

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING

Santa Fe, New Mexico

May 12, 2011

This meeting of the Santa Fe County Ethics Board was convened by County Attorney Steve Ross, on the above-cited date at approximately 3:10 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:

Estevan Baca
Randy Forrester
Adair Waldenberg
David Mittle, Alternate

Member(s) Excused:

None

Elected Official(s):

Danny Mayfield, County Commissioner

Others Present:

Diane Garrity, Ethics Board Contract Counsel
Steve Ross, County Attorney
Penny Ellis-Green, Deputy County Manager
Bernadette Salazar, County HR Director
Juan Rios, Constituent Liaison

III. APPROVAL OF AGENDA

Ms. Waldenberg moved to approve the agenda as published. Mr. Forrester seconded and the motion carried unanimously.

IV. INTRODUCTIONS

Those present introduced themselves.

V. **ELECTION OF CHAIR**
VI. **ELECTION OF VICE CHAIR**

By unanimous voice vote Randy Forrester was elected Chair and Adair Waldenberg Vice Chair.

VII. **PRESENTATION: Open Meetings Act and Open Meetings Act Resolution**
[Resolutions and the ordinance were distributed to board members and are available on the County's webpage]

Mr. Ross said the Board of County Commissioners (BCC) annually enacts the Open Meetings Act Resolution which describes the notice for all County boards and committee meetings. Staff will handle noticing issues. As a complaint-driven body, the Ethics Board will probably not have regular meetings once the tasks of drafting procedural regulations and recommendations to the BCC regarding the Ethics Ordinance have been addressed. Special meetings can be held with at least three days notice published in a newspaper; emergency meetings are also possible. All meetings require an agenda which is contained in the initial notice. He noted agendas are posted on the County's website. The resolution also spells out recessed meetings, cancelled meetings, participation by conference telephone, and closed meetings.

Recognizing the difficulties of a three-member board, in which any two members getting together is a quorum, Mr. Ross recommended that staff serve as the middleman for conversations between the board. All substantive discussions need to happen at the meeting. Ms. Ellis-Green was identified as the staff contact.

VIII. **PRESENTATION: Rules of Order** [Resolution 2009-2]

Mr. Ross said these rules are adopted periodically by the BCC and are applicable to this board. He noted the following issues: quorum of two, duties of the chair to include announcing the results of all votes, the chair has voting rights and can make and second motions, agenda with action and informational items clearly delineated, types of meetings and that this board will focus on administrative and administrative/adjudicatory proceedings. Staff will present the item, the board may ask questions, public input is taken, followed by board discussion prior to action. Hearings will be governed by rules prepared by this board.

Referring to the section on motions, Mr. Ross said every formal action of the board requires a motion and there can be no discussion until a second is secured. The County uses "friendly amendments" – accepted by the movant and seconder: there are no unfriendly amendments. He said this keeps the record clean. The County also uses secondary, non-debatable motions which supersede the motion on the floor. Motions to reconsider are restricted to the very next meeting. He emphasized the importance of paying attention to the ordinance regarding conflicts and financial interest.

Referring to attendance, Mr. Ross recommended calling staff in advance in the event they cannot attend a meeting.

IX. PRESENTATION: Code of Conduct Ordinance [Ordinance 2010-12]

Mr. Ross said the County has had a Code of Conduct since 1996 which was quite progressive. The State recently enacted a new law effective June 2011 that subjects local government to the State Governmental Conduct Act. Ms. Garrity said the new state law can be reviewed as SB 432.

A. Applicability

Mr. Ross said the ordinance applies broadly to elected officials, appointed officials, employees and volunteers. As a practical matter and for purposes that apply to the Ethics Board, it will be elected officials, appointed officials and volunteers. If an employee violates the Code of Conduct it will be handled through personnel procedures. Employees cannot appeal to this Board.

Ms. Salazar indicated that the HR Handbook serves as the employees' Code of Conduct and can be reviewed on the County's webpage.

