



The NM EDGE County College

A Program of the Cooperative Extension Service and
New Mexico Counties

Present

The New Mexico County Commissioner Handbook

December 2024 Edition



NEW MEXICO COUNTY COMMISSIONER

A Reference Handbook and Practical Guide

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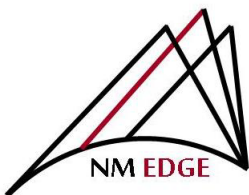
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Better Government through Education

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This handbook is intended as a general reference for informational purposes only. It is not all inclusive. Most importantly, it is not intended to serve as legal advice or interpretation in any way. When in doubt, ask your County Manager and County Attorney.

FOREWARD

As Associate Dean and Director for the New Mexico Cooperative Extension Service in the College of Agricultural, Consumer, and Environmental Sciences (ACES) at New Mexico State University, I have had the pleasure of working with New Mexico Counties (NMC) 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 Counties leadership in pursuing collaboration with Cooperative Extension Service to create and help sustain the NM EDGE County College.

NMSU College of ACES’ 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, specialists, 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 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 NMC 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 handbook ties directly to the classes being taught in the New Mexico County Commissioner 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 Commissioner. 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, NMSU College of Agriculture, Consumer, and Environmental Sciences
Director, New Mexico Cooperative Extension Service

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CHAPTER 1

KNOWING YOUR GOVERNMENT

For more information on this Chapter, take NM EDGE classes
CPM 111- Knowing your Government, CPM 113- Knowing the Law I, CPM 211-Knowing the Law II
CPM 212-Contractual Obligations Between Governments, & CARE 101A & B- Building Strong
Intergovernmental Relations in New Mexico

It all begins with the Oath of Office.

*I, _____, having been (appointed or elected) to the office of
_____ in the (County of _____), State of New Mexico, do solemnly
swear that I will support the Constitution of the United States, the Constitution and the
laws of the State of New Mexico, and will faithfully discharge the duties of said office to
the best of my abilities, so help me God.*

This is the oath taken by all New Mexico elected officials, through which they agree to support the US Constitution, the State Constitution, and the laws of New Mexico. This handbook begins with a brief history of these fundamental documents and outlines their powers.

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

The most important thing about a federal system of government is that power is divided between a central national government and state and local governments.

The system is based on two traditional values of a democracy: 1) the natural rights of every citizen to life, liberty, and the pursuit of happiness; and 2) a social contract or agreement, in which citizens agree that they will form a government and live by its rules.

The US Constitution was preceded by first the Declaration of Independence from Great Britain and King George III in 1776, at the beginning of the Revolutionary War (1775 – 1783). Then, in 1781, the thirteen colonies made an attempt at self-government: the Articles of Confederation, the first written constitution in the

history of the world. The colonies kept most of their local power and gave only very limited power to the new federal system, allowing it to deal with other nations and to print money. But the colonies did not provide the new national government a source of revenue or a way to enforce its decisions.

The Constitution that followed the Articles of Confederation in 1787, fundamentally changed this powerful local and weak national government relationship. It created a strong national system called Federalism, with two basic principles:

- 1) Separation of powers, with three interrelated but independent branches of government: legislative, executive, and judicial. Laws are created by the legislative branch, put into action by the executive, and interpreted by the courts of the judicial branch.
- 2) Checks and balances, in which each of the three branches can affect the way that another branch exercises its power. For example, the President (executive) must act to sign or veto laws proposed by the Congress (legislative), but the court (judicial) has the power to decide what the law is or says, and whether or not it conforms to the Constitution.

One of the first actions taken by the new Congress was to add a Bill of Rights to the new Constitution in 1791: ten amendments that limited the power of the federal government over its citizens. These rights include protection for freedom of speech and religion, the right to bear arms and the prevention of cruel and unusual punishment. The tenth amendment clarifies that all powers that are not specifically given to the federal government, belong to the states, and to the people.

Women, slaves, and Native Americans were not considered whole people under the new government. The words slaves and slavery do not appear and there was an agreement not to discuss this most divisive issue for a period of twenty years. The thirteenth amendment ended slavery in 1865, and women won the right to vote under the nineteenth amendment in 1910.

1.2 The Role of Federal and State Government

Separation of powers and checks and balances exist at the state and local level as well as nationally, in the form of a state system of Governor, Legislature, and state courts, and local systems of county and municipal commissions and councils, managers, and municipal courts.

At both the national and local levels, the struggles for power between the three branches of government continue to this day, as executives try to exert more power over the legislative branch through executive orders and transfers of money, legislators pass laws mandating their power over the executive as appropriators of funding, and courts strike down laws and sometimes prevent action by the executive branch.

Among the most significant of the seventeen amendments that have been added to the US Constitution in the more than two hundred years since it was written, is the Fourteenth Amendment. It was approved in 1868, after the Civil War, to prohibit the states from denying any person life, liberty, or property without due process, and from denying any person equal protection of the laws. This meant that citizens' most basic rights were protected against actions by state governments as well as by the federal government.

1.3 The New Mexico State Constitution

New Mexico was one of the last two states to become a part of the United States in 1910, 66 years after the end of the Mexican War and the Treaty of Guadalupe Hidalgo, which had promised statehood to the territory. Arizona followed in 1912. The delegates to the 1910 New Mexico constitutional convention had the same mistrust of government as existed in Philadelphia in 1787. There was similar mistrust of the West in Washington, where the Congress added a special requirement for the New Mexico constitution: the President's acceptance of the document, as well as their own approval.

Two thirds of the 100 delegates in Santa Fe were conservative Republicans, about a third were Democrats and there was one Socialist. There were no women, no Native Americans, and few Hispanics. Many delegates supported statehood as a way to strengthen corporate business interests through mining, water, and land ownership rights.

Although the new constitution set up a checks and balances system of government, executive power was shared by a large number of elected offices such as Treasurer, Auditor, Secretary of State and Land Commissioner. One of the few things that all the convention delegates agreed upon was to guarantee the civil, religious, and political rights to the descendants of Hispanic Mexicans. They wrote a Bill of Rights that preserved the agreements of the Treaty of Guadalupe Hidalgo, which ended the war with Mexico, in 1848. They also made the bilingual provisions of both the Education Article and the Elective Franchise Article almost un-amendable, by freezing them into the constitution, requiring that they could only be amended by a three-quarters (75%) majority vote statewide and by a two-thirds (67%) majority vote in each county.

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 that 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; and
- They provide innovative and entrepreneurial leadership that will help to further enhance the lives of those they serve.

Additionally, New Mexico counties are mandated by law to provide adequate housing for the district attorney, the office of the district court, and public health facilities.

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 New Mexico Statutes Annotated). 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, Treasurer, and Probate Judge. Each elected office is organizationally equal with a few very specific exceptions such as the BOCC must serve in specific oversight capacity when acting as the Canvassing Board or the Board of Finance. It is important

that each office respects the work of the others and work together towards the common good of the county.

For an example of one county's organizational chart, please refer to Appendix D.

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 (§7-36-16A NMSA). In addition, the Assessor is responsible for mailing notices of tax valuation 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. The Clerk's office may also receive IPRA requests. The Inspection of Public Records Act (IPRA) is a New Mexico state law that provides the public and media access to public information. The law requires open access to almost all public records in state and local government, with few exceptions (§14-2-1 through §14-2-12).

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. All Law Enforcement officers in New Mexico must wear body-worn cameras. (§4-41-2 NMSA).

1.9 County Treasurer

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.

The Treasurer is responsible for the collection of taxes, penalties, and interest due under the property tax code. 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 unions to receive the county's deposits (§6-10-8, §6-10-10 NMSA).

1.10 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.

1.11 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 can be created.

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

1.12 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).

1.13 Tribal Government

The 1848 Treaty of Guadalupe Hidalgo also contained an agreement by the US government to recognize Indian land holdings, and to allow Indian customs and languages. The definition of citizenship for Indian people contained in the Treaty, together with its definition of land rights and tenure, created a fundamentally unique legal status in the American system of law, which holds that each tribe has the inherent right to govern itself, its people, and its land, and is recognized as having control over its own destiny or sovereignty.

Tribal government authority includes the right to form governments, enact laws, establish membership, hold elections, operate courts and law enforcement, provide for public health and safety, and engage in economic development. Tribal government structure in New Mexico is similar for Nations, Tribes, and Pueblos, and consists generally of a President, Governor, or Chairman (executive), a Council and Committees (legislative), and a Tribal Judiciary.

In New Mexico, Native American groups are designated as nations, tribes, and pueblos, each with sovereign status. While commonly referred to as “tribes” the distinction among the various designations is important to understand and

honor. Here is a list of the Native entities in New Mexico:

- Navajo Nation
- Jicarilla Apache Nation
- Mescalero Apache Tribe
- Fort Sill Apache Tribe
- 19 Pueblos
 - Acoma | Cochiti | Isleta | Jemez | Laguna | Nambe | Ohkay Owingeh | Picuris | Pojoaque | Sandia | San Felipe | San Ildefonso | Santa Ana | Santa Clara | Kewa/Santo Domingo | Taos | Tesuque | Zia | Zuni

Land tenure/holdings vary according to the creation designation.

- Those tribes in New Mexico with reservations designated by treaty are the Navajo Nation (Executive Order), the Jicarilla Apache Nation and the Mescalero Apache Nation.
- The Pueblo lands were designated through Land Grants and are held in communal fee-simple trust.

Areas of collaborative services among Native and non-native government in New Mexico, to name a few, are:

- Taxes
- Law Enforcement and Public Safety
- Public Health
- Infrastructure
- Social Services
- Environment & Natural Resources
- Economic Development
- Elections
- Education

For more information on building collaborative relationships among governments, take CARE 111 A & B and CPM 212.

CHAPTER 2

KNOWING THE LAW

For more information on this Chapter, take NM EDGE classes
CPM 113- Knowing the Law I, CPM 114- The Public Policy Making Process,
CPM 153- Public Meetings & Public Hearings,
CPM 211 Knowing the Law II, and CO 113- Open Meetings and Public Records for the Commissioner

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), 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 policymakers (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, policymakers 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 (policymakers) must mobilize support for their policy proposal and how it will 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 also to 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 unfunded 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 policymakers 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) (§ 10-15-1 through § 10-15-4 NMSA)., 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 (§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 (NMSA 10-15-1 (H) exceptions).

The second is the Inspection of Public Records Act (IPRA) (§14-2-1 through §14-2-21 NMSA), 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 may be downloaded from the NM Attorney General’s Office website, with other documents, at <https://nmdoj.gov/publications/compliance-guides/>

The IPRA Compliance Guide and a Compliance Checklist are easily downloaded from the NM Attorney General’s Office website, with other documents, at <https://nmdoj.gov/publications/compliance-guides/>

2.6 General Requirements of County Elected Officers

(§ 1-8-18A and 1-4-16B NMSA 1978)

- Office holders must be elected;
- Residents of the district or county as of the date of proclamation;
- Every candidate shall run only under the name and political party indicated on the certificate of voter registration;
- The certificate of voter registration is the only document or means by which the requirements will be satisfied;

- Any person convicted of a felonious or infamous crime, unless such person has been pardoned or restored to political rights, shall not be qualified to be elected or appointed to any public office in this state (§ 10-1-2 NMSA).
- Citizenship of the United States is a requirement to register to vote and a general requirement to run for elective office in New Mexico. (Const. Art, VII, Sec 1 and 2(A)).
- All county officers are to establish and maintain their offices and headquarters for the transaction of business at the county seat (§ 4-44-34 NMSA).

2.7 Terms of Office

The New Mexico Constitution provides that all county officers are to be elected for four-year terms.

The general election is held in even-numbered years; the term of office of every state, county, or district officer commences on the first day of January after the election (NM Const. Art. XX, Sec. 3).

After holding the office for two consecutive terms, a county officer may not hold any county elected office for the next two years (Art. X, Sec. 2). An elected officer is limited to a total of two consecutive terms regardless of whether they serve them in different counties.

Terms among the members of the Board of County Commissioners (BOCC) are staggered, which means that at every general election in New Mexico, members are elected to each county's BOCC (§4-38-6 NMSA).

To provide for staggered County Commissioner terms, in counties with three County Commissioners, the terms of no more than two commissioners shall expire in the same year. In counties with five County Commissioners, the terms of no more than three commissioners shall expire in the same year (NM Const. Art. X, Sec. 2).

A commissioner holds office until their successor is qualified and enters upon the duties of the office (§4-38-7 NMSA).

2.8 Vacancy in Office

Whenever any vacancy occurs due to death, resignation or otherwise in any county or precinct office in any New Mexico county, other than a vacancy in the office of County Commissioner, the Board of County Commissioners of the county where the vacancy has occurred fills the vacancy by appointment, and the appointee may hold the office until a successor is duly elected and qualified according to law (§ 10-3-3 NMSA).

A person who is appointed to fill a vacancy in a county office may serve out the term of their predecessor and still be eligible to run for two consecutive terms. If a person has served one full term as an elected county official and then is appointed to fill a vacancy in office, they are still eligible to run for one more term (1949-50 Op. Att'y Gen. No. 50-5286). <https://nmonesource.com/nmos/en/nav.do>

Circumstances under which a vacancy occurs in local elective office are defined as follows: (§10-3-1 NMSA)

- Death of the party in office
- Removal of the officer as provided by law (See 2.9 below)
- Failure of the officer to qualify as provided by law
- Expiration of term of office when no successor has been chosen as provided by law (the incumbent continues to serve until a successor is appointed by the Governor)
- Removal of the officer from the county in which they are elected
- Absence from the county for a period of six consecutive months, unless the law provides that the duties may be discharged by a deputy and the absence is due to illness or other unavoidable cause
- Resignation of the officer and
- Accepting/undertaking the discharge of duties of another incompatible office and

- A Commissioner representing a district, once elected and qualified, loses their right to office by leaving their residence within the district (NM Constitution, Art. X, Sec. 7). A person appointed to fill a vacancy as a County Commissioner must, at the time of the appointment, be a resident of the commission district from which their predecessor was elected.
- If a vacancy occurs in the office of County Commissioner, the Governor fills the vacancy by appointment. The appointee holds office until the next general election at which time a successor is chosen (NM Const. Art. XX, Sec. 4). In the event that the vacancy occurs during the first two years of a four-year term, the person appointed must run in that general election, even though it is not the ordinary cycle in the staggered four-year term procedure. The successor who is then elected at the general election will serve out the unexpired portion of the original four-year term, which will have the effect of restoring the proper cycle. That person is then eligible to hold office for two additional four-year terms (NM Const. Art. XX, Sec. 4 and Art. X, Sec. 2). In this unusual circumstance, one person could serve up to two years through the appointment and then two four-year terms for a total time of ten years.

2.9 Removal from Office

New Mexico statutes provide circumstances under which a person may be removed from office (§10-4-2 NMSA).

- Conviction of any felony or of any misdemeanor involving moral turpitude
- Failure, neglect, or refusal to discharge the duties of the office or failure, neglect, or refusal to discharge any duty devolving upon the officer by virtue of his office
- Knowingly demanding or receiving illegal fees
- Failure to account for money coming into the hands of such an officer
- Gross incompetence or gross negligence in discharge of the duties of the office

- Any other act or acts, which in the opinion of the court or jury amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.
- In order to be removed from office, a local official must either be indicted by a grand jury and found guilty at trial or recalled by the voters.

Recall occurs when a petition for recall is signed by one third or more of the voters who voted when that person was elected to office. The allegations supporting the petition must be examined and probable cause found by the district court. Following the court's determination of probable cause, a recall election will be held. If the recall election is successful, the office is declared vacant (NM Const. Art. X, Sec. 9). For more information and greater detail regarding removal from office, please review §10-4-1 through §10-4-29 NMSA in its entirety.

2.10 Abandonment of Office

If an elected official fails to devote his or her time to the usual and normal extent during ordinary working hours to the performance of the duties of such public office and employment, shall be deemed to have resigned from and to have permanently abandoned his public office and employment. (§10-6-3 NMSA).

2.11 Oath of Office

Each County Official, whether elected or appointed, must take and subscribe to an oath or affirmation that they will support the Constitution of the United States and the Constitution and laws of the State of New Mexico. Further, that they will faithfully and impartially discharge the duties of that office to the best of their ability (NM Const. Art. XX, Sec. 1). In the event that a newly elected official does not subscribe to the required oath of office, the office becomes vacant, and the incumbent continues in office until a successor is qualified and assumes the duties of the office.

2.12 Bonds

The elected official shall give an official bond payable to the state and conditioned for the faithful performance of his duties during his term of office and until a successor is elected or appointed and is qualified. The officer will pay all money received in their official capacity to the person entitled to receive it. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond required shall be fixed by the Board of County Commissioners in a sum equal to twenty percent of the public money handled by the county officer during the preceding fiscal year, but not to exceed \$5,000 for County Assessors, Commissioners, and Probate Judges; \$10,000 for County Clerks, flood Commissioners and small claims Clerks, \$20,000 for County Sheriffs and \$50,000 for County Treasurers. (§10-1-13 NMSA). County officers are prohibited from being sureties for other officers who are required to give a bond (§10-2-3 NMSA). Violation of this statute constitutes a misdemeanor in office (§10-2-4 NMSA). When any county officer is required to give a surety company bond, the premium on that bond is to be paid out of the county's General Fund (§10-1-13 NMSA). Failure by a newly elected official to post a bond causes that office to become vacant (§10-1-13 NMSA).

The County Manager, or risk manager if one exists, will assist the county elected officials in meeting the statutory bonding requirements through the New Mexico Counties Insurance Authority, or other insurer.

2.13 Compensation

2024 General Election Update: During the 2024 General Election, Constitutional Amendment 4, proposing an amendment to Article X, Section 1 of the Constitution of New Mexico, was passed by the voters of New Mexico. This amendment provides that the salaries of county officers shall be established by the Board of County Commissioners. The amendment also removes references to the first Legislative session and clarifies that any fees collected by a county official shall be paid to the treasury of the county.

Maximum salaries of county officials are fixed by the State Legislature and vary according to the county classification (NM Const. Art. X, Sec. 1). The legislature is limited in its financial control of county officers by the fact that they can neither increase nor decrease the compensation of any county officer during their term of office (NM Const. Art. IV, Sec. 27). The salaries of county officers are subject to change and if approved by the BOCC, will become effective January 1 of the following year, or other date as set by the BOCC (See §4-44 NMSA).

Despite the fact that the BOCC may approve a newly authorized (by the legislature) salary increase, county officials are not eligible to receive an increase in pay during their term of office. Salaries may only be increased prior to the county official assuming office for the first time, or upon re-election.

