



# **The NM EDGE County College**

A Program of the Cooperative Extension Service and  
the New Mexico Association of Counties

Present

# **The New Mexico County Treasurer Handbook**

November 2016 Edition





# **NEW MEXICO COUNTY TREASURER**

## **A Reference Handbook and Practical Guide**

**November 2016  
11<sup>th</sup> Revised Edition**

**Revised by**  
Members of the  
New Mexico EDGE Treasurers Curriculum Committee

**Edited & Produced by**  
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# **FORWARD**

As Associate Dean and Director of New Mexico Cooperative Extension Service, I have had the pleasure of working with the New Mexico Association of Counties (NMAC) on a number of projects—none more important than bringing education and resources to New Mexico’s 33 counties. We appreciate the vision of the New Mexico Association of Counties leadership in pursuing collaboration with Cooperative Extension Service to create and help sustain the NM EDGE County College.

NMSU’s Cooperative Extension Service delivers the land-grant mission to the people through a century of service to New Mexico residents. Today, Cooperative Extension Service continues to deliver education deeply rooted in tradition, innovation and collaboration.

In addition to the vital role county agents and staff play in providing non-formal, educational programs in every community around the state, we are proud of the evolving role of NM EDGE in pursuit of its goal of Better Government through Education and its statewide reach. Building on the foundation of County College, New Mexico Association of Counties and Cooperative Extension Service joined together to offer high quality, meaningful and accessible education at affordable prices and later expanded to include the nationally recognized Certified Public Manager® Program. NM EDGE continues to work closely with NMAC to bring you county-specific classes and resources.

First created and published by Cooperative Extension Service in 1975, this handbook is periodically updated and revised to assure that it remains relevant and factual. This year in particular, the handbook was revised to include a more direct tie to the classes being taught in the New Mexico County Clerk curriculum so that the information is consistent and supportive of both handbook and classes.

We hope you will find this handbook a useful and practical resource in your role as New Mexico County Clerk. We also encourage you to give us feedback on ways to make this handbook even more helpful. We sincerely thank you for your service to New Mexico County Government.

Dr. Jon C. Boren, Associate Dean and Director New Mexico Cooperative Extension Service

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# CHAPTER 1

## KNOWING YOUR GOVERNMENT

For more information on this Chapter take NM EDGE class CPM 111 and CPM 212

In the United States and New Mexico, the respective Federal constitution and state constitution are both the framework and the foundation for the structure of government and the creation of all law.

While the purpose of this chapter and this handbook is to provide the reader with a better understanding of county government and how county-elected offices functions within the State of New Mexico, it is similarly important to understand the structure of government and how its history, culture and political influence have shaped the face of modern-day New Mexico.

### 1.1 The U.S. Constitution: Establishing a Federal System of Government

Following the American separation from Great Britain, the original American Colonies formed a loosely aligned union under the *Articles of Confederation*, which provided for a weak central government and powerful state governments. While the central government (or national government) was responsible for handling foreign affairs and the business transactions between the states, it lacked the requisite resources and revenue (taxation power) to conduct its work.

With a number of varying practices, disputes between the states and the inability of the bankrupt national government to take action, Congress recognized the need to rethink and restructure the central government. As a result, a Constitutional Convention was established to address and revise the weaknesses within the original governing document. However, what resulted was more than a mere revision.

When the Constitutional Convention completed its work in September of 1787, the delegates representing each state had created a new document, which fundamentally changed the role of the Federal government and its relationship with the states. Ratified (or placed into law) in 1788, the U.S Constitution established a government based on two essential principles:

1. *Separation of Powers* – Rather than power centralized into one body or institution, the Framers of the Constitution saw a need to divide power between

three independent, but interrelated branches: The Legislative (Congress), charged with creating laws; The Executive (President and Administration), charged with approving laws passed by Congress and executing those laws; and the Judicial (Courts), charged with interpreting law.

2. *Checks & Balances* – While power is shared among the three branches, no single branch can act alone: there is a check on the execution of their power. For example, while Congress makes laws (with the approval of two separate houses), the President is responsible for signing such legislation into law or not (veto). In turn, the judiciary, as part of a common law system, has the ability to interpret the law as it has been applied when questioned in court.

While the Framers of the Constitution created a new, stronger central government, they also left intact the original state governments, creating a system of government we have come to know as Federalism.

In a Federal system, power is distributed between the central government and the state governments. Although the principle of Separation of Powers is applied to the shared authority among the three branches of the Federal government, the concept can be similarly recalled when applied to the respective, shared power among the central government and the states.

For a majority of the Framers, key to the creation of the new constitution (and the new American nation for that matter), was a reverence for individual freedom. It was their intention to see that no single government (Federal or state) or part of government could impede on individual liberties and rights. That is why some believed that it was important to outline, implicitly, individual rights in the original document.

Recognizing this matter, the states, while in the process of approving the Constitution, held that a *Bill of Rights* be added or amended to the document. Such a change was received and was one of the first actions taken by the First U.S. Congress. As a result, in 1791, the Bill of Rights (the first 10 amendments to the Constitution) was ratified.

While each of the first nine amendments to the Constitution are important in their own right, in this instance, the focus is on the tenth, which further highlights the balance of

power between the Federal government and the states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In this very statement, it holds that what the Federal government is not empowered to do by the Constitution is left to each state. However, we know that Federalism, even in its early days, is much more complex, and there are often times no clear boundaries.

## **1.2 The Role of State & Federal Government**

The concept of Federalism is often compared to marble cake because of how the roles of state government and Federal government often intertwine. While some may hold that the Tenth Amendment of the US Constitution clearly suggests that the powers not provided to the Federal government are left to the several states, others would point to the US Constitution's Sixth Article:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

This Article, and its Supremacy Clause, states that the laws of the Federal Government are supreme in their authority and trump similar decisions made by state governments. As a result of these two competing philosophies or views of how Federalism ought to work, we have witnessed an evolution or experiment in Federalism over the past several hundred years. It is a process wherein America has tried to answer the fundamental question of what the proper balance of power and responsibility is between the states and the Federal government.

For example, we know that the US Constitution does not explicitly task the Federal government with the responsibility of education, roads or the administration of a number of social programs. Yet the Federal government provides most funding to states for such programs and initiatives.

It is a question that we continue to struggle with answering, and responses have changed from time to time. Government has responded to changes in society and conformed to the needs of a modern America.

### **1.3 The New Mexico State Constitution**

Like the US Constitution, the Constitution of the State of New Mexico was born in a place and time where there was little trust and great suspicion of government. Despite several earlier attempts at statehood, it was not until 1910 that Congress authorized the territorial government to write a state constitution in the process of becoming a part of the Union.

Elected on a party ballot, 100 delegates from around the state were selected to serve in a Constitutional Convention to last no longer than 60 days. The delegates came from a variety of professions with lawyers, bankers, ranchers, farmers, doctors, newspaper editors, and merchants represented. An overwhelming majority of the delegates were *Old Guard Republicans* who had many staked financial interests in the state. There were few Democrats and Native-born Hispanics represented.

While the *Old Guard* knew that they had a majority in convention and could essentially create any document they desired, there were some key considerations that they had to keep in mind:

- They had to create a constitution that would be acceptable to all voters at that time, which included many Hispanics, and
- The document also had to be satisfactory to the conservative president, Howard Taft, and a Congress suspicious of a state with a diverse population and an unknown terrain.

The *Old Guard* worked to create a constitution to establish a system of government that would be favorable to corporate interests and their personal investments in the state. They were also highly apprehensive of government in general and knew that they wanted to put in place a somewhat weak system, where there would be little governmental influence.

While they created a structure of government that is fundamentally similar to that of the

Federal Government (separation of powers and checks & balances), there are some key differences, in that it:

- Established a fragmented executive: Rather than executive power being vested entirely to the Governor, power is shared among several elected-executive offices; and
- To ensure that the document would remain unchanged in key aspects, the *Old Guard* established an intricate standard to revise key pieces of the document, which have come to be known as the *Unamendables*.

The *Unamendables* are four sections of the state constitution that cannot be changed without extraordinary majorities for proposing and ratifying an amendment. They are:

- Sections One and Three of Article VII, Elective Franchise  
Prohibiting certain citizenship rights from being denied on account of religion, race, language or color, or inability to speak, read or write English or Spanish;
- Sections Eight and Ten of Article XII, Education  
Providing for bilingual (English/Spanish) training of teachers, prohibiting racial segregation in education and guaranteeing the right of children of Spanish descent to an equal education.

Passage of a proposed amendment to change the *Unamendables* of the New Mexico Constitution requires:

- Approval of 3/4 (75%) of the members elected to each house of the State Legislature.
- Ratification by at least 3/4 of the electors in the state voting on the question.

Unlike the US Constitution, the New Mexico State Constitution is significantly longer and constantly changing. If we were to compare the original US Constitution to the US Constitution of today, several additions, clarifications and a few changes to original text would be apparent, but the document would ultimately look the same. The opposite is true for the State of New Mexico Constitution, which has been amended, grown, and changed several times.

Despite the vast differences between the US Constitution and that of the State of New Mexico, each document serves an importance purpose in the lives of the people it serves.

## **1.4 County Government in New Mexico**

Unlike state government or the Federal government, counties are not autonomous organizations that function with implicit power. Counties are entities created by the state to serve as administrative units or extensions of the state on a local basis. Initially, counties had a general purpose of assessing and collecting property taxes for the state, enforcing laws, running elections, managing records, and maintaining the roads. While the county continues to fulfill all of these responsibilities, county government has transformed into a vital resource for the constituencies they have been created to serve.

The State Constitution's Tenth Article has three provisions that are the only limits on the State Legislature's power over counties. They include:

- A provision that outlines elections and terms of office for county officials (Section Two)
- A provision which states that a county seat can be removed with the approval of 3/5 of the voters in a given county (Section Three), and
- A provision which prevents the legislature from passing special laws that only affect one or a few counties (Section 24).

Beyond these three items, the State is free to exercise its power over the county. While there are many laws and common practices that define how counties function, there are essentially three vital roles that the county plays in NM (as outlined by Garcia, Hain, Clair & Seckler, 2006):

- They serve as an administrative unit of the state.
- They provide and maintain vital services for their constituents, especially those living in non-urban areas;
- They provide innovative and entrepreneurial leadership that will help to further enhance the lives of those they serve.

## **1.5 Organization of County Government**

The form of organization for County Government in New Mexico is established by the State Constitution. The powers of the county as a political and corporate entity are exercised by a *Board of County Commissioners (BOCC)* (Section 4-38-1 NMSA). The BOCC has broad authority, including adopting the annual budget, approving tax levies, and enacting ordinances to provide for the health, safety, welfare and prosperity and morals of the community. In addition, the BOCC has significant appointive,



administrative, and regulatory powers.

While the BOCC serves as the governing body of the county, they must also cooperatively share their power with other elected county officials in a number of different aspects. These offices include the Assessor, Clerk, Sheriff, Surveyor, Treasurer, and Probate Judge. Additionally, New Mexico counties also play a role in housing a district attorney and a district judge or judges. Each office is discussed in brevity below.

### **1.6 County Assessor**

In general, the Assessor is responsible for the proper and timely assessment of most property subject to valuation for taxation purposes within the county (§4-39-2 through §4-39-6 NMSA). In addition, the Assessor is responsible for mailing notices of tax liability within their jurisdiction. Though serving in an elected position, the Assessor works cooperatively with the Taxation & Revenue Department.

### **1.7 County Clerk**

The County Clerk serves an important role for the BOCC and the state. The County Clerk is the ex-officio Clerk of the BOCC (§4-40-3 through 8 NMSA) and, therefore, the Clerk must attend all sessions of the BOCC, though a surrogate may be sent in their place. In this role, the Clerk is responsible for recording all action taken by the BOCC and any supporting materials. The Clerk is also mandated by statute to subscribe to and maintain files of all newspapers published in the county (§4-40-7, 8 NMSA). Additionally, the Clerk's office receives a multitude of documents from the public for filing and recording, such as property records, marriage certificates and informal probates, which is a service to the state.

### **1.8 County Sheriff**

The elected County Sheriff is the principal preserver of the peace in the county and is charged with the suppression of assaults and batteries, and the apprehension and commitment to jail of all offenders violating criminal state laws or county ordinances (§4-41-2 NMSA).

### **1.9 County Surveyor**

In all counties, the surveyor is no longer elected. Private surveyors, engineering firms, or

the county road or public works department now perform these functions (§4-42-11 NMSA). The office of the County Surveyor was created in 1891 (§4-42-1 through 15 NMSA) to conduct official surveys, plats and maps within the county. Historically, all surveying of county roads and bridges was performed by the County Surveyor who was, by virtue of office, mandated to be one of the reviewers in establishing new roads or bridges.

### **1.10 County Treasurer**

The County Treasurer is responsible for keeping accounts of all county funds received and disbursed by the various county departments, keeping regular accounts of all checks and warrants drawn, and keeping the books, papers and money pertaining to the office ready for inspection by the BOCC at all times (§4-43-2 NMSA).

### **1.11 Probate Judge**

In 1865, the part-time position of elected Probate Judge was created for each county to help with the settlement of wills and estates (§34-7-1 NMSA). The Probate Judge is not required to be a lawyer, but is required to hold court in the county seat (§34-7-4 NMSA). The county is responsible for housing the Probate Judge and providing additional administrative resources.

### **1.12 District Judge**

There are 13 judicial districts in New Mexico, with one or more District Judges in each district. Districts include two or more counties except for the Second (Bernalillo) and Third (Doña Ana) Judicial Districts, which contain only one. District Judges are charged with presiding over cases of general jurisdiction at the trial level. District Judges hear both criminal and civil cases, and divisions to address specific matters (such as family law) can be created.

Each county is required to provide quarters for the operation of the District Court, including juvenile probation services. The provision of office space includes necessary utilities and maintenance service for the operation and upkeep of District Court facilities (§34-6-24 NMSA).

### **1.13 District Attorney**

While the District Attorney is elected locally, they are an employee of the state and all

salaries and expenses, except office space, which is the responsibility of the county, are paid from state funds appropriated to the District Attorney (§36-1-8 NMSA). The District Attorney is charged with prosecuting and defending criminal and civil cases in which the State or county is a party, or may be interested in all courts of record (i.e., magistrate courts are not “courts of record”) within the district. The District Attorney is also authorized and required by law to represent the BOCC upon request, to advise all county and state officers whenever requested, and to represent any county in the district in all civil cases in which the county may be concerned in the Supreme Court or Court of Appeals, except in suits brought in the name of the State (§36- 1-18 NMSA).

#### **1.14 Tribal Governments in New Mexico**

Written by Fred Harris and used with permission

Approximately 2.5 million Native Americans are found in over 500 groups known as tribes, nations, pueblos or native villages.

- Around 10% of the two million people who live in New Mexico are Native Americans.
- Reservations in New Mexico include:
  1. Mescalero Apaches
  2. Jicarilla Apaches
  3. Part of the Navajo reservation
  4. Nineteen Pueblos
- Each of the nineteen New Mexico pueblos is a Federally recognized Indian tribe.
- The Navajo tribe is the largest in the United States. Reservations arose when Congress “reserved” or set aside certain lands for Native Americans.
- American Indian tribes are not, as some think, “foreign nations.” For example, they can’t make treaties with foreign governments.
- The Federal Government has exclusive power to deal with Federal and tribal matters, unless it delegates that power to the states - which it rarely does.
- Upon becoming a state, New Mexico adopted a constitutional provision (Article XXI, Section 2) giving up taxing jurisdiction and other authority on Indian reservations.
- Legally, a pueblo and a reservation is the same thing. Pueblo is a Spanish word for village.
- New Mexico was the first in the nation to create a Bureau of Indian Affairs and a Cabinet Level appointment made by the NM Governor. For many years Federal policy sought to assimilate Native Americans. It was felt that Native Americans should become like everyone else.

- Since the 1960's, however, federal policy has changed. Preserving the heritage of Native Americans is encouraged. Native Americans, in addition to being citizens of the United States and the state they live in, are also citizens of the tribes of which they are enrolled as members. Each tribe has the authority to determine who is eligible to be a member.
- Dual citizenship means that Native Americans are entitled to vote in all elections plus tribal elections.
- Native Americans have become active in state and national politics. They are represented in the state legislature. Indian casinos have become a significant source of campaign funds.

When Congress created the reservations, the federal government assumed responsibility for providing certain needs such as health and education benefits.

- But Native Americans do not receive individual payments, as some people think.
- Just as it does for state and local governments, the federal government makes grants and loans to tribes and tribal programs.
- For example, when a Native American attends a public school, the federal government makes a contribution for this purpose to the local school district. This is similar to a federal contribution for children who live on military bases and attend public schools.

Do tribal members have the same constitutional rights as the rest of the country?

- Almost. The Bill of Rights acts as restraint on federal officers. The Fourteenth Amendment acts as restraint on state and local officers. But these amendments do not apply to tribal officials.
- To remedy this, Congress passed the Indian Civil Rights Act in 1968 to put similar restraints on tribal officers. But there are exceptions. For example, an Indian tribe can establish a religion, of whatever kind, although it cannot prohibit other religions. A Pueblo may choose to have a Catholic priest "bless the canes" (a traditional symbol of authority) for an inauguration of tribal officials.
- Nor is a tribe required to elect its officials. In fact, the majority of pueblos choose their leaders in the traditional (non-elective) way.

For more information on Tribal Government in New Mexico see *Governing New Mexico: "American Indians and tribal governments"/ Chapter* Written by Fred R. Harris and LaDonna Harris, UNM Press, 1994.

## **1.15 Tribal Government Relationships with Other Governments**

**Researched and Written by Douglas Decker, JD, McKinley County Attorney**

Federal Indian Law --

“Prior to the creation of the United States, the entire land mass it now occupies was owned and governed by hundreds of Indian tribes. These tribes, sovereign nations under international law, were brought into the United States through a colonial process that was partly negotiated and partly imposed. Federal Indian law is the primary mechanism for mediating the resulting intergovernmental relationships among the Indian nations, the United States, and the states of the Union.” [Underlining added].

–Cohen’s Handbook of Federal Indian Law.

Some basic concepts to keep in mind in discussing Tribal Government relations with other Governments are:

- Tribal status as Federally-Recognized Tribal Governments.
- Tribes govern citizens of its government (Tribal Members); and, Territory - - i.e. Indian Country.
- Tribal Sovereignty.
- Exclusive Federal Authority in Indian Affairs or Preemption.
  - No state authority over activity in Indian country if preempted by federal law.
  - Fee land within Indian Country is broader in scope than under constitutional law, and as such State law may apply.
  - State law will be preempted if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests sufficiently justify the assertion of state authority. Balancing of interests of the three sovereigns.
  - Trust Responsibility of the United States Federal Government

Pre United States Constitution: Discovery, Settlement, and Colonial period.

