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MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING



Santa Fe, New Mexico

July 9, 2014

This meeting of the Santa Fe County Ethics Board was convened by Chair Estevan Baca, on the above-cited date at approximately 2:04 p.m. in 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:

Estevan Baca, Chair
Bill Heimbach, Vice Chair
William Peyton George
Carol Thompson
Adair Waldenberg [late arrival]

Member(s) Excused:

[None]

Others Present:

Willie Brown, Assistant County Attorney
Lisa Katonak, Manager's Office

III. Approval of Agenda

Mr. Heimbach moved to approve the agenda as published. His motion was seconded by Ms. Thompson and passed by unanimous [4-0] voice vote. [Ms. Waldenberg was not present for this action.]

IV. Approval of May 12, 2014 Minutes

Ms. Thompson moved approval as amended and Mr. Heimbach seconded. The motion carried unanimously by 3-0 voice vote with Mr. George abstaining and Ms. Waldenberg not present.

V. Review, Discussion and Approval of Recommended Amendments to the Board of County Commissioners to amend the Santa Fe County Code of Conduct Ordinance

Chairman Baca went over the color coding in the edited version of the ordinance. Mr. Brown stated he had met at length with new County Attorney Greg Shaffer who had many comments.

Page 1: The ordinance titled was whittled to a brief description and the lengthy explanation was removed.

Page 2: Mr. Shaffer added except for transportation and related travel expenses. Chairman Baca asked if related expenses included other costs beyond strictly transportation and Mr. Brown said it did.

[Ms. Waldenberg joined the meeting.]

“Anything of value” was also defined more closely to exclude campaign contribution; this was previously stricken. An addendum was requested by one of the Commissioners: “nor does it include food, lodging and transportation expenses paid by the New Mexico Association of Counties (NMAC) for attendance by Commissioners of the Board of County Commissioners at NMAC’s statewide conferences or for their attendance at National Association of Counties conferences.”

Page 3: Double strike-through should be read as blue, that is, coming from Mr. Shaffer. Section 4.E, Candidate was modified to quote the Campaign Reporting Act.

Page 4, Section 4.N, Financial Interest, was changed to add “Appointed Official’s, Volunteer’s, or Employee’s.”

Page 5: Section 4, T, defines respondent, and volunteer specifically implies the service is on behalf of the County. Section 7 title now reads “The Duty to Avoid Impropriety.”

Page 6: No suggested changes.

Page 7: Section 10. Ms. Waldenberg said it appeared many of the changes were moving things around rather than eliminating them. She also asked about the word “pendency”. Mr. Brown said the section describes due diligence. He explained pendency refers to the moment between starting and ending, such as is found in the procurement process. Ms. Waldenberg requested a more easily understood word be used. Mr. Brown suggested “window” as a possibility and said he would try to come up with a different suitable word.

A discussion ensued regarding the difference between a desire to do business with the County and submitting an application. Mr. Brown said it downshifts the impetus of the scope of the provision since desire to do business is vague. Ms. Waldenberg suggested “express an interest” or being on a bidders list. Mr. Brown felt the harm was greater after

the submission is filed. Commissioners have complained about there being restrictions on speaking with their constituents. Ms. Waldenberg said the goal is to prevent quid pro quo type dealings. Mr. Brown said the language comes from the procurement code. Mr. Heimbach stated they might be trying to tighten things up too much. Mr. Brown pointed out Commissioners have limited ability to influence procurement decisions.

Page 9: Mr. Brown said this covers campaign contributions vis-à-vis applications, particularly in land use cases. Paragraph 2 is almost identical to Paragraph 5 on the preceding page. Mr. Brown referred to a "safe harbor provision" through which a thing of value can be returned within seven days.

Page 10: The change specifies the section of the Whistleblower Protection Act. Section 14. A. 4 adds the statement: and the use is otherwise in accordance with applicable law and policy.

Page 11: Mr. Brown said 15. A has a clarification of existing language. On C. Mr. Heimbach asked if this refers to off-County property. He asked what "appropriate location" referred to. Ms. Katonak noted that candidates for office are required to provide an address, usually their home, where contributions could be received.

Page 12: In 17. B, "or solicit" is redundant. In 18. A, "campaign" is substituted for "political."

Page 13: 18. D, a double negative is corrected. In G, the new language reflects more accurately what the Governmental Conduct Act says.

Page 14: At the bottom of the page the "or" after 21.A.3 should be stricken, and placed after 4.

Page 15: Following extensive research on the Secretary of State's website, Mr. Brown recommended adding a fifth proscription for candidates: use campaign funds in a manner contrary to NMSA 1978, § 1-19-29.1 of the Campaign Reporting Act. E. and F. further refine provisions in line with the Campaign Reporting Act.

Mr. Shaffer suggested the following change to Section 22. A. 2: returned on a pro rata basis to those who have made contributions in excess of one hundred dollars (\$100) in the aggregate a year during either a primary or a general election. Ms. Waldenberg expressed concern about dropping "in the aggregate" thinking it would lead to serial contributions that would go beyond the stated limit. Mr. Brown said this refers to what has to be returned. The Campaign Reporting Act does not specified what must be done with surplus funds at the end of a campaign.