Historical Note: Constitutional Amendment 2, on the November 2008, ballot would have allowed Boards of County Commissioners the option of giving mid-term raises to county elected officials. The voters defeated the amendment.

NOTES

CHAPTER 3

ETHICS & PROFESSIONALISM IN THE PUBLIC SECTOR

For more information on this chapter, take NM EDGE classes
PE 110 A & B- Ethics: Know the Law I & II, CPM 112- Answering the Call to Public Service,
CPM 121- Ethics and Professionalism, CPM 142- Ethics & Managing Public Funds.
More classes may be referenced throughout the chapter.

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 making policy, to the thousands of public employees dedicated to performing 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, 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 impropriety or corrupt behavior among elected public officials can be sufficient to destroy the public trust and 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 diminishes 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 attacked the very legitimacy of their governments.

(NM EDGE class *PE 226 - Leadership and the Public Trust* 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 Advocate for Public Ethics (CAPE) offers a series of classes exploring these and other concepts in detail. Parenthetically noted throughout this chapter are 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 towards attaining a CAPE certificate from NM EDGE.

3.1 Universal Ethical Principles

(PE 120- Do the Right Thing, CPM 139- Creating an Ethical Culture)

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-Ethical Leadership)

Universal ethical principles for public servants include:

- Public service is a trust to be used only to advance public interests, not personal gain.
- Decisions are to be made on the merits of an issue, 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 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 or conduct unbecoming a public servant.

3.3 Ethical Principles in New Mexico Law

(PE 110 A&B- Ethics: Know the Law I and II, CPM 142- Ethics and Managing Public Funds, & CPM 153- Public Meetings and Public Hearings)

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.

This law applies to officials and employees of all levels of government.

Originally focused on state government, 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 volunteer boards 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 <https://nmdoj.gov/publications/compliance-guides/>

In 2021, the State Ethics Commission approved a model code of ethics, promulgated at 1.8.4 NMAC. The code includes an executive summary, the code provisions approved by the State Ethics Commission, and corresponding commentary and examples applying the model code provisions in particular hypothetical circumstances. <https://www.sec.state.nm.us/education/>

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. The State Procurement Code, §13-1-28 NMSA 1978, provides additional ethical requirements relating to purchasing and contracting. Local governments must comply with these ethical

provisions, as well as those in the Governmental Conduct Act, unless they have Home Rule. Local governments with home rule may adopt their own procurement policies. Some local governments have adopted local ordinances governing the ethical conduct of public officials. 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 primarily or wholly funded by federal grant money.

A listing of many of these laws is in the Appendices to the Attorney General's Compliance Guide on the Governmental Conduct Act

<https://nmdoj.gov/publications/compliance-guides/>

3.4 Ethical Rules for Specific Aspects of Public Service

(PE 110A&B- Ethics: Know the Law I & II and PE 120- Do the Right Thing)

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 disclose any conflicts fully to the appropriate management personnel.

B. Abuses of Power (PE 147- Risky Business)

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; avoiding criminal citations because of one's official position; making employment decisions based on a personal connection with the applicant or employee; directing the use of county facilities for personal or political events; or directing county employees to work on the official's property, especially during ordinary work hours.

C. Managing Public Funds (CPM 142- Ethics and Managing Public Funds)

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. Civility (PE 123- Promoting Civility)

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. The reputation and effectiveness of government suffer when the civility of public officials lapses.

E. Transparency (CPM 153- Public Meetings and Public Hearings)

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. (NMSA 10-15-1 (H))

exceptions).

F. Managing Staff (PE 239- Ethical Leadership)

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.

G. Politics (PE 147- Risky Business)

When public officials campaign for office, it is unethical to use public resources or employment 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.

H. Research (CPM 271- Role of Research in Public Service)

Research is an important tool of government and must take into account ethical standards to assure that its findings do more good than harm.

3.5 Ethical Leadership (PE 239- Ethical Leadership)

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 they supervise and contractors they approve. Meeting these expectations requires elected leaders, as well as other managers, to make several commitments:

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 or she 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 much of 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- Creating an Ethical Culture; PE 239- Ethical Leadership)

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 how well staff comply 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- Do the Right Thing; PE 220-Principle Based Decision Making)

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 decision makers 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. Leaders who are able to articulate principled, factually supported reasons for their decisions reduce the concern that they play favorites or respond 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 facts important to other perspectives.
- Second, review and consider all the facts, to anticipate 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 the name of 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 A&B- Ethics: Know the Law I & II)

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 breach can be adequately addressed. 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; a warning should come first, whenever possible. More serious responses may include reassignment, suspension, or dismissal, among others. Consult your county attorney and your local ethics ordinance, if applicable.

C. Civil Action

When serious infractions have occurred, the Governmental Conduct Act provides for civil cases to be filed. These suits 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.

CHAPTER 4

THE NEW MEXICO COUNTY COMMISSIONER

For more information on this chapter, take NM EDGE classes
CO 101- Roles and Responsibilities of the NM County Commissioner

The Board of County Commissioners (BOCC) consists of three or five elected members, any majority of whom may transact business. Changes to the New Mexico Constitution and statutory changes now allow for five-member boards in every county, if approved at the local level.

4.1 Board of County Commissioners (BOCC) as Legislative Body

In New Mexico, the BOCC is the legislative body of county government. The BOCC has legislative power for:

- budgeting
- taxing
- issuing of bonds
- zoning
- adopting other regulations by ordinance

The BOCC prepares the proposed or preliminary county budget and files it with the Department of Finance and Administration (DFA), Local Government Division, by June 1 of each year (§6-6-2 NMSA). In order to fund the budget, the BOCC levies a tax on all taxable property in the county; revenues collected (by the County Treasurer) are used for general county purposes, including salaries (§4-38-17 NMSA). All property taxes are set at rates ordered by the DFA (§7-38-34 NMSA). In addition, the BOCC may levy a number of special taxes including local option gross receipts taxes.

The BOCC may also issue general obligation bonds for certain purposes, such as juvenile detention homes, administrative facilities, athletic facilities, parking structures, landfill systems, airports, detention centers, courthouses, bridges, hospitals, public libraries, facilities to hold county fairs and cultural facilities (§4-49-7 NMSA) and has certain responsibilities in the issuance of general obligation bonds (§6-15-3 through 8 NMSA). The BOCC is designated as the zoning authority for the county (§3-21-1 through 3-21.3.2 NMSA) and may adopt zoning ordinances to regulate height, number of stories and size of

buildings; percentage of lot to be occupied; size of yards and other open space; density of population; location and use of buildings for trade, industry, or residence.

Counties are also granted the same authority as municipalities (§4-37-1 NMSA), except for powers that are inconsistent with statutory or constitutional limits placed on counties, such as Section 62-3, which limits county franchise fees to actual expenses incurred in the granting of a franchise. county ordinances are not enforceable inside municipal boundaries (§4-37-2 NMSA).

4.2 County Commissioners as Administrative & Executive Officers

In addition to its legislative duties, the BOCC must perform a large number of administrative functions. These duties include:

- those specified by law (§4-38 NMSA)
- those necessary to follow through on implementation of the BOCC's prior legislative action
- those administrative actions necessary to carry out the routine day-to-day operations of the county

The other county elected officers are also granted specific powers within the framework of county government, and executive branch authority.

The executive powers granted to the BOCC include, but are not limited to, the following:

- hire a County Manager to perform the administrative oversight of the county including personnel matters
- set salaries for county employees, including the County Manager*
- care for county property
- perform certain election duties
- make appointments to a number of boards and commissions
- grant certain licenses and regulate certain activities
- perform a number of financial management functions within the county government structure
- maintain a variety of county services, including those provided through intergovernmental agreements approved pursuant to the Joint Powers Agreements Act, (§11-1-1 through 7 NMSA)

** The maximum salary for elected officials is set by state statutes. Please refer to §4-44-4, §4-44-4.1, §4-44-5, §4-44-14 for salary information based on county class.*

4.3 General Powers and Duties of County Commissioners

The division of labor between the BOCC and the County Manager is simple and straightforward:

- The County Commission establishes policy for the county
- The County Manager and county staff implement policy and are responsible for day-to-day operations of county government.

The County Manager has broad responsibilities that include facilitating the work of the county on behalf of the BOCC. These responsibilities include but are not limited to working with Commissioners and other Elected Officials to meet daily responsibilities and strategic goals of the county, representing the county at numerous meetings, directing the work of the administrative staff, managing the county budget, working with key county department heads such as finance and purchasing or Public Works to name a couple, towards the county's goals.

While it may be tempting to get involved with personnel matters, especially when an employee comes to you directly, do not fall into the trap of reacting to one-side of the story. Employee matters belong in the hands of the County Manager, your HR Department, and your legal counsel. Some of the primary responsibilities of a County Manager as supervisor and chief employment officer include:

- ◆ Clearly define expectations/standards
- ◆ Evaluate employee's performance against specific factors
- ◆ Provide constructive performance feedback, focus on behaviors and performance rather than attitudes and personality.
- ◆ Identify Goals and Career Progression
- ◆ Record evaluation of Employee's performance

Responsibilities in personnel matters include:

- Understanding the difference between being a policymaker and a supervisor
- Understanding the pitfalls and consequences of behaving like a supervisor as a policymaker

- Understanding the range of employment laws and principles that apply to county government

These are covered in-depth in NM EDGE County College class CO 131- Employment Law for Policy Makers.

A County Commissioner has both ministerial and discretionary duties to perform in connection with this job. Ministerial duties are those that a person performs without regard to their own judgment as to the desirability of the act. For example, the BOCC has a ministerial duty to call an election for the formation of a special district if presented with a proper petition. The BOCC must do this even though the members may feel that the special district is not necessary and would be against the general public welfare. The BOCC cannot disregard the legal process presented for action because it has no discretion in this aspect of this official duty.

On the other hand, the orderly conduct of governmental affairs requires a commissioner to exercise considerable independent judgment. In these matters, they are considered to have discretion in deciding whether an act is to be performed and in deciding the manner of performance of any action that is undertaken. Thus, the BOCC has discretion in the formulation of ordinances (law making) and resolutions (policy setting) within the limits set by law.

In every function of local government, it is established that a County Commissioner, and any other officer of the county, has a duty to carry out powers that do not violate the fundamental rights of persons as guaranteed under the United States Constitution. Generally, the BOCC is protected by the Tort Claims Act (§41-4-1 NMSA) from personal liability in performing discretionary acts unless it can be clearly shown that their actions are fraudulently, corruptly, or maliciously committed.

- Whenever a county official, employee or agent is sued, the proper party to be named as the defendant is the BOCC (§4-46-1 NMSA).

4.4 Specific Duties/Authority Granted to Boards of County Commissioners

There are a large number of statutory references to specific powers granted to a New Mexico Board of County Commissioners. See Appendix A at end of book for a partial list.

4.5 Office of the Chairperson for the Board of County Commissioners

The members of the BOCC vote to select one of their members as their Chairperson at the first meeting of the calendar year in the absence of an ordinance mandating otherwise. The Chairperson is to preside at all meetings during the year. If the Chair is absent, the members have usually also chosen a Vice-Chair who will act as temporary Chairperson (§4-38-10 NMSA).

The Chair is an equal member of the Commission, with the same amount of authority to bind the county as the other Commissioners, but the Chair also has the authority to preside at meetings, to sign on behalf of the County as approved by the full board, and to administer oaths to witnesses before the BOCC.

Except for the above duties and the ceremonial functions that the Chairperson is expected to perform, and absent a formal delegation of authority by a majority of the BOCC to the Chair regarding any other functions, the powers and duties of the Chairperson coincide with those of the other commissioners.

It can therefore be said that the powers and duties of the Chairperson do not result in a strong executive. However, depending on the personality and degree of influence of the Chairperson, there is also the possibility of informal power. This is something to consider when choosing the Chairperson, for once chosen, the Chairperson is not likely to change during their term as Chair (AG Opinion No. 1953-54: 5983). According to statute (§4-38-10 NMSA), the Chair “shall preside at that (first) meeting and all other meetings, if present.”

CHAPTER 5

MEETINGS OF THE BOARD OF COUNTY COMMISSIONERS

For more information on this chapter take NM EDGE classes

CPM 153- Public Meetings & Public Hearings, CPM 159- Parliamentary Procedure, CPM 253-Writing Resolutions, Ordinances, and Minutes, & CO 113-Open Meetings and Public Records for the Commissioner

The statutes contain some basic meeting requirements, some of which are outdated and impractical in light of the evolving roles and responsibilities of Counties, and the advanced technology of modern times. However, following the rules for Open Meetings and Public Hearings are essential.

- The law provides that the Board of County Commissioners (BOCC) must meet at least quarterly during the months of January, April, July, and October at the county seat (§ 4-38-8 NMSA).
- More frequent meetings may be held if necessary for the transaction of business.
- The BOCC determines the specific times, places and rules for holding these meetings, traditionally at its Organizational Meeting, which is usually the first meeting of the year
- Meetings must be held in public buildings, i.e., county, municipal, state, public school.
- Smoking is generally prohibited at public meetings by state law (§24-16-5 NMSA), but state law does not preempt the enactment of local government ordinances that are not inconsistent with the Clean Air Act (§24-16-2 NMSA).
- By the tenth of each month, a summary of minutes of all the meetings held during the preceding month must be prepared by the BOCC (§10-17-1 NMSA).
- The summary must be sent to all newspapers within the county (§10-17-2 NMSA).
- The Open Meetings Act imposes similar requirements to ensure that the business of the BOCC is made accessible to the public and requires that the draft minutes be prepared within ten working days after the meeting, and approved, amended or disapproved at the next meeting of the Board. (§10-15-1 NMSA)

5.1 Meetings

All meetings of the BOCC are required to be open to the public and all final decisions must be made in public (§10-15-1 NMSA). The BOCC may meet privately in closed session to discuss items that fall within an exception to the Open Meetings Act; however, most final decisions must be voted on in public meeting and must have been properly noticed on the agenda for such action. The most utilized exceptions by Counties are those for the discussion of confidential personnel matters, deliberations regarding licensing or other administrative hearing, pending or threatened litigation, and the purchase of real property. (§10-15-1 NMSA) Any action taken by the BOCC in violation of the Open Meetings Act is invalid and is susceptible to being declared to be null and void. (§10-15-3 NMSA) Additionally, any person who violates the Open Meetings Act is guilty of a misdemeanor and if convicted, may be punished by a fine of up to \$500 for each offense (§10-15-4 NMSA).

For more information, please refer to [The Open Meetings Act: A Compliance Guide for New Mexico Public Officials and Citizens](https://nmdoj.gov/publications/compliance-guides/), available at <https://nmdoj.gov/publications/compliance-guides/>

5.2 Proceedings

The BOCC may, and should, establish its own rules and regulations to govern the transaction of business (§4-38-12 NMSA). The meeting is led by the Chairperson, according to the rules adopted by the BOCC. As previously stated, the Chairperson is typically chosen by the BOCC during the first meeting of the year. The BOCC must have a seal which is affixed to all important documents, which may be changed by the BOCC (§4-38-12 NMSA).

- To transact official business, a majority of the Commissioners must be present as a quorum (§4-38-2 NMSA). Without a quorum, no business may be discussed or decided upon.

- The County Clerk, or designee, must be present at all meetings to record the proceedings (§4-40-3 NMSA).
- Following roll call and determination of a quorum, the draft minutes from previous meeting(s) are discussed, approved, modified, or rejected by the BOCC.

5.3 Roles & Responsibilities

Everyone in the meeting has a role in supporting the objective of the meeting. The Chair's role is to move the agenda, keep order, and facilitate the business of the body. The County Manager and the administrative staff assist with setting the agenda, providing all supporting materials, advertising the meeting, etc. Each presenter must prepare to give the BOCC a succinct presentation including exhibits and be ready to stand for questions. The public is permitted to attend and listen to the deliberations of the BOCC. (§10-15-1 NMSA)

- **Elected Officials** generally serve a Legislative function (ex. County Commissioners) developing and adopting policy
- Some **Elected Officials** also serve an Executive function, administering government services (ex. County Clerks, Treasurers, Assessors) and developing policy
- **Appointed Officials** (ex. Planning and Zoning Commissions, other Citizen Advisory Groups) provide policy advice to elected officials
- **Public Managers/Administrators** provide technical support and professional services to elected and appointed officials, and implement adopted policy

Public Managers/Administrators can:

- ✓ Collect data for public hearings/meetings
- ✓ Properly obtain and employ public input
- ✓ Establish rapport with residents
- ✓ Serve as surrogates for the BOCC, in accordance with the authority delegated by the BOCC

Public Managers/Administrators

- ✓ should not engage in politics or give advice, unless expected or asked
- ✓ should not overstep boundaries with elected officials
- ✓ should not speak to the media without authorization
- ✓ should fairly present all sides of the issue at hand
- ✓ should remember they are responsible to the public

Transparency and accountability are essential.

Many attacks on government policies focus on the legitimacy of the decision-making process, including claims of:

- Prejudging of decisions/conflict of interest
- Limiting public input/secret discussions
- Misrepresenting the real issue
- Hiding facts

5.4 Agendas

An agenda is an outline of items to be considered at a meeting and should be prioritized for importance and timeliness.

The Open Meetings Act requires that each meeting notice include an agenda specifically listing items of business to be discussed or transacted and detailing how the public may obtain a copy of the agenda (§10-15-1 NMSA). The agenda must be available to the public at least seventy-two hours prior to the meeting unless an emergency requires otherwise.

Except for emergency matters, action by the BOCC is generally limited to those matters detailed with specificity on the agenda. An “emergency” is defined by the Open Meetings Act as, "unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body." A formal determination

should be made by the Board as to whether an emergency exists and stating the nature of the emergency, prior to considering and taking action upon any matter that has not been duly noticed on the agenda for the meeting, and must report to the Attorney General's Office within ten days of taking action on an emergency matter the action taken and the circumstances giving rise to the emergency

The County Manager should be present and consulted at meetings of the BOCC. Items of interest attracting large numbers of people may be moved up on the agenda as a courtesy to those attending, as well as to minimize distraction during discussion of other matters. Grouping subject matters by similar types is also desirable. Any time an item is to be considered that affects a county official or employee, the presence of that individual is recommended. Anytime an item on the agenda affects, or may potentially affect, a personal or business interest of a Commissioner, the Commissioner should disclose the relationship or interest as soon as possible, and that Commissioner should make a decision on whether the Commissioner shall abstain from the discussion and vote.