- The “Rule of Discovery” simply put was the notion of 16th and 17th century European countries had to simply plant their flag in unknown lands; and, thereby exercise sovereign authority. This simple act of planting the flag divested all existing governments and simply left the inhabitants a Right of Occupancy.
- This rule was tempered somewhat when King George III issued the Proclamation of 1763 to prevent settlements of colonies in the west of the Appalachian Mountains.

- The framers of the US Constitution had examples of how a system of separation of powers in a central government worked. The IROQUOIS CONFEDERATION united several tribes (Mohawk, Oneida, Onondaga, Cayuga, and Seneca nations). The governance structure of the Confederation had three separate groups:
  - A Chief: as the Executive
  - Two groups of “lords”: as the Legislature
  - Fire Keepers: as the Judiciary

Ratification of the United States Constitution in 1789.

- The US Constitution Creates a bi-governance structure: a National or Central Government (separate Executive; Legislature; and, Judiciary) with enumerated powers; and, State Governments having significant independence and power. This notion of Federalism means USA has 51 different governments above local governments, i.e. the 50 States and the Federal Government. Tribal Governments are also addressed in the US Constitution with subsequent US Supreme Court Decisions and Federal Legislation.
- The US Constitution vests the federal government exclusive authority over commerce with Indian tribes and treaties with tribes. [See, US Constitution Article I Section 8(3); and, Article II Section 2(2)]. From 1790 to 1871, the United States entered into just under 400 treaties with tribes. In 1871, Congress passed a statute that purportedly ended the President’s authority to negotiate treaties with tribes. Now the United States still negotiates with tribes, but resulting agreements are adopted as legislation.

The United States Supreme Court interpreting the Constitution handed down three foundational Indian Law Opinions which are now referred to as the Marshall Trilogy or the Indian Cannons of Construction.

Johnson v. M’Intosh, 21 U.S. (8 Wheat.) 543 (1823).  
 Cherokee v. Georgia, 30 U.S. (5 Peters) 1 (1831).  
 Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832)

**Johnson v. M’Intosh**

- This case was a land dispute in the nature of ejectment, involving non-Indians -- One party purportedly acquiring title from a tribe through private purchase; and, the other party with a land patent.

- Case was viewed as collusive litigation by land speculators seeking to secure a decision to defeat the 1763 Royal Proclamation.
- Ruled on the Discovery Doctrine: discovering colonial power acquires title to the land, and tribes retain “aboriginal title” – a right to occupy the land.

### **Cherokee v. Georgia**

- The State of Georgia declares the Cherokee territory to be “Cherokee County” and opened the lands for non-Indian settlement.
- Georgia purported to extend its jurisdiction into the Cherokee lands and render tribal laws null and void
- Georgia prohibited Indians from testifying in court.
- Cherokee Nation sued Georgia, relying on the U.S. Constitution Article III, Section 2 original jurisdiction of the Supreme Court.
- The Supreme Court held: Indian tribes are not foreign nations, which would give the Supreme Court original jurisdiction under Article III, Section 2.
- The case is most cited for two other propositions: Tribes are Nations; and, Tribes are not states of the Union, but are “domestic dependent nations.”
- In this case, the Court distinguishes between “external” and “internal” sovereignty. [External is the power to enter treaties with other nations, which Tribes do not have; and, Internal means that Tribes are part of the United States – i.e. the notion of federalism].
- The case did not resolve crux of the dispute between Cherokee Nation and Georgia was not settled.

### **Worcester v. Georgia**

- Non-Indian missionary living in Cherokee Nation convicted in Georgia state court of violating state law forbidding non-Indians from being in Indian Country without a license.
- Georgia did not file a brief or appear at oral argument.
- The Supreme Court held that State law does not apply in Indian Country, Emphasizing the tribe’s plenary authority in Indian Country.
- Today there is still a presumption against state authority in Indian Country

### **Self-Determination:**

From the ratification of the US Constitution in 1789, Federal policy toward Indian tribes

has moved in various decades from physical extirpation to measured separatism to removal to assimilation to self-determination – sometimes at the same time.

-Prof. Matthew L.M. Fletcher

Today we are in what can be called the Self-Determination Era. This era has an origin in the late 1960's.

In 1969 the Senate Labor and Public Welfare's Special Subcommittee issued a report on "Indian Education; A National Tragedy – A National Challenge". This report found among other things:

- "A nation that is massively uninformed and misinformed about the American Indian and his past and present."
- "Prejudice, racial intolerance, and discrimination towards Indians far more widespread and serious than generally recognized."

President Lyndon B. Johnson in a 1968 message to Congress: "The Forgotten American", stated the goal of ending termination (the prior policy of ending the Trust Relationship) and stressing self-determination. Some of the goals set out by President Johnson included:

- Freedom of Choice: An opportunity [for Indians] to remain in their homelands, if they choose, without surrendering their dignity; an opportunity to move to the towns and cities of America, if they choose, equipped with the skills to live in equality and dignity.
- Full participation in the life of modern America, with a full share of economic opportunity and social justice.

President Richard M. Nixon's address on Indian affairs in 1970 stated the goals for national toward the Indian people to include:

- Strengthen the Indian's sense of autonomy without threatening his sense of community.
- Assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group.
- Make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.



These goals and findings culminate in the adoption of the “Indian Self-Determination and Education Assistance Act of 1975.

- Rather than the Bureau of Indian Affairs (BIA) providing services, the tribes themselves have the option of providing and managing services.
- Recognition that tribes were in the best position to govern their affairs and determine their future.

Other considerations to consider in Government to Government relations with Tribes:

- The US Constitution; Supreme Court Case Law; along with, International The Full Faith and Credit Clause—Article IV, Section 1, of the US Constitution—provides that the various states must recognize legislative acts, public records, and judicial decisions of the other states within the United States. It states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The Full Faith and Credit Clause ensures that judicial decisions rendered by the courts in one state are recognized and honored in every other state. It also prevents parties from moving to another state to escape enforcement of a judgment or to relitigate a controversy already decided elsewhere, a practice known as forum shopping. This is the basis of Government to Government relations between States of the United States. Indian Tribes are not States; nor are they foreign nations, but are domestic dependent nations.

The US Constitution is the source for the government to government relationship between Tribes and the Federal Government. When developing a government to government relationship between States of the U.S. (or their political subdivisions – i.e. Counties and Municipalities) we borrow principals found in international law.

The doctrine of comity --- The U.S. Supreme Court's holding in *Hilton v. Guyot* (1895) where the Court held in that case: ..."Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Comity in the U.S. between States (including the political subdivisions) and Tribes is stronger because the citizens of the Federally Recognized Indian Tribes are also citizens of the United States.

- Tribal Jurisdiction and Regulatory Authority  
Both Civil and Criminal Jurisdiction of Tribes hinge primarily on two factors: who and where.

- Who (political identity): Member Indian, Non-Member Indian, Non-Indian.
- Where: Indian Country

Other considerations in analyzing jurisdiction and how laws are applied include:

- Montana v. U.S. is the “path-marking case” standing for the Presumption in favor of Tribal regulatory authority in Indian Country.
- If the location is Fee Land within Indian Country and the person is a non-Indian; first look at treaties or federal statutes that may affirm/vest jurisdiction. If none, then the presumption is against tribal regulatory authority, unless:
  - Conduct threatens or directly affects the tribe’s political integrity, economic security, or the health or welfare; or,
  - The non-Indian has consented to tribal jurisdiction
- Statutes or Federal regulations that grant authority to Tribes:
  - Clean Water Act
  - Clean Air Act

Congress may regulate in Indian Country pursuant to its broad authority. However, there is an outstanding question whether this can be done through generally applicable laws.

- New Mexico Police Power intergovernmental relations:
  - N.M.S.A. Section 29-8-3. Mutual aid agreements – a/k/a Cross Commission Agreements. “Any state, county or municipal agency having and maintaining peace officers may enter into mutual aid agreements with any public agency as defined in the Mutual Aid Act,

with respect to law enforcement, provided any such agreement shall be approved by the agency involved and the governor.

- See, *Loya v. Gutierrez*, 2015-NMSC-017, 350 P.3d 1155. The New Mexico Supreme Court only mentioned the Mutual Aid Act in passing. The facts of *Loya* did not include a validly executed Cross Commission agreement. The Court did hold that “Count[ies] must provide [non-county employee peace officers that are commissioned by the Sheriff] ...with a legal defense, including costs and attorney’s fees in conformity with the [New Mexico Tort Claims Act] NMTCA.

### **Further Resources**

Cohen’s Handbook of Federal Indian Law (LexisNexis Matthew Bender 2012).

William C. Canby, Jr., *American Indian Law in a Nutshell* (6th ed. 2015).

Matthew L.M. Fletcher, *Federal Indian Law* (West 2016).

Lindsay Robertson, *Conquest by Law* (2012).

## **1.16 Cultural Awareness**

### **Researched and Written by Reese Fullerton, JD**

The importance of cultural awareness, competence and humility when relating with Native American governments, individuals, families and communities

How do we learn to respectfully interact with tribes and their citizens?

Direct interaction, experience and personal relationships build understanding and respect for different cultures. We need to remember that there is great diversity in cultures among tribes and pueblos. Cultural customs vary significantly. Each community is unique and their customs are important to understand.

We need to have an open mind, a sense of humor, honest communication, be flexible and adaptable, tolerate ambiguity, be sensitive and respectful of differences, not make assumptions, be aware of the possibility of misunderstanding, let time happen in a conversation, do not interrupt, listen carefully, seek guidance, always remember you are a guest, and be respectful, predictable and credible.

You can build trust by demonstrably respecting their values, sharing interest in their welfare and following through on commitments. When asking questions for understanding make the purpose explicit. A question about culture should relate to how services are to be provided in a culturally appropriate manner.

Confidentiality and privacy are extremely important to insure for a tribe or a pueblo.

So your ability to value cultural differences, understand a range of dynamics that can occur in interactions among people of different cultures and your ability to adapt programs, projects and services to fit the cultural context of the individual, family or community is critically important.

So how do we do this?

Our agenda needs to be secondary and open. We need to be transparent and flexible. We need to explore joint purposes and inclusive priorities. We need to work together, be clear about the impact of a project or of services, clarify roles and responsibilities, and understand where there is agreement and differences, and keep discussing the process and checking in to insure that everyone is comfortable with how things are progressing.

# CHAPTER 2

## KNOWING THE LAW

For more information on this Chapter take NM EDGE classes CPM 113, CPM 114, and CPM 153

In order to understand law in the United States and New Mexico, we must first understand the sources of law. Generally, there are two sources of law: primary and secondary. Primary sources of law are laws created by an established body of government and have the potential to impact the citizenry. Secondary sources of law are essentially background resources that do not have the weight of law but help us to understand primary law. Here are some examples of each:

- **Primary Sources of Law:** Constitutions, Statutes (state or Federal laws), ordinances (local government laws), administrative regulations or executive orders (by the President, Governor or a cabinet-level secretary), and court decisions (rulings made by the courts that interpret or clarify the law).
- **Secondary Sources of Law:** Opinions issued by the Attorney General, legal publications and dissenting court opinions (arguments against court rulings).

While it is always good to know about secondary sources of law, it is of greater importance, for the purpose of this text, to understand our primary sources of law and who has the authority to make such laws.

### **2.1 The Power to Make Law**

In general, it is Congress and the New Mexico State Legislature who have the authority to make law in New Mexico. However, those laws (as legislation) must be signed into effect by the President or the Governor. Such laws are often the subject of dispute and interpretation and that is when the court systems, both federal and state, have the ability to further define the law and thus make policy through precedence.

While the federal government does have the ability to make laws that affect all states and the laws that they make individually, not all federal laws are applicable in each state. Conversely, laws made in New Mexico only affect New Mexico. Nonetheless, the law in New Mexico can affect how the federal government operates within the state.

### **2.2 The Lawmaking Process**

Although both Congress and the New Mexico State Legislature follow ultra-specific

procedures in the lawmaking process, all laws are made following a rather general process (model adaptation from Kraft & Furlong, 2007):

- **Agenda Setting:** This is where an issue, problem or desired change is presented before a policy making body such as the State Legislature or the Board of County Commissioners (BOCC). The influences at this point are essential. The public, policy-makers (lawmakers), current events or legal mandates (laws about law making) all play a role in determining what becomes part of the agenda.
- **Policy Formulation:** Once there is a specific issue or item being discussed by a policy- making body, policy-makers must discuss, create, and outline how they will address a particular issue. This process occurs in a political system and there are often clashes of values.
- **Policy Legitimation:** During the process of formulating policy, lawmakers (policy-makers) must mobilize support for their policy proposal and how it will to achieve its outlined goals. This is the politicking of the process. Not everyone or every policy will prevail. This part of the process often requires compromise and change to a policy in order for it to be adopted.
- **Policy Implementation:** Once a policy has gone through a very complex and lengthy process of approval and adoption (very few items make it this far), it is time to put it into place. Some laws take effect immediately, while others are implemented at a later time or slowly phased into place.
- **Policy Evaluation:** While it is becoming more and more common for a law to require revision within a given period of time, not all laws require future review. However, most laws, should they need to be modified and adapted, will require evaluation. This part of the policy-making process is often left to professionals (such as the Legislative Council Service) and results are presented to the policy-making body.
- **Policy Change:** If a law or policy requires change, it will have to reenter the competitive process as listed above. It will again have to compete for a place on the agenda and be walked through the complexities of the political process.

For specific details on the lawmaking processes in New Mexico and in Congress, please see the following resources:

- Federal lawmaking: “How Our Laws are Made,” Revised and Updated in 2007, by John V. Sullivan, Parliamentarian, U.S. House of Representatives  
<https://www.congress.gov/resources/display/content/How+Our+Laws+Are+Made+-+Learn+About+the+Legislative+Process>
- USHistory.org  
<http://www.ushistory.org/gov/6e.asp>

### **2.3 Other Law Making Bodies**

Although legislative bodies are typically regarded as the sole creators of law in America, it is important to keep in mind that is not always the case. Administrative decisions and rules set by governmental units also have the effect of law. For example, while the BOCC creates policy for Human Resources within a given county, the Board cannot make a law for every possible HR-related issue. Rather, the Human Resources Department, under direction of the county Manager, tends to be provided with a general law that they have to interpret and apply as they believe was expressed by the BOCC. While their decisions can be overturned by the BOCC (or another governing body, such as the courts), most administrative decisions or policies have the effect of law.

### **2.4 The Impact of Laws**

While counties also follow the policy-making process as a lawmaking entity, it is important to also watch how such a process plays out at both the Federal and state level. While laws have the ability to impact a number of groups and stakeholders, laws at the state and Federal level have a significant impact on local government.

Local governments, including counties, are often delegated or mandated to carry out very specific tasks and duties. Generally, there are two types of mandates that can be placed upon counties. Here is what they are, with some examples:

- *Funded Mandates*: If the State Legislature were to pass a law requiring counties to provide immunizations to all those who present themselves, and provided the funding and/or requisite resources to purchase the vaccines and deliver such a service, the county has been given a funded mandate.
- *Unfunded Mandates*: On the other hand, if the State were to require the county to provide immunizations, but provided zero funding and/or resources beyond their general appropriations that would be an unfunded mandate. The county, through the

BOCC, would be forced to find a way to pay for such a requirement.

In an effort to prevent the Federal Government from placing unfunded burdens on counties, the Unfunded Mandates Reform Act of 1995 (UMRA) was established to curb such a practice. Under this act, Congress and Federal agencies are required to identify and evaluate mandates placed on other governmental entities.

In New Mexico, Article X, Section Eight of the State Constitution holds that the state government cannot place mandates on local governments unless requisite resources or funding are provided. Note that the language does not apply to un-funded laws passed by the legislature:

A state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new funding or a means of new funding to the county or city to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed. (Adopted by the people November 6,1984.)

Despite these efforts, unfunded mandates are still handed down to local government. However, through effective intergovernmental relations and communication, there are things than can be done to curb these types of directives.

## **2.5 Encouraging Public Involvement in Policy Making & Transparency**

While there is an expectation that lawmakers understand and know the needs of their constituency, it is impossible to expect that representatives in government are all-knowing. That is why it is critical for policy-makers to engage the public in all decisions they make. Inclusive government is vital to the preservation of a democratic society. To aid public servants in their inclusive efforts, there are two key laws that all elected officials should know.

The first is the New Mexico Open Meetings Act (OMA), which was established to ensure that the public has every opportunity to involve themselves in the policy making process. The purpose of this Act holds that:

- Representative government depends upon an informed electorate



- All persons are entitled to the greatest possible information regarding affairs of government and the official acts of public officers and employees; and
- Providing such information is an essential function of government and an integral part of the routine duties of public officers and employees (Section 14-2-5 NMSA)

The act provides explanations for what types of meetings fall under the law, public notice requirements for meetings, and proper issuance of agendas, minutes, and closed meetings. Also covered in the Act are remedies, penalties, and exceptions to the law. The second is the Inspection of Public Records Act (IPRA), which serves as New Mexico's version of the Federal Freedom of Information Act and is designed to provide the public with access to virtually all public records. Such a law is intended to see that all work and action of the government is visible to the public. Of course, there are some limited restrictions on what is open.

For more information on both of these laws, please see the New Mexico Attorney General's compliance guides. These guides aid local governmental agencies in meeting each respective act's requirements.

The OMA Compliance Guide and a Compliance Checklist are easily downloaded from the NM Attorney General's Office website, with other documents, at <http://www.nmag.gov/consumer/publications/openmeetingsactcomplianceguide>

The IPRA Compliance Guide and a Compliance Checklist are easily downloaded from the NM Attorney General's Office website, with other documents, at <http://www.nmag.gov/consumer/publications/inspectionofpublicrecordsactcomplianceguide2009>



# **CHAPTER 3**

## **ETHICS & PROFESSIONALISM IN THE PUBLIC SECTOR**

For more information on this Chapter take NM EDGE CAPE classes.

### **Introduction - Ethics are Essential to Government**

People judge their government by the caliber of those who serve in it. The public's belief in the integrity of their government will be determined entirely by the ethics of its elected officials and appointed personnel, from the highest elected officials forging policy, to the thousands of public employees diligently conducting the daily work of government.

When members of the public trust their government to act with integrity, they are more likely to vote, voice opinions on issues, resolve disputes through the courts and administrative agencies, pay their taxes fully, cooperate with government authorities, and otherwise comply with the law. Their trust in government depends upon the belief that it will keep its promises, perform diligently and competently, give out truthful and complete information, act transparently, distribute public benefits and burdens fairly, and use publicly funded resources for the benefit of the community.

