

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING

Santa Fe, New Mexico

July 6, 2017

I. This meeting of the Santa Fe County Ethics Board was convened by Chair Carol Thompson, on the above-cited date at approximately 1:30 p.m. in the Santa Fe County Legal Conference Room, County Administration Building, Santa Fe, New Mexico.

II. Roll call indicated the presence of a quorum as follows:

Members Present:

Carol Thompson, Chair

Peter Dodds

MacKenzie "Mac" Allen

Member(s) Absent:

Michael "Rosey" Rosanbalm

Linda Ramos

Others Present:

Lisa Katonak, Manager's Office

Tony Flores, Deputy Manager

Cristella Valdez, Assistant Attorney

III. Approval of Agenda

Upon motion by Mr. Allen and second by Mr. Dodds the agenda was unanimously [3-0] approved.

IV. Approval: May 18, 2017 Minutes

The minutes were accepted by consensus.

V. Approval: May 25, 2017 Minutes

Upon motion by Mr. Allen and second by Mr. Dodds, the May 25, 2017 minutes were approved by 3-0 voice vote.

SFC CLERK RECORDED 12/21/2017

Deputy Manager Flores thanked the Board for the opportunity to apprise them of the County's policy regarding absences. He recently updated the BCC on all County boards and committees that have BCC-appointed members. Part of the update included the Planning Commission's request that the BCC clarify member absences that reduce the full complement to conduct business and achieve quorums. He conducted an analysis of absentees and it has been determined that a member may be removed following three or more absences within a calendar year. A procedure is being developed that would notify the County Manager of absences and the Manager would update the BCC.

Mr. Flores said all County boards and commissions are governed by New Mexico's Open Meetings Act which mandates that all business must occur within a public setting. He discussed the prohibition of a rolling quorum via email or phone call and spoke to the importance of transparency. Board members having questions or concerns between meetings should contact staff rather than other Board members. He repeated the importance of transparency.

Mr. Flores confirmed that proxy voting is not permitted within the 2009 County resolution.

VI. Review of the Santa Fe County Code of Conduct Ordinance, Including Campaign Financing: Political Activity; Proper Uses of Campaign Funds; Prohibited Uses of Campaign Funds; and Disbursement of Surplus Campaign Fund [Draft Ordinance on file with Manager's Office]

There was agreement that the changes from the May 18th meeting were approved and did not necessitate further discussion. The changes proposed at the May 25th meeting required action.

Section 19: Disclosure

Assistant Attorney Valdez said she reviewed how household members and partnerships are defined under the state's Domestic Violence statute – which defines it as “as a continuing personal relationship including dating or intimate relationship.” At the May 25th meeting the Board decided not to add the DV definition and maintain the elimination of “boyfriend and girlfriend and fiancé or fiancée.”

It was noted that this was discussed at the May 18th meeting and “boyfriend” and “girlfriend” were considered too vague. “Domestic partner” was agreed upon with a definition.

Action: Mr. Dodds moved to approve 19.C.3 as shown. Mr. Allen seconded and the motion passed [3-0].

Section 20: Proper Uses of Campaign Funds

The Board requested language to expand the term “reasonability of expenditures.” Ms. Valdez borrowed language from the proposed rules of the Secretary of State regarding campaign financing. The rules are intended to provide clarification.

Mr. Allen favored being more restrictive than the state to promote an atmosphere of transparency.

Action: Mr. Allen moved to approve the new language under Section 20. Mr. Dodds seconded and the motion carried by 3-0 voice vote.

- All defined terms have been capitalized throughout the ordinance
- Blue highlighted text has been approved and incorporated
- Green highlighted text has been approved and incorporated

Section 22: Disbursement of Surplus Campaign Funds

A.5 and B were discussed at the May 28th meeting. Ms. Valdez said there is no case on point regarding whether or not the County can prohibit what is allowed by state law. She indicated that A.5 and B are allowed by state law and the general rule is a county can be stricter but cannot prohibit what the state allows.

Action: Mr. Dodds moved to delete Section 22, A.5 and B. Mr. Allen seconded and the motion carried 3-0 voice vote.

The discussion continued and Ms. Valdez said all elected officials will be required to follow state law regarding campaign contributions. However, if an official transferred funds as outlined in the deleted A.5 and B, that individual would be in violation of the County's Ordinance.