In summary, under the Open Meetings Act:

- Agendas must be posted in advance.
 - Meeting notice must include an agenda or where the public can obtain an agenda
- Notice must be given before meeting or taking action.
 - Must contain a list of items of business to be discussed or transacted at meeting
- Must be made available to public 72 hours in advance of the meeting
 - **NO ACTION** may be taken at meeting unless the item appears on the agenda and is made available 72 hours in advance of the meeting
 - Emergencies may allow for a limited exception to this rule (consult your county attorney)
- The Public has a right to attend meetings
- The Public has a right to minutes

The BOCC might adopt an agenda similar to the following example:

- I. Call to Order and Determination of Quorum**
- II. Pledge of Allegiance**
- III. Introductions and announcements**
- IV. Reading and approval of previous meeting minutes**
- V. Consent Agenda**

In some counties there is a Consent Agenda item, which may include items such as:

 - a. previous meeting minutes,
 - b. budgetary adjustments (minor)

Consent Agenda items are items on which the BOCC and public have no specific questions or comments. The County Manager would present a summary of these consent agenda items, and, if there are no questions or comments from the BOCC or the public, they could be acted upon quickly. If any item does surface a question or comments, the item should be removed from the Consent Agenda and added as a regular agenda item for the meeting.
- VI. Changes to the Agenda**

This action considers changing the order of items to be heard or deleting an item. Except for the purposes of an emergency, as that term is defined by the Open Meetings Act, the BOCC cannot add a new topic for discussion or action without proper notice as required by their annual notice resolution and the Open Meetings Act.
- VII. Public Input**

Under the Open Meetings Act, the public only has a right to attend and listen to the deliberations of the Board. The BOCC may set content-neutral time, place and manner restrictions on the participation by members of the public.
- VIII. Petitions, memorials, proclamations and announcements**
- IX. Approvals of bid awards and contracts**
- X. Reports by county officials, boards or commissioners**
- XI. Approvals of ordinances and resolutions**
- XII. Public hearings (may fall under ordinance category also)**
- XIII. Executive Session (Closed Meeting) if any**

Note: Closed Meetings may be held if properly convened and noticed as required by the Open Meetings Act.

NM EDGE County College Class CO 113 – Open Meetings covers this subject in great detail.

XIV. Action regarding closed session matters, if any.

The matter needs to be on the printed agenda with reasonable specificity in order for the BOCC to be able to take a valid vote once they return from Executive (Closed) Session.

XV. Adjourn

Assuming a quorum, the first five (or six if there is a Consent Agenda) items should be considered in order; however, the remainder of the agenda can be varied, depending upon the circumstances, including attendance of dignitaries, time limitations of legal counsel in attendance, large numbers of the public in attendance, etc.

Closed Meetings

Must identify subject matter and if applicable 10-15-1(H) exemption.

- *announce subject*
- *stick to announced subjects*
- *vote in open meeting*
- *record vote of each member of the body*

⚙ **Procedure for closure**

1. Open Meeting
 - a. vote of public body
 - b. authority for closure
 - c. state topic to be discussed
 - d. minutes must explain that only specified matters were discussed
2. Closed Meeting
 - a. prior public notice
 - b. specific law authorizing closure
 - c. state topic to be discussed
 - d. minutes on next open meeting must reflect that only specified topics discussed

5.5 Rules of Procedure

Each elected BOCC has the right to adopt rules to govern how their meetings will be conducted, and to change them as needed. As a general rule, each Commissioner should become familiar with basic parliamentary procedure. The object of any set of rules, such as Robert's Rules of Order (RRO) or Democratic Rules of Order, is to assist an assembly in accomplishing the work it was designed to do, in the most efficient and least contentious manner possible.

The most formal and comprehensive set of procedures is authoritatively defined in Robert's Rules of Order. Many different versions (i.e., editions) are available. If the BOCC states in its rules that it is going to follow RRO, then it should also specify which edition and which, if any, specific rules it is not going to utilize. Robert's Rules specify that the Chair shall remain neutral, though many adopt resolutions modifying RRO to expressly permit the Chair to vote as it would otherwise disenfranchise the Chair's constituents were the Chair unable to cast a vote merely because they agreed to assume the additional responsibilities as Chair. This matter may be clarified in the rules you adopt. Consult with your county attorney and County Manager regarding the Rules adopted by your County.

A quick reference guide to Robert's Rules and to the Democratic Rules are included in Appendix C of this book. Also, NM EDGE County College class CPM 159- Parliamentary Procedures covers this subject in greater detail.

Some of the most commonly needed/used rules of order are the following:

- Gaining the floor. A person wishing to speak should address the Chairperson and await recognition before speaking. The Chairperson should acknowledge and fairly call on each member in a consistent or methodical fashion.
- Calling to order. The Chairperson may call to order any speaker violating the rules of procedure. If another Commissioner calls the speaker to order, the speaker must remain silent until the Chairperson decides if they were out of order. Note: any member may appeal from the Chairperson's procedural ruling—a second is needed, and then the point of order is decided by vote of the full board.

- Dividing the question. If any question or item to be discussed has more than one proposition, then that should be divided into separate points of consideration upon motion of a Commissioner.
- Moving the previous question. A Commissioner desiring to close debate and vote upon a question should say, "I move the previous question." Debating and voting upon one question or motion at a time is usually the best procedure. Full debate on each question is encouraged and protected under Robert's Rules of Order.
- Making and seconding a motion. To make a motion, a Commissioner should say "Mr./Ms. Chairperson, I **move** that ..." The motion is seconded if another Commissioner states, "Mr./Ms. Chairperson, I second that motion."
 - Most motions require a second.
 - Some motions do not require a second:
 - Question of privilege; Call for agenda of the day; Point of order; Call to order
 - Requests; Call for division; Withdraw a motion
- Stating the motion. The Chairperson restates the motion after it has been moved and seconded. The Clerk records the motion in the minutes, and if asked, reads the motion to ensure its proper recording. Until the Chairperson states the motion, it is not properly before the BOCC for debate or amendment.
- Appeal from a decision of the Chair. A Chairperson's decision to refuse to entertain a motion or any other point of order may be appealed by another Commissioner. After a second to the appeal, and debate, the BOCC then votes whether to allow the Chairperson's decision to stand. If the decision is sustained by Commission vote, no further action is taken. However, if the decision is overruled, discussion of the motion is begun by the BOCC.
- Debate. Not all motions are debatable in formal procedure. If a motion is debatable, the Chairperson should ask for comments after he or she states the motion.
 - Debatable motions:
 - To postpone (but only as to the date and time that the matter will be postponed to); To refer to committee; To amend; Main motion; To appeal it

(the decision to which it relates is the natural right of the governing body);
To reconsider it (the motion to be reconsidered is debatable)

- Non-debatable motions:
 - To fix adjournment times; To adjourn; To take a recess; To call for orders of the day; To lay on the table (to table an issue); To move the previous question; To modify debate; To appeal; if it relates to the rules of speaking; to priority of business; to a decision on a non-debatable question
 - If it is made while a vote is being determined
 - To suspend the rules; To make a point of order; To call to order; To object to consideration of a matter; Requests; To call for division; To withdraw a motion; To divide a question; To reconsider (if the motion to be considered is not debatable); To take from the table

- Putting the question. A motion is put to a vote by the Chairperson after debate, if any. The Clerk must record the vote of each Commissioner. Votes may be taken by a show of hands, roll call or voice vote. If a roll call is required, the Chairperson should request the Clerk to call the roll.
For more information regarding roll call votes, please refer to the Closed Meetings section of the New Mexico Open Meetings Act Compliance Guide.

<https://nmdoj.gov/publications/compliance-guides/>

- Stating the results. Immediately after a vote is taken, the Chairperson should state the results.

NOTES

CHAPTER 6

WORKING WITH OTHER OFFICIALS & OTHER BOARDS WITH COUNTY GOVERNMENTAL RESPONSIBILITIES

For more information on this Chapter, take NM EDGE classes
CPM 212 Contractual Obligations Between Governments, CPM 151- Foundations for Communications, CPM 154- Effective Meetings by Design, CO 102-County Services & Functions Part I: Public Works & Land Use, CO 103- County Services and Functions Part II: Health, Welfare, & Public Safety

The ideal relationship between elected county officials and the county employees that are staff members of their respective offices/departments should be one of **reciprocal respect and cooperation**. This is to ensure that county residents receive the provided county services in the most expeditious and courteous manner possible. For the same reason it is important commissioners give the other elected county officials the respect and cooperation that will promote and enhance the public trust. In addition, there are other elected bodies, appointed officials and organizations that interact with the county and the various elected offices of the county; i.e., Conservancy Districts, Water and Sanitation Districts, School Boards, State Agencies, non-profits, municipalities, etc.

6.1 Cooperation Among County Offices is Essential

Cooperation and respect for the other elected officials' offices and roles within the county's structure is essential in promoting public trust and efficiency.

An illustration of why cooperation is needed:

- the Board of County Commissioners (BOCC) imposes the tax rates, upon the direction of the Department of Finance Administration/Local Government Division (DFA/LGD) and Property Tax Division (PTD);
- the Assessor reviews the rates submitted by DFA and PTD to assure the debt services of general obligation debt will receive the needed amount of taxes; and, assesses the net taxable value of property;
- the Treasurer prepares and sends out the property tax bill (with the information provided by the BOCC and the Assessor) and collects from the county's property owners;
- the Treasurer distributes the property taxes to the various other entities that are entitled to a portion, i.e.,
 - the Hospital Mil Levy
 - the Conservancy Districts

- the School Districts
- the Municipal Bonds and other bonds requiring payment from property taxes and any taxes imposed by other authorized agencies or organizations;
- County treasurers, with the advice and consent of the County Board of Finance (County Commission) which are charged with the supervision and control of the respective funds, may invest unexpended funds or money not immediately necessary for the public uses of the counties. NMSA 1978 §6-10-10(F);
- The County Commission uses the revenue amounts given by the Treasurer to generate the annual County Budget for all services provided by the county including the budgets of the Assessor's and Treasurer's offices.

It takes the offices of three sets of elected officials to accomplish this one major function cycle of county government. It cannot be done efficiently without cooperation, and cooperation will not happen without communication.

6.2 County Manager as Liaison

It is the County Manager who is in the best position to serve as liaison between officials, to facilitate communication for the benefit of all county departments, and to set a tone of professionalism, healthy respect, and an expectation of open communication and never-failing cooperation between the departments, other entities, and organizations. (§§4-38-18 and 4-38-19; and the Personnel Policy adopted by each County).

6.3 Protecting Tax Revenues

The same need for cooperation exists in the area of setting the deposit and investment policy for the county's tax revenue. The duty owed to protecting the tax revenue is a shared responsibility between the BOCC, the County Treasurer and the County Clerk, together constituting the County Board of Finance (§6-10-8 and 6-10-10(F) NMSA).

6.4 The BOCC and the County Clerk

The BOCC must rely on the County Clerk, who is charged by law to attend all BOCC meetings and to keep record of all votes, decisions, resolutions, ordinances, and other papers for the BOCC.

Another example of overlap and the need for cooperation is the planning for, and management of primary, general, local, and other statewide elections, which involve shared duties between the County Clerk and the BOCC. The County Clerk also works with and aids other agencies in conducting any Special Elections for All Mail Ballots (§3-8-7, and 1-22-1 et. seq. NMSA).

6.5 Special Boards and Commissions

In addition to the elected officials and their staffs, there are a number of special boards and commissions that may be created within a county. These entities perform various functions and have specific powers. Some of their appointed members will receive compensation; most will not. All are entitled to per diem and mileage if travel is required to perform the duties they are assigned.

Examples of special boards include but are not limited to:

- Special District Commissions
- Extra Territorial Zoning Boards
- Planning and Zoning Boards
- Smart Growth Commissions
- Joint Powers Agreement Boards;
- Any Advisory Boards created by the BOCC (Fire Tax, DWI Council, Local Emergency Planning Council); etc.

Examples of other boards that require interaction from the BOCC and other elected officials include but are not limited to:

- Council of Governments
- Water & Sanitation Districts
- Mutual Domestic Water Association Boards
- Workforce Development Boards
- Hospital Boards; etc.

6.6 Volunteer Organizations and Non-profit Entities

As leaders in the community, the members of the BOCCs must foster and maintain the spirit of reciprocal respect and cooperation with non-governmental organizations and groups. At times, elected officials will be sought to either serve on the boards of these organizations or appoint community members to serve on these boards. In either case,

elected officials must realize the separate duties and obligations that come with this extra service, and the liabilities that can be imposed on individuals and organizations.

County Commissioners serving on extra boards or appointing members to other organizations must remember that each organization is governed by their own declarations, bylaws, or other forming documents. These forming documents control the fiduciary duties and obligations of the organization and the board members.

Elected officials, when serving as officers of an organization, are required to exercise the ordinary and reasonable care required to carry out the purposes of the organization, including confidentiality. Once appointed, the provisions of the declaration or bylaws govern the actions of all board members and their continued service and removal are a function of the organization. Conflicts that arise between the county and an organization may require the self-removal of the elected official from the extra board, so the elected official is able to fulfill the oath of office taken for public service.

When serving on these extra boards, an elected official is not acting in the capacity of their office and therefore, the county should not be held liable for the actions of a board member. There are various types of liability of a member serving on an extra board. The type of liability can be personal, limited personal, or exempt from personal liability. There can be liability for breach of fiduciary duty, breach of contract, negligent acts, failure to perform the duties of a director, willful misconduct or recklessness, failure to act or take appropriate action, etc. It is important for every elected official to understand the separation of duties between their elected office and their volunteer role on a board, and to maintain an ethical balance in the process.

NOTES

CHAPTER 7

EMPLOYMENT LAW FOR POLICY MAKERS

For more information on this chapter, take NM EDGE class
CO 131- Employment Law for Policy Makers

7.1 Responsibility/Liability for Personnel Administration

It is the Board of County Commissioners (BOCC) that will be named in any lawsuit arising from a county personnel dispute (§4-46-1 NMSA), as is often the case in any other area of county operations. Absent a delegation of authority by the BOCC thereby creating a personnel department (human resources), or otherwise delegating authority to a person to administer the county's personnel policies on behalf of the county, i.e., a County Manager, the members of the BOCC may be named and potentially found liable for county decisions and actions taken in violation of law or established policy, if such decisions adversely affect an employee.

Such liability may be in the Commissioner's official capacity, in which case the county and/or its insurance carrier pays for any adverse judgment that may be rendered against him or her. However, in the event of extraordinary misconduct, liability can be imposed against a Commissioner in their personal capacity and such personal liability shall not be paid by county or insurance funds.

Fortunately, most New Mexico counties have County Managers and Human Resources staff to administer their personnel policies. It is critical for County Commissioners individually, and for the BOCC as a whole, to permit these professionals to do their jobs.

The creation of a personnel (human resources) department will only protect Commissioners from personal liability to the extent that they allow the personnel (human resources) department to operate professionally and independently and do not personally involve themselves in personnel matters. The BOCC will still be named in any lawsuit, but any individual Commissioner who has not involved themselves in the personnel matter at issue should be able to be dismissed early in the litigation.

7.2 County Merit Systems

By law, the BOCC is responsible for setting and fairly maintaining the salaries of county employees (§4-38-19 NMSA). Often, the BOCC employs a County Manager to perform this function on its behalf. The County Manager in turn may delegate these duties to other staff, depending upon the resources available within the County.

The BOCC is authorized, but not required, to enact a merit system by ordinance for county employees (§4-37-1, 4-38-19 NMSA). Most New Mexico counties have enacted merit systems through personnel ordinances or employee policy manuals. The term merit system simply means that personnel actions will be objective, fair, and impartial and based upon the qualifications and performance of the person, not on political or other improper considerations.

Although the BOCC has considerable authority when enacting a countywide personnel policy, the other elected county officials may receive significant deference to their recommendations concerning recruitment, salary, and discipline of the employees hired in their departments.

The BOCC, under distinct authority granted by the New Mexico legislature, is expressly authorized to establish a merit system for deputies and other personnel in the County Sheriff's office (§4-41-6 NMSA). Such an ordinance would typically:

- provide for the classification and compensation of the Sheriff's personnel
- define the probationary period and other changes in employment status
- provide for work performance evaluations and the methods by which pay increases will be granted
- set the required work hours and address issues relating to overtime
- set forth the expected standards of conduct; provide methods and standards for recruitment and promotion
- and clarify the consequences for variances from the expected standards of conduct (i.e., discipline, demotion, or dismissal from employment)

However, many offices also adopt Standard Operating Procedures (SOP's) that touch on the same issues. In addition, some county employees belong to unions and, therefore, have collective bargaining agreements that also address issues such as pay and discipline. It is critical that these documents not contain conflicting provisions.

7.3 Federal and State Laws Influence Personnel Administration

Adopting and implementing appropriate and comprehensive personnel policies is good business practice. It also helps counties to comply with the many federal and state laws and corresponding rules and regulations that govern the area of public employment. This is very important because violations of employment laws and principles of nondiscrimination expose counties to significant liability.

As policy makers, every County Commissioner, and the BOCC as a whole, needs to be familiar with **each** of the following laws and principles:

- 1st, 4th, 5th, and 14th Amendments to the United States Constitution
- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act as Amended (ADAAA)
- Arbitration
- At-will Employment
- Civil Rights Act (42 U.S.C. Section 1983)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Collective Bargaining
- Criminal Offender Employment Act (NMSA 1978 § 28-2-1 et seq.)
- Drug Testing
- Due Process
- Employee Privacy
- Equal Pay Act (EPA)
- Fair Labor Standards Act (FLSA)
- Fair Pay for Women Act (NMSA 1978 § 28-23-1)
- Family and Medical Leave Act (FMLA)
- IRS Independent Contractor Test
- Health Insurance Portability and Accountability Act (HIPAA)
- HIV Testing of Job Applicants (NMSA 1978 § 28-10A-1)

- Leave Donation Policy (NMSA 1978 § 10-7-22)
- National Labor Relations Act
- New Mexico Human Rights Act (NMSA 1978 § 28-1-1 et seq.)
- New Mexico Whistleblower Protection Act (NMSA 1978 § 10-16C-1 et seq.)
- New Mexico Workers' Compensation Act
- Occupational Disease Disablement Law
- Occupational Health and Safety Act (OSHA)
- Pregnancy Discrimination Act
- Reemployment of Persons in Armed Forces (NMSA 1978 § 28-15-1)
- Title VII of the Civil Rights Act of 1964
- Tort Claims Act
- Unemployment Compensation
- Uniformed Services Employment Reemployment Rights Act (USERRA)
- Use of Breast Pump in the Workplace (NMSA 1978 § 28-20-2)
- Veterans' Rights

Employment Law is a complex specialty that is always changing. As the above list demonstrates, it is crucial for each county to adopt, maintain, and consistently enforce merit system employment practices as well as to ensure that county personnel regulations are informed by current legal principles. Your County Manager and County Attorney are key members of your administrative team charged with helping the county avoid exposure to employment liability.