Nothing erodes public confidence in government more than unethical or dishonest leadership. Even the perception of immoral or corrupt behavior among elected public officials can be sufficient to destroy political careers. More important, however, is the impact on the larger community. The cynicism and distrust of government that usually follows political scandals over ethical violations diminish the public trust in its leaders, institutions, and laws. Both history and current events offer numerous examples where the public found dishonesty and favoritism so pervasive that they even attacked the very legitimacy of their governments. (NM EDGE class PE 226 offers further discussion of this topic.)

This chapter will offer a brief overview of ethical government for public officials, including:

- Universal ethical principles
- Ethical principles for public servants
- Ethical requirements in New Mexico law
- Ethical rules for specific areas of public service

- How leaders create a culture of ethics
- Suggested models for ethical decision-making
- Consequences of misconduct

This chapter is intended only as an overview. The NM EDGE curriculum for Certified Advocates for Public Ethics (CAPE) offers a series of classes exploring these and other concepts in detail. Throughout this chapter we parenthetically note NM EDGE ethics classes in which material is explored, either as Public Ethics (PE) or Certified Public Manager (CPM) classes. All classes noted may be credited toward attaining a CAPE certificate from NM EDGE.

### **3.1 Universal Ethical Principles (PE 120, CPM 139)**

Ethicists have attempted to identify ethical principles valued in all settings and across many different cultures. While there are some differences among their lists, several principles appear on virtually all of them. According to one typical formula, universal ethical principles include:

- Trustworthiness
- Responsibility
- Compassion
- Respect
- Fairness
- Loyalty
- Tying all these principles together is a general rule, familiar to all of us, that has been stated in various ways over the millennia:

**Treat Others as You Would Yourself Wish to Be Treated.**

### **3.2 Ethical Principles for Public Servants (PE 239)**

When we apply these universal ethical principles to the work of public servants, we find principles like these:

- Public service is a trust to be used only to advance public interests, not personal gain.
- Decisions are to be made on the merits, free of partiality or prejudice and unimpeded by conflicts of interest.
- Government is to be conducted openly, so the public can make informed judgments and hold public officials and servants accountable.

- Leaders of governmental agencies are responsible for ensuring that they, and all other public servants under their authority, conduct the public's business efficiently, equitably and honorably.
- All public officials must observe the letter and spirit of the laws.
- Public officials are responsible for safeguarding public confidence in the integrity of government by avoiding appearances of impropriety and conduct unbecoming a public servant.

### **3.3 Ethical Principles in New Mexico Law (PE 110 and PE 111; CPM 142 and CPM 153)**

New Mexico has embedded many ethical principles into its statutes. Conduct that does not violate the law may still violate other ethical principles. But violating ethical laws may lead to administrative, civil and even criminal sanctions. Ethical violations that do not violate the law still have consequences, discussed elsewhere in this chapter, such as undermining public trust.

#### **A. Governmental Conduct Act:**

The primary law governing ethical conduct by officials of New Mexico state and local government is the Governmental Conduct Act, §10-16-1 et seq. NMSA 1978.

Originally this law applied only to officials and employees of state government. In recent years the legislature has extended coverage of this law to officials and employees of local government, including judges and many board and commission members. It has therefore become crucial that all state and local government officers and employees in New Mexico, including even volunteer board and commission members, understand their ethical responsibilities under the Act. To that end, the Attorney General has published a Compliance Guide to explain the provisions of the Governmental Conduct Act and clarify their application to covered officials and employees. In addition, the Guide will enable members of the public to become more knowledgeable about the standards of conduct the Act requires and assist them in holding their representatives in government accountable to those standards.

The Attorney General's Compliance Guide on the Governmental Conduct Act may be found online at <http://www.nmag.gov/> Select the Governmental Conduct Act Compliance Guide from the menu on the left.

#### **B. Other Ethics Laws Applicable to Local Government:**

The Governmental Conduct Act is not the only New Mexico law that imposes ethical

restrictions on officials and employees of local governments. For example, the Whistleblower Protection Act, §10-16C-1 et seq. NMSA 1978, protects public employees against retaliation for disclosing improper conduct at their public agencies. The Open Meetings Act and Inspection of Public Records Act, both described in section 2.5 of this Handbook, are designed to ensure transparency of governmental decision making, so citizens can provide their input and hold their elected representatives accountable for their actions. Local governments who use the State Procurement Code, §13-1-1 et seq. NMSA 1978, are subject to ethical requirements related to their purchasing and contracting practices. A number of state laws prohibit government employees from committing serious unethical practices such as embezzling funds, receiving kickbacks or unlawful fees, or nepotism. And federal laws also control conduct by local government officials in certain circumstances. One example is the limitation on political activities imposed by the Hatch Act, 5 USC §1502, on officials whose jobs are partially or wholly funded by federal grant money.

A listing of many of these laws is attached as Appendix II to the Attorney General's Compliance Guide on the Governmental Conduct Act. The link to the Compliance Guide may be found in the previous section of this Handbook.

### **3.4 Ethical Rules for Specific Aspects of Public Service (PE 110 and PE 120 in general, and other classes as noted):**

Public servants elected or appointed to positions in local government are required to comply with ethical rules in discharging all of their responsibilities. What follows are some examples, briefly described, of ethical rules that arise frequently for those working in the public sector.

#### **A. Conflicts of Interest:**

The Governmental Conduct Act, Criminal Laws, and the Procurement Code, all referenced above, contain numerous restrictions to prevent people from using their public position to unlawfully benefit themselves, family or friends. For example, these laws restrain people from being involved in hiring or contracting decisions from which they or close family members may benefit. Even former employees of government are restricted from benefiting from certain transactions involving their former agencies. The first step to overcoming ethical problems arising from conflicts is to make full disclosure to the appropriate authorities.

**B. Abuses of Power (PE 147):**

Public officials cannot take advantage of their authority to harass other people, improperly gain political advantage, or seek unauthorized special favors. Examples of abuse of power include sexual harassment or other forms of bias; offering or withholding public services based on the political affiliations of those requesting them; or avoiding criminal citations because of one's official position.

**C. Managing Public Funds (CPM 142):**

Special rules apply to those in charge of managing public funds, to ensure that the funds are protected and used as intended. Those having these responsibilities must be aware of their duties as fiduciaries, including the obligation to act with diligence, responsibility, loyalty and honesty.

**D. Managing Staff (PE 239):**

Supervisors are required to treat those they supervise with fairness, respect and sensitivity to their rights as employees. Employees must be treated with impartiality when being hired or promoted, and must receive due process when being disciplined.

**E. Politics:**

While elected public officials are expected to campaign for office, it is unethical to use official resources or status in support of one's election or other political objectives. Officials are prohibited from requesting, or even "advising," any employee to contribute to or to work on a political campaign.

**F. Civility (PE 123):**

This is one area where ethical principles require positive behavior, even when laws may not. Public officials should treat all people with whom they come in contact—colleagues, employees, citizens, the media, everyone else they serve—courteously and openly. Government suffers when lapses occur.

**G. Research (CPM 271):**

Research is an important tool of government, but when it does not consider ethics it can do more harm than good. For example, insensitive polling can cause invasions of privacy, or even emotional harm for people dealing with stressful situations.

**H. Transparency (CPM 153):**

Government can only be trusted when it operates as much as possible in the open. When citizens understand what officials have decided and, even more importantly, how they decided it, the public will be more inclined to trust the officials' efforts and less inclined to oppose them. This applies both to meetings and government documents, but with

exceptions to protect the public interest. See section 2.5 of this Handbook, above.

### **3.5 Ethical Leadership (PE 239)**

Elected public officials have special obligations to ensure that government adheres to the highest ethical standards. It is not enough for elected officials to be honest personally; they are also accountable to the public for the honesty of all appointed public officials that they supervise and contractors that they approve. Meeting these expectations requires elected leaders, as well as other managers, to make several commitments for their terms of office:

#### **A. Understand the Importance of Appearances:**

Leaders of government organizations must recognize that appearances count for as much as reality. A public official may know, for example, that he will be fair and unbiased when dealing with a request by a relative or close friend for some service. But to outside observers, just dealing with such a person gives the appearance that the official cannot help but be influenced by the relationship. Unlike in the private sector, public officials are working with the community's resources, not their own. Thus appearances matter.

#### **B. Create a Culture of Ethics (CPM 139 and PE 239):**

A leader must inspire ethical conduct within the organization. The leader must demonstrate every hour of every day that ethical conduct is valued and emphasized. Employees and colleagues must know that choosing the ethical course of action will be respected and rewarded, even when it may not be the fastest or easiest way to attain other goals. It is equally important to convey the message that unethical conduct will not be tolerated or overlooked, even when it is done in the name of a desirable goal.

To create a culture of ethics, a leader must ensure that everyone working with the organization understands that he or she is expected to behave ethically at all times. This requires training in ethics for everyone in the organization, and clear statements of the standards of expected conduct. The disciplinary consequences of unethical conduct must also be clearly defined, and, when necessary, applied. Leaders must assess the compliance of staff with ethical standards, both through periodic performance reviews and through closer, more frequent monitoring as needed to resolve problems.



To ensure the credibility of the agency's commitment to ethics, leadership must train everyone to recognize and respond appropriately to trouble signs, whether those signs point to inappropriate conduct internal to the organization or in dealing with the public. Staff and the public must have clear, easily accessible directions on how to report ethical concerns, and each concern must be acted on promptly and appropriately. Staff must also be confident that a fair and efficient mechanism exists for resolving disputes within the organization, so that they will resort to those mechanisms for constructive conflict resolution before disputes escalate.

**C. Commit to a Principle-Based Approach to Ethical Decision-Making (PE 120 and 220):**

Decisions with ethical consequences often come with little warning and under intense pressure, especially for leaders with weighty responsibilities. Decisions are most difficult when there are advocates for both sides, each emotionally involved. It is therefore valuable for those responsible for deciding to understand and commit in advance to use one or more systems of ethical decision-making. While there are different ways to resolve ethical dilemmas, the important thing is to commit to using a principle-based approach. If the leader is able to articulate a principled, factually supported reason for his or her decision, that reduces the concern that the leader plays favorites or responds without adequately understanding the situation.

To begin a principle-based ethical decision making process, it is helpful to start with several preparatory steps. First, seek as much information about the issue as possible. Information obtained from a single source will likely omit important facts important to other perspectives. Second, review and consider all the facts, to anticipate all the possible consequences of the decision. Third, review your own emotions and put them in context. While reason is usually a more reliable guide than emotion, "gut reactions" may be helpful in matters such as reining in offensive conduct. But it is important to analyze whether the emotion involved is an appropriate one. Fourth, be open to all solutions, since the most ethical and productive decision may not be the one that has been used before or that first comes to mind.

Examples of principle-based approaches include:

- a "virtuous character" test (what would [insert your personal role model] do

in this situation?);

- a “disclosure” test (has the process been open and transparent?);
- a “professional ethics” test (does the decision satisfy the professional requirements in the relevant field?);
- an “intuitive ethics” test (which decision feels right?).

Each of these tests has some strengths and some weaknesses, making each appropriate in some circumstances and less appropriate in others. The point is not to select one in advance and stick to it for every decision. Rather, the point is to recognize which test is operating in the decision making process, to articulate how it has been applied, and to check whether the chosen approach is the most suitable and persuasive to others.

### **3.6 Consequences of Ethical Breaches (PE 110 and 111)**

As discussed in the beginning of this chapter, unethical conduct in government does serious harm to the public interest and to citizen confidence in government. A critical job for elected officials is to use every available tool to prevent ethical problems before they arise. When they arise despite the best efforts of agency leadership, a rapid and predictable response should follow.

#### **A. Education**

The first response need not always be punitive. Even employees trained in ethical conduct may not understand the rules, especially when they are new to government. Misconduct may result from honest mistakes. In such cases, education may be sufficient to prevent further errors, provided that the damage that was done can be repaired. Relying on education where possible also encourages other employees to report problems, since the consequences to the offender may not be criminal charges or administrative discipline.

#### **B. Administrative Sanctions**

Most ethical misconduct is handled through disciplinary action. Any disciplinary measures should be only as harsh as the seriousness of the misconduct. Such measures may include reassignment, suspension or dismissal, among others. See Chapter 7 of this Handbook for disciplinary options and the restrictions on imposing them.

#### **C. Civil Action**

When serious infractions have occurred, the Governmental Conduct Act provides for

civil cases to be filed. These can be used to recoup losses caused by the unethical conduct and prevent further such actions.

#### **D. Criminal Proceedings**

When public officials break the law, it may be necessary to refer the matter for prosecution. Most infractions of the Governmental Conduct Act and state criminal laws are classified as misdemeanors, but some are felonies. Criminal laws may also provide for forfeiture of salary or benefits.

### **Conclusion**

Everyone who chooses to enter public service, whether through election or appointment, commits to abide by rules of ethical conduct. It is incumbent on all government personnel to learn the rules and observe them. Leaders have an additional obligation: to ensure that the culture of their government agency includes a commitment to ethics.

## NOTES

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# **CHAPTER 4**

## **ROLES & RESPONSIBILITIES OF THE NEW MEXICO COUNTY TREASURER**

### **4.1 Term of Office**

The county treasurer serves a four-year term (§4-38-6 New Mexico Statutes Annotated 1978).

### **4.2 General Duties**

The treasurer's statutory duties (§4-43-2 NMSA) include:

- to keep account of all monies received and disbursed;
- to keep regular accounts of all checks and warrants drawn on the Treasury and paid;
- to keep the books, papers, and monies pertaining to this Office ready for inspection by the Board of County Commissioners at all times.

County revenues consist of property and other taxes, various fees, licenses, and distributions and grants from the state and federal governments. The county treasurer is the ex-officio collector of all county revenues and has all powers and duties provided by law to county collectors. (§4-43-3 NMSA). The treasurer is responsible for the collection of taxes, penalties, and interest due under the property tax code. County revenues are also distributed by the county treasurer (§6-10-36 NMSA), and an administrative charge is to be assessed to each entity that receives funding through an ad valorem distribution (§7-38-38.1 NMSA).

After valuation of all property it is the responsibility of the treasurer and assessor to administer and enforce property tax matters.

The treasurer also supervises the deposit, safekeeping and investment of all county funds, with the advice and consent of the Board of County Commissioners (BOCC) sitting as the Board of Finance regarding the determination and qualification of banks, savings and loans and credit union to receive the county's deposits (§6-10-8 NMSA).

The treasurer is also in charge of compiling the budget that is approved by the board of commissioners and the Department of Finance and Administration (DFA) and operating

the office within budgetary limitations. The treasurer may be required to expend resources to achieve federal or state policy goals without being provided funding to cover the costs. The Unfunded Mandates reform Act of 1995 is intended to help curb the practice of unfunded mandates.

On a monthly basis the treasurer must prepare a financial statement (§10-17-4 NMSA). See Calendar of Events for County Treasurer for this and other deadlines at Appendix D.

#### **4.3 Assuming/Departing the Office**

When a treasurer leaves office, he/she is required to make a full and complete settlement with the Board of County Commissioners and deliver in the presence of the county clerk all books, papers, and other property to his/her successor. The Board of County Commissioners is required to file a comprehensive financial statement with the state auditor including all unfinished business of the treasurer that is passed on to a successor. The books must be balanced before being passed on to the successor (§4-43-4 NMSA).

#### **4.4 Salary**

The salary of all county treasurers is controlled by state law. The state constitution authorizes the state legislature to set the salaries, and it has done so based upon the classification of each county (§4-44-1 through 4-44-14 NMSA).

The classification and salary level for New Mexico county treasurers are found at [http://nmdfa.state.nm.us/County\\_Classifications.aspx](http://nmdfa.state.nm.us/County_Classifications.aspx)

#### **4.5 Bond and Oath of Office**

The law requires all county officers to be bonded, to assure faithful performance of the duties required by law (§10-1-13 NMSA). Any elected county official failing to meet the nominal bonding requirements by January 10th following his/her election or within ten days after appointment shall have his office declared vacant. The treasurer must also take and subscribe to an oath of office as must any appointed deputies. It is evident the law is somewhat outdated, as it requires that the amount of the bond is to be fixed by the Board of County Commissioners in an amount equal to 20% of all public monies received during the preceding fiscal year, but not to exceed the following amounts:

- County Treasurer \$50,000
- County Commissioner \$5,000
- County Assessor \$5,000
- County Clerk \$10,000
- County Sheriff \$20,000
- County Surveyor \$5,000
- Probate Judge \$5,000
- County Flood Commissioner \$10,000
- Small Claims Court Clerk \$10,000

The cost of the bond for all county officers is to be paid from the county general fund, and the terms of this statute are usually fulfilled by coordination between the elected officer and the county’s risk manager, in cooperation with the New Mexico Association of Counties, and the insurance pool that insures many New Mexico counties.

**4.6 Vacancy in Office**

When a vacancy occurs in a county office by reason of death, resignation or otherwise, then the Board of County Commissioners appoints a qualified person to hold the office until a successor is duly elected and qualified (§10-3-3 NMSA).

**4.7 Removal, Suspension and Abandonment of Office**

Any county officer may be removed from office on the following grounds: conviction of any felony or of any misdemeanor involving moral turpitude; failure, neglect or refusal to discharge the duties of the office; knowingly demanding or receiving illegal fees; failure to account for money coming into his/her hands; gross incompetency or gross negligence; and any other act or acts which, in the opinion of a jury or court, amount to corruption in office or gross immorality rendering the officer unfit to fill the office (§10-4-1, §10-4-2 NMSA).

In addition to the grounds and process involved in the statutes identified above, the director of the Department of Finance and Administration may suspend any local official when an audit reveals any of the following:

- fraudulent misappropriation or embezzlement of public monies;

- fiscal mismanagement of an office resulting in a violation of law;
- willful violation of DFA regulations;
- or willful failure to perform any duty required by any law which the director of DFA is charged with enforcing.

Upon such suspension, the director of DFA may take charge of the office of the person suspended. The statutes provide for a hearing and a petition for reinstatement. The suspended officer may be reinstated by order of the district court if the director of DFA does not show reasonable cause for the suspension, or at the discretion of the director, if the suspended officer makes a proper showing satisfactory to the director that he/she is willing and able to conduct his office as provided by law and that no loss will be suffered by the county.

Where there are grounds for removal from office, the director of DFA may cause removal proceedings to be initiated by the district attorney (§10-5-19 NMSA).

The statutes also provide for the temporary replacement of officers serving active duty in the military service and for replacement of officers who permanently abandon their offices.

Permanent abandonment is defined as the acceptance of public office or employment (other than military service) or private employment for compensation when such office or employment results in failure to devote the usual and normal amount of time during ordinary working hours to duties of his office for a period of 30 successive days or more (§10-6-1 through 10-6-6 NMSA).