B. Duties of the Board

Mr. Ross said this section of the ordinance is new and largely derived from Bernalillo County. A sworn complaint would be filed with the County Attorney's office attesting that a person covered by the ordinance violated the ordinance. The complaint would be forwarded to Ms. Garrity. The Ethics Board shall adopt rules of procedure for conducting hearings pursuant to this ordinance, which Mr. Ross said is the Board's current number one task. The rules will delineate how to deal with the complaint. Pursuant to the procedures there will be a finding based on the complaint. The findings of fact and conclusions of law will be forwarded to the County Manager or, as appropriate, the District Attorney, for appropriate action. The parameters for penalties for violations of County laws were addressed and Mr. Ross said fines cannot exceed \$300. This portion was last amended in 1950s. Censuring and referral to the DA or appropriate governmental office for commencement of criminal proceedings is another option. He noted the one-year statute of limitations. Upon the request of any elected official, appointed official or County employee, this board may also provide advisory opinions regarding the applicability or interpretation of the provisions of this ordinance.

Any decision of the board may be appealed to the First Judicial District Court; it is a record appeal.

C. *Ex-Parte* Communications

Mr. Ross said in the board's capacity as arbitrator of complaints the prohibition of *ex-parte* communications applies. The board should neither be talking to the complainant nor to the individual who the complaint is about. In fact, he suggested the Board be mindful of talking to County staff in regard to a complaint. Ms. Garrity is the appropriate person to speak to.

Mr. Ross pointed out that *ex-parte* communications could be the basis for a complaint.

D. Financial Interest/Conflicts of Interest

E. Disclosures

Mr. Ross said these sections have been in the ordinance since its enactment. The remedy for a conflict of interest is disclosure on a form filed in the County Clerk's office.

Conflict of interest is defined as a situation where a person who has a responsibility to exercise a duty has an interest, financial or otherwise, that could potentially impact or exploit the exercise of that duty.

Ms. Waldenberg said the definition of family appeared narrow, excluding in-laws or cousins.

Mr. Ross said avoiding perceived conflicts is important. Receiving gifts, personal benefits; political or charitable contributions or anything of value is prohibited. He referred to the definitions section that provides an in-depth definition of "anything of value," "benefit" or "thing of value." A meal is limited to \$25 and travel expenses are limited to \$50 a trip.

Financial interests are strictly prohibited, stated Mr. Ross. He outlined the five elements: an ownership interest or other interest in any contract or prospective contract with the County; an interest in the sale of real or personal property to or from the County; a financial relationship with a person or business whose interests may be affected by the County; employment or prospective employment for which negotiations have already begun where the prospective employer has an interest in the sale of real or personal property to or from the County; or any other interest that may be affected by the County.

Ms. Waldenberg noted a discrepancy under financial interest, which refers to an elected official's spouse and minor children which does not follow the family definition set out in the ordinance. Mr. Ross said this was clearly an issue the board could address.

Chair Forrester requested that staff obtain the procedures Bernalillo County adopted for this ordinance. Mr. Ross said the City of Santa Fe has procedures that may be helpful.

Mr. Ross said in the past the BCC served as the enforcement body and to his knowledge there has never been a complaint filed.

Mr. Ross said training sessions are periodically provided on the Code of Conduct Ordinance.

Ms. Waldenberg said it was essential for accountability that elected officials, appointed officials, etc. sign a declaration that they are aware of the Code of Conduct Ordinance. There was consensus to place that on the next board agenda for formal action as well as a review of possible ordinance changes, i.e. broadening the definition of family and

financial interest family limitations. Chair Forrester recommended a page-by-page review.

X. MATTERS FROM THE BOARD

There was consensus to hold meetings on the second Thursday of the month from 3 to 5. The next meeting was scheduled for June 9th.

Commissioner Mayfield requested the Board allow for "Public Comments" within their agenda.

XI. ADJOURNMENT

Having completed the agenda and with no further business to come before this Board, Ms. Waldenberg moved to adjourn. Mr. Baca seconded and by unanimous voice vote this meeting was declared adjourned at 4:15 p.m.



Approved by:

Randy Forrester
Randy Forrester, Chair
Santa Fe County Board of Ethics

ATTEST TO:
Valerie Espinoza
COUNTY CLERK

Before me, this ____ day of _____, 2011.

My Commission Expires: _____
Notary Public

Submitted by:
Karen Farrell, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss ETHICS BOARD MINUTES
PAGES: 5
I Hereby Certify That This Instrument Was Filed for
Record On The 10TH Day Of June, 2011 at 02:57:31 PM
And Was Duly Recorded as Instrument # 1637195
Of The Records Of Santa Fe County
Valerie Espinoza
Deputy _____
Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

SFC CLERK RECORDS 10/2/11