



ESSENTIAL ELEMENTS FOR AN INDEPENDENT ETHICS COMMISSION

In November 2018, more than three-quarters of those who voted on the constitutional amendment creating an independent ethics commission in New Mexico voted to approve or ratify the amendment. New Mexicans are tired of the corruption that has plagued the state for years. New Mexico Ethics Watch (NMEW) believes the following elements are essential for a strong, independent commission, as desired by New Mexico's citizens:

I. INDEPENDENCE

It is essential that the commission be an independent agency, not assigned to any branch of government or attached, administratively or directly, to a department of state government, and that it retains policy making and administrative autonomy from any other state agency.

II. JURISDICTION

a. Over Whom

The constitutional amendment approved by the voters provides for ethics commission jurisdiction "for state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts and have such other jurisdiction as provided by law." NMEW believes that the commission should initially focus on the activities of those specifically named within the constitutional amendment, in order to function most effectively.

b. Primary Jurisdiction

NMEW believes that the commission should have primary jurisdiction in the screening and referring of complaints to the appropriate agency. Primary jurisdiction will permit commission staff to evaluate complaints, direct complaints, and avoid duplication of efforts.

III. TRANSPARENCY

It is essential that the public be able to view the activities of the commission. While some, even the staunchest advocates of transparency, might disagree as to where in the process ethics complaints and responses be made public, NMEW believes that disclosure to the public should happen upon the filing of a complaint. Accordingly, the commission should not accept complaints during the 30-day period preceding an election.

IV. OPEN MEETINGS

NMEW believes that all commission hearings and meetings need to be open to the public and comply with the Open Meetings Act.

V. FUNDING

From the outset, the commission needs to be appropriately funded to accomplish its mission. Often, New Mexico's Judicial Standards Commission (JSC), with 7 FTEs and a smaller population to administer, is used as a measuring stick for funding. The JSC receives recurring funding of more than \$800k per year. Given the task set out for the ethics commission, NMEW

believes that, as a starting point, the commission needs to be funded at \$1 Million per year, with adequate safeguards against politically-motivated defunding.

VI. EVIDENCE STANDARD

NMEW believes that the standard of evidence to be applied in commission hearings needs to be “preponderance of the evidence”. This standard has been defined as: “the standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.”¹ Some legal scholars define the standard as requiring a finding that at least 51% of the evidence shown favors the complainant’s facts – in other words, that the burden of proof is met if there is a greater than 50% chance that, based on all of the evidence presented, the complainant’s claims are true and the respondent did in fact commit the ethical violation complained of.

Tangentially, NMEW believes that the Rules of Evidence should not apply to commission hearings.

VII. SUBPOENA POWER

It is essential that the commission be able to subpoena witnesses and documents, in order to make probable cause determinations and to conduct hearings. It is also essential that persons and entities are able to object to issued subpoenas. Upon a determination by the commission regarding the objection to a subpoena, it is essential that judicial review of that determination is provided for in the commission’s enabling legislation.

VIII. ENFORCEMENT

NMEW believes that the commission should have the authority to issue and enforce civil fines and to make recommendations for further action to a respondent’s superintending authority. This division will prevent separation of powers issues. Additionally, NMEW believes the commission should have the authority to require a respondent to pay for the costs of an investigation, when the respondent is found to have committed an ethics violation. The costs of investigation may also be levied upon a complainant who files a frivolous or fraudulent complaint.

IX. COMMISSION QUORUM

NMEW believes that commission decisions should require a quorum of at least four members, with at least two political parties needed to produce the quorum, to avoid partisan decision making by the commission.

¹ Merriam-Webster Dictionary