#### **4.8 Abolishment of Office Permitted**

Any county of the third, fourth, fifth or H class may abolish the offices of county assessor, clerk, surveyor and treasurer and transfer the powers and duties of the abolished offices to the Board of County Commissioners (§4-44-36 NMSA). The procedures for abolishing these Offices may be initiated by a petition signed by at least 10% of the registered voters in the county (§4-44-37 NMSA). The procedures for challenging the petition and conducting an election on the question are set forth in statutes 4-44-38 to 4-44-43 NMSA. The statutes also provide for the re-establishment of the abolished offices by similar procedures (§4-44-44 NMSA).



## Legal Resources and Information

The treasurer should have some knowledge of the legislative process. There are several NM EDGE classes which cover this information. Additional information may be found on the web.

Here are two publications recommended by the committee members who revised this chapter:

How Our Laws are Made

<http://thomas.Loc.gov/home/lawsmade.tohtml>

New Mexico Arts Legislative Advocacy Kit

<http://www.nmarts.org/pdf/advocacy%20kit.pdf>

Sunshine Laws, such as the NM Open Meetings Act (§10-15-1 through 10-15-4 NMSA 1978) explain what types of meetings fall under the law, public notice requirements for meetings, and proper issuance of agendas, minutes, and closing meetings. The Act covers remedies, penalties, requirements and exceptions to the law.

The Inspection of Public Records Act (§14-2-1 through 14-2-12 NMSA 1978) is meant to provide the public with access to virtually all public records. There is a Compliance Guide that is prepared and updated by the NM Attorney General's Office that aids state and local governments meet the requirements of the Act. This guide and others are available on-line at <http://nmag.gov>

# NOTES

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# **CHAPTER 5**

## **PROPERTY TAXES AND OTHER SPECIAL LEVIES**

There are various types of taxes that the treasurer must be familiar with. The most common tax encountered is the property tax which is imposed under authority of the Property Tax Code. Some of the most pertinent provisions follow.

### **5.1 Valuation Increase Limitations**

Limitation on increases in valuation of residential property (§7-36-21.2 NMSA).

- A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978]; provided that for the 2001 and subsequent tax years, the value of a property in any tax year shall not exceed the higher of one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued or one hundred six and one-tenth percent of the value in the tax year two years prior to the tax year in which the property is being valued. This limitation on increases in value does not apply to:
1. a residential property in the first tax year that it is valued for property taxation purposes;
  2. any physical improvements made to the property during the year immediately prior to the tax year or omitted in a prior tax year; or
  3. valuation of a residential property in any tax year in which:
    - a. a change of ownership of the property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined; or
    - b. b) the use or zoning of the property has changed in the year prior to the tax year.
- B. If a change of ownership of residential property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined, the value of the property shall be its current and correct value as determined pursuant to the general valuation provisions of the Property Tax Code (Chapter 7, Articles 35 to 38 NMSA 1978).
- C. To assure that the values of residential property for property taxation purposes are at

current and correct values in all counties prior to application of the limitation in Subsection A of this section, the department shall determine, for the 2000 tax year, the sales ratio pursuant to Section 7-36-18 NMSA 1978 or, if a sales ratio cannot be determined pursuant to that section, conduct a sales-ratio analysis using both independent appraisals by the department and sales. If the sales ratio for a county for the 2000 tax year is less than eighty-five, as measured by the median ratio of value for property taxation purposes to sales price or independent appraisal by the department, the county shall not be subject to the limitations of Subsection A of this section and shall conduct a reassessment of residential property in the county so that by the 2003 tax year, the sales ratio is at least eighty-five. After such reassessment, the limitation on increases in valuation in this section shall apply in those counties in the earlier of the 2004 tax year or the first tax year following the tax year that the county has a sales ratio of eighty-five or higher, as measured by the median ratio of value for property taxation purposes to sales value or independent appraisal by the department. Thereafter, the limitation on increases in valuation of residential property for property taxation purposes in this section shall apply to subsequent tax years in all counties.

- D. The provisions of this section do not apply to residential property for any tax year in which the property is subject to the valuation limitation in Section 7-36-21.3 NMSA 1978.E. As used in this section, "change of ownership" means a transfer to a transferee by a transferor of all or any part of the transferor's legal or equitable ownership interest in residential property except for a transfer:
1. to a trustee for the beneficial use of the spouse of the transferor or the surviving spouse of a deceased transferor;
  2. to the spouse of the transferor that takes effect upon the death of the transferor;
  3. that creates, transfers or terminates, solely between spouses, any co- owner's interest;
  4. to a child of the transferor, who occupies the property as his principal residence at the time of transfer; provided that the first subsequent tax year in which that person does not qualify for the head of household exemption on that property, a change of ownership shall be deemed to have occurred;
  5. that confirms or corrects a previous transfer made by a document that was recorded in the real estate records of the county in which the real property is located;

6. for the purpose of quieting the title to real property or resolving a disputed location of a real property boundary;
  7. to a revocable trust by the transferor with the transferor, the transferor's spouse or a child of the transferor as beneficiary; or
  8. from a revocable trust described in Paragraph (7) of this subsection back to the settlor or trustor or to the beneficiaries of the trust.
- E. As used in this section, solar energy system installation means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:
1. an installation that uses solar panels that are not also windows
  2. a dark-colored water tank exposed to sunlight or
  3. a not-vented trombe wall.

History: 1978 Comp., §§ 7-36-21.2, enacted by Laws 2000, ch. 10, §§ 2; 2001, ch. 321, §§ 1; 2003, ch. 118, §§ 1.

## **5.2 Limitation on increase in value for single-family dwellings occupied by low-income owners sixty-five years of age or older or disabled (§7-36-21.3NMSA).**

Limitation on increase in value for single-family dwellings occupied by low-income owners sixty-five years of age or older or disabled (§7-36-21.3NMSA).

- A. For the 2001 and subsequent tax years the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older and whose modified gross income, as defined in the Income Tax Act (§7-2-1 NMSA 1978), for the prior taxable year did not exceed the greater of eighteen thousand dollars (\$18,000) or the amount calculated pursuant to Subsection C of this section shall not be greater than the valuation of the property for property taxation purposes in the:
1. 2001 tax year;
  2. year in which the owner has his sixty-fifth birthday, if that is after 2001; or
  3. tax year following the tax year in which an owner who turns sixty-five or is sixty-five years of age or older first owns and occupies the property, if that is after 2001.

- B. For the 2009 and subsequent tax years, the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is disabled and whose modified gross income, as defined in the Income Tax Act, for the prior taxable year did not exceed the greater of thirty-two thousand dollars (\$32,000) or the amount calculated pursuant to Subsection F of this section shall not be greater than the valuation of the property taxation purposes in:
1. the 2009 tax year, if the person owns and occupies the property in the 2009 tax year;
  2. the tax year in which the owner's sixty-fifth birthday occurs, if that is after 2009; or
  3. the tax year following the tax year in which an owner who is sixty-five years of age or older first owns and occupies the property, if that is after 2009.
- C. For the 2003 and subsequent tax years, the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is disabled and whose modified gross income, as defined in the Income Tax Act [7-2-1 NMSA 1978], for the prior taxable year did not exceed the greater of eighteen thousand dollars (\$ 18,000) or the amount calculated pursuant to Subsection C of this section shall not be greater than the valuation of the property for property taxation purposes in the:
1. 2003 tax year;
  2. year in which the owner is determined to be disabled, if that is after 2003; or
  3. tax year following the tax year in which an owner who is disabled or who is determined in that year to be disabled first owns and occupies the property, if that is after 2003.
- D. An owner who is entitled to a limitation in valuation pursuant to more than one subsection of this section may designate the subsection pursuant to which the limitation shall be applied.
- E. The limitation of value specified in Subsections A, B and C of this section shall be applied in a tax year in which the owner claiming entitlement files with the county assessor an application for the limitation on a form furnished to him by the assessor. The application form shall be designed by the department and shall provide for proof of age or disability, occupancy and income eligibility for the tax year for which application is made.
- F. For the 2002 tax year and each subsequent tax year the maximum amount of modified gross income in Subsections A and B of this section shall be adjusted to

account for inflation. The department shall make the adjustment by multiplying the maximum amount for tax year 2000 by a fraction, the numerator of which is the consumer price index ending during the prior tax year and the denominator of which is the consumer price index ending in tax year 2000. The result of the multiplication shall be rounded down to the nearest one hundred dollars (\$100) except that if the result would be an amount less than the corresponding amount for the preceding tax year, then no adjustment shall be made. For purposes of this subsection, consumer price index means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30. The department shall publish annually the amount determined by the calculation and distribute it to each county assessor no later than December 1 of each tax year.

- G. The limitation of value specified in Subsections A and B of this section does not apply to:
1. a change in valuation resulting from any physical improvements made to the property during the year immediately prior to the tax year or a change in the permitted use or zoning of the property during the year immediately prior to the tax year; or
  2. a residential property in the first tax year that is valued for property taxation purposes.
- H. As used in this section, disabled means a person who has been determined to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act [42 USC §§ 301 et seq.] or is determined to have a permanent total disability pursuant to the Workers' Compensation Act (§52-1-1 NMSA 1978).

HISTORY: Laws 2000, ch. 21, §§ 1; 2001, ch. 321, §§ 2; 2003, ch. 78, §§ 1.

### **5.3 Rate of Tax Cumulative; Determination; Governmental Units' Entitlement to Tax. (§7-37-6 NMSA).**

- A. The rate of the tax is cumulative and shall be determined for application against any property in a tax year by adding all of the rates authorized by this article and set by the department of finance and administration for the use of the governmental units to which the net taxable value of the property is allocated.

- B. Each governmental unit that is authorized a rate under this article is entitled to that portion of the tax collected by applying the governmental unit's rate set for the tax year to the net taxable value of property allocated to the governmental unit.
- C. For the purposes of this section and Section 7-37-3 NMSA 1978, the net taxable value of all property subject to the tax is considered allocated to the state when determining or applying tax rates authorized for the use of the state.

History: 1053 Comp., § 72-30-6, enacted by Laws 1073, ch. 258, §39.

#### **5.4 Tax Rates Authorized; Limitations (§7-37-7NMSA).**

- A. The tax rates specified in Subsection B of this section are the maximum rates that may be set by the department of finance and administration for the use of the stated governmental units for the purposes stated in that subsection. The tax rates set for residential property for county, school district or municipal general purposes or for the purposes authorized in Paragraph (2) of Subsection C of this section shall be the same as the tax rates set for nonresidential property for those governmental units for those purposes unless different rates are required because of limitations imposed by Section 7- 37-7.1 NMSA 1978. The department of finance and administration may set a rate at less than the maximum in any tax year.

In addition to the rates authorized in Subsection B of this section, the department of finance and administration shall also determine and set the necessary rates authorized in Subsection C of this section. The tax rates authorized in Paragraphs (1), (3) and (4) of Subsection C of this section shall be set at the same rate for both residential and nonresidential property.

Rates shall be set after the governmental units' budget-making and approval process is completed and shall be set in accordance with Section 7-38-33 NMSA 1978. Orders imposing the rates set for all units of government shall be made by the Boards of County Commissioners after rates are set and certified to the boards by the Department of Finance and Administration (DFA).

The Department of Finance and Administration shall also certify the rates set for nonresidential property in governmental units to the department for use in collecting



taxes imposed under the Oil and Gas Ad Valorem Production Tax Act [7-32-1 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [7-39-1 NMSA 1978].

- B. The following tax rates for the indicated purposes are authorized:
1. for the use of each county for general purposes for 1987 and subsequent property tax years a rate of eleven dollars eighty-five cents (\$11.85) for each one thousand dollars (\$1,000) of net taxable value of both residential and nonresidential property allocated to the county;
  2. for the use of each school district for general operating purposes, a rate of fifty cents (\$.50) for each one thousand (\$1,000) of net taxable value of both residential and nonresidential property allocated to the school district;
  3. for the use of each municipality for general purposes for 1987 and subsequent property tax years a rate of seven dollars sixty-five cents (\$7.65) for each thousand (\$1,000) of net taxable value of both residential and nonresidential property allocated to the municipality.
- C. In addition to the rates authorized in Section B of this section, there are also authorized:
1. Those rates or impositions authorized under provisions of law outside of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] that are for the use of the governmental units indicated in those provisions and are for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law;
  2. Those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions and have been approved by the voters of the governmental unit in the manner required by law;
  3. Those rates or impositions necessary for the use of a government unit to pay a tort or workers' compensation judgment for which a county, municipality or school district is liable, subject to the limitations in Section B of Section 41-4- 25 NMSA 1978, but except as provided in Paragraph (4) of this subsection, no rate or imposition shall be authorized to pay any judgment other than one arising from a tort or workers' compensation claim and

4. Those rates or impositions ordered by a court pursuant to Section 22-24-5.5 NMSA 1978 and for the use of a school district to pay a judgment pursuant to that section.
- D. The rates and impositions authorized under Subsection C of this section shall be on the net taxable value of both residential and nonresidential property allocated to the unit of government specified in the provisions of the other laws or judgments.

History: 1953 Comp., § 72-30-7, enacted by Laws 1973, ch 258, § 40; 1974, ch. 92, § 6; 1975, ch. 132, § 1; 1981, ch. 176, § 2; 1986, ch. 20, § 110; 1990, ch. 125, § 5; 2004, ch. 125, § 3.

Special procedures for administration of taxes on real property divided or combined. (2013)

1. For real property subject to valuation for property taxation purposes in a taxable year that is divided or combined, a county shall proceed to determine the taxes due on the property by using the prior year's tax rate, if the current tax rates have not been set, and the prior year's value, if the current year value has not been set, and proceed to immediately collect the taxes, penalties, interest and fees through the taxable year in which the property is divided and combined.
2. A taxpayer shall pay the taxes, penalties, interest and fees due on real property divided or combined through the taxable year in which the property is divided or combined prior to filing a plat.

History: Laws 2013, ch. 119, § 1

DFA is authorized and directed to promulgate regulations covering the receipt of, accounting for, and distribution of funds received under Property Tax Code by the county treasurers as taxes. DFA may provide that taxes collected by the state and amounts withheld by them as their portion due be credited and shown as paid by the treasurer on the property tax schedule.

## 5.5 **Property Tax Schedule and Tax Bills**

After receipt of the rate setting order by the Board of County Commissioners and the order imposing the tax, but no later than October 1 of each year, the county assessor

prepares a property tax schedule of all property located in the county that is subject to taxation.

The schedule is in a form containing the following information (§7-38-35(A) NMSA):

1. description of property, and if personal property, its location;
2. property owner's name and address, and name and address of any person other than the owner to whom the tax bill is to be sent;
3. classification of the property;
4. value of the property determined for taxation purposes;
5. the tax ratio;
6. the taxable value of the property;
7. the amount of any exemption allowed and a statement of the net taxable value of the property after deducting the exemption;
8. the allocations of net taxable value to governmental units;
9. tax rate in dollars per thousand of net taxable value for all taxes imposed on the property;
10. the amount of taxes due on the property; and
11. the amount of penalties and interest already imposed and due on the described property.

The property tax schedule is a public record and must be prepared and delivered by the assessor to the county treasurer by October 1 of each tax year (§7-38-35(B) NMSA).

The treasurer is generally restricted in making any changes to the schedule, but is authorized by statute to make some limited changes under certain conditions (§7-38-77 NMSA).

#### **5.5.1 Notices; mailing (§7-38-84)**

- A. Any notice that is required to be made to a property owner by the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] is effective if mailed by regular first class mail to the property owner's last address or to the address of any person other than the owner to whom the tax bill is to be sent as shown by the valuation records unless the provisions of the code require a different method of notification or

mailing, in which case the notice is effective if given in accordance with the provisions of the code.

- B. If a property owner notifies, in writing or by electronic mail, the county assessor or the county treasurer that the property owner wants to receive notices pursuant to the Property Tax Code by electronic mail rather than by regular first class mail, the county assessor or the county treasurer may thereafter provide such notices to the property owner with the requirements of the Electronic Authentication of Documents Act [14-5-1 through 14-5-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. A property owner's request to receive notices by electronic mail shall be effective until revoked in writing or by electronic mail to the county assessor and the county treasurer. Wherever the Property Tax Code requires a method of notification or mailing done only by the county assessor or county treasurer, other than by regular first class mail, the notice is effective if given in accordance with the provisions of that code.
- C. An electronic mail address provided by a property owner pursuant to this section shall not be considered a valuation record pursuant to Section 7-38-19 NMSA 1978 and shall be retained by the county assessor as a confidential record that is not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978.]

History 1953 Comp., §72-31-84, enacted by Laws 1973, ch. 258, § 124; 1974, ch. 92, § 29; 2015, ch. 2, §1.

## **5.6 Authority to Make Changes in Property Tax Schedule After It's Delivery to the County Treasurer (§7-38-77 NMSA).**

After delivery of the property tax schedule to the county treasurer, the amounts shown on the schedule as taxes due and other information on the schedule shall not be changed except:

- A. by the county treasurer to correct obvious clerical errors in:

1. the name or address of the property owner or other persons shown on the schedule;
  2. the description of the property subject to property taxation; or
  3. the mathematical computation of taxes;
- B. by the county treasurer to cancel multiple valuations for property taxation purposes of the same property in a single tax year, but only if:
1. a taxpayer presents tax receipts showing the payment of taxes by him for any year in which multiple valuations for property taxation purposes are claimed to have been made;
  2. a taxpayer presents evidence of his ownership of the property, satisfactory to the treasurer, as of January 1 of the year in which multiple valuations for property taxation purposes are claimed to have been made; and
  3. there is no dispute concerning ownership of the property called to the attention of the treasurer, and he has no actual knowledge of any dispute concerning ownership of the property;
- C. by the county treasurer, to correct the tax schedule so that it no longer contains personal property that is deemed to be un-locatable, unidentifiable or uncollectable, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk;
- D. as a result of a protest, including a claim for refund, in accordance with the Property Tax Code, of values, classification, allocations of values determined for property taxation purposes or a denial of a claim for an exemption;
- E. by the department or the order of a court as a result of any proceeding by the department to collect delinquent property taxes under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978];
- F. by a court order entered in an action commenced by a property owner under Section 7-38-78 NMSA 1978;
- G. by the department as authorized under Section 7-38-79 NMSA 1978;
- H. by the department of finance and administration as authorized under Section 7-38-77.1 NMSA 1978; or
- I. as specifically otherwise authorized in the Property Tax Code.

History: 1953 Comp., § 72-31-77, enacted by Laws 1973, ch. 258, § 117; 1974, ch. 92, § 27; 1981, ch. 37, § 79; 1995, ch. 65, § 1; 2000, ch. 32, § 1.

## **5.7 Exemptions**

The constitution and statutes of New Mexico provide exemptions for property valuation and taxation. Some of these exemptions depend upon who owns the property while other exemptions depend upon how the property is used. The primary exemptions issued are those for veterans, head-of-family and non-government entities. Tax exemption on property continues as long as the use is for the exempted purpose. *Berger v. U.N.M.*, 28 N.M. 666, 217 P. 245 (1923).