7.4 The Structure of a Personnel or Human Resources

Department

Some county governments have neither a personnel department nor a person assigned to carry out personnel functions. While the ideal may be to institute a centralized personnel/human resources (HR) department for each county, this option may not be feasible for smaller New Mexico counties. Most counties employ a County Manager who at a minimum oversees the personnel functions on behalf of the Board and who, in smaller counties, may perform them.

County Managers should ensure that either they or a personnel/human resources (HR) department if there is one established, are knowledgeable in each area of federal and state law listed above, and with each general area of operation listed below.

Additionally, the County Manager should make an annual effort to provide continuing training to key employees who can in turn share the knowledge gained with others in the department. Continuing education training should be focused on those areas where the rules are continually changing, and where exposure to liability is the greatest. Training efforts also need to be focused in those areas that have been proven to be lacking, based on the county's experiences. When proper interest and resources are directed to these areas, not only will the potential liability to the county be reduced, but county operations will be more efficient and effective.

7.5 Basic Areas of Operation of a Personnel or Human Resources Department

As policy maker (with your staff as policy implementer) it is crucial to consider carefully some general areas of operation of any personnel or human resources during the drafting and implementation of a comprehensive personnel/merit system ordinance:

- **Recruitment:** Recruitment relates to the issue of attracting the best employees to compete for existing positions. A wide variety of employee benefits is usually offered and should be explained and emphasized as an additional reason to consider employment with a county. NM EDGE class CPM 134 - Recruiting the Best of the Bunch.
- **Evaluation:** Objective criteria to evaluate applicants is an integral part of any good personnel system, because competitive examinations and/or evaluation rating forms are useful in ranking the qualified candidates, and in defending hiring and promoting decisions when inevitably challenged.
- **Selection or Certification:** As a result of the recruitment and examination/evaluation processes, the best applications are certified, and selection is made. NM EDGE class CPM 135- Selection for Success: When Everybody Wins.

- **Position Classification:** The different kinds of work and job functions performed by each of the county's employees are identified, described, and then grouped into similar job classifications, by which fair compensation for the level of responsibility and scope of duties can be set. NM EDGE class CPM 232- Job Analysis, Classification, & Compensation.
- **Compensation Plan:** The compensation (pay) plan or salary schedule set by the BOCC for each position classification must be maintained in order to stay current with cost-of-living increases that naturally occur. If there is no ordinance authorizing the County Manager and Personnel Department to make annual or biannual adjustments, then these staff persons will need to bring such a proposed revised pay plan to the Board's attention at its public meetings on a regular basis. If the pay plan is not maintained, the county may not remain competitive with other agencies, and may lose employees that have been trained at the county's expense to other entities. Employee morale may suffer, and the Personnel Department and other administrative officials involved in the recruitment and hiring processes may spend inordinate amounts of time dealing with issues relating to turnover.
- **Employee Benefits:** Employee benefits, including insurance benefits and paid and unpaid leave, need to be clearly defined and communicated to employees.
- **Employee Conduct:** Policies describing employee conduct, including any restrictions on outside employment, personal appearance and drug use, also need to be clearly defined and communicated to employees. Personnel ordinances also frequently address use of county equipment as well as safety procedures.
- **Employee Training:** Training should be viewed as a necessary annual expense to be budgeted for by the County Manager, elected officials, Personnel Department, or other authorized individual county departments. The County Manager should challenge department heads to propose a training plan for each department that will maintain, enhance, and broaden the current level of skills and knowledge necessary for serving the public. An ability to prove that training was provided in certain areas will also serve to help the county defend certain types of lawsuits that are regularly brought against public entities. As we have mentioned in other areas of this handbook, the NM EDGE County College program is designed to meet the needs of all aspects of NM county

government, by providing cost-effective, accessible, and targeted educational opportunities to all county policy makers and staff.

- **Promotion:** A fair and impartial method or system for promoting competent and hard-working employees should be instituted, made known to the prospective applicants, and applied consistently. If the county chooses, preference to internal county candidates can be written into the criteria that will be considered for promotion; but if so, then it must be applied with every job opportunity, not just those where there is a preferred internal candidate.
- **Discipline and Dismissal:** The county's merit system ordinance should explain the minimum standards of conduct that will be expected from each employee, and should clarify that some consequence (i.e., discipline) will be imposed for violation of same, along with explaining the procedures by which such consequences will be imposed. If the county has not adopted a merit system ordinance, then the County Manager should ensure that the county's administrative directives (i.e., policies) are written and distributed to the employees. This will assist each supervisor in enforcing the county's policies on a consistent basis and will assist the county in defending against claims that may be predicated in part on an alleged failure to address misconduct.
NM EDGE class CPM 137- Discipline & Termination.
- **Due Process:** Classified county employees who have successfully completed their probationary period are entitled to due process any time they risk termination, demotion with loss of pay or involuntary unpaid time off from work. Due process consists of notice and an opportunity to be heard prior to the discipline being imposed, along with a post- disciplinary hearing if requested.
- **Nepotism:** It is unlawful (§10-1-10 NMSA) for any persons elected or appointed to any public office or position under the laws of the state or by virtue of any municipality (or county) thereof, to employ as clerk, deputy or assistant, in which such office or position, whose compensation is to be paid out of public funds, any persons related by consanguinity (blood) or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the officer, board, council or commission, whose duty it is to approve the bond of the person giving such employment.

The statute does not apply when the position is compensated at the rate of \$500 or less a year and does not apply to public school teachers.

County governments, including those in New Mexico, should strive to pursue a program of excellence in their services to the public. If the area of personnel or human resource administration is neglected, it will negatively impact each and every county service and program. A competent and satisfied county staff (in the sense of the morale that results from a fairly applied and enforced personnel system) will most efficiently and courteously provide the required public services.

7.6 County Government Benefits

All BOCCs should become well informed about the county's employee benefits program and the several options that can be provided to county employees and elected officials. County employers are required by law to provide group term life, medical and disability insurance to employees and eligible retirees and may contribute up to 100% of the premium in counties with fewer than 25 employees (§10-7-4.2 NMSA). Other programs which are made available to county personnel are Social Security, Public Employees Retirement Association (PERA) membership, Unemployment and Worker's Compensation.

Counties must enroll employees in the Public Employees Retirement Association (PERA) unless the employee or official qualifies to be exempted from the program (§10-11-3 NMSA). There are multiple retirement plans ranging from matching seven percent (7%) contributions by the employee and county, to higher rates for special situations. Law enforcement and fire members pay a minimum of seven percent (7%), and the county matches this with a ten percent (10%) or greater contribution.

In the 2010 special session, the Legislature severely restricted the practice of employees returning to work and receiving both a pension and a salary. Exemptions to the new return to work provisions of the law, after July 1, 2010, are for legislative session workers and elected officials only.

Every county, as an employer, is subject to the provisions of the Worker's Compensation Act and the Unemployment Compensation Act (§51-1-14 NMSA). Every county is liable to pay legitimate claims brought against it by eligible county employees.

Counties are also subject to the Whistleblower Protection Act, which prohibits public employers from retaliating against public employees who take action, object to, or refuse to participate in a matter that they believe, in good faith, to be an unlawful or improper act (§10-16C-3 NMSA).

State agencies, political subdivision and school districts shall implement policies that provide for employees who earn annual or sick leave the opportunity to donate annual or sick leave to another employee for a medical emergency (§10-7-22 NMSA) Leave Donation Policy.

7.7 Collective Bargaining in the Public Sector

The Public Employee Bargaining Act guarantees county employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the State and its political subdivisions (§10-7E-2 NMSA). Management, supervisory employees, and confidential employees are generally excluded from participation (§10-7E-13C NMSA).

If a labor organization has sought to represent a unit of county employees, and once the representation issues have been resolved (i.e., what labor organization will represent the unit and which job classifications are appropriately included in the proposed unit), each county will need to appoint a team to represent the county in negotiating sessions with the labor organization that has obtained the approval from the county's bargaining unit, the end result of which will be a collective bargaining agreement that will then govern most aspects of the public employee's relationship with the county as their employer.

Typically, a member from the county's personnel or Human Resources Department will be on the negotiating team, along with a representative from the Finance Department and the department head of the department that is organizing.

Usually, Commissioners and County Managers are not on the bargaining team for several reasons, including but not limited to:

- negotiations are very time consuming

- the County Manager or County Commissioner is usually viewed by the labor organization as having greater authority than the other members of the team, which is detrimental to the process
- personnel and finance staff are usually the most knowledgeable about the topics being negotiated
- any agreement worked out is ultimately subject to review and recommendation by the County Manager before it is placed on the BOCC's agenda for consideration and formal approval. Therefore, if the County Manager or a member of the BOCC is on the team, it is viewed as negating the efforts of the others on the team.

However, occasionally there can be a situation that presents a compelling reason to include Commissioners on the team.

The Public Employee Bargaining Act gives the BOCC the authority to adopt a local ordinance that will very closely mirror the State Act and establish a local labor relations management board. It is usually in the county's best interest to establish a local board, because it allows persons who have local knowledge and interests to make decisions that will impact county operations for a long time into the future, and further because it reduces the cost of mileage and per diem that must be paid to numerous staff members and witnesses needed for the many hearings. If a local board is not established by ordinance, all representation, election, impasse and grievance hearings will be heard by the State Public Employee Labor Relations Board in Albuquerque or Santa Fe. After June 30, 2020, no new local boards may be created, and existing Boards are subject to elimination if they fail to meet the stringent reporting and operational criteria set forth in §10-7E-10.

7.8 Salaries (§4-38-19 NMSA)

County commissioners; employing deputies and employees; employing a County Manager.

A. A Board of County Commissioners may set the salaries of such employees and deputies as it feels necessary to discharge the functions of the county, except that elected county officials have the authority to hire and recommend the salaries of persons employed by them to carry out the duties and responsibilities of the offices to which they are elected.

B. A Board of County Commissioners may employ and set the salary of a County Manager to conduct the business of the county, to serve as personnel officer, fiscal

director, budget officer, property custodian and to act generally as the administrative assistant to the board, aiding and assisting it in the exercise of its duties and responsibilities.

C. All officials, officers, deputies, and employees of the county or of an elected official of the county, shall receive their salaries or wages for services rendered on regular paydays, not more than sixteen days apart.

7.9 Liability

Elected and appointed county officials who are found liable for acts or omissions made while in the performance of their duties will likely be defended by the county or its insurance carrier, who is responsible for defending public employees and to pay damages, settlements, or judgments (§41-4-4 NMSA). However, employment lawsuits present counties with out-of-pocket costs even when the insurance carrier defends the suit. This is because counties may be responsible for front pay, back pay, or incidents of compensation or benefits due to a successful plaintiff, and such damages are not covered.

In addition, the Tort Claims Act does not protect public employees who may be found liable in their personal capacities as a result of actions (or omissions to act) outside the course and scope of their duties, or as a result of fraudulent or intentionally malicious conduct (§41-4-4 NMSA).

The New Mexico Whistleblower Protection Act creates an additional basis for liability against public officials who retaliate against employees because they disclose information about conduct they believe in good faith to be unlawful or improper (§10-16C-1 through §10-16C-6 NMSA). If the jury or judge finds that county officials engaged in intentional or malicious conduct and awards punitive damages, such damages are not paid by the insurance carrier.

Counties are required to obtain insurance coverage against tort claims and may participate in coverage provided by the New Mexico County Insurance Authority, a pool consisting of many New Mexico counties for the purpose of insuring against risk or loss.

7.10 Training Programs

The NM EDGE offers an entire track of Human Resource classes. These classes are offered on a regular basis. For the convenience of our County Members, the NM EDGE conducts classes in advance of each of the New Mexico Counties (NMC) conferences held in January and in June, as well as standalone class delivery each March and September. In addition, NM EDGE is an integral part of the NMC Better Informed Public Officials (BIPO) Conference conducted in December of election years. The NM EDGE as part of the Cooperative Extension Service has updated and provided handbooks for the use of county elected officials since 1975. This current edition also ties with the Certified County Commissioner Curriculum developed through the NM EDGE County College with the assistance of a curriculum committee comprised of your Commissioner peers from around the state of New Mexico.

Another training resource available for counties is through your statewide advocacy organization aptly named New Mexico Counties (NMC). This organization was formerly known as the New Mexico Association of Counties. NMC offers a broad array of training and educational opportunities for county elected officials and employees. NMC's loss prevention department employs full-time professionals and offers training to members of the self-insurance pools on topics such as effective supervision, sexual harassment prevention, ethics and professionalism, as well as first aid/CPR, and comprehensive safety and OSHA training. NMC also provides legal consultation on employment matters and all other areas of county government.

NMC provides extensive training and education in detention issues and offers training in consultation with the National Institute of Corrections and other national organizations. NMC has copyrighted its Risk Awareness Program, a 50-week customized training program for county government, which has resulted in a significant reduction in the number of county accidents and claims. NMC has developed accreditation programs for sheriffs' departments and adult detention facilities to improve professionalism and operations of these high-risk departments.

As mentioned earlier, an important and meaningful training opportunity for NM County Commissioners, County Elected Officials, and county staff is the NM EDGE County College program.

The NM EDGE County College is a partnership between NMC and New Mexico State University's Cooperative Extension Service, which began in 2003 with the goal of delivering quality, meaningful, and accessible training at affordable prices to county officials and their employees. In 2008, Cooperative Extension Service joined the National Certified Public Manager® Consortium, allowing New Mexico to offer the nationally recognized CPM program. County College was restructured to meet the requirements of the national CPM program allowing students to earn credits in both programs.

The NM EDGE (Education Designed to Generate Excellence in the public sector) was created in 2011 as an umbrella organization for the County College, the nationally accredited Certified Public Manager program, and a certificate in public ethics (CAPE). In addition to these core programs, the NM EDGE County College offers customized certification programs for various county offices resulting in designations such as:

- NM Certified County Commissioner
- NM Certified Public Assessing Official
- NM Certified Treasury Official
- NM Certified County Clerk
- NM Certified Jail Specialist
- NM Certified Geographic Information Systems Professional
- NM Certified Public Finance Professional
- NM Certified Public Purchasing Professional

Additional certifications are created based on educational need. A current list of all the available programs can be found at:

<https://nmedge.nmsu.edu/programs/certification.html>

Many of the training opportunities are offered in conjunction with regional NMC conferences or affiliate meetings. Participants can earn the designation as a Certified Public Official, Certified Public Supervisor, Certified Public Manager® or other customized New Mexico certifications, depending on the individual's interest.

For further information about The NM EDGE County College program, the history of this partnership, classes being offered and copies of these handbooks, visit the website at <https://nmedge.nmsu.edu/resources/handbooks.html>

CHAPTER 8

SOURCES OF PUBLIC FINANCE COUNTY TAXES & REVENUES

For more information on this chapter, take NM EDGE classes
CO 141- Sources and Uses of Public Finance, CO 272- Economic Development: Resources, Skills, & Tools, CPM 124- Grant Writing I: Federal Grants and Private Foundations, and CPM 224-Grant Writing II, CPM 146- Capital Planning and Financing

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 an *Index to Revenue Sources in New Mexico*.
https://www.nmlegis.gov/Publications/New_Mexico_State_Government/index_to_revenue_sources_2008.pdf
- Statistics are available in the annual reports of the Department of Finance & Administration's Local Government Division Budget & Finance Bureau
<https://www.tax.newmexico.gov/all-nm-taxes/property-tax-reports/>
- And in publications of the Taxation & Revenue Department
<https://www.tax.newmexico.gov/businesses/wp-content/uploads/sites/7/2020/11/FYI-C120-County-Gross-Receipts-Tax-Program-Final-Draft.pdf>

8.1 County Revenue Sources

County revenues are collected and distributed by the County Treasurer. Generally speaking, the largest components of county revenues are Property Taxes and Gross Receipts Taxes followed by Charges for Services and Licenses and Permits. The order of these varies by county. For the latest numbers, contact the Department of Finance Administration, Local Government Division, Budget and Finance Bureau.

<https://www.nmdfa.state.nm.us/local-government/budget-finance-bureau/>

8.2 Property Taxes

Property taxes usually 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 (§7-37-3 NMSA). 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 is made up of local and state assessed property, copper ad valorem, and oil and gas production. 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 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 wastewater 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.

Effective July 1, 2019, House Bill 479 removes the restricted uses of several county local option gross receipts taxes. In doing so, several restricted local option rates are repealed in favor of increasing the unrestricted countywide local option rate from 7/16 percent to 1.25 percent, the unrestricted county remainder additional local option rate would be capped at .5 percent. Several local options were not repealed and would add to the total rate imposed in each county. Certain new replacement authorizations will require a positive referendum.

The bill also removes restrictions on the use of various increments of the County Gross Receipts tax. The bill makes provision for the procedures and guarantees in situations where various local option gross receipts taxes have been used as a source of funds for retiring revenue bonds. Effective July 1, 2019, House Bill 479 retains the cap for local government local option gross receipts taxes but modifies the requirement for counties to take some local options taxes to the voters. For countywide local options, new authorizations that exceed 1.25 percent minus .25 percent, or 1.00 percent would have to go to the voters for approval. For county area (county remainder) local options, new authorizations that exceed 0.12 percent would require an authorizing election. Increments up to a total of twenty-five hundredths percent shall not go into effect until after an election

is held and a majority of the voters in the county voting in the election votes in favor of the tax. Increments approved by voters prior to the effective date of this 2019 act shall be included in the increments approved by the voters, as provided in this paragraph. Remaining increments, totaling thirty-eight hundredths percent, shall not go into effect until after an election is held and a majority of the voters in the county area voting in the election votes in favor of the tax. Increments approved by voters prior to the effective date of this 2019 act shall be included in the increments

For a description of each county local option GRT, see TRD's publication: FYI-C120 (page 2), County Gross Receipts Tax Local Options at <https://www.tax.newmexico.gov/businesses/wp-content/uploads/sites/7/2020/11/FYI-C120-County-Gross-Receipts-Tax-Program-Final-Draft.pdf>

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.

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. These funds are dependent upon

State revenue and will vary from year to year.

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

Effective July 1, 2010, the excise tax on cigarettes is \$1.66 per pack (if the cigarettes are packaged in lots of 5, 10, or 20, and \$2.075 if the cigarettes are packaged in lots of 25. (§7-12-3 NMSA). 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). All municipal police, school district police and county sheriff's departments shall be entitled to a rate of distribution of forty-five thousand dollars (\$45,000) through fiscal year 2023 and ninety-five thousand dollars (\$95,000) thereafter (§29-13-4 NMSA).

