

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE

ETHICS ADVISORY OPINION NO. H94-1

A member of the House of Representatives requested an advisory opinion from the Legislative Ethics Committee during the 1993 interim. After the request was submitted, the committee did not meet in the remainder of the 1993 interim. Pursuant to House Rule 9-13-1, the request was forwarded to the House Rules and Order of Business Committee.

For the reasons set forth below, the committee finds that the circumstances described in the request do not create a conflict of interest.

Request for Advisory Opinion

The request is as follows:

Does a state legislator who is President of a local foundation in his¹ hometown have a conflict of interest if one of the purposes of the foundation is to approve plans for development of the town's central plaza and if that development is partially funded by state money?

The foundation does not apparently receive any state money directly. Rather, it receives private donations and grants and uses them to develop the town's plaza. The town seeks state funding from time to time to partially cover the cost of development of projects approved by the foundation.

Analysis

Analysis of the request begins with consideration of the constitutional prohibition against legislators having interests in contracts passed during their term in office. See Article 4, Section 28 of the constitution of New Mexico. That provision does not, however, appear to restrict the activities described because the state money involved goes strictly to develop the town's plaza projects.

The projects may have been recommended by the foundation. The foundation itself does not, however, as we understand it, receive directly or indirectly any of the state money appropriated. Since none of the state money goes to the foundation, no conflict is present.

If different circumstances are present, or if the assumptions noted in this opinion are in any way incorrect, a revision of the opinion may be necessary. If, for example, the money the

¹ The opinion uses the pronoun "his" strictly for purposes of grammatical convention. The word does not identify the requester's gender.

state appropriates goes to reimburse the foundation for its expenses, and if the state legislator is paid by the foundation in his role as President, then a different analysis and conclusion might be warranted. For relevant Attorney General statements on this issue, please see Opinion No. 91-11 (1991) and the Attorney General letter, dated January 19, 1993, referencing "Contract with Nonprofit Organization". Copies of those statements are attached.

As a general ethical matter, the legislator in the circumstances described may want to disclose in public hearings, committee or floor votes or other settings his role with the foundation that recommends a particular project the legislature may be asked to fund. This is entirely up to the legislator to decide; the disclosure of such tangential interests are not, based on the facts as we understand them, required.

We are always mindful of the fundamental notion adopted in the Governmental Conduct Act that was enacted last year: "Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct." See Subsection C of Section 10-16-3 NMSA 1978. In ethical issues, appearances can often require actions and disclosures that objective facts do not warrant.

In this spirit, the legislator may choose, for example, to disclose his relationship with the foundation and its interests on his Financial Disclosure Statement. The Financial Disclosure Act provides in the statement a final "general category that allows the person filing [it] . . . to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest". See Paragraph (9) of Subsection C of Section 10-16A-3 NMSA 1978. The disclosure is the legislator's to determine.

We appreciate the sensitivity of members of the House of Representatives to ethical issues. We hope this first ethics advisory opinion is helpful.

BARBARA A. PEREA CASEY
State Representative
Chair, House Rules and Order of Business Committee

Date: January 20, 1994