### **5.7.1 Head-of-family Exemption (§7-37-4 NMSA)**

A. Up to two thousand dollars (\$ 2,000) of the taxable value of residential property subject to the tax is exempt from the imposition of the tax if the property is owned by the head of a family who is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code, as those sections may be amended or renumbered, by a head of a family who is a New Mexico resident.

The exemption allowed shall be in the following amounts for the specified property tax years:

1. for the property tax years 1989 and 1990, the exemption shall be eight hundred dollars (\$800);
  2. for the property tax years 1991 and 1992, the exemption shall be one thousand four hundred dollars (\$1,400); and
  3. for the 1993 and subsequent tax years, the exemption shall be two thousand dollars (\$2,000).
- B. The exemption shall be deducted from taxable value of property to determine net taxable value of property.
- C. The head-of-family exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.
- D. As used in this section, head of a family means an individual New Mexico resident who is either:
1. a married person, but only one spouse in a household may qualify as a head of a family;
  2. a widow or a widower;
  3. a head of household furnishing more than one-half the cost of support of any related person;
  4. a single person, but only one person in a household may qualify as a head of

family; or

5. a member of a condominium association or like entity who pays property tax through the association.
- E. A head of a family is entitled to the exemption allowed by this section only once in any tax year and may claim the exemption in only one county in any tax year even though the claimant may own property subject to valuation for property taxation purposes in more than one county.

History: 1953 Comp., § 72-30-4, enacted by Laws 1973, ch. 258, § 37; 1983, ch. 219, § 1; 1989, ch. 81, § 1; 1991, ch. 228, § 1; 1993, ch. 343, § 1.

### **5.7.2 Veteran Exemption (§7-37-5 NMSA)**

- A. Up to four thousand dollars (\$ 4,000) of the taxable value of property, including the community or joint property of husband and wife, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from taxable value of [property] to determine net taxable value of property. The exemption allowed shall be in the following amounts for the specified tax years:
1. for tax year 2004, the exemption shall be three thousand dollars (\$3,000);
  2. for tax year 2005, the exemption shall be three thousand five hundred dollars (\$3,500); and
  3. for tax year 2006 and each subsequent tax year, the exemption shall be four thousand dollars (\$4,000).
- B. The veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.
- C. As used in this section, veteran means an individual who:
1. has been honorably discharged from membership in the armed forces of the United States;
  2. except as provided in this section, served in the armed forces of the United States on active duty continuously for ninety days.

- D. For the purposes of Subsection C of this section, a person who would otherwise be entitled to status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if he served during the applicable period for less than ninety days and the reason for not having served for ninety days was a discharge brought about by service-connected disablement.
- E. For the purposes of Paragraph (1) of Subsection C of this section, a person who would be entitled to be honorably discharged unless he received either a dishonorable discharge or a discharge for misconduct.
- F. For the purposes of this section, a person whose civilian service has been recognized a service in the armed forces of the United States under federal law and who has been issued a discharge certificate by a branch of the armed forces of the United States shall be considered to have served in the armed forces of the United States.

History: 1953 Comp., § 72-30-5, enacted by Laws 1973, ch. 258, § 38; 1975, ch. 3, § 1; 1975, ch. 77, § 1; 1977, ch. 140, § 1; 1977, ch. 168, § 1; 1981, ch. 187, § 1; 1983, ch. 330, § 1; 1986, ch. 104, § 1; 1989, ch. 236, § 1; 1989, ch. 353, § 1; 1991, ch. 228, § 2; 1992, ch. 68, § 1; 2000, ch. 17, § 1; 2003, ch. 57, § 1.

## **5.8 Payment of Property Taxes**

- Property taxes in the amount of ten dollars (\$10.00) and over are payable to the county treasurer in two equal installments due November 10th in the year which the tax bill was prepared and on April 10th of the following year.
- Taxes become delinquent on December 10 and May 10 of each tax year.
- The Board of County Commissioners may provide by ordinance that taxes under ten dollars (\$10.00) are due and payable in one single payment on November 10th.
- If property taxes are less than five dollars (\$5.00), the Board of County Commissioners may authorize an administrative fee equal to the difference between the tax and five dollars (\$5.00).
- No administrative fee is due if no tax is due.
- If an overpayment is made by the taxpayer, the county treasurer may refund the overpayment if:
  1. a written request is made by the taxpayer and received by the treasurer within sixty days of the date the payment was made; or
  2. the treasurer on his/her own initiative determines by June 30th of the following



year that an overpayment was made.

- The Board of County Commissioners may, by resolution and additional publication efforts, provide the taxpayers an opportunity to pre-pay property taxes if the tax due is one hundred dollars (\$100) or more.
  - The first payment is due July 10th in an amount equal to twenty-five percent of the total tax due.
  - Pre-payment for the second installment is due by January 10th in the amount equal to fifty percent of the tax due (§7-38-38.2 NMSA).
  - No penalty and interest shall be applied for failure to pay or to pay late any optional pre-payment of property taxes as authorized by this section.

## **5.9 Protesting Values**

A County Valuation Protest Board is created in each county to hear all protests filed by property owners (§7-38-25 and 21 NMSA). All testimony is taken under oath. Protests must be decided within 180 days of the date the protest is filed. If the property owner or his authorized representative fails to appear without reasonable cause, the protest will be denied (§7-38-27C NMSA). The assessor must maintain a file of all orders issued by the valuation protest board.

If a property owner has not pursued an administrative protest of the valuation pursuant to Section 7-38-21 NMSA (includes issues such as the property classification, the allocation of value, the fact of or the amount of an administrative fee charged, or a denial for claim of exemption), the property owner may also protest property values after receipt of the tax bill (§7-38-39 NMSA) by filing a claim for refund. This means that the taxes that he disputes to be due and owing must first be paid prior to the delinquency date. The payment that is contested will be deposited into a fund called the property tax suspense fund (§7-38-41 NMSA). These monies are used to pay refunds if the taxpayer prevails.

Claims for refund are filed as a civil action in District Court. When it is decided, the treasurer will receive a copy of the final order from the district court regarding the claim and should submit a copy to the assessor and to the director of the state property tax division so they can update their records accordingly.

## **5.10 Delinquent Taxes**

Property taxes become delinquent after ninety days past the payment date. If a taxpayer files a timely protest under Sections 7-38-22 and 7-38-24 NMSA 1978, taxes may become delinquent within thirty days if the property owner:

1. fails to pay taxes or appeal a decision of the county valuation protest board, the PTD, or Court with the time allowed for an appeal; or
2. fails to pay taxes as ordered within ten days after entry of a final order. Collection of delinquent property taxes, penalties, and interest is applied first to the oldest outstanding due.

The treasurer is responsible for publishing a notice within the county in a newspaper of general circulation of the date taxes become delinquent. The notice must be published at least once per week for three weeks immediately preceding the week in which the delinquency date, for both the first and second installments are due (§7-38-46 NMSA). Interest due begins accruing on the thirty-first day of delinquency at the rate of one percent per month until paid (§7-38-49 NMSA). A penalty of one percent per month not to exceed five percent is also due on the unpaid balance. The minimum payment that can be imposed is five dollars. Counties may suspend the minimum charge for one tax year by resolution of the Board of County Commissioners (§7-38-50 NMSA).

### **5.10.1 Delinquent Tax Notification**

The treasurer is required to mail a notice of delinquency for taxes that are past due thirty days as of June 30th of each year (§7-38-51 NMSA).

The specific information to be included on the delinquency notice includes:

1. the owner of the property as shown on the tax schedule and the address; and
2. any person other than the owner to whom the tax bill was sent to;
3. description of the property;
4. the amount of taxes due;
5. date taxes become delinquent;
6. interest accrual rate;
7. penalties that may be charged;
8. a statement that if taxes due on real property are not paid within three years from date of delinquency, the property will be sold and a deed issued by the PTD;

9. a statement that if taxes due on personal property are not paid, the property will be seized and sold for taxes under to authority of a demand warrant.

Taxes due are a first lien against property regardless of other liens and are in favor of the state until paid (§7-38-48 NMSA).

### **5.11 Personal Property Seizure**

The treasurer is authorized to issue for service a demand warrant by his/her office or by the county sheriff for the seizure of personal property (§7-38-53 NMSA). The treasurer may release all or part of the personal property seized if it is determined that the release will facilitate the collection of the delinquent taxes. However, the release does not prevent any subsequent claims or actions that may be taken against the property.

After the property is seized and before ten days of the proposed sale of the property, the treasurer must notify the owner by certified mail to the amount and kind of property seized, and that it will be sold for delinquent taxes unless they are paid prior to the sale. The notice must also state the taxes, interest, and penalties due. Failure of the owner to receive a notice of sale does not affect the validity of the sale (§7-38-57 NMSA).

Personal property seized must be offered for sale within sixty days (60) after seizure. A notice of sale must be published in a local newspaper of general circulation at least once a week for three weeks immediately preceding the week of the sale (§7-38-58 NMSA). At the time of the sale, the treasurer must deliver a certificate of sale to the purchaser.

### **5.12 Real Property Foreclosure**

Real property may be foreclosed upon for the payment of delinquent taxes. This is generally more involved than the sale of personal property; however, many of the same requirements are still present such as advance notice to the property owner of contemplated sale and publication in a newspaper of sale. More specific information may be obtained from the statutes dealing with real property and PTD.

### **5.13 Mobile Homes**

In addition to the information required to be sent in the delinquency notice as previously stated and under Section 7-38-51 NMSA, the notice for mobile homes will also contain

location and vehicle identification number. The notice must also state that the motor vehicle division will be notified and the legal effect of the security interest created. A copy is to be sent to the Motor Vehicle Division of the Transportation Department. Once taxes, interest, and penalties are paid, the treasurer certifies this fact and prepares a notification of certified payment with the original to be sent to the Motor Vehicle Division and a copy sent to the owner.

#### **5.14 Property Tax Delinquency List**

By July 1st of each year the treasurer is to prepare a property tax delinquency list for all taxes two years or more delinquent. A notation is made on the property tax schedule indicating that the account is being transferred to PTD at the time the tax delinquency list is mailed to the division.

#### **5.15 State Actions**

Upon receipt of the property tax delinquency list, the PTD may proceed to seize and sell property under the same procedures that are authorized of the county treasurer. Whenever taxes are paid, a copy of payment received is given to the property owner and a duplicate sent to the treasurer. The treasurer then notes payment on the property tax schedule.

#### **5.16 Delinquency Limitation**

Property tax delinquent in excess of ten years are indicated as "presumed paid by Act of the Legislature". This applies only to taxes in excess of ten years and the same holds true for levies and assessments in the form of property taxes under provisions of §73- 14-1 through 78-18-43 NMSA.

The county treasurer may correct the tax schedule so that it no longer contains personal property that is deemed to be unable to be located, unidentifiable or uncollectible, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk.

#### **5.17 Public Improvement Districts (PID)**

In addition to collection of property taxes, the treasurers may be involved in billing and collecting special taxes imposed upon portions of the county voluntarily by the residents,

through a statutory mechanism designed to provide an affordable method of financing needed public improvements within that particular locale, but not benefitting the county residents at large. The Public Improvement District Act provides a relatively complex system for residents and their boards of county commissioners to create public improvement districts inside the boundaries of the county (§5-11-1 through 27 NMSA). The treasurer may or may not be involved during the process of formation, but if the district is ultimately formed, it is the treasurer as the ex officio collector of the revenues of the county that will likely be responsible for collection of any special levy imposed to finance public improvements constructed within the public improvement district.

The public improvement district process begins when a petition, signed by at least 25% of the owners (by assessed value not acreage) of the real property proposed to be included within the area proposed to become the district is filed with the county clerk on behalf of the Board of County Commissioners, or presented directly to the Board of County Commissioners at one of its meetings (§5-11-3 NMSA). A resolution may be adopted by the Board of County Commissioners declaring its preliminary intent to form the district after a public hearing on the Petition. This preliminary resolution declaring the board's intent to consider the matter may require the persons petitioning for formation of the district to deposit with the treasurer an amount equal to the estimated costs of conducting the feasibility study and other estimated formation costs, to be reimbursed if the district is formed and the requested public improvements are financed (§5-11-3(B) NMSA).

A study of feasibility and estimated costs of improvements, and maximum benefit to be conferred on each parcel within the proposed public improvement district must be prepared, typically by private engineers and appraisers selected by the county before the board may hold the hearing on the issue of formation of the district. Objections to the formation of the public improvement district may be filed by persons claiming an interest in the real property within the area proposed to become a public improvement district. (§5-11-5 NMSA). At the public hearing (conducted by the BOCC) on the question of formation (after the studies are done and the costs and maximum benefit to each parcel has been provided by the expert engineer and/or appraiser and presented to the board), the board shall determine whether the public improvement district should be formed, and shall base its determination on factors of interest, convenience, necessity of the owners, residents and citizens of the county.

If the BOCC determines that the public improvement district should be formed, it shall adopt a resolution ordering formation of the public improvement district. In its decision, the BOCC shall delete property proposed to be in the district that it determines is not directly or indirectly benefitted by the public improvements; the BOCC may also modify the general plan. If the BOCC decides the public improvement district should be formed, it shall also order an election to be held on the question of whether or not to form the district (§5-11-6 NMSA). The election shall be conducted in accordance with the requirements of §5-11-7 NMSA. If the public improvement district passes at the election, and the bonds are issued to finance the public improvements, the treasurer will likely be involved to ensure that the provisions regarding implementation of the special levy are followed, and to oversee the collection of the special levy on each parcel within the public improvement district.

Section 5-11-23 NMSA provides the specifics regarding implementation of the special levy. For example, the property taxes for the operation and maintenance expenses of the public improvement district shall not exceed an amount equal to three dollars (\$3.00) per one thousand dollars (\$1,000) of net taxable value for all real and personal property in the district, absent an election approving same by qualified electors within the district. This statute also sets forth the public improvement district's board's duties; the Board of County Commissioners is the ex officio district board unless another is appointed pursuant to §5-11-2 (F) NMSA.

Section 5-11-23 NMSA requires the district board to make annual statements and estimates of the operation and maintenance expenses of the district, the costs of public improvements to be financed by the taxes or special levy and the amount of all other expenditures for public infrastructure improvements and enhanced services proposed to be paid from the taxes or special levy and of the amount to be raised to pay general obligation bonds of the district or special levy bonds, all of which shall be provided for by the levy and collection of property taxes on the net taxable value of the real property in the district or by the imposition and collection of special levies. The district board shall file the annual statements and estimates with the clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation bonds or special levy bonds and shall adopt a budget. The district board, on or before the date set by law for certifying the annual

budget of the municipality or county, shall fix, levy and assess the amounts to be raised by property taxes or special levies of the district and shall cause certified copies of the order to be delivered to the local government division of the department of finance and administration.

### **5.18 Assessment for Local County Road Maintenance**

A previous law attempting to address the issue of needed public improvements is still valid today, and provides that the Board of County Commissioners may adopt a resolution determining that any streets totally within an approved subdivision outside the corporate limits of any municipality, and which the board determines to have such a prospective population density as to require extraordinary street maintenance shall be maintained in part at the expense of the owner of any property which abuts upon the streets (§67-4-20 NMSA). The resolution shall only be adopted after a public hearing, notice of which has been advertised in a newspaper of within the county for two consecutive weeks. The assessment for the expense of maintaining the streets shall be billed and collected by the county treasurer at the same time as the property taxes and shall become delinquent thirty days after the date of billing. All delinquent assessments shall be a lien against the tract or parcel of property abutting the street, and the lien shall be enforced as provided in Section 67-24-21 NMSA 1978. 2001, ch. 3422.





# CHAPTER 6

## PUBLIC FUNDS AND INVESTMENTS

### 6.1 Cash Flow

It is important that the level of liquidity needed for county operations be accurately calculated. Cash flow needs will determine the amount, timing and kind of investments. In actuality, this is usually done in conjunction with the board of finance (Board of County Commissioners), county manager and the finance department.

### 6.2 Deposits

Deposits are to be made in financial institutions located with the county that are insured either by FDIC, FSLIC or NCUA. Deposits in excess of \$100,000 must be collateralized by the pledging of securities by the financial institutions. The depository must pledge 50% of the amount on deposit in excess of \$100,000 (§6-10-17 NMSA). A depository bond issued by a surety company may secure a portion of the deposits. Collateral must consist of either securities of the United States, its agencies, instrumentalities, or securities of the State of New Mexico, its agencies or instrumentalities, counties, municipalities, or other political subdivisions, or by securities, including student loans, that are guaranteed by the United States or the State of New Mexico.

Note:

To read the law, go to <http://www.nmonesource.com>, then look at the list of options at the top and select “Public Access Law”. From the drop down list click on “Search Statutes and Court Rules” and then click on “OK”. On the left side of the page click on “Statutes, Rules, and Const”. Under that heading, select “NMSA (Unannotated)”. Select the chapter you desire, and then the section.

To read DFA and PTD regulations, Administrative Code, go to <http://www.nmcpr.state.nm.us/nmac/> click on “Browse Compilation” on the left hand side of the page.

The next page gives you a list of the Titles for the administrative code. Treasurers in our state are generally interested in the titles “Public Finance” and “Taxation”.

The selected title will take you to a page outlining the various chapters of that particular part of the administrative code.

Qualifying banks, savings and loans associations or credit unions are addressed in §6-10-10 of NMSA 1978. Copies of deposits slips are to be retained by the treasurer and the secretary of the board of finance (§6-10-10 (D) NMSA 1978).

County treasurers have the power to invest in:

1. bonds or negotiable securities of the United States, the state or any county, municipality or school district with a taxable valuation of real property for the last preceding year of at least one million dollars and has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding; or
2. securities that are issued by the United States government or by its agencies or institutions and that are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies guaranteed by the US government.

Revenue bonds may qualify as security only if they are underwritten by a member of the National Association of Security Dealers (NASD) and are rated as “BAA” or above by the nationally recognized bond rating service.

<http://www.investopedia.com/terms/n/nasd.asp#axzz26lUkUfZN>

Collateral coverage may exceed 50% if determined by the board of finance. The treasurer should periodically review collateral coverage to determine its sufficiency. (NMCPR 2.60.4.9)

Deposits include checking, savings, and certificates of deposit (C.D.’s).

Deposits must be done on a pro-rata basis as a percentage of the financial institution’s net worth. This is calculated utilizing figures at the beginning of each year by adding total net worth’s (assets minus liabilities) of all financial institutions located in the county and dividing each institution’s net worth by the total.

This percentage is the pro-rata amount that must be maintained by the county.

