public officers shall remove themselves from the quasi-judicial role if any ex parte communication has occurred. When not acting in a quasi-judicial role, any public officer shall disqualify himself/herself from any official act, including discussion, affecting a financial interest. Public officers shall not take any

official action for the purpose of enhancing their financial interests and shall disqualify themselves from engaging in any official act directly affecting their financial interests.

- c. Public officers shall not acquire a financial interest in a business or other activity when they believe or have reason to believe that it will be directly affected by their official act.
- d. No County elected officer shall accept or receive to their own use, or for or on account of any deputy or deputies, clerk or clerks appointed by them or employed in their office, or for or on account of expenses incurred by them or by any such deputy or deputies, clerk or clerks, or for or on account of their office, any salary, compensation allowance, fees or emoluments in any form whatsoever for the performance of their official duties, other than as authorized by law.
- e. Any Commissioner who has received an individual campaign contribution shall publicly announce said contribution prior to consideration of any official action by the Board directly or indirectly relating to that contributor. Personal or professional relationships shall be similarly disclosed. The Commissioner shall then make a statement whether the disclosed relationship will affect his/her ability to remain fair and impartial. After a disclosure, if a majority of the members of the Board determine that a reasonable person would not be able to remain impartial under the circumstances disclosed, the member determined to have a conflict of interest shall not participate further in any discussion or proceeding relating to the item.
- f. Public officers shall not accept anything of value exceeding \$25 from any person doing business with the County or person who reasonably anticipates doing business with the County in the future. This limitation of \$25 does not apply to meals.

Passed, Approved and Adopted by the Board of Grant County Commissioners this 20th day of October 2016.

BOARD OF GRANT COUNTY COMMISSIONERS:


Brett Kasten, Chairman


Gabriel Ramos, Commissioner


Ron Hall, Commissioner

Attest:

[SEAL]


Robert Zamarripa, County Clerk