

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING

Santa Fe, New Mexico

February 11, 2013

This meeting of the Santa Fe County Ethics Board was convened by Chair Adair Waldenberg on the above-cited date at approximately 3:00 p.m. at the Santa Fe County Legal Conference Room, County Administration Building, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Adair Waldenberg, Chair
Estevan Baca, Vice Chair
David Mittle
Leon Young
William Peyton George

Member(s) Excused:

None

Others Present:

Erik Aaboe, County Manager's Office
Willie Brown, Assistant County Attorney
Lisa Roybal, County Manager's Office
Bernadette Salazar, County HR Director
Geraldine Salazar, County Clerk

III. Approval of Agenda

Upon motion by Mr. Mittle and second by Mr. Baca the agenda was unanimously [5-0] approved as published.

IV. Approval of December 13, 2012 minutes

A gender error was pointed out and with that correction Mr. Baca moved to approve the minutes as amended. Mr. Leon seconded. The motion carried by unanimous [5-0] voice vote.

V. Discussion and Possible Action Regarding changes to the Gift Policy

HR Director Bernadette Salazar pointed out that effective July 1, 2011 the Governmental Conduct Act (GCA) became applicable to officials and employees of local government. Based on that, Staff reviewed the County's Code of Conduct to address any conflicting items. Recommended changes to the gift policy resulted from that review and staff recommends that the Board members review the GCA to ensure consistency.

Mr. Brown said he discussed the changes with County Attorney Steve Ross and it was his suggestion that rather than piecemeal the code the Board consider amending and restating it.

Mr. Brown said the code contained a conflict regarding gifts of alcohol that was addressed by prohibiting alcoholic beverages of any value. Mr. Young strongly recommended eliminating the reference to alcohol. He noted it was not prohibited in the federal code and should not be in the local code: "It's about gifts, not a drink." He cautioned such a prohibition would promote minutia.

Ms. Salazar said there are alcohol prohibitions throughout the County's HR manual but not specifically identified as a gift.

Chair Waldenberg said non-alcoholic would also need to be removed from the text. Mr. George agreed that it was too much detail. Mr. Baca mentioned attending an event that includes a toast.

Reading from the federal code: "An employee may accept unsolicited gifts having an aggregate market value of \$20 or less, per source, per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year," Mr. Young noted it doesn't matter if the gift is alcohol.

It was suggested striking "non-alcoholic beverages" from item (vi), and "Alcoholic beverage of any value" from item (vii) thus excluding all references to beverages.

Ms. Salazar said the code may need additional tweaking to better clarify that anything up to \$25 is considered nominal and anything above that amount is considered of value and is prohibited.

Mr. Baca recommended adopting the federal language increasing the allowable gift amount to \$25 and no more than \$50 for the calendar year. Chair Waldenberg recommended repeating "source" and "person" to prevent a number of same-company people from giving gifts to an individual.

Mr. Young reminded the participants that the code of ethics should not be designed to embarrass or present awkward situations. The key word about ethical behavior is the ability to be open.

Ms. Ellis-Green said staff will present a draft with the recommended changes.

Asserting the chair's prerogative, items seven and six were reversed.

VII. Review, Discussion and Possible Direction of Amendments to the Code of Conduct Ordinance

Mr. Brown stated staff proposes a change in the definition of "Confidential Information" to mean information that by law or practice is not available to the public which complies with the GCA.

There was consensus to accept this recommendation.

Section 8. Limitations on employment with an appearance before the County following government services, is entirely new language, stated Mr. Brown. A former elected official, appointed official or employee shall not for pay represent a person in dealings with the County for one year after leaving County service or employment. The second prohibition refers to a matter in which that person participated personally and substantially while a County official or employees and that prohibition is permanent.

The Board explored a few scenarios and Mr. Brown advised that the situations will be addressed on a case-by-case basis.

Mr. Young said "supervised" should be included within the prohibition.

New Mexico law dictates the permanent and one-year prohibitions.

The scenario of being a supervisor during the development of a land development code was used and Mr. Brown said that would not prohibit that individual from working on a permit or application, etc. He said the law was meant to be narrower. The GCA is a criminal statute so in addition to penalties under the code, one could be prosecuted by the AG or DA.

Mr. Brown said the section attempts to prohibit self-dealing and also follows state law. He recommended developing a definition for "matter" for this section.

Section 26. Non-Retaliation

Mr. Brown said the code contained at least three instances of non-retaliation but this was written specifically to address ethics. Ms. Salazar said the HR manual and union contracts detail with non-retaliation in depth.

It was suggested the addition of "intimidation" to the first sentence.

Section 29. Penalties

Mr. Brown referred to new language on other penalties which could be enforced by the AG and DA. These penalties could apply where conduct prohibited by the Code of Conduct also constitutes conduct prohibited by the GCA.

Section 23. Reporting Violations of this Ordinance.

Mr. Brown commented that the added language provided clarification of the Ethics Board's scope of authority which does not include County employees. Mr. Mittle said the steps as outlined in the section fail to encourage an individual to report a violation. Ms. Salazar said only violations having to do with employees would come to HR. Elected officials, appointees, or volunteers would come directly from the ethics official, Ms. Garrity, to this Board. Mr. Brown identified the County Attorney as a repository for the complaint which is then forwarded.

