



## ETHICS COMMISSION

### *Next – And Necessary – Steps*

#### ***Do We Have an Ethics Commission? No, not yet.***

This primer discusses what the state of play is on the proposed statewide Ethics Commission. There is a background section explaining why the declarations of victory in the struggle for an Ethics Commission are premature, a technical background section discussing important legislative processes that will affect the ultimate construction of the Ethics Commission, and, most importantly, a section discussing what we can do to ensure that New Mexico gets an Ethics Commission with proper powers.

#### ***Background***

We are being told that New Mexico's statewide ethics commission is in the bag – that as soon as the people approve the commission when they vote on it in 2018, the commission is a done deal. This is not true.

Despite claims of victory concerning the commission, we do not know what the commission will look like, or what powers it will have. The constitutional provision on which we will vote provides only the shell of a commission. The Legislature promises that the Commission will have the transparency, independence, and power that the people of New Mexico want and require, and that they can be trusted to fill in the details *after* the people approve the Commission. But we do not have to wait until after we vote. There is a way that we can make the Legislature show their hand before the vote in 2018. This document discusses how we can bring that about.

#### ***Some Technical Details***

Bear with us for a moment, for some legislative process needs to be explained. It is important to know what is meant by “enabling legislation”, what it meant by a “contingent effective date”, and how the process of creating legislation works when the Legislature is *not* in session – that is, what interim committees are and what they do.

**ENABLING LEGISLATION:** What will be presented to the voters on their ballots in November 2016 is the *title* of the resolution that passed the Legislature. The title makes it look like the powers of the commission are fixed. Yet these powers, as the title notes at the very end, will be “as provided by law”. What this language means is that the extent of those powers will be determined later by the Legislature. Similarly, the body of the proposed amendment to the state constitution concerning an ethics commission frequently uses the phrase “as provided by law” (or similar constructs). What all of this means is that the details for those various powers will be provided in what is known as *enabling legislation*.

### IN A NUTSHELL

1. The Ethics Commission that will be voted on in November 2018 is a shell commission.
2. The commission's actual scope and powers will be determined later.
3. The Legislature can – and should – provide the people with the commission's scope and powers *before* the vote.

## TIMELINE

**Summer/Autumn 2017** – The 2017 interim committees meet

**January-February 2018** – Legislative Session (30-day)

**Summer/Autumn 2018** – The 2018 interim committees meet

**November 2018** – General election vote on Ethics Commission

*Enabling legislation* refers to the statutes that are written to bring a constitutional provision into full effect – think of it as the meat on the bones of the constitutional language. The constitutional amendment that the Legislature is sending to the voters is mostly bare bones – the Legislature stripped out all the language that would have fixed the commission’s powers in the Constitution, and said, effectively, *trust us* – we will put these powers back in later! By later, they meant *after* the voters approve the commission.

CONTINGENT EFFECTIVE DATE: One way the Legislature can let the people know what powers they intend to give the commission is through passing enabling legislation in the 2018 Legislative Session with a *contingent effective date*. A contingent effective date, in this case, states that the bill in question will become law if, and only if, the associated constitutional amendment is approved by the voters. *This is*

*how the people can know what the Legislature intends to give us as an ethics commission before the people vote in 2018*. Enabling legislation *does not* have to be passed after a constitutional provision is approved by the voters. The Legislature can pass enabling legislation in the 2018 session *before* the constitutional change goes to the voters, by adding a contingent effective date to the legislation. (Note: given that the 2018 Legislative Session will be a short session and thus have a limited scope, the enabling legislation would have to be requested by the Governor for the session.)

INTERIM COMMITTEES: There is another way for the Legislature to let the people know what specific powers they plan to give the Ethics Commission, and this is by developing a bill using the *interim committee* process. Many people do not know this, but the members of the Legislature meet frequently outside of the Legislative Session, usually monthly, from the end of May through early December in what are called *interim committees*. These committees are made up of legislators from both chambers and are used by the Legislature both to assist members in learning about issues of concern to that committee, and, most importantly for our purposes, to vet legislation before a Legislative Session. Not only do the interim committees vet legislation, they often endorse legislation – meaning that the committee gives its stamp of approval to a proposed piece of legislation. The state spends thousands of dollars on per diem and mileage for these committees – there are 26 of them, at last count – to do their work.

Thus, enabling legislation for the Ethics Commission could be brought before one of the interim committees and be discussed fully before any vote on the commission – the interim committee that would vet ethics legislation is the Courts, Corrections and Justice Committee. Note that there will be **two** interim committee sessions before the people vote on the Ethics Commission, more than enough time for enabling legislation to be vetted.

Always keep in mind that even if the Ethics Commission amendment to the Constitution is approved by the voters in November 2018, it is a shell commission until the enabling legislation is approved. Not only is the fight for a statewide ethics commission not over, it has barely begun.

## WHAT WE CAN DO

1. Contact your legislators, both House and Senate, to request that the enabling legislation for the Ethics Commission be placed on the 2017 interim committee agenda;
2. Contact your legislators, both House and Senate, to request that they contact the Governor so that the enabling legislation for the Ethics Commission will be placed on the call for the 2018 Legislative Session;
3. Contact the Co-Chairs of the Courts, Corrections and Justice Committee, Sen. Richard Martinez and Rep. Gail Chasey, to ask that this interim committee have a vigorous discussion of the enabling legislation for the Ethics Commission during the 2017 interim, and, if necessary, in the 2018 interim.