See §29-13-4 NMSA for full description of determination of needs and rate of distribution.

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 \$180,000 and \$860,000 in September of 2019, 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 on

out-of-state tax sales 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

<https://www.tax.newmexico.gov/wp-content/uploads/sites/4/2020/10/FY2020-NM-Payments-In-Lieu-Of-Taxes.pdf>

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

For more information on this Chapter, take NM EDGE classes
CPM 143- Purchasing and Procurement, CPM 145- Investing & Growing Public Funds, CPM 146-Capital
Planning and Financing, CPM 241/242- Budgeting I and II

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 New Mexico Taxation & Revenue Publication 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, as formally identified through an audit, 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 Section 9.9 - General Obligation Bonds) 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.

After each election, a newly elected official will be involved in the budget cycle within the first six-months of taking office. It is important to fully engage in this process and to ask questions of the County Manager, County Treasurer, and County Finance Director who are there to help guide you through this process.

Purposes of a Budget:

- ✓ Required by statute
- ✓ Helps to set and reach goals and objectives
- ✓ To spend according to priorities
- ✓ To ensure continuation of services
- ✓ To ensure future financial viability and stability
- ✓ To know where you stand/accountability

Components of the Budget Cycle

- Budget Call – Initial distribution of preliminary budget worksheets to elected officials and department managers.
- Formulation – The process of forecasting revenues and expenditures, projecting necessary or required capital assets, scheduling debt service payments, analyze personnel costs, assess the County’s current financial condition and analyzing economic developments.
- Budget Hearings – Public and internal meetings between BOCC and management to review and refine the budget prior to approval.
- Execution – Approval, distribution, and implementation of final BOCC/DFA/LGD approved budget. Tasks include revenue and expenditure administration, purchasing, and cash management.
- Audit – Continuous review of the budget for corrections and improvements.

DFA/LGD Recommended Budget Calendar (NMSA 1978 Section 6-6-2)

- Interim Budget Submission – **June 1** **NOTE:** NM law **does not** allow time extensions
- Final Budget Submission – **July 31**
- Quarterly Budget Submissions
9/30 due 10/31, 12/31 due 1/31, 3/31 due 4/30 & 6/30 due 7/31

DFA/LGD Recommended Budget Calendar

Task	Timing	Responsibility
1. Set up budget format for each fund, department, division and account.	January	Finance Department
2. Compare total actual expenditures from previous fiscal year to establish total expenditures and revenue for current fiscal year.	Mid-February	Finance Department
3. Prepare instructions for elected officials & department heads. Indicate any guidelines that should be considered, such as estimated gasoline increases, telephone, postage, etc.	Mid-February	Finance Department
4. Send instructions, appropriate budget page and appropriate analysis of expenditures.	First week in March	Finance Department
5. Complete or update estimates for this year and budget requests for next year.	Mid-March	Elected Officials & Department Heads
6. Attach justification for budget requests and return.	April 1	Elected Officials & Department Heads
7. Review departmental requests and update revenue estimates and proposed adjustments.	First week in April	County/City Manager & Finance Department
8. Send budget proposals to Governing Body.	Second week in April	Finance Department
9. Hold workshops with elected officials, department heads, and have hearings for public input.	Third week in April	Governing Body
10. Return budget preparation turnaround worksheet to elected official or department head for review and comment.	End of April	Finance Department
11. Finalize budget and submit to governing body for review. Estimate ending cash balance as of June 30 and reflect on recap of budget.	Early-May	Finance Department
12. Review recommended budget and approve.	May Meeting	Governing Body
13. Prepare budget for submission to DFA/LGD.	By June 1	Finance Department
14. Budget approval granted.	By July 1	DFA/LGD
15. Hold final budget hearing, submit final adjustments and financial reports as of June 30 to DFA/LGD.	By July 31	Finance Department/Governing Body/Manager
16. Load budget into accounting system.	For July processing	Finance Department
17. Review and certify budget.	By 1st Monday in September	DFA/LGD
18. Load final budget adjustment into accounting system.	September	Finance Department

DFA/LGD Recommended Budget Calendar		
Task	Timing	Responsibility
19. Certification of tax rates to counties.	September	DFA/LGD
20. Instructions to impose tax rate to county assessor.	September	Governing Body

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. Public meetings are subject to the “Open Meetings Act”. A BOCC can hold as many public meetings as necessary. However, a minimum of one (1) budget hearing must be held. 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.

DFA/LGD requires counties to keep 3/12th, 25%, of projected General Fund expenditures and 1/12th, 8.33%, of projected Road Fund expenditures **must be** maintained in the fiscal year ending cash balance on June 30. This requirement helps maintain an adequate cash flow if revenue shortfalls occur.

Budgets are submitted to DFA/LGD through the Local Government Budget Management System (LGBMS). LGBMS is the only method approved by DFA/LGD for submitting budgets, budget adjustments and quarterly reports. Further

information about LGBMS may be accessed at:

<http://nmdfa.state.nm.us/lgbms.aspx>

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.

DFA/LGD interprets Section §6-6-6 NMSA to apply to a Fund's total budget. If a Fund's total budget is not overspent, even if individual line items or department totals are overspent, then the fund is considered in compliance with Section §6-6-6 NMSA.

A budget is a continuously evolving document. Once a budget is approved, changes can, and should, be made to the budget throughout the year by means of a budget adjustment resolution (§6-6-2H NMSA). Some budget adjustments do not need approval from DFA/LGD, and some budget adjustments must be approved by DFA/LGD. All Budget Adjustment Resolutions (BARs) requiring DFA/LGD approval must be submitted using LGBMS. Below is a summary of when a budget adjustment does, and does not, require approval by DFA/LGD.

ADJUSTMENTS REQUIRING DFA/LGD APPROVAL:

- Increases and/or decreases to budgeted **revenues** (fund level)
- Increases and/or decreases to budgeted **expenditures** (fund level)

- Transfers, in or out (between funds)
- Transfers of cash, both permanent and temporary (between funds)
- Any combination of the above

ADJUSTMENTS NOT REQUIRING DFA/LGD APPROVAL:

- Transfers of budget between departments within a fund
- Transfers of budget between line items within a department within a fund

All BARs should be reviewed by the BOCC, the affected elected officials, and department managers within the county regardless of if they need to be approved by DFA/LGD.

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).

During every election cycle it shall be unlawful (§6-6-9 NMSA) for the Board of County Commissioners, the county clerk or any other county official authorized to make purchases to disburse, expend or obligate any sum in excess of fifty per centum of the approved budget for the fiscal year during which the terms of office of any such official will expire. Simply stated, each incoming elected official has the right to receive 50% of the approved annual budget on January 1. Exceptions are elections expenses, record books, necessary office equipment, and fuel as outlined in Sections §6-6-7 NMSA. In the event it may be deemed advisable or advantageous to contract for fuel for the entire year, proper precaution must be exercised that a sufficient supply of fuel will be on hand and available for the needs of the incoming officials, or an amount equal to the sum by which one-half the budget item has been exceeded.

Any member of any board of county commissioners, or of any local school board, or of any governing board or council of any municipality, or any other official who

shall violate the provisions of Sections 6-6-7 through ~~6-6-10~~ NMSA 1978 [~~6-6-7, 6-6-9, 6-6-10~~ NMSA 1978] shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six months or both [and] upon conviction under the section the position shall be declared vacant. (§6-6-10 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 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). Every county shall file a financial report on a quarterly basis with the local government division through the Local Government Budget Management System (LGBMS). 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

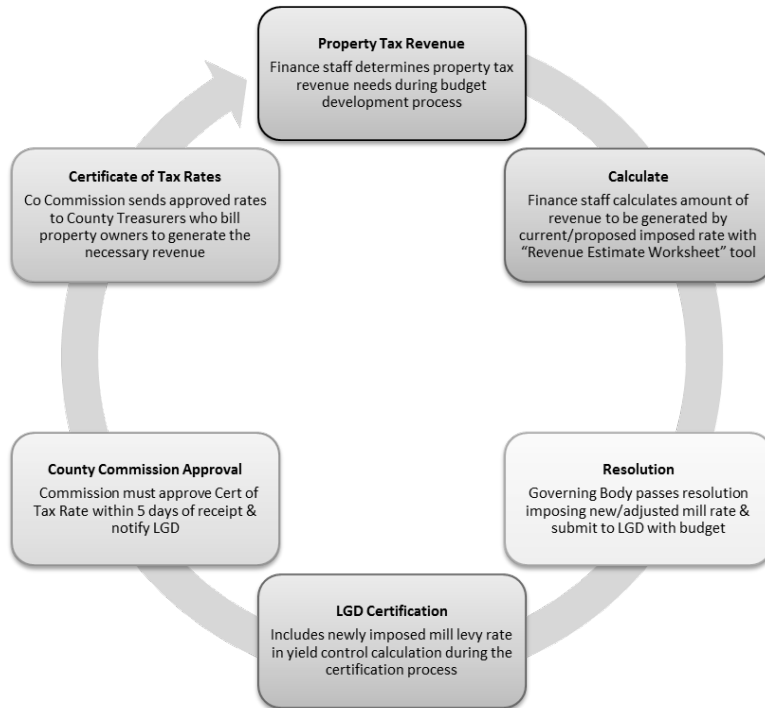
The law provides that the BOCC may establish a Local Government Permanent Fund and a Local Government Income Fund (§6-6-19 NMSA).

- 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 Related to Budget Process



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). As of January 2014, the Legislature has mandated that, except in limited circumstances, the Taxation and Revenue Department offer real property for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent. (§7-38-65 NMSA).

In 2018, legislation passed to assist with delinquent accounts that were on the tax roll for more than ten years. The law permits for a "right of first offer" to permit pueblos, land grants, and non-taxable entities such as counties, to have the right of

first offer on land they may have previously owned before placing it through the auction process. It defines “abandoned real property” to be a part of a subdivision with a minimum of 5,000 delinquent vacant lots; part of a subdivision plotted on or before 1980; and the property taxes, penalty and interest have not been paid in at least ten years. It allows for real value to be taxed and collected instead of an inflated tax rate due to taxes that will never be resolved by permitting the department to “undergo exclusive good faith negotiations with the rights holder before offering abandoned real property for sale to the public.” This is the first legislation that permits for an online platform to sell abandoned delinquent accounts after all negotiations and public auction have occurred. (7-38-67.1 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. No monies derived from general obligation bonds shall be used for maintaining existing buildings and, if so, such bonds shall be 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.

General Obligation Bonds are normally paid through an increase in property tax.

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, which was broadened in 2015, 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 (*an example of Dona Ana County's Industrial Revenue Bonds ordinance and policy are provided in the **Supplemental Reference Documents** section of this handbook*).

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
- industry for manufacturing, processing, or assembling of agricultural or manufactured products
- a nonprofit engaged in healthcare services
- mass transit
- 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 13-1-199 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.

The State legislature has mandated that every public body employ a Chief Procurement Officer (CPO) to manage the purchases of that public body. This requirement may be met by your County Manager becoming certified or by your County Manager sending someone from your purchasing department, such as the Purchasing Manager, to become certified. It is prudent to have a backup in this role. Certification is managed through the State Purchasing Division (see their website.) and certification classes are offered through NM EDGE. The NM EDGE has a public purchasing curriculum for those who purchase often, as well as overview classes of public purchasing for policy makers.

Every time a chief procurement officer is hired, the county is required to provide to the state purchasing agent the name of the county's chief procurement officer and information identifying the county's central purchasing office, if applicable. The chief procurement officer is required to complete an initial certification and recertification every two years, and only a certified chief procurement officer may:

1. make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;
2. issue purchase orders and authorize small purchases pursuant to the Procurement Code; and

3. approve procurement pursuant to the Procurement Code (§13-1-95.2 NMSA).

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 (§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 \$60,000 (§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 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 (§13-6-2 NMSA).

9.12 Resident Preference

To receive a resident business or resident veteran business preference pursuant to §13-1-21 NMSA 1978 or a resident contractor or resident veteran contractor preference pursuant to §13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate, valid resident veteran business certificate, valid resident contractor certificate or valid resident veteran contractor certificate issued by the taxation and revenue department.

CHAPTER 10

COUNTY REAL PROPERTY & JOINT PROJECTS

For more information on this chapter, in part, take NM EDGE classes
CPM 143- Purchasing & Procurement, CPM 212- Contractual Obligations between Governments

The county may purchase real and personal property for its use. The Board of County Commissioners (BOCC) must designate a Central Purchasing Office, which is responsible for all county purchasing, and for keeping records of all county inventories. The Procurement Code is that set of laws and regulations that applies to expenditures by state agencies and local public bodies for the procurement of items of tangible personal property, services, and construction (§13-1-28 through §13-1-199 NMSA).

The Chief Procurement Officer, as purchasing agent, serves an important function in assisting the county with the acquisition, transfer, and disposal processes for real and personal property. Although real estate transactions are not governed by the Procurement Code, the principals of the procurement process can be seen in the statutes which do apply to the purchase, lease, and conveyance of real property.

- All accounts payable vouchers require BOCC approval before warrants are issued. However, to take advantage of discounts or to ensure the timely payment of utility bills, the BOCC may authorize the County Clerk or County Manager to approve vouchers for payment prior to the Commission meeting.

The BOCC is also empowered to make all contracts and to exercise its corporate powers (§4-38-1 NMSA). Any real or personal property that is transferred to any county becomes the property of that county (§4-36-4 NMSA). The BOCC has the power to make, at any session, orders deemed necessary concerning county property (§4-38-13 NMSA). The BOCC is authorized, and has a duty to build and keep in good repair all county buildings and to otherwise manage county property in the best interest of the county (§4-38-18 NMSA).

10.1 Unfunded Housing Mandates

Unfunded mandates require the counties to provide facilities for the State without funding from the State, and the utilities and other expenses required increase from year to year. These mandates do not violate the Unfunded Mandate Clause of the New Mexico

Constitution (Article X Section 8), as that clause only prevents State Agencies from issuing a rule or regulation without the State providing sufficient new funding or a means of new funding to the county to pay the cost of the mandated activity. The Legislature, by statute, is not prevented from issuing mandates funded or unfunded.

Examples of such mandates are:

- The requirement to provide adequate quarters for the District Attorney and the District Courts
 - Which could also include juvenile probation services
 - (§34-6-24 and §36-1-8.1 NMSA)
- The requirement to provide suitable quarters for the County Health Department and the District Health Officer
 - Including office space for all involved, clinic space for patients and waiting area for patients, families, and friends
 - (§24-4-2 NMSA).

10.2 Disposal of Property

See relevant statutory references for guidance:

- For the disposal, sale or lease of both tangible personal property and real property (§4-38-13, 13-6-1 et. seq. NMSA)
- For conveyance to municipalities and state agencies (§4-47-2 NMSA).
- For leasing to non-profit organizations (§4-38-13.2 NMSA) along with the anti-donation clause of the New Mexico Constitution at Article IX section 14.

The BOCC may also sell excess county buildings and/or land to private persons at a public auction, after appraisal and application to, and approval by, the District Court. The property cannot be sold for less than two-thirds of its appraised value (§4-47-4 NMSA). For certain transactions, approval of the State Board of Finance or other appropriate approval agency must be sought and obtained (See also §13-6-2, 13-6-2.1 NMSA).

The BOCC may also dispose of any item of tangible personal property including obsolete, worn-out or unusable property, and delete the item from the public inventory, by following the procedures and processes as listed (§13-6-1 NMSA).

Some of the requirements include:

- a specific finding by the BOCC that the item of property is valued for resale at five thousand dollars (\$5,000) or less
- a finding that the item is worn-out, unusable, or obsolete such that it is no longer economical or safe for continued use by the county
- the BOCC must designate a committee to approve and oversee the property disposition
- the BOCC gives notification to the State Auditor and other appropriate approval authorities
- no property may be donated to an employee or relative of an employee of the county
- however, an employee of the county may participate and bid for public property at a public auction.

10.3 Insurance

It is the responsibility of the BOCC to insure all county buildings and facilities against loss and damage. Public buildings must be covered for at least 80% of their replacement cost or cash value (§13-5-3 NMSA). The county can buy insurance from a private company as long as the insurance company complies with the laws of New Mexico. The county can also set a self-insured reserve for the amount required or use a combination of private insurance and self-insured reserves. The BOCC may also authorize insurance programs to protect against loss or damage to tangible personal property.

Through a Joint Powers Agreement, the New Mexico Counties (FKA New Mexico Association of Counties) created a self-insurance pool (formerly separate pools) available to counties for covering their obligations regarding property, errors, and omissions; workers' compensation; law enforcement; etc. This self-insurance pool, operating as the New Mexico County Insurance Authority, is not an insurance company though they meet all the qualifications by pooling multiple counties together to establish the needed reserves for self-insurance.

A crucial area of potential liability for counties is that of ensuring that all county buildings and other buildings leased or otherwise used by the county for public functions are accessible to all members of the public, including those in wheelchairs and those with other disabilities such as hearing and seeing impaired individuals.

- The BOCC should inquire about the status of equal public accessibility within their county; all counties must be in compliance with the specific standards set forth in the Americans with Disabilities Act, which imposes stiff penalties for noncompliance.

10.4 Joint Powers Agreements/Joint Projects

The Joint Powers Agreements Act (§11-1-1 et. seq. NMSA) recognizes that counties and other public entities may enter into agreements with each other to jointly exercise authority common to both of them; such agreements must be in the form proscribed by, and then approved by Department of Finance Administration/Local Government Division (DFA/LGD). Other uses may include regional emergency communications authorities and regional solid waste authorities, both of which can be composed of multiple counties, municipalities, and state agencies.

A county and a municipality may, as a “Joint Project”, jointly acquire buildings and sites either wholly within the county or the city (§5-5-4 NMSA). Such action requires a county resolution passed by two-thirds vote and a municipal ordinance passed by at least three-fifths vote.

- Examples of joint projects are regional jails, libraries, museums, communications offices, and administrative buildings (§5-5-3 NMSA).

10.5 Miscellaneous

The BOCC may use its road or heavy equipment to remove snow from roads within its territory that are used for school bus routes (§22-16-10 NMSA). This does not create the ability to remove snow from driveways or private property to get to the designated school bus route (NM Constitution, Art. IX, Sec. 14).

The BOCC (except in the five Class A counties) may contract for the use of county equipment or property for the benefit of community ditch organizations, mutual domestic water associations, or other public entities providing services to significant groups of county residents (§4-38-13.1(A) NMSA).