Page 16: As in Section 18.A, "campaign" is substituted for "political." In Section 24 Ms. Waldenberg expressed her strong feeling that members of the Ethics Board should be allowed to submit complaints.

Page 17: 24. A, B, C, and D, all refer to the Ethics Board and are points of contention with members of the Ethics Board. Prior County Attorney Ross made the changes and Mr. Brown said Ethics Board members submitting complaints would make them the judge and the jury. Colleagues would tend to give too much weight to the voices of fellow board members.

Ms. Waldenberg pointed out grammatical errors in Section 24. E, which also contains clarifying language.

Page 18: The following sentence was added to show where to find the ethics section in the handbook. Consistent with Section 6 of the Human Resources Handbook, County Employees are bound by and must comply with this Ordinance. This is to prevent pleas of ignorance. Language was also added to Section 24. F: and which does not support an allegation of violation of this Ordinance, "On its merits" was added to describe the public hearing referred to in H. Minor wordsmithing occurs in 24. H. 1.b.

Page 19: Section 24. H. 2 and 3 should read "dismiss" instead of "recommend dismissal." J picks up what is stricken in I. "On the merits" is again added in J, and K. 4 has minor wordsmithing.

Page 20: In Section 24. K. 6, "rule on admissibility" is changed to "exclude" on the rules of evidence. The County Manager requested the change: or find no violation of this ordinance has occurred ~~in which case the complaint shall be dismissed.~~ in 24.K.10. "on the merits" is again added to 24. L. In Section 25 and following, "of County Commissioners" is stricken as redundant per the definitions which "Board" alone refers to the BCC.

Page 21: Mr. Shaffer included one small grammatical correction.

Page 22: The County Manager and County Attorney recommended the adoption of the following: Meetings of the Ethics Board shall be at the call of the chair and shall be no more frequent than quarterly, unless more frequent meetings are required when either an ethics complaint has been filed or an advisory opinion has been requested pursuant to this Ordinance. This implies the Ethics Board will meet when needed. Ms. Waldenberg indicated she felt it should say meetings shall be at the call of the chair. "No more frequent than quarterly" seems unduly restrictive. Mr. Heimbach agreed, saying it should be in their hands. Other changes on page 22 were for clarification between Board and Ethics Board.

Page 23: It was suggested to change "An employee who knowingly files a false ethics complaint" to "An employee who knowingly files an ethics complaint containing false statements" and "hear" was changed to "preside over".

Page 24: "Direct" was added to 28.B.1.a, to modify "financial interest" and "pecuniary" was struck as being redundant. Ms. Waldenberg felt including "direct" made it too narrow. Additionally, this page contained inconsistent capitalization.

Page 25: Ms. Waldenberg indicated she doesn't like the construction "and/or" and suggested the new language under 30.A.4 should read: "proceedings and discipline, up to and including termination, pursuant to the Santa Fe County Personnel Handbook, and/or any applicable collective bargaining agreement, if the violator is a County employee." The other change on the page was wordsmithing.

Page 26: The citation for the Governmental Conduct Act is included and the new County Attorney's name replaces that of the old.

Chairman Baca offered some options for approving the various changes and it was agreed to go page by page, after which staff would bring back some cleaner versions to the next meeting. Mr. Brown noted there needed to be two versions in order to show where the Ethics Board's preferences differ from those of staff.

Voting on Changes

Page: 1

Motion to accept: Mr. George

Second: Ms. Thompson

Vote: 5-0

Page: 2

The motion included acceptance of the Commissioner suggestions at the bottom of the page.

Motion to accept: Mr. Heimbach

Second: Ms. Thompson

Vote: 5-0

Page: 3

Motion to accept: Ms. Thompson

Second: Mr. Heimbach

Vote: 5-0

Page: 4

Motion to accept: Ms. Thompson

Second: Mr. George

Vote: 5-0

Page: 5

Motion to accept: Mr. George

Second: Ms. Thompson

Vote: 5-0

Page: 6

Motion to accept: Ms. Thompson

Second: Mr. Heimbach

Vote: 5-0

Page:7

Motion to accept: Ms. Thompson

Second: Mr. George

Vote: 5-0

Page: 8: No vote was taken on this page to allow alteration to the word "pendency."

Page: 9

Motion to accept: Ms. Thompson

Second: Mr. Heimbach

Vote: 5-0

Page: 10

Motion to accept: Mr. Heimbach

Second: Mr. George

Vote: 5-0

Page: 11

Motion to accept: Ms. Thompson

Second: Mr. George

Vote: 5-0

Page: 12

Motion to accept: Ms. Thompson

Second: Mr. Heimbach

Vote: 5-0

Page: 13

Motion to accept: Mr. Heimbach

Second: Ms. Thompson

Vote: 5-0

Page: 14

Motion to accept: Mr. Heimbach

Second: Ms. Thompson

Vote: 5-0

Page: 15

Motion to accept: Ms. Thompson

Second: Mr. Heimbach

Vote: 5-0

Page:16

Motion to accept up to Section 24: Ms. Thompson

Second: Mr. George

Vote: 5-0

Page 16, Section 24. A. Mr. Heimbach move to accept the language to read: "Any person may submit a complaint...."