Mr. Allen said he understood an elected official could challenge the County because state law allows it; however, it was his opinion it was a terrible law and he would prefer the County take a more restrictive approach. If it is challenged and goes to court then so be it. The question is whether surplus contributed campaign funds can legally be given, at the discretion of the candidate, to someone else. The Board's action prohibits the recipient of a campaign donation to donate that residual money to a third party.

Ms. Valdez said the case law on this is vague and there are few cases on point in regard to the deletions.

Referring to 21.D, a concern was raised that there may be a loophole in the term "campaign funds."

Add "Campaign Funds" as a defined term in the definition section.

Section 23: Coercion

A sentence was eliminated from A because it was deemed redundant.

Action: Mr. Allen moved to delete the second sentence in its entirety. Mr. Dodds seconded and the motion carried 3-0 voice vote.

Section 4: Definitions

Ms. Valdez noted there were two uses of “family” in the ordinance: “family” and “immediate family.” “Family” is broader and is used within the sections on the disclosure and prohibition of giving favors. She referred to Section 20 that is more restrictive and permits the use of campaign funds for travel and related expenses for the candidate and members of the candidate’s staff or immediate family.

Action: 4. R. Immediate Family: Mr. Allen moved to approve the changes (removal of “child of a” and deletion of four “a’s”) as recommended at the May 25th meeting. Mr. Dodds seconded and the motion passed 3-0.

Affirmative Duty (4.B) is a new definition requested at the May 25th meeting and refers to Section 10 A regarding an affirmative duty to disclose a conflict of interest, etc.

Action: Mr. Dodds moved to approve 4.B. as written. Mr. Allen seconded and the motion carried 3-0 voice vote.

4.F. Candidate, was edited for clarification and consistency at the May 25th meeting.

4.O. Family, the term “like” was removed to broaden the definition.

Action: Mr. Allen moved to approve 4.O. as written. Mr. Allen seconded and the motion carried 3-0 voice vote.

4.Y. Special Election was added as a definition per the request at the May 25th meeting and the word “resolutions” was corrected to be singular.

Action: Mr. Allen moved to approve 4.Y. as written. Mr. Allen seconded and the motion carried 3-0 voice vote.

Section 7: Conduct Avoiding Impropriety

Under C, Personal Benefit, which was defined in Section 4, was used for consistency rather than personal gain which was not defined.

Action: Mr. Dodds moved to approve and Mr. Allen seconded. The motion passed by 3-0 voice vote.

Section 8: Limitations on Employment with the Appearance Before, the County Following Government Service

Under A, “for pay” was replaced with “receive compensation.”

Action: Mr. Allen moved to approve. Mr. Dodds seconded and the motion passed by 3-0 voice vote.

Section 10: Conflicts of Interest, Disclosure

10.B a clarification was made by adding “and not” to hire, promote, or simply to reward.

Action: Mr. Dodds moved to approve the change. Mr. Allen seconded and the motion passed by 3-0 voice vote.

Section 11: Confidential Information and Misuse of Non-Public Information

The title was changed for consistency with the definition.

Action: Mr. Dodds moved to approve. Mr. Allen seconded and the motion passed by 3-0 voice vote.

This concluded the changes that were requested at the May 25th meeting.

Section 12: Duty to Report Improper Offers

Under 12. B, Mr. Allen said, the word “clear” as the defining standard for an attempt to improperly influence is vague and he would prefer adding the reasonableness standard.

Ms. Valdez pointed out that A and B address two distinct occurrences. In A, it appears a bribe is being offered whereas in B the bribe/offer is clear/obvious and should be reported to law enforcement.

Mr. Allen said if the individual knows enough to reject the offer (A) then it appears clear enough that it is an offer. He agreed it may not be clear enough to substantiate criminal action but it should be documented as unethical. It’s important that people understand this type of behavior will be documented and not tolerated in Santa Fe County.

Mr. Allen supported revising the last sentence of A. “...and unequivocally reject, document and report the incident to the appropriate authorities. He did not support that the individual caution the other about possible violations of the bribery laws.

Ms. Katonak said at this point there is not a vehicle to report such a violation other than law enforcement. She asked whether the Ethics Board would want to receive these sorts of complaints.

The notion that the County’s Contract Ethics Official would hear the complaint was mentioned.

Ms. Valdez advised the Board that there are penalties for false reporting of a criminal accusation and she expressed hesitancy to mandate a report to law enforcement. Mr. Allen said it was a report, not a criminal complaint and law enforcement would determine whether there was sufficient merit to move forward.