Chair Waldenberg reminded the Board that the HR process is confidential while this Board's process is public.

Section 24. County Ethics Board.

Proposed language was noted and there were no concerns or questions raised.

Ms. Ellis-Green said staff would make the necessary revisions to the Code and distribute it for additional Board comments prior to requesting its approval.

V1. Discussion and Possible Direction on Strategies to Encourage Reporting Including Website and Tip Line Reporting

Ms. Roybal distributed a public comment form which has been available on the County website for the past few months. She said they have received interesting comments – complaints and compliments. It can be anonymous which restricts any feedback to the originator. She said the anonymous tip line was created in response to a Commissioner's request.

When she provided her quarterly report to the BCC, Chair Waldenberg said the fact there have been no complaints was noted. Mr. Young said the question the BCC should have asked was, what is the process for complaining.

Mr. Young proffered a scenario of an employee having witnessed an unethical act of another employee, say accepting a bribe, the witness becomes an accomplice and needs to encourage the employee to report it or report it him/herself.

Chair Waldenberg said the barriers to reporting an offense are sufficiently high. The educational process is crucial to raise employee awareness.

Ms. Salazar said the Code of Conduct training is ongoing and at this point 80 percent of the County's employees have received training. The training is part of the County's

mandatory training for performance evaluations. HR was considering reminders on the website of how and when to file a complaint. She said internal investigations have increased which she attributed to employees are feeling safer.

Ms. Ellis-Green said all complaints are followed through. Anonymous complaints tend to contain more ranting and less factual information.

The reticence of filing a sworn complaint was raised along with the notion it was contrary to the process.

Mr. Brown said the complaints involve criminal conduct and behavior and taking away the sworn statement restricts the individual accused of a crime from confronting the complainant. The stakes are very high in this regard.

Mr. Young asked about the Inspector General hotline and how that works on as anonymous hotline.

Chair Waldenberg asked what methods could be used to lower the barriers to complaining if misconduct continues and no complaints come forward. Mr. Brown expressed concern regarding speculation without proof.

Mr. Brown said the Public Education Department ethics complaint form requires a sworn signature. He said previously a complainant was not required to sign and those that did not sign made highly scandalous comments.

Ms. Ellis-Green said as a public board, these meetings are open to the public and names will be mentioned.

Mr. Baca said he understood that a complaint/violation would have been vetted through a process that includes the ethics officer before this board investigates it.

Mr. Brown repeated his concerns about allowing anonymous complaints: "Libeling a person is forever..."

Chair Waldenberg said the Board's role is to discourage and dissuade unethical behavior.

Mr. Mittle asked what this Board could do to help HR and the Commission to eliminate or discourage unethical behavior.

Ms. Salazar suggested the Board conduct an ethics forum with invitations to County elected official, appointees and volunteers. Ethical dilemmas could be presented with dialogue. As far as Code of Conduct training, Ms. Salazar said some of the volunteers have attended and to date no elected officials have participated.

County Clerk Geraldine Salazar said the Community College has an excellent training program which includes ethics courses. Elected officials should have the same due

process as others and an anonymous tip is unfair. The goal is to have good candidates willing to serve the public with ethical behavior and principled politics.

Chair Waldenberg asked that staff present suggested methods to encourage attendance at Code of Conduct training at the next meeting.

Mr. Brown suggested a public workshop may be useful and Chair Waldenberg said the Commission could hold that meeting and this Board could be present.

The Board needs to state an opinion on anonymous complaints, stated Mr. Baca and then hold a public forum. At this point, he said he could not support anonymous complaints.

Chair Waldenberg asked staff to provide information as to whether a sworn statement is required by other governmental entities. She mentioned that the City's ethics board received one complaint which was sworn and signed.

In regards to the Board's activities, Mr. Brown said the current ordinance allows the Board to issue unsolicited advisory opinions.

Mr. Young said ethics is about being open and not talking about what is going on can be an indicator of unethical behavior.

VIII. Matters from the Board

In response to a Board question, Ms. Salazar confirmed that when the County advertises for positions minimum qualifications are included and adhered to. Neither appointed officials nor elected officials are required to go through an HR screening process.

Mr. Young said it was important that the Equal Employment Opportunity Act be supported to maintain a professional and ethical environment.

Mr. Mittle said his desire was to be helpful to the County. Code of Conduct training is occurring; there is a higher level of interest in ethics and the issue is how assertive this Board wants to be.

Discussing the topics noted below may serve to improve employee morale and reduce the appearance of improprieties, pre-selection, etc.

Proposed Agenda items:

- Discussion of qualifications and hiring practices for appointed at-will employees
- Possible amendments to Code of Ethics

Ms. Salazar spoke to the benefits of elected officials appointing at-will employees and mentioned the task before her to hire an election-bureau director – replacing an individual who is known throughout the country, state and county – will be exceedingly difficult. Chair Waldenberg said the Board is merely considering minimum qualifications.

