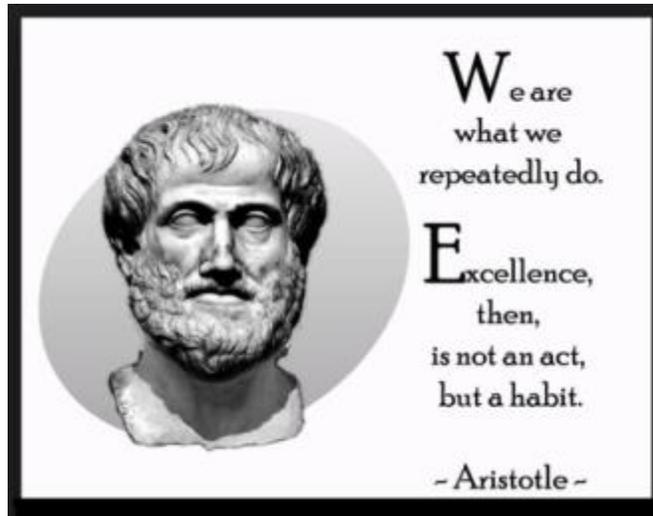
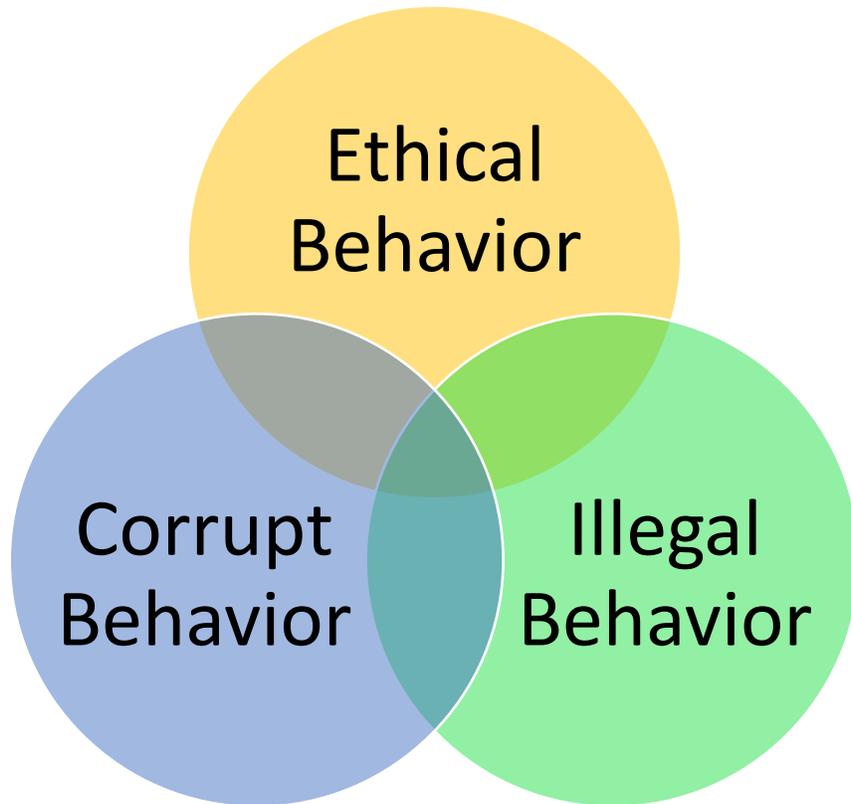


*Ethics and Advocacy: Morals, Ethics and  
the Law – Materials*



# *The Three Filters of Malfeasance*



# Some Questions to Ponder

- *Does New Mexico need an Ethics Commission?*
- *Should public officials who violate the law lose their state pensions?*
- *Voluntary compliance in New Mexico's ethics statutes – good, bad, or simply ugly?*

*The Judgement of Solomon?*



*Or the Gordian Knot?*



# **The Fundamentals**

Governmental Conduct Act (Chapter 10, Article 16 NMSA 1978)

Lobbyist Regulation Act (Chapter 2, Article 11 NMSA 1978)

Campaign Reporting Act (Sections 1-19-25 through 1-19-36 NMSA 1978)

Financial Disclosure Act (Sections 10-16A-1 through 10-16A-8 NMSA 1978)

Gift Act (Chapter 10, Article 16B NMSA 1978)

House Rules

Senate Rules

Section 30-24-1 NMSA 1978 (Bribery of public officer or public employee)

Section 30-24-2 NMSA 1978 (Demanding or receiving bribe by public officer or public employee)

*McDonnell v. United States*, 136 S. Ct. 2355 (2016)

# Conduct

## **10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.**

A. 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.

B. Legislators and 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.

C. 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.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or 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.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. 46, § 28; 2007, ch. 362, § 2; 2011, ch. 138, § 3.