### **6.3 Investments**

The types of investments utilized, is dependent upon the excess monies available and their future needs and dates needed. It is important that the county earn the highest

return possible, with safety being the highest priority and liquidity being the next highest.

Some of the more common short term investments include

- savings accounts
- C.D.'s
- Treasury Bills
- investments with the State treasurer
- Brokered CD's
- FICA's (Federally Insured Cash Accounts)

Savings accounts and C.D.'s are traditional and the easiest method, but must be done in consideration of institution net worth and collateral requirements, as previously mentioned.

Another method to obtain a higher rate of return utilizing deposits in financial institutions is the use of re-purchase accounts. Re-purchase accounts can be invested on a daily basis which funds are invested in the institution's investment portfolio which typically consists of government securities, treasury bills and other securities that are the same allowed to counties by law. Not all institutions have re-purchase accounts available.

Treasury Bills (also known as T-bills) can be purchased directly at a premium or discount in increments of \$10,000 and with a maturity of thirty days to one year. If the county is unable to receive a rate of return as set forth under Section 6-10-36 NMSA, then with the consent of the board of finance, and if the money required for expenditure is within 30 days or less, the county treasurer may remit it to the state treasurer for short term investments (§6-10-10.1 NMSA). The state treasurer will invest the money in behalf of the county.

Long term investments are monies available for investment in excess of one year. Favorite county investments include C.D.'s, T-Bills, T-Notes, T-Bonds and GNMA's. Investments should generally be in government securities or government insured securities for safety and ease of convenience. The county may also invest in some of the following types of securities although, they are generally the types invested in by the state. Because some of these securities are complex in nature, it is advisable for the

county to invest in some of these securities only with prudent attention and a thorough knowledge of the nature of the particular instruments.

This knowledge can be gained from a qualified financial advisor or by education such as can be obtained from NM EDGE County College classes.

The minimum interest rate should never be less than US Treasury Bill for the same maturity on the day of the deposit (§6-10-36E NMSA).

Not more than fifty percent of the total of the permanent fund shall be invested in securities under Subsections 6-10-10.1(E) and 6-10-10.1(F).

Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

#### **6.4 Bonds**

An important source of funds for the county involves the issuance of bonds. The most common type is the general obligation bond which may not mature more than twenty years with interest payable either annually or semiannually.

- These types of bonds cannot exceed four percent of the assessed taxable value of property in the county (Article IX, Section 13 and 4-49-7).
- A two-year limitation applies to the issuance of the bonds.
- The time period begins at the date the first proceedings began (§6-15-9 NMSA). This latter restriction does not apply to bond refunding or if the validity of the bond or the bond election is in litigation.
- Bonds may be issued for various purposes including the construction of county buildings, hospitals, jails, airports, utility projects, and roads.
- When contemplated and before issuance, the county must submit a bond proposal to the Local Government Division of the Department of Finance and Administration for their review. DFA will then furnish the county information regarding the issuance such as tax rates, debt contracting power and authority, limitations, and other useful information.

Bonds issued under the County Industrial Revenue Bond Act, County Recreational Bond Act, and various other Acts, are not considered to be general obligation bonds.

## **6.5 Revenue Recipients Administrative Charge**

The treasurer is required to bill revenue recipients for whom revenue has been received for an administrative charge equal to:

1. In Class A counties, three fourths of one percent of the revenues received not to exceed forty percent of the assessor's budget; and
2. In all other counties, one percent of the revenue received not to exceed forty percent of the county assessor's budget.

The provisions only apply to revenue recipients which include the state and any of its political subdivisions excluding institutions of high learning located in Class A and Class B counties having an assessed valuation of more than \$300 million. Revenue in this case means money which the treasurer has a legal responsibility to collect and which is owed to a revenue recipient as a result of the law.

Administrative charges collected by the treasurer are deposited to the county property valuation fund. Expenditures from this fund are made pursuant to a property valuation program presented by the county assessor and approved by the Board of County Commissioners (§7-38-38.1 NMSA).



# **CHAPTER 7**

## **FINANCIAL REPORTS**

The county treasurer is responsible for the preparation of various reports. The types of reports vary from county to county depending upon the existence of a finance department and other factors. Some of the more common reports or financial items are as follows.

### **7.1 Checks and Warrants**

Checks and warrants are issued by the finance department upon authorization of the Board of County Commissioners (BOCC). As they are presented to the bank and presented to the county for payment they are verified and a treasurer's check is issued for payment.

#### **7.1.1 County Orders for Payment from Treasury; Form and Signature (§4-45-4 NMSA)**

County orders shall be signed by the chairman of the Board of County Commissioners or his/her designee and attested by the county clerk and shall specify the nature of the claim of service for which they were issued, and the money shall be paid from the county treasury on such orders and not otherwise. Money may be paid from the county treasury by check or warrant. If money is paid by check, the check must be signed by the chairman of the Board of County Commissioners or his/her designee and the county treasurer.

History: Laws 1876, ch. 1, § 21; C.L. 1884, § 352; C.L. 1897, § 670; Code 1915, § 1223; C.S. 1929, § 33-4237; 1941 Comp., § 15-4204; 1953 Comp., § 15-44-4; Laws 2001, ch. 147, § 2.

#### **7.1.2 Canceled Checks and Warrants Register**

The treasurer is required to cancel any unpaid checks or warrants issued after one year. A register of canceled checks and warrants is required to be kept showing the number, date, amount, to whom payable, fund payable out of, and date of cancellation (§6-10-57 NMSA).

## **7.2 Treasurer's Financial Report**

This report is compiled at the close of each month and covers fiscal year information. The report includes such information as fund information by section, record of investments, bank reconciliation information, bonded debt information, detail of receipts, tax distribution information (by fund and section), tax schedule maintenance (10 years), and taxes collected by school district by year. Copies of the report are sent to DFA, county commissioners, county manager, county clerk, county finance officer, and others as may be required by established county policy.

Blank forms may be found on DFA website [www.nmdfa.state.nm.us](http://www.nmdfa.state.nm.us)

- Budget and Finance Bureau
  - Local Government Division
- Forms
  - County Treasurer Tax Payment Form is on the home page the bottom.
  - Other forms are located under Local Government, Budget & Finance Bureau, Forms.

## **7.3 Public School District's Financial Statement**

This report may be prepared by the treasurer if he/she is also the fiscal agent for any school district. The report contains current month activity and includes fund information by school district, detail of receipts by school district, bonded debt information, and investment information. Copies of reports are sent to DFA, each school district, public school finance board, and other as required.

## **7.4 Budget**

Although the treasurer is not individually responsible for the preparation of the county budget, he/she may issue monthly reports showing the actual operating results compared to the budgeted amounts. In some larger counties, this may be done by a Finance Department.

## **7.5 Property Tax Collection Report to DFA**

Section 6-6-2 NMSA 1978 charges the Local Government Division of the Department of Finance and Administration (LGD) with the responsibility of reviewing and approving budgets for local government bodies, which includes counties, municipalities and special districts.



As part of the process of reviewing budgets, the LGD review projected revenues and analyses of prior year collection and expenditures. This report is due to LGD by the August 1, of each year.

## **7.6 Financial Reports (3.6.50.9)**

- A. Subsection F of Section 6-6-2 NMSA 1978 requires periodic financial reports of all local public bodies. Section 6-6-3 NMSA 1978 requires that every local public body shall make all reports as may be required by the local government division.
- B. Every county shall file a financial report on a quarterly basis with the local government division. The first quarter is from July 1st to September 30th; the second quarter is from October 1st to December 31st; the third quarter is from January 1st to March 31st and the fourth quarter is from April 1st to June 30th. The reports are due at the local government division no later than thirty days following the end of the quarter.
- C. The local government division may grant a county's written request, if warranted, an extension for filing the quarterly financial report.
- D. Monthly financial reports shall be submitted to the county commission and may be requested by the local government division.
- E. Quarterly financial reports shall be submitted on the prescribed local government division format, unless the local government division approves submission of similar data hand written, typed or using the county's current software program.
- F. The treasurer's office should work cooperatively with the county manager's office or county finance department to ensure that reports are submitted accurately and timely. The reports must include the signatures and titles of the individuals who prepared the reports.
- G. Instructions and sample reporting formats of the quarterly financial reports are available in the local government divisions budgeting and financial accounting manual for local governments. [7/15/98; Recompiled 10/01/01]

# NOTES

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# Chapter 8

## SOURCES OF PUBLIC FINANCE

### County Taxes & Revenues (excerpted from NM Commissioners Handbook)

County revenues in New Mexico are administered by the Board of County Commissioners (BOCC) and are obtained from three main sources:

- property taxes
- gross receipts taxes
- fees and licenses

County revenues are collected by the County Treasurer. State revenues are collected by the New Mexico Department of Taxation and Revenue or another state agency and then shared with county governments. Federal revenue sources are grants derived from the federal government.

Several sources of information on New Mexico county finances are available. The Legislative Council Service publishes a 382-page Index to Revenue Sources in New Mexico, most recently revised in November, 2008. Statistics are available in the annual reports of the Department of Finance & Administration's Local Government Division Budget & Finance Division (See Property Tax & Other Reports on their website) and in publications of the Taxation & Revenue Department (See Taxation & Revenue Department/Tax Library/Municipal & County Government or FYI Publication 120, for a description of all local option gross receipts taxes).

### **8.1 County Revenue Sources**

County revenues are collected and distributed by the County Treasurer. According to a report prepared by the staff of the Legislative Finance Committee (LFC) in August of 2010, property taxes were the single largest component of county revenues in Fiscal Year 2009, at 19 percent. Gross receipts taxes were at 17 percent. State grants and transfers were 7 percent. Fees and licenses were not discussed in the LFC report, but are estimated to account for one-tenth to one-fifth of county revenues. Only some of the more common revenue sources are described in this handbook.

### **8.2 Property Taxes**

Property taxes represent the single greatest source of county government revenue.

Property subject to tax is valued for tax purposes at one-third of the current market value (Section 7-37-3 New Mexico Statutes Annotated). This taxable value is assigned by the County Assessor and constitutes the tax base. All property subject to taxation purposes shall be reported once a year to the Assessor's department (§7-38-8 NMSA). The property tax is levied on real property and tangible personal property that is used or held for business purposes (§7-36-8 NMSA). Property owned by governments and certain nonprofit organizations is exempt, while livestock, motor vehicles, personal property of banks and financial corporations and certain oil and gas properties are subject to separate tax laws. The County may charge an administrative fee on property taxes that are under \$5.00 (§7-38-36.1 NMSA).

The total taxable property value for all counties in 2011-2012 was \$52,846,098,496 decreased from \$54,399,590,798 in 2009. The value is made up of local and state assessed property, copper ad valorem, and oil and gas production. See Appendix B, which reflects the individual property values for each county, the population, and the county. The County Treasurer is responsible for the collection of all property taxes, and is authorized to receive a maximum of \$11.85 per \$1,000 of taxable value for county operating expenses (§7-37-7 NMSA). Certificates of property tax rates for each county, for 2011 and 2012, can be found on the DFA/LGD website, under Budget & Finance Bureau, Property Taxes & Annual Reports.

### **8.3 Low Income Property Tax Rebate**

All BOCCs are required to consider, in January of every odd-numbered year, the question of whether or not to resolve to adopt a local ordinance that would authorize a property tax rebate for low income property tax owners (§7-2-14.3(G) NMSA). If such an ordinance were to be adopted (following the process outlined in the statute, which also involves voter approval of the ordinance), the tax rebate would reduce the net revenues to the County. If such a tax rebate is authorized, the county offering the rebate shall notify the State about the adoption of the ordinance no later than September 1 of the first taxable year to which the ordinance applies. At the end of the year, the County should expect to receive from TRD a certified report with the amount of property tax revenues attributable to the ordinance rebate, and the County is required to promptly remit this amount to the State. The rebate is currently in place only in Los Alamos and Santa Fe counties. Eligibility for the rebates is a modified gross income of \$24,000 or lower.

The law provides for a property tax rebate for senior citizens over the age of sixty-five who file an individual New Mexico income tax return, and who are not dependents of another individual. The statute lists the amounts of such rebate (§7-2-18 NMSA).

There are also exemptions from property tax that are discussed in more detail in other county official manuals, (e.g. The NM County Assessors Handbook) such as the veterans and disabled veteran's exemptions, and the head of household exemption.

#### **8.4 Fees and Licenses**

Fees for county services may be collected by a variety of county departments in a variety of locations, for a variety of types of fees, but all must be deposited promptly with the County Treasurer. Some fees received by the County are set by statute; some fees are set by county policy in the form of an ordinance or resolution. One example of a legislatively set fee is the one on most businesses operating outside of municipal limits, including real estate agents, hotels, inns, restaurants, amusement places and dealers in merchandise, except liquor. Since 1988, the maximum allowable fee has been \$35.00 (§3-38-3 NMSA). Another example of a statutorily set fee is the authorization for BOCCs to charge an annual tax of up to \$250 to those holding State liquor licenses and operating outside municipal limits [Note: to collect this fee, the BOCC must pass an annual resolution imposing the fee by June 1 of each year (§7-24-2 NMSA)].

Examples of fees set by county policy by way of resolution or ordinance are:

- kennel or multiple animal permit
- solid waste pick-up
- water and waste water hook-up
- care of prisoners
- platting and subdivision review
- right-of-way access fees.

Fees set by ordinance and/or the regulations promulgated under authority of ordinance enable the County to enforce collection by prosecuting violators.

#### **8.5 Lodgers Tax Act**

The County may impose an ordinance authorizing an occupancy tax, with some exceptions, not to exceed five percent of gross taxable rent (§3-38-15 NMSA). The

proceeds from the tax are primarily for advertising, publicizing, and promoting tourist related attractions, facilities and events. Under certain conditions, lodgers' tax proceeds may also be used to defray costs of police and fire protection for tourist-related events, or for acquiring, constructing and operating tourist- related facilities or services.

## **8.6 County Gross Receipts Taxes**

The majority of the governing body of an eligible county may enact an ordinance imposing an excise tax on the gross receipts of any person engaging in business in the County for the privilege of doing business (§7-20E-21 NMSA). The tax may be imposed in increments of 1/16th of one percent not to exceed an aggregate rate of 7/16ths of one percent (.4375%). As of July 1, 2010, counties may impose the local option capital outlay gross receipts tax without having to fully impose the prerequisite gross receipts tax increments previously required by statute.

In 2004, the legislature removed the gross receipts tax from food and medical services, but voted to hold local governments harmless from the resulting loss of revenue. The 2010 legislature, in a special session held after the regular session, voted to reinstate the tax on food, but the provision that would have eliminated the local government hold harmless distributions to counties and municipalities was vetoed by the Governor. In 2011, the total amount distributed to counties was almost \$32 million and this amount would potentially be lost if the State were to eliminate the hold harmless provisions.

For a description of each county local option GRT, its reference to statute, and a listing of counties that may, and/or have imposed that increment, see TRD's publication: FYI-C120, County Gross Receipts Tax Local Options, revised June, 2012, at <http://www.tax.newmexico.gov>

## **8.7 Bonding**

The bonding process offers each county an opportunity to generate revenues for specific purposes. General obligation bonds may be issued by the BOCC after approval by a majority vote of property taxpayers (§4-49-5, 12 NMSA). These bonds may be used to construct courthouses, detention centers, bridges, hospitals and facilities for county fairs, cultural and athletic events, libraries, roads, airports, utilities and other facilities (§4-49-7 NMSA). Two restrictions apply to general obligation bonds:

- First, no county may issue bonds that total more than four percent of the assessed value of the taxable property in the County (NM Const. Art. IX, Sec. 13 and §4-49-7 NMSA).
- Second, no bonds can be issued or sold if four years have elapsed from the date on which the first proceedings for the bond election began (§6-15-9 NMSA). This latter restriction does not apply to bond refunding or if the validity of the bonds or the bond election is in litigation.

Issuance of these bonds and other public securities, such as notes and certificates of indebtedness require that the BOCC approve a resolution authorizing the issuance and that the notice of adoption be published in a local newspaper (§6-15-4 NMSA).

Refunding of these bonds also requires a resolution from the BOCC (§6-15-12 NMSA).

Not all bonds are defined as a public security (§6-14-2 NMSA). Excluded from this category are revenue bonds and bonds issued by the New Mexico Finance Authority Act to support county projects. Bonds issued under the authority of these acts are not general obligation bonds, and therefore are not part of the county indebtedness.

County recreational bonds are an example of revenue bonds that the BOCC may issue. Such bonds, payable from the cigarette tax, can only be used for county recreational facilities. All counties, with the exception of the one Class H county, may issue the bonds by resolution; the Class H county must issue these bonds by ordinance because it is a charter (home rule) county. These recreational bonds are not part of a county's general obligation or indebtedness.

When any county debt in the form of a bond or other certificate of indebtedness has been paid, documentary evidence of that debt may be destroyed, but only if the County has first obtained a certificate of destruction from the bank or third party paying agent. The certificate must be retained by the BOCC for six years as required by the Bond Election Act (§6-15-23 NMSA).

## **8.8 Special Levies**

There are several laws which provide for the creation of special districts for certain purposes, the cost of which is paid through the issuance of bonds by the County, and repayment is made by assessing those within the special district (See public improvement districts, below).

## **8.9 Special Levy by Livestock Board**

This law requires the BOCC to impose a special tax, at a rate set by the New Mexico Livestock Board, for cattle, horses, sheep, goats and other livestock (§77-2-15 NMSA).

## **8.10 County and Municipal Gasoline Tax Act**

This Act (§7-24A-1 through 21 NMSA) authorizes Class A and Class H counties to impose by ordinance a tax on gasoline sold outside of municipal boundaries. The tax may be as much as two cents per gallon in increments of one cent. After adoption, an ordinance approved under this Act must be approved by the voters. The proceeds may be used to meet public transportation needs as outlined in the statutes (§7-24A-3 NMSA), which also includes the establishment and/or operation and maintenance of a vehicle emissions inspection program.

## **8.11 Special County Gasoline Tax**

Qualifying counties (definitions section narrowly defines “county” by population and net taxable value) are authorized to impose by ordinance, a tax on gasoline sold outside of municipal boundaries (§7-24B-1 through 10 NMSA). The tax may be as much as two cents per gallon, in increments of one cent. The proceeds shall be used for the operation and maintenance of a county-owned hospital. The ordinance is subject to referendum within sixty (60) days after the ordinance is adopted. This tax is in effect for five years, and may be extended in additional five year terms.

## **8.12 Public Improvement Districts**

This Act (§4-55-1 et seq. NMSA) provides a process by which the property owners within a particular geographical area are assessed a special levy, which pays for needed or desired improvements financed through the issuance of public improvement bonds as authorized in the Act. The Act allows residents to petition, or the BOCC to order, the creation of a public improvement district (PID). If the district is created, the parcels



within the district are assessed a special levy over a ten or twenty-year period to repay the bonds issued to finance the construction of the drainage/flood controls, road paving, sidewalks or other public improvement.