The BOCC may contract for the use of county buildings for the benefit of nonprofit organizations demonstrating a consistent history of service to sick and indigent persons in the county, which services could legally be expected to be provided by a governmental entity, at rates these organizations can be reasonably expected to pay while maintaining their full-service commitment to their respective constituencies. Such contracts must set forth the respective value of services being provided to county residents and the relative value of the use of property provided by the county (§4-38-13.1(B) NMSA), along with the Anti-Donation Clause of the New Mexico Constitution (Art. IX, Sec. 14).

CHAPTER 11

COUNTY SERVICES & FUNCTIONS: ROADS, HIGHWAYS, BRIDGES, AND AIRPORTS

For more information on this chapter, take NM EDGE class
CO 102- County Services and Functions Part I: Public Works and Land Use

The Board of County Commissioners (BOCC) is responsible for the general control and management of all roads, highways and bridges within its jurisdiction. Implicit within the county's obligation to maintain and keep in repair all public highways, except those owned and operated by private corporations and those highways within the corporate limits of any incorporated city or town, is the recognition of the county's authority and responsibility to develop county road standards. (§67-2-2 NMSA).

Exceptions include those federal roads, state roads, and highways traversing the county, including the interstates, which are maintained by the New Mexico Department of Transportation (NMDOT) (and sometimes by the county, upon request and a written agreement between the State and the County).

A more troublesome exception are those private easements and rights of way traveled by the public, but which have not been dedicated to, nor accepted by, the county. Both dedication and acceptance is required before the county may accept a road for use as a public road. Counties typically do not accept every piece of land donated or dedicated to them because of the great potential for accepting an easement that is not capable of being built to industry standards, or one for which the county does not have funding to bring it up to such standards.

11.1 General Laws Relating to County Roads

- As a general rule, the county is responsible for all roads within the jurisdiction UNLESS there is no right to ownership or control
- NMDOT maintains most federal and state roads, including the interstate highways
- The BOCC is authorized to establish, alter, or discontinue any road running through precincts in its county (§4-38-24 NMSA).

11.2 Local Government Road Fund (LGRF)

- ❑ The Department of Transportation administers the Local Government Road Fund (LGRF) and receives all income from the investment of the LGRF (§67-3-28.2 NMSA).
- ❑ It transfers funds from the State Road Fund to the LGRF to facilitate cash flow for funding of local road projects.
- ❑ LGRF requires a 25% county match of any entitlement amount given to county projects
- ❑ In addition, NMDOT distributes up to \$1 million from LGRF to local governments demonstrating financial hardship
- ❑ NMDOT may also donate surplus property/materials to local governments unable to purchase such items

11.3 Transportation Project Fund (TPF)

Since 2019, the Legislature has appropriated more than \$1.3 billion to the Department of Transportation for statewide investments in transportation infrastructure to improve state roads, support local government transportation needs, and make other investments in transportation projects. These investments have been in addition to the department's operating budget, which grew from \$886 million in FY19 to \$1.2 billion in FY24

11.4 Financial Hardship Qualification

In 2009, the legislature authorized NMDOT to distribute monies, not to exceed \$1 million, from the LGRF to municipalities and counties that demonstrate financial hardship in meeting the local match requirements. Qualification for this money requires provision of a financial hardship qualification certificate issued by DFA.

11.5 Surplus Personal Property Donation

The 2009 legislature also authorized NMDOT to donate available surplus personal property or material to a local government to repair damage to public roads, highways and bridges, if the local government can certify that they do not have funds available to purchase such materials.

11.6 County Road Fund

The account for roads and bridges is referred to as the County Road Fund (§67-3-28.2 NMSA). This fund is generated primarily from property taxes and fuel taxes returned from the State Treasury. The U.S. Department of Agriculture may allocate monies to some county road funds (§6-11-2 NMSA). The transfer of monies from the County Road Fund to any other county fund is unlawful (§67-4-11 NMSA). Cash transfers can be made from the County's General Fund to the road fund, with prior approval from both the BOCC and the DFA/LGD.

Whenever there are not sufficient funds available in the state road fund for maintenance of all state highway mileage in any county, the State Transportation Commission shall certify, to the BOCC of the impacted county, the sections of highway mileage that it is unable to maintain at the State's expense, and these sections shall thereafter be maintained at the expense of the county until such time as there are state funds available to maintain them (§67-4-13 NMSA).

11.7 Grants and Awards

Often, grants and awards will be offered for the construction and maintenance of highways and county roads. A primary method for transferring state funds to the counties is the local government's road fund, which is administered by the NMDOT. It funds the very popular use of cooperative agreements. Counties that provide a contributing match of twenty-five percent (25%) are given preference in obtaining cooperative agreements (§67-3-28.2 NMSA). Hardship waivers may be authorized annually by the NMDOT to cover the county's match. The local government's road fund also provides funds for school bus routes and for prioritized construction and maintenance projects. Some counties receive as much as \$500,000 each year for such prioritized projects (§67-3-28.2 NMSA).

11.8 Reporting of County Maintained Road Mileages

By April 1 of every year, the BOCC must file a report with the NMDOT affirming the total mileage of public roads maintained by the county.

Each road shall be identified by name, route, and location. If a county has not

made the required mileage certification, the Secretary of Transportation shall estimate the mileage maintained by that county or counties for the purpose of making distribution to all counties. The amount calculated to be distributed each month to any county or counties not certifying mileages shall be reduced by one-third each month for that fiscal year, and that amount not distributed to any county or counties failing to certify shall be distributed equally to all counties which have certified mileages (§67-3-28.3 NMSA).

The secretary of Transportation shall determine and certify on or before July 1, 1987 and on or before July 1 of each subsequent year the total miles of public roads maintained by each county pursuant to §66-6-23 NMSA 1978 (see §7-1-6.26. County government road fund; distribution). §67-3-28.3 NMSA 1978, as amended, requires all counties to certify and submit their maintained miles by April 1 of each year. The County Manager's office will have current Certified County Road Mileage.

11.9 County Road Superintendent

The BOCC may employ a County Road Superintendent to be in charge of construction and maintenance of county roads and bridges (§67-4-3 NMSA). Depending upon the merit system in place, the position may be an at-will appointment by the BOCC, as is the County Manager, or may be a department director position comparable to the other department directors in the county. In counties that adopt the Road Superintendent's plan, expenditures from the road fund may be made only on itemized bills or estimates rendered and approved by the County Road Superintendent, subject to the requirements of the Procurement Code (§67-4-6 NMSA).

11.10 State Transportation Commission Plan

The BOCC, if it desires, may contract with the State Transportation Commission to perform county road work. In that event, construction and maintenance of county roads and bridges, and the corresponding bids and purchasing of equipment, materials and supplies, are done under the direction and control of the State Transportation Commission and paid for by the county. Furthermore, if a county has inadequate equipment to perform needed road maintenance or construction, and if the State has road equipment in the

vicinity, and upon request of the BOCC, the State Transportation Commission may furnish equipment, machinery and operators needed to grade and maintain county roads (§67-4-4 NMSA).

In counties that adopt the State Transportation Commission plan, expenditures from the road fund will be made only on bills or estimates approved by the State Transportation Engineer, or their assistant, by warrants drawn by the BOCC (§67-4-7 NMSA). While this plan is available to counties in New Mexico, the NMDOT discourages its use.

11.11 District Road Supervisor Plan

The BOCC may divide the county into road districts composed of two or more adjoining school districts, and then appoint a District Road Supervisor. The District Road Supervisor directs and controls the construction and maintenance of county roads and bridges in his or her district. Subject to the approval of the BOCC, the District Road Supervisor may purchase road equipment, materials and supplies (§67-4-5 NMSA). In counties that adopt this plan, expenditures from the road fund may be made only on itemized bills or estimates rendered and approved by the District Road Supervisor. Final approval from the BOCC is required for the road work and supplies or materials that are purchased and received, and such purchases are subject to the provisions of the Procurement Code (§67-4-8 NMSA).

11.12 Performance Bonds

A performance bond is held to ensure that, in the event a contractor cannot or does not complete the work in accordance with bid specifications and/or the contract, there are insurance monies available to allow the county to complete the work without the contractor. When the county enters into an agreement with a contractor for any public work (roads and bridges included) that exceeds \$25,000, the contractor must furnish a performance bond. For contracts less than \$25,000, the performance bond requirement may be waived (§13-4-18 NMSA); each project poses a unique set of risks and therefore each decision to waive should be based on the facts relating to each project. The requirement for a performance bond and the amount of the bond should be contained in the bid packet to put bidders on notice.

11.13 Construction Contracts

The awarding and execution of contracts for construction of county roads, bridges, or other public works in the county, can only be made under authority of the BOCC (§13-1-100 NMSA) and subject to the requirements of the Procurement Code and public works contract laws. The BOCC may also enter into cooperative agreements with the U. S. Secretary of Agriculture for the survey, construction, and maintenance of roads and trails upon federal property (§67-4-17 NMSA).

11.14 Discontinuance of a Road

If any road or part of a road is not needed, or the cost of repairs is excessive, the BOCC may appoint, at a regular meeting, three freeholders from the county to serve as viewers of the road. The viewers will report to the BOCC at its next regular meeting whether the road is any longer needed, or whether the burdens of continued maintenance outweigh the benefits. If a discontinuance of the road is recommended, the BOCC may order it vacated. If the road being vacated runs between two counties, the BOCCs of both counties must agree before it can be vacated (§67-5-4 NMSA).

If a county wishes to abandon or vacate property or property rights acquired by purchase or condemnation for public roads, the BOCC may simply file a formal and written declaration of abandonment or vacation (§67-2-6 NMSA). The county has the right to abandon the property regardless of its previous intent to construct a road, or the intent of the Legislature to assist with building a road.

11.15 Creation of New Roads and Alteration of Old Roads

The BOCC may establish township and section lines as roads (§67-5-1 NMSA) and may establish the same as rights-of-way for gas lines or drainage ditches (§67-5-6 NMSA). Fair compensation must be paid when a township or section line is taken from private property for a public right-of-way (§67-5-1 NMSA). If a proposed highway lies on the boundary between two counties, a petition made to the BOCC of each county will cause each board to appoint three viewers. The viewers will meet at a time and place named by the BOCC. They will first mark out the road. Next, they will report to the BOCC in their

respective counties. The boards must then concur to establish the new road. If the new road is to be established, each county must open and maintain its portion of the road. If the BOCC cannot agree upon the apportionment, then the matter is referred to three freeholders whose duty it is to apportion the road (§67-5-8 NMSA).

The BOCC, when petitioned by at least ten freeholders residing within two miles of a road sought to be altered, widened, changed or laid out, can order the establishment of a new road or the alteration of an existing one. The petition must set forth a description of the road to be altered and in case of a new road, must identify the point of termination (§67-5-5 NMSA). If the BOCC receives a request under this statute, the statute requires it to appoint three freeholders to view and mark out the road. §67-5-7 NMSA requires the petitioner to post a bond or deposit with County Clerk for viewing costs. The BOCC must set the time for viewing and publicize this fact at least five days prior to the viewing (§67-5-9 NMSA). The County Clerk issues a warrant ordering the viewers to look at and mark out the road, assess the damages and benefits accruing to the owner of any lands over which the proposed road will pass, and assess the cost of opening the road (§67-5-10 NMSA). Road viewers shall be paid no more than \$5.00 per day for their services (§67-5-14 NMSA). The BOCC, at its regular meeting, considers the viewers' report and all objections, and determines whether the road is to be established and opened for travel.

If the BOCC decides to open a road, the viewers' report, the plat and the surveyor's report must be recorded in the office of the County Clerk (§67-5-16 NMSA). Following these steps, including the payment of compensation to damaged owners, the BOCC opens the road for travel. Notices must be posted at three public places along the line of the road. No road can be ordered opened through fields of growing crops or along a line where growing crops will be exposed to stock until the owner has sufficient time to harvest and take care of the crops (§67-5-17 NMSA).

It should be noted that the above described laws were first enacted in the early 1900's, and as a result of the tremendous population growth, scarcity of resources in New Mexico, demand for public services, and the U.S.

Constitutional requirement to treat all persons equally under the law, it is difficult for counties to oblige equally all persons who might request that the county turn their private easement into a county maintained road. Therefore, a policy containing objective criteria by which the BOCC may consider and prioritize each such request is advisable.

Some factors the BOCC may wish to include in such a policy would be:

- the number of residents benefited by the proposed new road
- the amount of work, materials and money involved to bring the private easement up to county standards so as to not result in liability to the county for a negligently designed road
- the amount to maintain the new road going forward
- the existence of health or safety issues
- other pending necessary maintenance and repair requests to fix existing county roads
- the chronological order of receipt of the request for a new road compared to other similar requests for new roads
- and whether or not there are property ownership/access issues that might impede acquiring clear title to perform the work, should the request be granted.

11.16 Rights-of-Way

Unless the BOCC decides otherwise, all public rights-of-way must be 60 feet in width (§67-5-2 NMSA). Necessary rights-of-way may be acquired by donation, through negotiation with property owners, or by eminent domain and condemnation (§67-4-12 NMSA). Counties may also acquire rights-of-way or permission for rights-of-way through federal and state lands. The Forest Service, Bureau of Land Management, and State Land Office control most public land and have differing regulations concerning rights-of-way acquisition by counties. Each agency should be contacted and involved early in the road planning process.

Finally, the New Mexico Subdivision Act authorizes the BOCC to require

developers in any subdivided area to provide rights-of-way with widths conforming to the county's subdivision ordinance. BOCC approval is required before any new subdivision may be developed and before any new subdivision road is constructed or accepted for maintenance (§47-6-5 NMSA).

11.17 Road Maintenance in Subdivisions

The BOCC may, by resolution, require streets within existing subdivisions to be maintained by the persons owning property adjacent to the streets requiring maintenance (§67-4-20 NMSA). The county is not statutorily required to accept roads within a subdivision for maintenance. Upon full conformance with the county road construction standards, the roads within a subdivision may be accepted for maintenance by the county (§47-6-5 NMSA). If, however, the county accepts a road or the roads within a subdivision for maintenance and the subdivision plat is filed with the County Clerk, then road maintenance becomes the responsibility of the county (§47-6-5 NMSA).

11.18 Airports

The BOCC may establish airports (§4-38-31 NMSA). The BOCC, through purchase, condemnation, gift or lease, may acquire land for use as an airport, or the land may be acquired under the power of eminent domain (§4-38-32 NMSA). Furthermore, the BOCC may establish, construct, own, lease, control, equip, improve, maintain, and operate the airport. Finally, the BOCC can lease or grant this use to others (§4-38-31 NMSA).

The BOCC can join with any municipality in the county in a joint operation of publicly owned or operated airports (§4-38-34 NMSA). The joint powers agreement also permits such cooperation between that county and municipality (§11-1-3 NMSA).

The BOCC may also seek financial aid from the federal government for the operation of an airport. Donations given to aid the airports may also be accepted (§4-38-35 NMSA). Revenue bonds (§4-62-1 NMSA) and general obligation bonds (§4-49-6 NMSA) may be issued by the BOCC for the purpose of constructing and developing an airport subject to the requirements of the respective statutes.

11.19 Operation on Streets or Highways; Prohibited Areas

- A. A person shall not operate an off-highway motor vehicle on any:
 - 1. limited access highway or freeway at any time
 - 2. or on a paved street or highway, except as provided in Subsection B, C or D of this section of the statute (citation reference unavailable).

- B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

- C. If authorized by ordinance or resolution of a local authority or the state transportation commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing entity if:
 - 1. the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act
 - 2. the vehicle has brakes, mirrors, and mufflers
 - 3. the operator has a valid driver's license, instruction permit, or provisional license and an off-highway motor vehicle safety permit
 - 4. the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act
 - 5. the operator of the vehicle is wearing eye protection and a safety helmet that comply with the Off-Highway Motor Vehicle Act.

- D. By ordinance or resolution, a local authority or state transportation commission may establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways pursuant to Subsection C of this section of the statute (exact citation reference unavailable).

- E. A person shall not operate an off-highway motor vehicle on state game

commission-owned, -controlled or -administered land except as specifically allowed pursuant to §17-6-3 NMSA.

- F. A person shall not operate an off-highway motor vehicle on land owned, controlled, or administered by the State parks division of the Energy, Minerals, and Natural Resources Department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the Secretary of Energy, Minerals and Natural Resources. Note: Several sections of this Chapter/article have been repealed, so be sure to double check the statutes and the Administrative Code for EMNRD.

- G. Unless authorized, a person shall not:
 - 1. remove, deface, or destroy any official sign installed by a federal, state, local or private land management agency
 - 2. install any off-highway motor vehicle-related sign.

NOTES

CHAPTER 12

COUNTY SERVICES & FUNCTIONS: PUBLIC WORKS AND OTHER CONCERNS

For more information on this chapter, take NM EDGE class
CO 102- County Services & Functions Part I: Public Works & Land Use

Every county government, through its Board of County Commissioners (BOCC), receives requests to meet a variety of needs and to provide a number of services to its citizens. Some that may have not been addressed in earlier chapters are discussed below.

12.1 Playgrounds and Recreational Equipment

Counties may equip, maintain, operate, and supervise playground and recreational facilities, as well as acquire land and buildings for recreational purposes (§5-4-1 NMSA). The county may establish joint recreational systems with cities, other counties, or school boards (§5-4-5 NMSA). Lands and/or buildings, either owned or leased by the county, may be used for recreation. BOCCs are empowered to obtain lands or buildings and to make appropriations from the County General Fund for this purpose (§5-4-2 NMSA). Counties are also empowered to own, acquire, maintain, operate, and sell county fairs and fairgrounds (§16-6-31 NMSA).

By resolution or ordinance, the BOCC can grant the power to provide playgrounds, recreation centers, zoos, and other recreational facilities to a school board, park board, or a playground and recreation board (§5-4-3 NMSA). Grants or donations made to the county for recreational purposes must be approved by the BOCC (§5-4-6 NMSA) and shall be deposited into the county Treasury under an account for said recreational facility and expended in the same manner as other county funds (§5-4-7 NMSA). Revenue bonds may be issued to acquire, construct, repair, extend, or improve recreational facilities (§5-4-10 NMSA).

12.2 Licensing

The general authority to provide, by ordinance, for the health, safety, welfare, prosperity, and morals of the community grants the BOCC a broad range of options to set policies affecting and regulating special events and businesses within the county

and outside the limits of any incorporated municipality (§4-37-1 NMSA).

Through separate and specific statutory authority granted by the Legislature, counties may impose liquor license taxes upon those persons holding state liquor licenses outside of municipalities. The maximum annual fee is \$250, and it must be imposed on an annual basis by the BOCC before June 1. The payment may be allowed to be made in two installments (§7-24-2 NMSA).