The reporting of a bribe should be obligatory, stated Mr. Allen.

Chair Thompson referred to Section 24 A: “Any elected official, appointed official, employee, volunteer or member of the public may submit a complaint alleging unethical

conduct to the County Ethics Board by delivering to the County Attorney's Office a signed complaint sworn under penalty of perjury to be true that alleges facts which..."

Mr. Allen pointed out the section states may submit a complaint rather than shall. Mr. Dodds recommended adding "shall have a duty..."

In response to the idea of adding a definition of unethical conduct, Ms. Valdez said the standard for unethical conduct is covered within the ordinance. She noted that the ordinance applies to elected officials, appointed officials, employees and volunteers.

Section 24 A. provides that includes members of the public can submit a complaint.

Mr. Allen said the ordinance needs to identify that County officials have the right to report on a civilian. Ms. Valdez repeated that there is not a mechanism in the ordinance for someone to make a complaint about something that a citizen does.

Mr. Dodds said he understood that the ordinance would establish a means to flag situations where in-house officials were approached by other parties with an attempt to influence and to identify the consequences.

Mr. Allen said this appears to only address in-house individuals and to change the culture of the County he wanted to include the public.

Ms. Valdez said if reporting a perceived bribe is mandatory then it becomes a crime, a violation of the ordinance, if it is not reported.

Section 24: Reporting and Resolving Alleged Ethics Violations

There was a suggestion to change A as follows: Any Elected Official, Appointed Official, Employee or Volunteer , ~~or~~ and a member of the public shall submit a complaint"

Ms. Valdez said she has concern with "shall" is that if it is not reported it becomes a violation of the ordinance and becomes a circular issue. Adding "shall" compels one to perhaps risk their job on a complaint they don't want to make. Mr. Allen recognized her point and said that perpetuates the problem and is classic harassment. Ms. Valdez said harassment laws have mandatory reporting.

Ms. Valdez said it was her legal opinion that a member of the public cannot be coerced to file a mandatory complaint within this ordinance. Using "may" for the public is a policy decision.

In response to the attorney's comments, the suggested language was modified to: Any Elected Official, Appointed Official, Employee or Volunteer shall have a duty to submit a complaint ~~or~~ and a member of the public may submit a complaint"

In order to change the culture, everyone must be held accountable, stated Mr. Dodds, and Mr. Allen agreed. Chair Thompson said that exceeded the Board's charge. Mr. Allen

pointed out that the Board is making suggestions to the BCC he understood from the Board's charge that they were to improve and strengthen the ordinance.

Mr. Dodds said he understood his appointment to the Board was to offer fresh review eyes and to formulate suggestions to the BCC who would either accept or reject them. Mr. Allen agreed and said the code of conduct should be perceived as ethical and above board.

A discussion of permitting the reports to be submitted confidentially rather than anonymously ensued. Ms. Valdez said neither the BCC nor the Ethics Board can remove things from the public record. Chair Thompson recalled that anonymity was an issue in the past.

Stating that "may" lacked teeth, Mr. Dodds suggested adding "has a duty" or "is expected" to report unethical conduct.

Chair Thompson reminded the Board that elected officials take an oath of office.

Action: Mr. Dodds moved to approve the following language: Any Elected Official, Appointed Official, Employee or Volunteer shall have a duty to, ~~or and~~ a member of the public may submit a complaint alleging unethical conduct" Mr. Allen seconded. The motion passed without opposition.

A correction was made to Section 22 A. 4 in that it should end with a period and the semicolon and or removed.

VII. Matters from the Board

None were presented.

VIII. Matters from the Public

None were presented.

IX. Adjournment

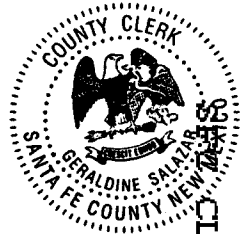
Having completed the agenda and with no further business to conduct the meeting was declared adjourned at 3:45 p.m.

Approved by:


Carol Thompson, Chair

Respectfully submitted by:

Karen Farrell, Wordswork



CLERK RECORDED 12/21/2017

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
ETHICS BOARD MINUTES
PAGES: 8
I Hereby Certify That This Instrument Was Filed for
Record On The 21ST Day Of December, 2017 at 02:15:12 PM
And Was Duly Recorded as Instrument # 1844451
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy County Clerk, Santa Fe, NM

DRAFT

subject to approval