Neither the County's General Fund, nor other revenue streams are committed; the outstanding balance is equivalent to a lien against the property until paid in full. The proceeds from the issuance of these bonds and the construction projects must be administered by county staff, but it is the property owners that are assessed, not the public at large.

### **8.13 Tax Increment Development Districts**

Tax Increment Development Districts (TIDDS) are a mechanism for providing gross receipts tax financing and property tax financing of public infrastructure, for the purpose of supporting economic development and job creation (§5-15-1 through 28 NMSA). TIDDS plans must be approved by a BOCC or by the governing board of a city within which the TIDDS projects are proposed.

### **8.14 State Revenue Sources**

County governments in New Mexico share in a number of state government-administered-and- collected taxes. Major state revenue sources include the gasoline and cigarette taxes and motor vehicle registration and transaction fees. State-shared revenues account for approximately one-fifth of all county revenues. The New Mexico Legislature also has traditionally provided funds to counties for use in capital improvements on an individual county needs basis, although these funds have recently been severely curtailed, and in some cases, voided, because of the shortfall in state revenues.

### **8.15 Gasoline Tax**

An excise tax of 17 cents per gallon is levied by the State on all gasoline received in New Mexico and is paid by gasoline distributors (§7-13-3 NMSA). Gasoline sold for export from the State and then sold to the federal government or its agencies is exempt from the tax with some credits and refunds allowable. Currently, 5.76% of the net receipts attributable to the gasoline tax are deposited by the State in the county government road fund (§7-1-6.19 NMSA). Revenues are distributed from the fund to each county based

upon population and the proportionate share of roads in each county relative to the total miles of county roads in the State (§7-1-6.26 NMSA).

In addition, a special fuel excise tax of 21 cents per gallon is levied on diesel fuel, kerosene and all other alternative fuels used to propel motor vehicles (§7-16A-3 NMSA). Currently 11.11% of total special fuel tax proceeds are distributed to the road fund for allocation to the counties.

### **8.16 Cigarette Tax**

This excise tax was increased by 75 cents per pack in 2010 (§7-12-1 through 17 NMSA) on cigarettes sold, given, or consumed in the State. Cigars are not taxed under the Act. The distribution of receipts from the Cigarette Tax Act to the County/Municipal Recreation Fund and the County/Municipal Cigarette Tax Funds were reduced by the legislature, but the Governor's veto of the bill removed these distributions entirely, and gave those revenues to the State General Fund.

### **8.17 Motor Vehicle Fees**

Motor vehicle registration fees are levied according to the type, age, use and weight of the vehicles. The fees that are levied on motorcycles, passenger cars, trailers, trucks, road tractors, buses, vehicle manufacturers and dealers, wreckers, travel trailers, mobile homes and horseless carriages vary. Revenue from the balance in the motor vehicle suspense fund is distributed monthly according to statutory formulas (§66-6-23 and 23.1 , 66-5-33.1 (B); 66-5-408 (A) NMSA).

### **8.18 Law Enforcement Protection Funds**

The Act (§29-13-1 through 9 NMSA) provides limited funds to municipal and county Police and Sheriff Departments for maintenance and improvement of those departments. The funds are provided from fees, licenses and taxes paid to the State from the life, general, casualty and title insurance industry (§29-13-3 NMSA). The act outlines a distribution formula that provides annual payments of \$20,000 for counties with populations less than 20,000 persons, to \$40,000 for counties with populations greater than 160,000 persons. In addition, the Act pays \$600 each year per full-time Sheriff's Deputy (§29-13-4 NMSA).

### **8.19 Local Government Corrections Fund**

In 1983, a fund was created in the State treasury for the transfer of funds collected by courts to counties and municipalities (§33-3-25 NMSA). The fund is administered by the Administrative Office of the Courts. Monies are made available for:

- training jailers or juvenile detention officers
- construction planning, construction, maintenance and operation of county detention centers or juvenile detention facilities
- matching required for the receipt of federal funds.

Quarterly payments are made to the counties from penalties and fees collected by magistrate or metropolitan courts and fines paid to the Motor Vehicle Division of TRD. Exceptions include penalties and fees collected by a metropolitan court which are prorated between the county and the municipality based on whether the offenses were committed within the jurisdiction of the county or municipality (§33-3-25 NMSA).

### **8.20 Small County Assistance Act**

This Act (§4-61-1 NMSA) provides funds to assist small counties meeting the specific requirements of a population of 48,000 or less, which impose property taxes of at least \$8.85 per \$1,000 of net taxable value. Qualifying counties received between \$93,000 and \$609,000 in September of 2010, based on their statutory eligibility. The base distribution is increased for counties imposing the 1/16th % general gross receipts tax increment and the jail increment. See <http://www.tax.newmexico.gov> for a description of these increments. The small county funds are provided from compensating taxes collected by the State.

### **8.21 Miscellaneous Revenues**

Counties may also receive funds from the State in minor amounts from the Fire Protection Fund (§59-53-1 et seq. NMSA), the State Racing Commission, and for housing felony offenders in county detention facilities (§33-3-25 NMSA). An increase in the amount of money payable to county government from the Fire Protection Fund, which had in part been going to the State General Fund, was authorized by the legislature in 2007, but has been delayed because of State General Fund deficits. The annual authorization for the County Detention Facility Fund has been shaved several times, also because of state revenue shortfalls.

Fees resulting from the federal Taylor Grazing Act are also available to counties for special purposes (§6-11-5 NMSA). Eligible counties place the fees in the farm and range improvement fund, which is administered by the President of New Mexico State University or his appointee (§6-11-6 NMSA). These fees are to be used for conservation of soil and water, and rodent control, and are not administered by county officials.

## **8.22 Severance Tax Bonds**

This Act (§7-27-1-27 NMSA) authorizes the New Mexico Board of Finance Division (BOF) of DFA to issue and sell severance tax bonds. By January 15 of each year, the BOF must estimate the amount of bonding capacity available for severance tax bonds to be authorized by the legislature. The division authorizes ten percent (10%) of the estimated bonding capacity each year, and the legislature authorizes the BOF to issue severance tax bonds in the annually deducted amount for use by the Water Trust Board to fund water projects statewide, with some exceptions specified in the statute.

The BOF is required to schedule the issuance and sale of the bonds in the most expeditious and economical manner possible, upon a finding by the Board that the project has been developed sufficiently to justify the issuance, and that the project can proceed to contract within a reasonable time. Any unexpended or unencumbered balance reverts to the Severance Tax Bonding Fund.

## **8.23 Federal Revenue Sources**

A number of federal government programs provide funds for county governments. The major sources in recent years have been pass-through funds and grants for emergency relief, employment assistance and law enforcement assistance.

## **8.24 Payment-in-Lieu-of-Taxes**

As a result of the Payment-in-Lieu-of-Taxes Act, codified at 31 U.S.C. 6902 et seq., counties receive a significant amount of revenue for federally owned lands that are located within the counties. Payments in Lieu of Taxes (PILT) are federal payments to local governments that help offset losses in property taxes due to nontaxable federal lands within their boundaries. Chart of PILT distribution available at

<http://www.tax.newmexico.gov/Businesses/maps.aspx>

The only New Mexico county not qualifying for PILT funding is Curry County because it

does not contain qualifying non-taxable federal lands.

The amount of payments to local governments varies according to several factors built into a formula, which basically provides that the County will receive the greater of seventy-five cents per acre of entitlement land located within the boundaries of such unit of local government, reduced by the amount of payments already received pursuant to other existing laws during the preceding fiscal year (eliminate double compensation for the same federal lands), or ten cents per each acre of entitlement land located within the boundaries of such unit of local government. The law defines entitlement lands as:

- National Park System and National Forest System lands, including wilderness areas
- lands administered by the Secretary of the Interior through the Bureau of Land Management
- federally owned lands dedicated for use of water resource development projects.

After the determination regarding the amount of the payment for federally-owned land is made as described above, a third factor is introduced into the formula: population according to the most recent U.S. Census. This is used to determine the maximum amount of the payment to be made to any local government, in order to ensure that local governments do not receive funds for which there is no real need. In other words, the federal government does not intend to create wealth for local units; rather, it intends to help local governments that might have suffered from lost revenues resulting from federal ownership of lands.

### **8.25 Construction Grant Programs**

The Housing and Community Development Act of 1974 made federal funds available to counties for community development programs. This Act consolidated Housing and Urban Development (HUD) programs in community development, housing and planning and made changes in housing programs administered by the Department of Agriculture. Non-metropolitan areas (cities under 50,000 population and rural areas) are targeted to share in the annual grants. The current HUD Program is known as the Community Development Block Grant (CDBG) Program. Most counties and municipalities have utilized this program to provide assistance to persons of low and moderate income levels. The intent of the program is to provide a suitable living environment, decent housing, essential community facilities and expanded economic

opportunities. Certain restrictions apply and counties must meet eligibility requirements. Other federal grants and loans are also available for specific projects, including transportation, recreation and water and sewer facilities.

Contact the Community Development Bureau at the Local Government Division in Santa Fe for further information regarding grants and loans.

The HOME Investment Partnerships Program is another HUD program administered by the State. HOME provides funds for housing projects and has been used successfully by counties and municipalities throughout New Mexico.

Contact the New Mexico Mortgage Finance Authority for more information.

## **8.26 Tax Liability in Federal Areas**

No person is relieved of liability for any tax levied by the State or duly constituted taxing authority by reason of residing within federal area, having property within a federal area or engaging in business within a federal area.

# **CHAPTER 9**

## **FINANCIAL ADMINISTRATION**

Financial administration of a county encompasses many different facets. As with many other areas of county operation, an elected official best serves their constituents, the public at large, and the County as an entity by attempting to learn from, to understand and to cooperate with the other elected officials and other county representatives. It is also helpful for the Board of County Commissioners (BOCC) and its administrative staff members to develop a close working relationship with the New Mexico Department of Finance and Administration (DFA), especially with the Local Government Division (LGD), which approves or rejects each county budget and has significant, if not absolute, control over certain county financial matters.

Some of the functions that the BOCC shares with other county officials and representatives relating to county finances are:

- preparation and approval of the County's budget
- purchasing and contracting for goods and services
- depositing and investment of the County's funds
- receipt and accounting for all funds received and expended by the various county departments
- issuance of bonds
- collection and monitoring activities authorized by the bond process, including
- the collection of special levies or assessments
- the collection of property taxes and other income due the County.

The fact that authority to act is spread amongst more than one elected office, and that the BOCC has several department divisions to assist it with its administrative functions, requires the timely and cooperative communication between all involved county elected officials, other department directors, and their respective staff members.

### **9.1 Specific Statutory Duties**

Some of the specific duties/authorizations assigned to the BOCC are:

- The BOCC serves ex officio as the County Board of Finance (§6-10-8 NMSA)

- The BOCC must examine and settle all accounts of receipts and expenses of the County and all accounts chargeable against the County (§4-38-16 NMSA).
- Accounts must be itemized and the Board can disapprove all or part of the accounts (§4-45-3 NMSA)
- The BOCC is responsible for assuring that a statement of receipts and expenditures is prepared on an annual basis (§4-38-27 NMSA)
- If the BOCC approves the payment of county funds without the authority of law, they are liable for the amount paid out, as well as the costs and fees associated with collecting those funds (§4-38-28 NMSA)
- The BOCC may impose, by ordinance, various local option gross receipts tax increments, as described in FYI-C120.
- The BOCC may issue revenue bonds upon approval from a majority of all the members of the Board (note: this is different from a majority vote of the Board present, which might be a majority of a quorum and less than the full Board) and may issue general obligation bonds after election and voter approval
- The BOCC, and/or its staff, serve as an agent of the United States Government for the expenditure of money authorized by U.S. Congress (§4-36-3 NMSA)

Despite this seemingly extensive authority, the BOCC, as manager of the County's funds, is subject to many other internal and external controls.

For example:

- The BOCC has no authority to divert money from one fund to another.
- If Commissioners attempt to pay warrants drawn from improper funds, the County Treasurer must refuse to pay the warrants.
- If a county has a history of problems with the budget and/or violates LGD's rules and regulations on a regular basis, the State (through the DFA Secretary) has the right to step in and take over the County's fiscal matters, in accordance with the statutory processes for same (§10-5-2 NMSA).

## **9.2 County Board of Finance**

The BOCC constitutes the ex officio Board of Finance.

- The purpose of the Board of Finance is to coordinate with the Treasurer to determine the qualifications and selection of banks, savings and loan institutions, credit unions and other institutions to receive the County's deposits.



- The County Treasurer is responsible for the investment and safekeeping of public funds.
- The County Clerk serves ex officio as the Clerk for the Board of Finance. Board meetings are held upon request of the Treasurer or whenever the Board deems it necessary (§6-10- 8 NMSA).

### **9.3 Deposits and Investments**

The County Treasurer, with the advice and consent of the Board of Finance, makes the deposits and investments (§6-10-8 NMSA). Investment of sinking funds (See General Obligation Bonds, below) also requires the consent of the Board of Finance (§6-10-10 NMSA). In some counties, the Board of Finance formally delegates the authority relating to investments to the County Treasurer or other staff member competent in the field. In all cases, however, the Board retains ultimate responsibility.

County funds must be deposited in one or more accounts in federally insured banks, saving and loan institutions or federally insured credit unions within the County. Statute allows the requirement of additional security for the deposit of public money (§6-10-16 NMSA).

Deposits to interest earning accounts may be made to qualified institutions, but must be distributed equally throughout the County (§6-10-36 C NMSA). No county may make such deposits in institutions outside of that county (§6-10-31 NMSA).

The rate of interest on all interest bearing accounts shall be set at least quarterly by the New Mexico Board of Finance (NMBOF) and in no case shall the rate be lower than 100% of the price of the United States treasury bills. Any institution not paying this rate forfeits any right to an equitable share of deposits. Also, if the financial institutions do not pay the interest rate set by the NMBOF, then statute allows the County to place money not immediately needed into a short term investment fund at the State Treasurer's Office (§6-10-10.1 NMSA). These short term investments should not exceed thirty days. Deposits of funds may be made in non-interest- bearing checking accounts to one or more qualified financial institutions located within the boundaries of the County (§6-10-36B NMSA). In all cases of deposits or investments, bank statements are due on the first day of each month and shall be provided to the State Board of Finance and to the

County Treasurer (§6-10-29 NMSA), as well as to the County Manager and Finance Director.

#### **9.4 Filing of Monthly Financial Statements**

All county departments receiving and disbursing public money are required to file monthly financial statements with the County Clerk on the first Monday of each month. The financial report is to detail the amounts of all public monies received and disbursed by the department, and is to be verified. The BOCC's duty is to audit and adjust the reports in accordance with the facts (§10-17-4 NMSA).

#### **9.5 Budgeting**

The county budget is not something that happens once a year, but rather is an ongoing process that needs and deserves county officials' time, patience, cooperation, and devoted attention throughout the entire year.

The annual budget is the County's financial statement of expected income and planned expenditures for the fiscal year. The BOCC, or its budget officer, who is frequently also the County Manager, must plan the amount of money required to meet the County's needs. Specifically, each department estimates and justifies their operational needs. Management reviews the compiled departmental estimates and balances out a provisional budget. If there are more requests than revenues, cuts are made.

Some counties hold a series of both internal and public meetings during which members of the staff and the public respectively express their views and opinions regarding county priorities. Records of cuts must be kept since the BOCC and/or State Legislature may wish to know the reasons why cuts were made. Once the BOCC has approved the preliminary budget, it is transmitted, no later than June 1, to DFA/ LGD for its review and approval. The final budget must be submitted by July 31.

The fiscal year begins on July 1 and ends on June 30 (§6-10-1 NMSA). The statute provides that LGD must receive an approved, preliminary, proposed budget from each BOCC by June 1. The approval from LGD is due, by law, on the first of July (§6-6-2B NMSA). The division is to certify to each county its final budget and property tax rates before the first Monday in September of each year (§6-6-2E NMSA).

The final step in the budgetary process is budget execution. As revenues are received, the

County Treasurer verifies their receipt and deposits them in banks or savings and loan institutions designated as official depositories for county funds (§6-10-36 NMSA). The county departments should be provided monthly statements reflecting the revenues/payments/deposits credited, and expenditures made, in order to enhance the monitoring of budget compliance countywide throughout the year.

Once a budget is approved, a transfer of funds from one line item to another is not allowed unless approved by LGD (§6-6-2G NMSA). No expenditures or claims shall be made in excess of the operating budget. At the end of the year, excess monies, if any, shall be applied to the budget estimate for the next succeeding year (§4-51-1 NMSA) or may be deposited in a Local Government Permanent Fund (§6-6-19 NMSA).

## **9.6 Accounting**

The BOCC fulfills several specific duties in the area of accountability for money received and expended within the County. Each January, the BOCC must see to it that an annual statement of receipts and expenditures is prepared (§4-38-27 NMSA). The BOCC must also examine and settle all accounts of receipts and expenditures for the County (§4-38-16 NMSA). All accounts must be itemized so that the BOCC can approve or disapprove them (§4-45-3 NMSA).

Every four years, or at the end of term of the elected Treasurer, the County Treasurer is required to make a full and complete settlement with the BOCC and deliver in the presence of the County Clerk all books, papers, and other property to the new Treasurer. The BOCC is then required to file a comprehensive financial statement with the State Auditor including all unfinished business of the previous County Treasurer that is passed on to a successor. The books must be balanced before being passed on to the successor (§4-43-4 NMSA). The LGD prescribes the form for all budgets, books, records, and accounts used by county governments (§6-6-2 NMSA). The Statewide Uniform Budgeting System is a means of evaluating the total performance of a county government; it introduces other measures such as budget performance, outstanding encumbrances, fixed assets, control and usage of funds and efficiency of programs and services.

## **9.7 Local Government Permanent Fund**

The law provides that the BOCC may establish a Local Government Permanent Fund and a Local Government Income Fund (§6-6-19 NMSA).

- Un-appropriated General Fund surplus in excess of fifty percent (50%) of the prior fiscal year's budget may be deposited into the Permanent Fund.
- The Permanent Fund is appropriated and expended only by approval of the voters of the County.
- Earnings from Permanent Fund investments are to be deposited in the Local Government Income Fund.
- Money in the Income Fund may be budgeted and appropriated for any purpose.

## **9.8 Revenue Collecting**

As the county officials responsible for the levying of taxes, the BOCC plays a role in the collection of revenues. The County Treasurer is directly responsible for the collection of taxes, while the BOCC orders the amount of the levy.