Counties may also impose business license fees upon those persons conducting business outside of municipalities, which may not exceed \$35 (§3-38-3 NMSA). Additionally, counties may impose a business registration fee, which fee must be set by the BOCC, and the fee shall be reasonably related to the regulation of the business (§3-38-1 NMSA).

12.3 Artesian Conservancy Districts

All artesian waters declared to be public waters are under the supervision and control of the State Engineer (§72-13-2 NMSA). However, in an area where an Artesian Conservancy District has not been organized, the BOCC may employ, with the approval of the State Engineer, an Artesian Well Supervisor. The salaries of the Artesian Well Supervisor and any assistants are fixed by the BOCC, and a special tax can be levied to pay these salaries (§72-13-3 NMSA).

12.4 Libraries

A county may issue general obligation bonds for the purpose of constructing a library and/or purchasing books or other library resources (§4-49-6 NMSA). In addition, the BOCC may authorize issuance of revenue bonds for constructing, equipping, or improving libraries (§4-62-1 NMSA). A county may contract with other counties to form a regional library or to allow mutual use of library services upon approval of the State Librarian (§4-36-2 NMSA).

12.5 Detention Facilities

The law provides that county detention centers may be operated and maintained by the County Sheriff, an independent contractor hired by the BOCC, or by a professional Detention Administrator employed by the county (§33-3-1(A) NMSA). The BOCC is

responsible for determining who administers the detention center and for the appropriation of funds to operate the center (§4-44-19 NMSA).

What sort of detention services must the county provide?

- Keep detainees in custody
- Provide safe and secure operation for inmates and staff
- Attend to inmate health needs
- Attend to inmate mental health needs
- Attend to inmate hygiene needs
- Accommodate religious beliefs

The Detention Administrator submits proposed rules and regulations for the punishment of persons violating the rules of the detention center to the BOCC for approval (§33-3-8 NMSA). Counties may enter into agreements with other counties, municipalities, or independent contractors for the creation and operation of regional detention centers (§33-3-2 NMSA).

Agreements with a private independent contractor for the operation of a jail or for the incarceration of prisoners shall be made for a period of up to five years, but those agreements may allow for additional one-year, two-year, or three-year extensions not to exceed a total of six extensions. Agreements binding on future governing bodies for construction, purchase, or lease of a jail facility for not more than fifteen years are authorized.

Administrators and detention employees retain the power of Peace Officers on the detention center premises and when transporting detainees, regardless of who administers the center (§33-3-28 NMSA). The Local Government Corrections Fund may be used for operations, administrator training, construction and maintenance of county detention centers (§33-3-25 NMSA). See subsequent entries on the Fund in this chapter.

In 2011, the Legislature changed the jail inspection requirements. The BOCC is now required to conduct an annual inspection of its detention center (§33-3-4 NMSA). This inspection is to consist of a careful examination of the overall conditions at the facility. A restricted housing report must be filed quarterly by presenting to the BOCC as well as

submitting to the Legislative Council Service Library (§33-16-5 and §33-16-7 NMSA).

Because detention centers are necessary public buildings (§4-49-6 NMSA), the BOCC may issue general obligation bonds for the purpose of building, remodeling, and adding to detention centers (§4-49-1 through 4-49-21 NMSA). Revenue bonds may be utilized for the same purposes (§4-62-2 NMSA).

Six Major Budget Categories for a Detention Center

1. Personnel Services
2. Medical and Mental Health Services
3. Utilities
4. Food Services
5. Other Operations
6. Capital Outlay

In 2007, the legislature enacted the County Detention Fund Reimbursement Act (§33-3B-1 et. seq. NMSA) and funded the Act at \$5,000,000 as a line item in the DFA budget. Distribution of the funds is based on an annual count by the New Mexico Sentencing Commission of three specific categories of offenders housed in county jails. Funding for the Act has been significantly reduced in recent years. Restoration of funding is an ongoing legislative issue for the New Mexico Counties.

- **Do not underestimate the value of the lives of the people in your custody**

12.6 Local Government Corrections Fund

The Local Government Corrections Fund helps counties finance detention center operations (§33-3-25 NMSA). These funds are appropriated to the Administrative Office of the Courts for quarterly distribution to counties for the construction and operation of detention facilities.

12.7 Fire Districts

Counties may establish, by ordinance, those regulations necessary for fire prevention (§3-17-6 and §3-18-11 NMSA). Independent fire districts may be established. Fire District Revenue Bonds may be issued upon two-thirds vote of the BOCC, after

designation of the source of pledged revenue (§5-7-6 NMSA). An independent fire district is entitled to share in the distribution of monies from the *Fire Protection Fund*. (See, §§ 59A-53-1 through 59A-53-19). The amount is determined by the insurance rating and the number of fire stations. The Fire District may spend money from this fund for the maintenance of the department, for the purchase and maintenance of equipment, or for sending firefighters to fire training school (§§59A-53-7 and 8 NMSA). The BOCC, upon approval by the voters, may levy a one-eighth or one-quarter of one percent gross receipts tax to support the operation of fire districts. A Volunteer Firefighter's Retirement Program has been established to provide retirement benefits to long time voluntary firefighters (§10-11A-1 et. seq. NMSA).

One county's fire district, with the approval of the BOCC, may service another district in an adjacent county pursuant to a mutual aid agreement.

12.8 Television Translator Stations

Any county is authorized to use its General Fund to acquire, build, improve, or maintain TV translator stations (§5-2-1 NMSA). These funds, however, may not be used for translator stations licensed or maintained by a commercial TV station (§5-2-2 NMSA).

12.9 County Special District Commissions

State law provides for the occasional use of a Special District Commission in each county that will review proposals to create, dissolve, or merge special districts within the county for the purpose of constructing and furnishing any urban-oriented service which another political subdivision is authorized to perform (§4-53-4 NMSA).

12.10 Cooperative Extension Service

The Cooperative Extension Service (CES), in the College of Agricultural, Consumer and Environmental Sciences at NMSU, is the non-formal, educational component of New Mexico State University, the State's Land-Grant University. The CES mission is to provide the citizens of New Mexico with practical, research-based knowledge and programs that improve their quality of

life. CES represents a unique federal, state and county partnership enabled by the Smith-Lever Act of 1914, the Capper-Ketcham Act of 1928, and constitutionally mandated in New Mexico in 1915 (§76-2-3 and §76-2-4 NMSA 1978).

The CES has staff in all 33 counties and many Tribal areas in New Mexico, and collaborates with over 1,000 organizations, federal and state agencies, other universities, and over 8,000 volunteers. Every year, Extension faculty reach over 400,000 New Mexicans, more than one-fourth of the state's population, who benefit from wide-ranging CES educational programs in areas such as economic and community development, human nutrition, agriculture, environmental stewardship, and family and child development.

Extension impacts are wide-ranging. For example, on average 30,000 New Mexico youth are involved in the 4-H program annually, over 55,000 New Mexicans participate in the Extension Nutrition Education Program annually that saves the state approximately \$6.6 million in health-related expenses, and Extension Agriculture programs help New Mexico producers increase profitability. Extension's NM EDGE program reaches approximately 5,000 elected and appointed officials annually and 90% participants surveyed found the trainings were highly beneficial for elected officials and county staff.

Funding for Cooperative Extension Service comes from county, state, and federal sources. In each county, the BOCC may appropriate funds for the purpose of maintaining cooperative extension work (§76-2-4 NMSA). Programs are developed at the local level to meet the needs of county residents. A core staff of specialists is also available at the state extension office to support county needs.

12.11 Foreign Trade Zone

The BOCC, with prior written approval of the New Mexico Economic Development Department, can apply for and accept a federal grant of authority to establish, operate and maintain a Foreign Trade Zone (§4-36-7 NMSA). The

county may provide facilities and services, and exercise other powers to establish the Foreign Trade Zone as provided by the federal Foreign Trade Zones Act.

12.12 DWI Grant Programs

A county is eligible to receive a DWI program distribution if the county submits to the DWI Grant Council a request to use the distribution for the operation of a DWI program, services, or activities in the county by April 1 of each year (§11-6A-6 NMSA). The State DWI Grant Council approves the counties' funding requests by July 1 and distributes the funds quarterly on or before September 10, December 10, March 10 and June 10. The New Mexico Counties' organization (FKA NMAC), by statute, is entitled to a membership on the Grant Council.

Local DWI programs are funded through a distribution of the State Liquor Excise Tax. As of July 1, 2018, the distribution is set at 46% of that revenue by statute. State Drug Courts will receive an addition 5% of the tax, separate from the distribution to DWI programs, as of July 1, 2019.

CHAPTER 13

COUNTY SERVICES & FUNCTIONS: HEALTH, WELFARE, AND PUBLIC SAFETY

For more information on this chapter, take NM EDGE class
CO 103- County Services and Functions Part II: Health, Welfare, & Public Safety

County government is responsible for many aspects of the health and welfare of its residents. The powers and responsibility are set forth in the General Welfare Clause of the Counties; Powers and Ordinances section of the State Statutes.

“All counties are granted the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties. Included in this grant of powers to the counties are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of any county or its inhabitants. The Board of County Commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties.” (§4-37-1 NMSA).

Some of these duties are shared with the state, and some are statutorily assigned to local governments. County government is not required to actually provide the health/medical care services; rather, it serves as a conduit to other agencies, clinics and hospitals, through a variety of relationships and contracts, and to establish new and more efficient programs to reach more of the population. Some of the different areas in which local and state governments join together for various aspects of caring for the general welfare are described below.

13.1 Ambulance Service

A county may provide ambulance services in the absence of an established ambulance service, as authorized by the Public Regulation Commission (§5-1-1 NMSA). The Board of County Commissioners (BOCC) may contract operation of the service out to other political subdivisions or private firms. The BOCC may also lease the ambulances and any other necessary equipment. Ambulance service may be furnished to points outside the county provided no local established ambulance service in the area is available, or if one exists, such service has inadequate capacity or is insufficient for the service

requested. The county may use funds from the Indigent Care Funds Act to pay for ambulance service for indigent persons (§27-5-2 NMSA).

13.2 County Supported Medicaid Fund

This is a statutory obligation in which counties in New Mexico provide funding to the state to draw down federal matching dollars for the Medicaid Program (§27-10-3 NMSA). The mandated amount on each county is equal to the revenue generated by a one-sixteenth of one percent gross receipts tax (§27-10-4(A) NMSA).

The funds necessary to cover the county-supported Medicaid payment can come from any legitimate revenue source of the county. The Legislature has allowed counties to impose a 1/16th percent gross receipts tax (county health care gross receipts tax) which, if imposed, must be dedicated to the county-supported Medicaid fund (§7-20E-18 NMSA). Counties can also use the 2nd 1/8th increment of County Gross Receipts Tax (commonly called the Indigent Health Gross Receipts Tax) for payment of the county-supported Medicaid payment (§7-20E-9 NMSA).

Note: Medicaid expansion and those that qualify have been greatly reduced.

13.3 Safety Net Care Pool Fund

The Safety Net Care Pool Fund is created in the State Treasury and consists of public funds provided through intergovernmental transfers from counties and other public entities. (§27-5-6.1 NMSA). The money in this fund is directed towards payments to qualifying hospitals. The Legislature mandates that each county, by ordinance, dedicate an amount equal to a gross receipts tax rate of one-twelfth percent applied to the taxable gross receipts reported during the prior fiscal year to be payable on a quarterly basis, and authorized the Counties to utilize public funds from any existing authorized revenue source in the county. (§27-5-6.2 NMSA).

13.4 Other Care of Indigent Persons

Every county is responsible for ambulance transportation and hospital care of indigent patients under the provisions of the Indigent Hospital and County Health Care Act (§27-5-2 NMSA). The BOCC is required to provide a means for the care of indigent patients and for reimbursement to the institution caring for them (§27-5-2 NMSA). Hospitals eligible for these funds historically were nonprofit, but also include for-profit

and state-owned hospitals, nursing homes, and out-of-state hospitals, when treatment is not available in-state.

To be eligible for indigent claims, a person must physically reside in that county for at least three months prior to the date of hospitalization. The person must also meet income requirements that are established by each county through an ordinance (§27-5-4(G) NMSA). Many counties also use the ordinance to establish a process whereby health care costs for prisoners in the county jail may be paid for with indigent health funds (§33-3-5 NMSA and 1953-54 Opinion Attorney General No. 5928).

13.5 Duty to Indigent and Unclaimed Decedents

The duty to provide care to the indigent includes a duty to bury or cremate unclaimed decedents as defined (§24-13-1, 2 NMSA). All available assets of any the decedent's estate, discovered to exist, shall be used to reimburse the county for the burial or cremation (§24-13-5 NMSA). The BOCC shall be liable to their county, either personally or officially, in an amount double the amount authorized for a burial or cremation in violation of the statute.

Funeral directors shall immediately notify the BOCC regarding any receipt of payment or any agreement to make payment by relatives or friends of a deceased person who has been determined to be indigent, and the BOCC shall not thereafter pay for the burial or cremation. The funeral director shall reimburse the county if it has already paid for the burial (§24-13-6 NMSA). A failure on the part of the funeral director to notify the BOCC that payment has been received from relatives or friends shall result in the funeral director's liability to the county in an amount double the amount paid or to be paid by the BOCC (§24-13-7 NMSA).

13.6 Public Welfare and Assistance

Public welfare and assistance are under the exclusive control of the state, which administers all state welfare activities as provided by the Public Assistance Act (Chapters 27-1 through 27-15 NMSA). The state's Human Services Department is responsible for administering this act.

13.7 New Mexico State Fair

To aid the county in displaying its products at the State Fair in Albuquerque, the BOCC may appropriate up to \$1,000 annually from the County General Fund (§4-38-14 NMSA). This appropriation may be used to pay a qualified person, appointed by the BOCC, to manage the county exhibits (§4-38-15 NMSA).

13.8 Health Districts (County Health Offices)

The secretary of the New Mexico Department of Health (DOH) establishes health districts and appoints District Health Officers and establishes their powers and duties (§24-1-4 NMSA). The BOCC, with the approval of the DOH Secretary, may employ additional assistants to the District Health Officer to be paid by the county (§24-4-3 NMSA). The individuals hired by the county to assist the District Health Officer are subject to the State's Personnel Act and not the county's merit system or other personnel procedures.

The BOCC shall provide suitable quarters for the County Health Department and the District Health Officer, including office space for all involved, clinic space for patients and waiting area for patients, families and friends (§24-4-2 NMSA).

13.9 Hospitals

Each county has the power to create a Special Hospital District and construct, purchase, own, maintain and operate county hospitals. A county can levy and collect taxes to maintain and operate hospitals; can contract with other counties, municipalities, public or private corporations or the federal government to care for the sick; or join with a municipality to operate a city-county hospital (§4-48B-5 NMSA).

The county can also lease hospital facilities or contract for the management or operation of the hospital or other health care facilities. These leases can be for longer periods of time, exceeding one year, as long as statutory conditions are met (§4-48B-5(J) NMSA). If the county leases to a private entity, the sunshine laws and the state - procurement code generally do not apply to the private organization. If the county retains majority control, the sunshine laws and the state procurement code will still apply. Any public funds directly granted to the hospital without requiring performance of a service for such funds, (i.e. mil levy funds), must comply with the NM Procurement

Code and the sunshine laws.

13.10 Hospital Funding

Due to federal health care reform and its four-year period of implementation, it is not possible, nor is it intended that this chapter or manual can provide the reader with a complete understanding as to all the hospital funding options available to counties. Nor is it possible to cover all of the requirements counties may be subject to relating to hospitals, health care, or methods of meeting the obligation to provide medical care to the indigent population.

A brief description of some of the funding mechanisms is provided:

- Under the Hospital Funding Act, BOCC are authorized to impose a mill levy and collect annual assessments against the net taxable value of the property in a county, to pay the cost of operating and maintaining county hospitals, or to pay to a contracting hospital.
- The Indigent Hospital and County Health Care Act (§27-5-1 et. seq. NMSA) recognizes and states that the counties of this state are responsible for the provision of health care to qualifying indigent patients who are residents of the county. The BOCC can create an ordinance to discharge this responsibility and set forth the local qualifications. In addition, the county can provide local revenues to match federal funds for the state Medicaid program (as discussed above in this chapter), and matching funds for the sole community provider program (as discussed above in this chapter). As a source of revenue to carry out this responsibility, the Act allows BOCCs to impose, by ordinance and/or referendum as provided by the statute, a gross receipts tax (§7-20E-9(C) and (D) NMSA) or a property tax mil levy (§27-5-9 NMSA). The Act also creates a County Indigent Hospital and Health Care Fund so the revenues generated by these taxes can be managed (§27-5-7 NMSA).

Note: Changes by Congress to the Affordable Care Act could impact this section. Medicaid expansion has been greatly reduced.

- The Special County Gross Hospital Receipts Tax Act (§7-20E-13 NMSA) authorizes certain Class B counties to impose a gross receipts tax for hospital operations and maintenance.
- Gross receipts taxes must be approved by referendum.

13.11 City-County Hospitals

A county and a municipality may enter into an agreement to construct, maintain, and operate a county-municipal hospital (§4-48B-5 and §4-48B-9 NMSA), jointly governed through an appointed board of trustees. A joint powers agreement may be used to establish the county-municipal hospital. The board of trustees must submit an annual report, including management and financial sections, to the BOCC and to the municipality.

A county may also establish a hospital in conjunction with other neighboring counties. Any hospital created as a jointly governed hospital is subject to all of the sunshine laws and the Procurement Code.

13.12 County Hospitals

The BOCC of a county maintaining or operating a county hospital is authorized to appoint a hospital governing board to be composed of either five, seven, or nine members. The hospital governing board so appointed shall have the authority to exercise all powers that the county is granted by the Hospital Funding Act, for the operation of such hospitals, except the powers to issue bonds, call a mill levy election, levy the annual assessments for the mill levy authorized by the Hospital Funding Act and to dispose of real property of the hospital acquired with the proceeds of any bond issue. The hospital governing board shall account annually for the receipt and expenditures of funds received for the operation of the hospital.

Members of the hospital governing board shall be appointed by the BOCC for staggered terms of three years or less. Appointments shall be made in such a manner that the terms of not more than one-third of the members, or as near thereto as possible, expire on June 30 of each year. Vacancies shall be filled for the unexpired term by appointment by the BOCC.

The BOCC, by an agreement for the maintenance and operation of a county hospital with another county or counties, another political subdivision, person, association or corporation, may permit the selection of a hospital governing board by the other party to the agreement, subject to approval by the BOCC. Any hospital formed in this manner is subject to all the sunshine laws and the state's procurement code.