Second: Mr. George

Vote: 5-0

Page 17, continuation of Section 24. A, with some sections reactivated, to read:

"Complaints filed or submitted more than one (1) year after a violation of this Code is alleged to have occurred shall be beyond the jurisdiction of the Ethics Board and shall be dismissed with prejudice. As to ethics complaints submitted by County Ethics Board members:

1. Any County Ethics Board member submitting an ethics complaint shall submit a letter to the County's Contract Ethics Official ("CCEO"), together with their complaint, that recuses him/her from participating in any discussions, deliberations or voting on the merits of their complaint.

2. Because of the prohibitions in this Ordinance against *ex parte* communications, during the pendency of the complaint, such complaining Ethics Board member shall not formally or informally discuss the merits or substance of his/her ethics complaint with any other Ethics Board members unless: (a) the CCEO has dismissed the complaint because it failed to state a claim and the Ethics Board member has not appealed the dismissal; or, (b) the County Ethics Board has issued a final decision on the complaint after a hearing."

[With added 3. See below.]

Motion: Ms. Waldenberg

Second: Ms. Thompson

Vote: 5-0

Page: 17, Section 24. C, Approve with reactivated language: However, all complaints addressed to the County Ethics Board or a member of the Board, whether sworn or not and whether anonymous or not, shall be forwarded to the County Ethics Board as well as to the CCEO. The form of complaint shall also be noted whether it is an email, letter, phone message, etc.

Motion to reactivate: Ms. Waldenberg

Second: Mr. George

Vote: 5-0

Page: 17, Section 24. D, Approve with reactivated language: The Ethics Board shall take no action nor discuss at an open meeting a complaint it receives directly or is forwarded to it by reason of the complainant's having addressed the complaint to them, but shall turn such complaints over to the CCEO for processing and investigation if it is sworn and it states a claim.

Motion to accept: Mr. Heimbach

Second: Mr. George
Vote: 5-0

Page: 17, Section 24 E
Motion to accept: Ms. Waldenberg
Second: Mr. George
Vote: 5-0

Page: 18
Motion to accept: Ms. Waldenberg
Second: Mr. George
Vote: 5-0

Page: 19
Motion to accept: Ms. Waldenberg
Second: Ms. Thompson
Vote: 5-0

Page: 20
Motion to accept: Ms. Thompson
Second: Mr. George
Vote: 5-0

Page: 21
Motion to approve minor change and reactivate Section 25. B, as follows: The County Ethics Board shall elect its own chair and vice-chair. If any member of the County Ethics Board petitions the Ethics Board for a hearing and advice regarding his or her own conduct or the conduct of others, such member shall not be eligible to sit in such cases. This subsection is to be moved to become 24. A. 1. 3. The following sections to be renumbered.
Motion Ms. Thompson
Second: Ms. Waldenberg
Vote: 5-0

Page: 22, strike added language in Section 25. K: Meetings of the Ethics Board shall be at the call of the chair and shall be no more frequent than quarterly, unless more frequent meetings are required when either an ethics complaint has been filed or an advisory opinion has been requested pursuant to this Ordinance.
Motion to approve: Mr. Heimbach
Second: Ms. Thompson
Vote: 5-0

Motion to approve remaining changes: Ms. Thompson
Second: Ms. Waldenberg
Vote 5-0

Page: 23

Motion to accept: Ms. Thompson

Second: Ms. Waldenberg

Vote: 5-0

Page: 24

Motion to accept minor changes and striking added "direct": Ms. Waldenberg

Second: Mr. Heimbach

Vote: 5-0

Pages: 25 & 26

Motion to accept: Ms. Waldenberg

Second: Mr. George

Vote: 5-0

VII. Matters from the Board

The next meeting was tentatively scheduled for August 13th at 2:00. Chairman Baca suggested reintroducing the complaint form. Mr. Brown said finalization would need to reflect the ultimate version of the ordinance, particularly those sections involving conflict of interest.

Ms. Katonak described the process and timeline for passing and enacting an ordinance, beginning with presentation to the Board, publication of title and general summary, public hearings and Board discussion.

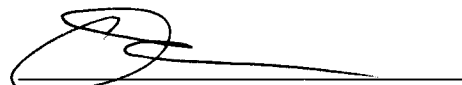
VIII. Matters from the Public

None were presented.

IX. Adjournment

Upon motion by Ms. Waldenberg and second by Ms. Thompson, Chair Baca declared this meeting adjourned at 4:04 p.m.

Approved by:

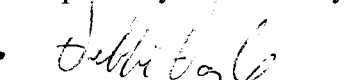


Estevan Baca, Chair
Santa Fe County Board of Ethics



ATTEST TO:
Geraldine Salazar
COUNTY CLERK

Respectfully submitted by:


Debbie Doyle, Wordswork

8-14-2014