Property tax imposition and collection are detailed in the New Mexico Property Tax Code (§7- 35-1 through 7-38-93 NMSA). Under these provisions, the BOCC must issue its written order imposing tax rates within five days of receiving DFA's rate-setting order, which is due by September 1 (§7-38-33, 34 NMSA). By October 1, the County Assessor must prepare the property tax schedule for the County (§7-38-35 NMSA). By November 1, the County Treasurer mails the property tax bills, which are payable in two installments, by November 10 and April 10 (§7-38-38A NMSA). Property taxes of \$10 or less must be paid in one annual payment. The maximum allowable tax rates are set forth in the statutes (§7-37-7, 7-37-7.1 NMSA). The property tax revenues are distributed by the County to the County for use for general purposes, to the school districts, and to municipalities.

The County is entitled and mandated to collect an administrative fee from most ad valorem property tax revenue recipients, in an amount of one percent (1%) of the revenue to be received by the revenue recipient. Such fees are deposited in the County Property Valuation Fund, which is expended at the recommendation of the County Assessor, subject to the approval of the BOCC (§7-38-38.1 NMSA).

No later than June 10 of each year, the County Treasurer is required to mail notice to each property owner of property for which taxes have been delinquent for two years, advising that the delinquent taxes will be transferred to the TRD for collection (§7-38-60 NMSA). TRD has the responsibility to take all action necessary to collect delinquent taxes, including sale of the property (§7-38-62 NMSA).

## **9.9 General Obligation Bonds**

Article IX, Section 10, of the New Mexico Constitution states that no county may borrow money except for the following purposes:

- Erecting, remodeling and making additions to necessary public buildings
- Constructing or repairing public roads and bridges
- Constructing or acquiring a system for supplying water, including the acquisition of water and water rights, the necessary real estate or rights-of-way and easements
- Constructing or acquiring a sewer system, including the necessary real estate or rights-of-way and easements
- Constructing an airport or sanitary landfill, including the necessary real estate or rights-of-way and easements
- The purchase of books and other library resources for libraries in the County.

The statutes clarify that “public buildings” include detention centers, juvenile detention facilities, hospitals, libraries, recreation and athletic facilities, fair facilities and cultural facilities, as well as similar other facilities.

General obligation bond indebtedness can only be created to finance the construction or acquisition of specific public projects, and only if voted on and approved by the registered voters of the County. The general obligation bonds are repaid through property taxes. The total value of all outstanding general obligation bonds cannot exceed four percent of the total assessed value of county property (§4-49-7 and NM Const. Art. IX, Sec. 13). Bonds or other obligations in excess of four percent are invalid.

General obligation bonds, with the exception of refunding bonds, must mature within 20 years of the date of issuance. Interest must be payable semiannually or annually (§6-5-3 NMSA). Furthermore, the issuance of the bonds will be time-barred if they are not issued within four years of the date of the election (§6-5-10 NMSA). This time limitation

does not apply to bond refunding. A sinking fund may be used to secure payment of the principal, or principal plus interest, on general obligation bonds, and may be created by a resolution or ordinance by the BOCC (§6-15- 22 NMSA). The income generated by the sinking fund may be invested, reinvested, or deposited in a bank under an escrow agreement.

## **9.10 Revenue Bonds**

Counties may issue, pursuant to statute (§4-62-1 through 10 NMSA):

- Gross Receipts Tax Revenue Bonds
- Fire Protection Revenue Bonds
- Environmental Revenue Bonds
- Gasoline Tax Revenue Bonds
- Utility Revenue Bonds
- Project Revenue Bonds

No county can issue revenue bonds pledging revenues that are not being collected or received.

In addition, the County Industrial Revenue Bond Act (§4-59-1 NMSA et seq.) authorizes counties to induce industry to locate to their county in order to spur economic development. This Act allows the issuance of Industrial Revenue Bonds to be used to finance the proposed business project. When deciding whether or not to accept the project and adopt an inducement resolution (one of the first steps in the industrial revenue bond process), the BOCC should apply objective criteria, preferably reduced to a written policy, setting forth the factors they will consider before granting a request.

In other words, when the policy is applied consistently, the result should be that the type of business the BOCC intends to attract to the County is permitted to proceed.

Some factors that the BOCC may wish to use in considering and prioritizing these requests include:

- water usage
- environmental hazards
- risk of pollution or contamination
- the types of jobs to be created

- number of jobs to be created
- the expected hourly rate or salary for these jobs
- the county of residence of future employees

The financial viability of the prospective industry is another factor that should always be carefully examined and considered during each part of the multi-step process.

## **9.11 Purchasing**

An extremely important and daily administrative function of the BOCC is that of purchasing. The State's Procurement Code (§13-1-28 through 199 NMSA) applies to all expenditures by state agencies and local public bodies for the procurement of items of tangible personal property, services, and construction, unless specifically exempted or excluded by the Code (§13-1-30 NMSA).

Unfortunately, there are a tremendous number of exclusions and exemptions contained in the voluminous act that make it confusing and sometimes difficult to assess whether a proposed purchase is subject to the Code. In those cases, it is advisable to err on the side of free competition and issue a bid.

Counties are, as local public bodies, excluded from the requirement to purchase through the State's Central Purchasing Office. This does not mean however that counties are excluded from following procurement process. Though counties may adopt their own purchasing rules and regulations, which may be more stringent than the State's, in the absence of local regulation, counties must follow the State's Procurement Code.

The Procurement Code requires that each county centralize its purchasing function in one officer or office responsible for making all purchases for the County (§13-1-97 C NMSA). This office ensures that state and county procurement rules are followed by the various departments, and that federal laws are complied with when federal funds are involved in a project. Federal laws usually involve equal opportunity, equal access, wage rates and minimum wages, environmental standards and other affirmations relating to compliance with the laws.

Ideally, each county Central Purchasing Office provides training to the other county departments regarding the federal, state and local requirements for purchasing, as well

as the forms and other procedures adopted by the County, to make it easier for all to understand and to abide by.

Some highlights of basic public procurement law follow:

- There are numerous items of goods or services that the Legislature has exempted from the provisions of the Procurement Code. The pertinent exceptions are listed in Section 13-1-98 NMSA.
- Small purchases are not subject to competitive bid, although other more informal requirements apply, to allow for fair competition.
- A small purchase is defined as a tangible good not exceeding \$20,000 in cost, and a professional service not exceeding \$50,000 (§13-1-125 NMSA).
- County regulations, however, may impose more stringent requirements than those found in the Procurement Code.
- Procurement of professional services such as accounting, architectural, engineering, surveying, legal, and medical services are not subject to pricing controls, and are decided on the basis of qualifications and the respondent whose offer is most advantageous to the County.
- When no exceptions apply, invitations for sealed competitive bids must be published at least ten days in advance of any date set for opening of the bids (§13-1-104 NMSA) and must include specifications for the goods or services, terms, conditions, date, time and place of the bid opening (§13-1-103 NMSA).
- Bids are to be evaluated based upon objective criteria also provided in the bid specifications.
- Bids are to be opened in a public meeting with written notice sent to the lowest responsive bidder.
- When the County awards a construction contract that exceeds \$25,000, the contractor must provide a performance bond (§13-4-18 NMSA).
- Bonds for contracts under \$25,000 may be required at the discretion of the County, which should be included in the bid specifications.
- The bond may be reduced to less than 50 percent (50%) of the contract price when it is determined that it is less costly and more advantageous for the County to self-insure a portion of the performance of the contractor.
- The purchasing agent for the County is usually involved in the disposition of unused or obsolete property.
- The regulations governing the sale or other disposal of public property are contained in Section 13-6-2 NMSA.



# CHAPTER 10

## WEB RESOURCES

A partial list

NM Association of Counties

<http://nmcounties.org>

NM EDGE

<http://nmedge.nmsu.edu>

NM Cooperative Extension Service

<http://aces.nmsu.edu/>

### State of New Mexico

<http://newmexico.gov>

- Attorney General's Office  
<http://www.nmag.gov/>
- Department of Finance Administration- DFA  
<http://www.nmdfa.state.nm.us/>
- DFA/ Local Government Division –LGD  
[http://www.nmdfa.state.nm.us/Local\\_Government.aspx](http://www.nmdfa.state.nm.us/Local_Government.aspx)
- General Services/State Purchasing  
<http://www.generalservices.state.nm.us/statepurchasing/>
- NM Governor's Office  
<http://www.governor.state.nm.us/>
- Secretary of State's Office  
<http://www.sos.state.nm.us/>
- State Land Office  
<http://www.nmstatelands.org/>

- State Treasurer's Office  
<http://www.nmsto.gov/>
- Tax and Revenue (TRD)  
<http://www.tax.newmexico.gov/>
- TRD/Property Tax Division- PTD  
<http://www.tax.newmexico.gov/property-tax-division.aspx>
- NM Finance Authority  
[www.nmfa.net](http://www.nmfa.net)

### **Publications**

The Open Meetings Act (OMA) Compliance Guide and a Compliance Checklist  
[consumer/publications/openmeetingsactcomplianceguide](#)

# **GLOSSARY**

## **COMMONLY USED WORDS & TERMS**

- **Accountability** - taking responsibility for your own actions as well as holding others responsible for theirs
- **Assessor, County** - an elected official who assesses property for taxation
- **Board of County Commissioners (BOCC)** - the legislative body of the County
- **Board of Finance** - Board of County Commissioners as ex officio
- **Canvassing Board** - Board of County Commissioners as ex officio
- **Clerk, County** - an elected official serving as custodian of records, commission minutes, and elections
- **Code of Ethics** - written statement of values Conflict of Interest- when one activity could potentially corrupt (or appear to corrupt) another
- **Cooperative Extension Service** - serves NM Counties and brings education to rural areas
- **County Classification** - based on population and the total assessed valuation of each county at the end of the preceding year
- **Per Diem and Mileage** - governs reimbursement for travel costs associated with legitimate county business
- **Fiduciary Responsibility** - the public trust
- **Funds, Designated** - specific to the enabling legislation allowing collection (e.g. Fire, Indigent, Hospital, etc.)
- **Joint Powers Agreement** - an agreement to share power between governmental entities
- **New Mexico Association of Counties** - a private non-profit with a public purpose to serve as resource to New Mexico Counties
- **New Mexico Constitution** - foundation for law and government in New Mexico
- **New Mexico State Statutes** - laws created by the New Mexico State Legislature
- **New Mexico State Regulations** - policies made by administrative agencies
- **Open Meetings/Public Records Acts** - New Mexico sunshine laws which insure transparency
- **Probate Judge, County** - an elected official required to hold court overseeing matters of estates and wills
- **Public Trust** - the trust placed in one elected to public office
- **Sheriff, County** - an elected official responsible for preserving the peace
- **Stewardship** - a responsibility to take care of something one does not wholly own
- **Treasurer, County** - an elected office responsible for keeping account of all county funds received and disbursed, and serving as ex officio county tax collector
- **Voter Convenience Centers** - up to 10 combined precincts created within the County to offer greater access to voting

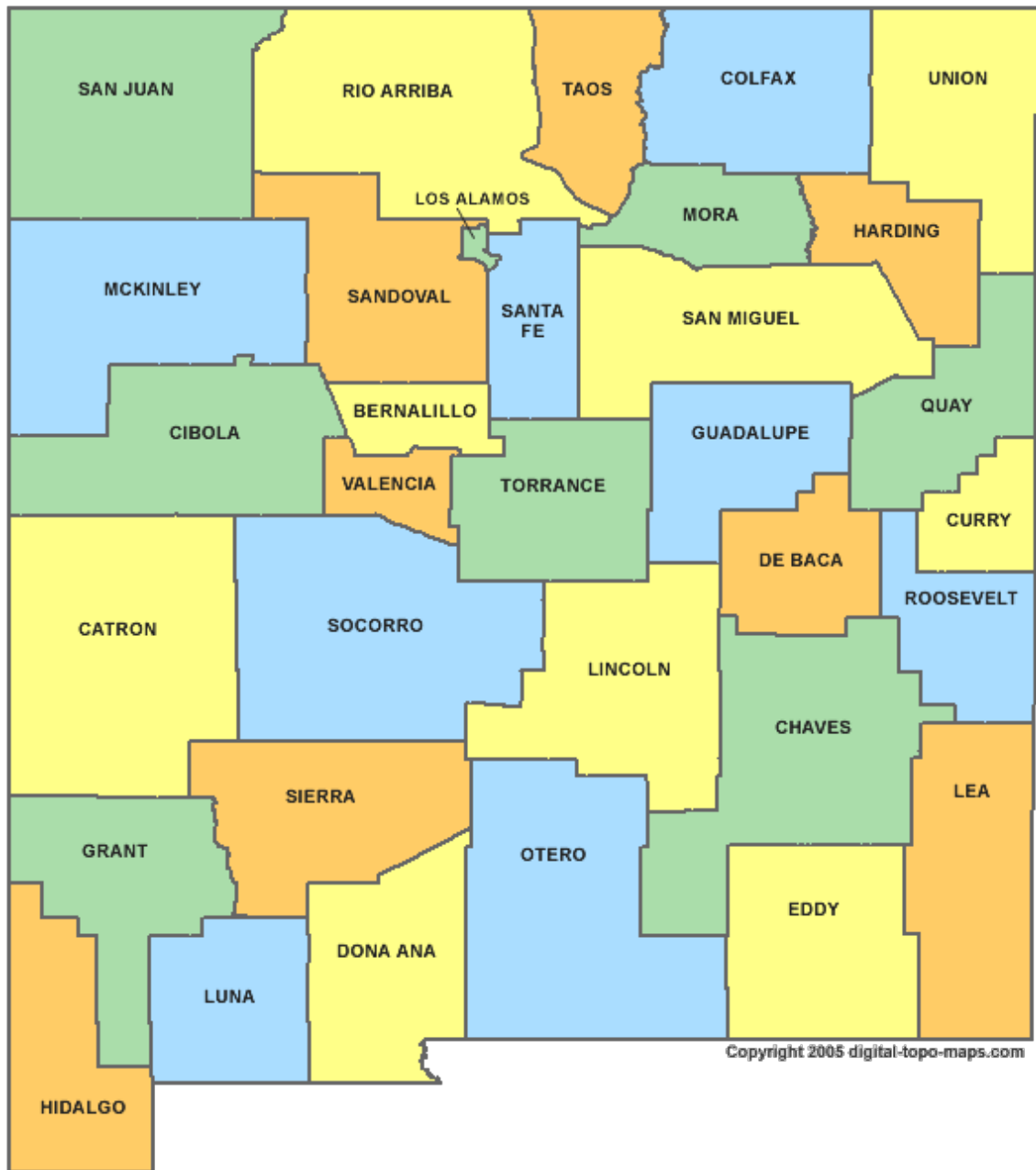
## Appendix A

### NM County Treasurer Calendar of Events

Date	Activity or Subject	Legal Authority
Oct. 1	Treasurer should receive property tax schedule from assessor	§7-38-36(A)
By Nov. 1	Treasurer to prepare and mail property tax bills	§7-38-36 (B)
Nov. 10	Payment of first half (installment) of annual property tax bills are due	§7-38-8(A)
once a week for 3 weeks leading up to Dec 11	Treasurer must publish notice of delinquency date in newspaper of general circulation within county	§7-38-46(D)
Dec. 11	First installment property tax not paid becomes delinquent (unless protest pending on taxes not paid)	§7-38-46(D)
Jan. 1	The date from which the lien against the real property runs, when property taxes are unpaid	§7-38-48
Jan. 1-21	County assessors shall publish the uniform, state-approved notice required by this statute in a newspaper of general circulation within the county once each week for three weeks in January of each tax year.	§7-38-18
periodic	Prior to distribution to a recipient of revenue received by a county treasurer, the treasurer shall deduct as an administrative charge an amount equal to 1% of the revenues collected (and then deposit to the county property valuation fund).	§7-38-38.1(B) and (C)
Jan. 9	Claims for refunds must be filed no later than the sixtieth (60 <sup>th</sup> ) day after the first installment of property tax is due	§7-38-40(A)(1)
April 10 of year following the year for which the tax is being collected	The second installment of annual property tax bills are due	§7-38-38(A)
Once a week for 3 weeks leading up to May 11	Treasurer must publish notice of delinquency date in newspaper of general circulation within county	§7-38-46(D)
May 11 of year following the year for which the tax is being collected	Second installment of property taxes not paid become delinquent	§7-38-46(A)
June 10 Of Each Year	Treasurer Must Mail Notice To Each Property Owner For Which Taxes Have Been Delinquent For Two (2) Years (Form Of Notice Listed In Statute)	§7-38-52(A)

Date	Activity or Subject	Legal Authority
by June 30 of each year	Treasurer must mail a notice of delinquency to owners of property (and others with interest- <i>See</i> statute) with respect to any tax that is delinquent for more than 30 days as of June 10 of each year.	§7-38-51
by July 1	Treasurer shall prepare and submit to the State a property tax delinquency list of all property for which property taxes have been delinquent for more than two (2) years. He shall record same in the county clerk's Office. The Treasure shall note on the property tax schedule that the account has been transferred to the State for collection.	§7-38-61
No later than August 15	The State Dept. of Public Education submits to DFA the property tax rates for each school district	§7-37-8
No later than Sept. 1	DFA sets property tax rates	§7-38-33
Early September-varies	Within five (5) days of a county's receipt of DFA's written property-tax setting order, each board of county Commissioner shall issue its written order imposing such tax, and deliver same to the assessor immediately after entry.	§7-38-34
NOTE	The county treasurer's and county budget reports should be mailed to the Local Government Division of DFA no later than the tenth (10 <sup>th</sup> ) of the following month. The 'Public School District's treasurer's Financial Statement' should be submitted monthly with the treasurer's Report. A copy of the school report should also be mailed to the Public School Finance Division and to the individual school districts.	
NOTE	Property tax remittance should be submitted to the State treasurer on a monthly basis. Remittance should also be made to municipalities, school districts and other entities monthly. ( <i>See</i> also §7-38-38.1)	

## Map of NM Counties



We hope this book is useful to you in the performance of your job duties as a county elected official. If we may assist you in any way, please feel free to reach out to the NM EDGE County College (575 646 0314), New Mexico Cooperative Extension Service (575 646 3015), and to New Mexico Association of Counties (505 983 2101).

We strive to continuously improve, and welcome your suggestions. You may contact NM EDGE County College at [NMEDGE@NMSU.EDU](mailto:NMEDGE@NMSU.EDU). Best wishes for every success as a Public Servant in the great State of New Mexico!



# The NM EDGE County College

A Collaborative Program of  
NM Cooperative Extension Service & NM Association of Counties

Visit our website at [NMEDGE.NMSU.EDU](http://NMEDGE.NMSU.EDU)

Contact us at [NMEDGE@NMSU.EDU](mailto:NMEDGE@NMSU.EDU)

This book is intended as a general guide.  
Consult your County Attorney for matters specific to your County  
or to the duties of your office.



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