## **10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.**

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.

History: 1953 Comp., § 5-12-4, enacted by Laws 1967, ch. 306, § 4; 1993, ch. 46, § 29; 2007, ch. 362, § 3; 2011, ch. 138, § 5.

### **10-16-3.1. 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.

History: Laws 2007, ch. 362, § 9; 2011, ch. 138, § 4.

### **10-16-6. Confidential information.**

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.

History: 1953 Comp., § 5-12-6, enacted by Laws 1967, ch. 306, § 6; 1993, ch. 46, § 30; 2007, ch. 362, § 4; 2011, ch. 138, § 7.

# Gifts

## 10-16B-2. Definitions.

\* \* \*

B. "gift" means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act [[1-19-25](#) through [1-19-36](#) NMSA 1978] or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift;

\* \* \*

D. "restricted donor" means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way

that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction;

### **10-16B-3. Limitation on gifts.**

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars (\$250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

C. A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

History: Laws 2007, ch. 226, § 3.

### **10-16B-4. Penalties.**

A person who violates the provisions of the Gift Act is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section [31-19-1](#) NMSA 1978.

History: Laws 2007, ch. 226, § 4.

# Lobbying

## **2-11-2. Definitions.**

\* \* \*

D. "lobbying" means attempting to influence:

- (1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or
- (2) an official action;

E. "lobbyist" means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis. "Lobbyist" does not include:

- (1) an individual who appears on his own behalf in connection with legislation or an official action;
- (2) any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity;
- (3) an employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before a legislative committee or in a rulemaking proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation;
- (4) any designated member of the staff of an elected state official, provided the elected state official keeps for public inspection and files with the secretary of state such designation;
- (5) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;
- (6) any witness called by a legislative committee or administrative agency to appear before that legislative committee or agency in connection with legislation or an official action;
- (7) an individual who provides only oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose name and the interest on behalf of which he testifies have been clearly and publicly identified; or
- (8) a publisher, owner or employee of the print media, radio or television, while gathering or disseminating news or editorial comment to the general public in the ordinary course of business;

### **2-11-8.1. Restrictions on campaign activities and contributions.**

A. No lobbyist may serve as a campaign chair, treasurer or fundraising chair for a candidate for the legislature or other state office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on:

(1) the day the session ends for:

(a) any statewide elected official or candidate for statewide office except the governor; and

(b) a legislator or any candidate for the legislature; and

(2) the twentieth day following the adjournment of the regular or special session for the governor or candidate for governor.

**History:** 1978 Comp., § 2-11-8.1, enacted by Laws 1993, ch. 46, § 23; 1995, ch. 153, § 21; 2016, ch. 13, § 5.

# **Bribery**

## **30-24-1. Bribery of public officer or public employee.**

Bribery of public officer or public employee consists of any person giving or offering to give, directly or indirectly, anything of value to any public officer or public employee, with intent to induce or influence such public officer or public employee to:

- A. give or render any official opinion, judgment or decree;
- B. be more favorable to one party than to the other in any cause, action, suit, election, appointment, matter or thing pending or to be brought before such person;
- C. procure him to vote or withhold his vote on any question, matter or proceeding which is then or may thereafter be pending, and which may by law come or be brought before him in his public capacity;
- D. execute any of the powers in him vested; or
- E. perform any public duty otherwise than as required by law, or to delay in or omit to perform any public duty required of him by law.

Whoever commits bribery of public officer or public employee is guilty of a third degree felony.

**History:** 1953 Comp., § 40A-24-1, enacted by Laws 1963, ch. 303, § 24-1.

## **30-24-2. Demanding or receiving bribe by public officer or public employee.**

Demanding or receiving bribe by public officer or public employee consists of any public officer or public employee soliciting or accepting, directly or indirectly, anything of value, with intent to have his decision or action on any question, matter, cause, proceeding or appointment influenced thereby, and which by law is pending or might be brought before him in his official capacity.

Whoever commits demanding or receiving bribe by public officer or public employee is guilty of a third degree felony, and upon conviction thereof such public officer or public employee shall forfeit the office then held by him.

**History:** 1953 Comp., § 40A-24-2, enacted by Laws 1963, ch. 303, § 24-2.