13.13 Refuse Collection & Landfills

Counties are authorized to create Refuse Districts (§4-52-1 et. seq. NMSA) or manage systems for the collection, disposal, and storage of refuse (§4-56-1 et. seq. NMSA). If the BOCC establishes landfills and regulates the disposal of refuse, it may assess and collect fees from persons using the facilities, and if the BOCC establishes Refuse Disposal Districts, it can delegate power to the Districts to assess and collect fees from any person who uses an established system of collection and disposal of refuse. The use of a Joint Powers Agreement is also a valid way to combine other local governmental entities for the operation of landfills and solid waste collection systems and obtain the economies of scale.

The Solid Waste Act of 1990 requires counties (or any other entity that operates landfills) to meet the heightened environmental standards of the Act. One major standard is that all solid waste systems must apply for and obtain a permit from the Environment Department. There are numerous standards that make up a permit.

There are also numerous federal regulations governing the establishment and operation of landfills requiring adherence by county government. A county can also make a contract for the provision of these services or any part of these types of services to a private entity.

In order to combat illegal dumping in rural areas of many counties, which is a real health issue, some counties have mandated residential curbside trash pick-up through adoption of an ordinance, and then contracted the hauling to private haulers. Other counties have mandated residential curbside trash pick-up but left it up to the residents to choose between using a private hauler or paying a user fee at the convenience transfer stations.

All county solid waste ordinances prohibit the illegal dumping of solid waste and

impose penalties for violations. The penalty for discarding or disposing of refuse, litter, or garbage anywhere other than in an authorized waste facility may be set at any amount up to \$1,000; the fine for improper or illegal disposal of hazardous waste may be as much as \$5,000 (§4-37-3(A) (1) and (2) NMSA). This fine is specified in the enabling legislation for illegal dumping. All other ordinance violations are limited to \$300.00 or 90 days in jail or both (§4-37-3(A) NMSA)

13.14 Animal Control

At the bare minimum, each county is required to make provisions by ordinance to control, seize, and dispose of dogs, cats, and other animals running at large, which are not claimed by any person or kept on their premises (§77-1-12 NMSA). Animals that are suspected of being rabid are to be impounded and tested.

Full or part-time animal control officers are to be deputized in order to enforce animal control laws and ordinances (§77-1-15.1 NMSA). The county may choose to provide more protection to the health and safety of the citizens regarding animal control by review, and implementation of the full statutory scheme is set forth in Chapter 77 of the state statutes.

- Dogs and Domesticated Animals (§77-1-1 et. seq. NMSA)
- Dangerous Dogs (§77-1A-1 et. seq. NMSA)
- Animal Sheltering (§77-1-1B et. seq. NMSA)

13.15 Environmental Controls

The Environmental Improvement Act (§74-1-1 through §74-1-10 NMSA) created the New Mexico Environment Department (NMED), which is responsible for environmental management and consumer protection. The NMED representative in each of New Mexico's 33 counties works with the BOCC in each. The NMED representative may assist the BOCC with such matters as food protection, inspecting health conditions at county fairs, checking on septic tanks and illegal dumping of litter, and hazardous wastes.

13.16 Air Pollution Controls

The New Mexico State Environmental Improvement Board (EIB) is the state air pollution control agency for compliance with federal air pollution legislation. The EIB may take all action necessary to secure to the State and its political subdivisions the benefits of such federal acts. A Class A county may establish a joint governing board with one or more municipalities within the county. When such boards are established, they are responsible for the administration and enforcement of the provisions of the Air Quality Control Act (§74-2-4 NMSA). The county Pollution Control Revenue Bond Act (§§4-60-1 et. seq. NMSA) authorizes counties to issue revenue bonds for the acquisition, ownership, or lease of projects which abate or reduce air, land, or water pollution.

13.17 Flood Plains

Partially as a result of federal regulations and policies in relation to flood plains, the New Mexico legislature has granted counties the authority to manage flood plain issues. Every county may enact ordinances to designate and regulate flood plain areas and flood ways, to set standards for buildings in flood or mud slide hazard areas, and to require new or replacement water or sanitary sewage systems in these areas (§3-18-7 NMSA). The ordinances must conform to established federal standards and guidelines.

Any county may enter into reciprocal agreements with other local, state, or federal units of government in order to carry out requirements of such ordinances. A county can request the assistance of the New Mexico Environment Department and the Construction Industries Division of the General Services Department, regarding flooding issues. Ordinances creating flood plain management will also allow the citizens of the county to participate in obtaining national flood insurance.

On the recommendation of the Flood Commissioner, the BOCC generally may contract to borrow funds from state or federal agencies for constructing and maintaining dikes, dams, embankments, ditches, and other structures to prevent flood damage. A property tax levy for the repayment of the borrowed funds for flood control purposes may be assessed, not to exceed \$1.50 per one thousand dollars of net taxable value of all property. The taxable property must be located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions.

13.18 Civil Preparedness/Emergency Management

The BOCC is responsible for the all-hazard emergency management of the county. Consequently, it is authorized to establish, by ordinance or resolution, a local Office of Emergency Management. This office is an agency of the county and is responsible to the BOCC.

Many emergency operations plans use the acronym CEO. The definition of CEO in the emergency management area is Chief Elected Office or Chief Elected Official. For counties, this means the BOCC, not the County Manager or the Emergency Manager, is considered CEO for this purpose.

The local Coordinator of Emergency Management shall be appointed under the county's merit system or other personnel procedures of the BOCC, subject to the approval of the state Director of Homeland Security and Emergency Management. The local coordinator shall have direct responsibility for carrying out the all-hazard emergency management programs of the county. Each county shall perform emergency management functions within its territorial limits (§12-10-5 NMSA). The BOCC has the power to make appropriations for the payment of emergency management expenses (§12-10-7 NMSA).

13.19 Detention: Juvenile and Adult

The BOCC is empowered to establish and equip juvenile detention centers and to house juveniles requiring detention (§33-6-1 et. seq. NMSA). Counties can also enter into a JPA with one or more counties in the same judicial district to build a detention center. Contracts for housing juvenile detainees may also be an acceptable form of fulfilling this duty (§33-6-4 NMSA).

Counties are required to make provision for jails and the housing of pre-adjudicated detainees and convicted misdemeanor offenders (§33-3-1 et. seq. NMSA). Jail operation is at the discretion of the BOCC and each county can choose to have the jail be operated:

- by the Sheriff
- by a professional jail administrator
- by contract to independent contractors/private companies

- by contract to another local public body or combination thereof (§33-3-1, 14, 15, 18 NMSA).

The operation of a detention center (adult or juvenile) requires consideration of the constitutional and statutory obligations of the counties and the rights of the detainees. Some practices to consider using at a detention center include but are not limited to:

- inspections of jails and detention centers and reports on the same (§33-3-4 NMSA)
- cleanliness of and feeding of prisoners (§33-3-5 and 6 NMSA)
- rules and procedures for prisoners (§33-3-8 and 9 NMSA).

Each governing body of a county or municipality shall conduct an annual site visit to the jail or detention center under its jurisdiction to inspect the overall conditions at the facility. Following a site visit, an inspection report shall be presented at a regular meeting of the governing body.

To build jails, the BOCC can use revenue bonds or general obligation bonds as approved by the voters to build any public building (§4-62-1, §4-49-4, §7-20E-21 NMSA).

Also, County Commissioners and the BOCC must realize the protections and rights granted by the Constitution of the United States and the Constitution of the State of New Mexico, prohibiting cruel and unusual punishment and defining due process, equal protection, search and seizure, etc.

There is a large body of case law imposing duties on the counties as jail operators that must be followed, or liability for damages can be awarded. When constitutional or civil rights are violated, the complaining party can be awarded damages plus their attorney's fees.

13.20 Fire Protection and Emergency Medical Services

Under the power granted to counties to protect the general welfare of its citizens; fire protection and emergency medical services (EMS) are a function of the county. It is up to the BOCC to determine the extent of such services, and what type of organization performs the service to the citizens. For many counties, the use of volunteer fire fighters and volunteer EMS people is the best option. For others and in areas of large

population, a full-time employee for fire and EMS is needed. Some counties choose to contract with external for-profit providers for ambulance service. Because the various sources of revenue for these services are limited to specific applications and uses, the decision on the use of volunteers or full-time employees comes down to weighing the need and availability of general fund monies with which to pay salaries and wages.

There are various funding sources for fire and EMS, although funding may be limited to capital expenditures (i.e. buildings and apparatuses), equipment, and material used for performance of these services (i.e. bandages, bunker gear, radios, etc.), and training expenses. Employee wages, salaries, and benefits are not available from most external revenue sources, and grants are usually self-reducing, requiring the county to continue to pay employment for several years out of the general fund.

The Countywide Emergency Communications and Emergency Medical and Behavioral Health Services Tax is a gross receipts tax of up to one-fourth percent (in increments of one-sixteenth percent) that must be dedicated to one or more of the following purposes:

- operation of a qualified consolidated emergency communications center/public safety answering point
- operation of emergency medical services provided by the county
- provision of behavioral health services including alcohol abuse and substance abuse treatment (§7-20E-22 NMSA).

There are also state funds administered by the Department of Health, using the State Emergency Medical Services Fund (§24-10A-3 NMSA), and the State Fire Marshal using the State Fire Protection Fund (§59A-53-7 NMSA).

CHAPTER 14

COUNTY SERVICES & FUNCTIONS: PLANNING AND ZONING

For more information on this chapter, take NM EDGE class CO 102- County Services and Functions Part I: Public Works & Land Use

Counties have broad authority in the areas of planning and zoning. These functions are related to the Board of County Commissioners' (BOCC) appointive and regulative powers pertaining to Planning Commissions, Planning and Development Districts, County Zoning Authorities and Extraterritorial Zoning Commissions, and to those powers granted in the Subdivision Act.

14.1 Planning Commission

Any county may establish by ordinance a Planning Commission of not less than five appointed members. The Planning Commission has such powers as are necessary and proper to carry out and promote county planning (§4-57-1 NMSA). Under certain conditions two or more adjacent counties, or one or more counties and a municipality, may create a Regional Planning Commission (§3-56-2 NMSA).

14.2 Planning and Development Districts

The Planning District Act (§4-58-1 et. seq. NMSA) established seven planning and development districts for the purpose of facilitating state grants-in-aid to the designated planning and development districts.

14.3 Zoning Commission

Counties have the same authority to regulate building and zoning as municipalities (§3-21-1 NMSA). The BOCC may act as the County Zoning Authority to designate the Planning Commission to serve as the Zoning Commission or appoint a Zoning Commission (§3-21-7 NMSA). Counties may regulate the construction, reconstruction, alteration, repair, or use of buildings and issue building permits (§3-18-7 NMSA).

The BOCC may adopt ordinances for the zoning of any or all of the unincorporated area of the county not within the zoning jurisdiction of a municipality (§3-21-2 NMSA). All

zoning, however, must be in conformance with a comprehensive land use plan (§3-21-5 NMSA).

14.4 Extraterritorial Zoning Authority

Extraterritorial zoning may be adopted by ordinance for the geographic area surrounding the boundaries of a municipality. The area which may be extraterritorially zoned varies from a distance of one mile from the boundary of municipalities with populations from 1,500 to 20,000 persons to a distance of three miles from the boundaries of municipalities greater than 200,000 persons. Limits may be extended by joint powers agreement between the city and BOCC but must not encroach upon the zoning jurisdiction of another city (§3-21-2 NMSA). An Extraterritorial Zoning Authority Commission may be established to zone that portion of the extraterritorial zoning area lying within the county (§3-21-3 NMSA).

14.5 Special Zoning District Act

The Special Zoning District Act allows residents of an unincorporated and un-zoned portion of a county to establish local zoning where the county has not adopted a general zoning ordinance (§3-21-16 through 26 NMSA). In order to establish a zoning district, there must be at least 150 single-family dwellings within the area under consideration. A petition representing at least 51% of the registered voters in the area must be submitted to the County Clerk (§3-21-18 NMSA). The BOCC is required to hold an election so that voters from within the Special Zoning District may elect five members as a Zoning Commission (§3-21-20 NMSA).

14.6 Historic Districts and Landmarks

Counties may designate qualifying unincorporated areas as historic areas or landmarks. Zoning regulations may be imposed within those areas, which prohibit destruction or alteration of exterior features of historic buildings or other structures (§3-22-3 NMSA). Counties are also authorized to use public funds to lease, purchase, or otherwise protect historic sites (§3-22-4 NMSA).

14.7 Subdivision Act

The BOCC has significant responsibilities relating to subdivision regulation (§47-6-1 through §47-6-29 NMSA).

All counties must adopt regulations setting forth the county's requirements for:

- preliminary and final subdivision plats, including their content and format
- quantifying the maximum annual water requirements of subdivisions, including water for indoor and outdoor domestic uses
- assessing water availability to meet the maximum annual water requirements of subdivisions
- water conservation measures
- water of an acceptable quality for human consumption and for protecting the water supply from contamination
- liquid waste disposal
- solid waste disposal
- legal access to each parcel
- sufficient and adequate roads to each parcel, including ingress and egress for emergency vehicles
- utility easements to each parcel
- terrain management
- phased development
- protecting cultural properties, archaeological sites and unmarked burials, as required by the Cultural Properties Act
- specific information to be contained in a sub-divider's disclosure statement in addition to that required in §47-6-17 NMSA
- reasonable fees approximating the cost to the county of determining compliance with the New Mexico Subdivision Act and county subdivision regulations while passing upon subdivision plats
- a summary procedure for reviewing certain type-three and all type-five subdivisions as provided in §47-6-11 NMSA
- recording all conveyances of parcels with the County Clerk
- financial security to assure the completion of all improvements that the sub-divider proposes to build or to maintain
- fencing subdivided land, where appropriate, in conformity with §77-16-1 NMSA, which places the duty on the purchaser, lessee, or other person acquiring an interest in the subdivided land, to fence out livestock
- any other matter relating to subdivisions that the BOCC feels is necessary to promote health, safety, and the general welfare (§47-6-9 NMSA).

Land within a new subdivision cannot be sold until the subdivision plat is approved by the BOCC and all regulations have been met (§47-6-8 NMSA). Sub-dividers must disclose to potential land purchasers evidence of compliance with County Subdivision Regulations (§47-6-17 NMSA).

14.8 Appeals

A party adversely affected by an administrative decision of a delegate of the BOCC has the right to appeal to the BOCC within 30 days from the date of the decision. The BOCC shall hear the appeal and render a decision within 30 days of receiving notice of the appeal (§47-6-15 NMSA). An aggrieved party may appeal the decision of the BOCC to the District Court pursuant to the provisions of §39-3-1.1 NMSA.

14.9 Water Development Planning

Counties which provide water for use by water supply and distribution systems are authorized to prepare Water Development Plans which predict water needs for a period of forty years. Upon approval of the plan by the State Engineer, the county can purchase, or otherwise acquire and retain water rights to satisfy the projected demand (§72-1-9 NMSA).

14.10 Manufacturing Housing and Zoning Act

The Manufactured Housing and Zoning Act states that manufactured homes, that is, homes manufactured to codes equivalent to or the same as those for site-built homes, cannot be excluded by zoning from areas set aside for site-built homes (§3-21A-3 NMSA). However, mobile homes, that is, homes built to lesser standards, may be excluded by zoning from such residential use districts (§3-21A-4 NMSA).

NOTES

CHAPTER 15

COUNTY SERVICES & FUNCTIONS: ELECTIONS

For more information on this chapter, take NM EDGE class
CO 101- Roles and Responsibilities of the
County Commissioner

The election code applies to the following types of elections

- General Elections
- Primary Elections
 - Local Election Act Elections (1-22-1 through 1-22-20)
- Statewide Special Elections
- Elections to fill vacancies in the office of Representative in Congress
- Municipal Officer Elections

In 2018, the Legislature adopted the Local Election Act (LEA) establishing a statewide election in November of odd numbered years consolidating elections for nonpartisan officers and local government ballot questions. The election of officers for certain municipalities, all school districts, soil and water conservation districts, sanitation districts, zoning districts, and other local districts are consolidated on the LEA ballot. Municipalities may opt in to participate in the Local Election Act election or they may conduct their own election on Municipal Officer Election Day in even numbered years.

The Secretary of State, the chief election officer of the state, maintains uniformity in the application, operation, and interpretation of the New Mexico Election Code. The secretary of state may, subject to the State Rules Act (§14-4-1 through §14-4-9 NMSA), make rules and regulations pursuant to the provisions of the election code. Copies of such rules and regulations are furnished to the County Clerk of each county (§1-2-1 NMSA). No election forms or election procedures can be used without prior approval of the secretary of state.

15.1 Election Officers and Boards

At least 55 days before the primary election, the County Clerk appoints the precinct board and alternates for each precinct (§1-2-6 and §1-2-10 NMSA) for a term of two years. The Precinct Board shall consist of a presiding judge, two election judges representing each major party and one or more election clerks, depending on the need in that particular precinct (§1-2-2 NMSA).

15.2 Precincts and the Duties of Board of County Commissioners (§1-3-2 NMSA)

For the conduct of any statewide election during the period beginning January 1 of the next succeeding even-numbered year until December 31 of the odd-numbered year thereafter, in June or July of each odd-numbered year, the board of county commissioners shall by resolution:

- A. designate the polling place of each precinct that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;
- B. consolidate any precincts pursuant to §1-3-4 NMSA;
- C. designate any mail ballot election precincts pursuant to §1-6-22.1 NMSA; and
- D. create additional polling places in existing precincts pursuant to §1-3-7.1 NMSA.

History: 1953 Comp., § 3-3-2, enacted by Laws 1969, ch. 240, § 51; 1975, ch. 255, § 28; 1977, ch. 64, § 2; 1979, ch. 105, § 1; 1984 (1st S.S.), ch. 3, § 2; 1989, ch. 392, § 4; 1991 (1st S.S.), ch. 6, § 2; 1995, ch. 126, § 2; 2009, ch. 251, § 3; 2009, ch. 274, § 2; 2011, ch. 131, § 2; 2018, ch. 79, § 3; 2019, ch. 212, § 36.

- The BOCC also appoints the board of registration, the body that creates the inactive voter list and ultimately compiles the purge voter list (§1-4-34 NMSA)
- The BOCC issues resolutions calling for county elections.

15.3 Registration of Electors

The BOCC must meet in February of each odd-numbered year to appoint three voters to the County Board of Registration. No more than two of the three persons may be members of the same party at the time of their appointment. The BOCC must also select two alternates who belong to different political parties at the time of their appointment. Appointments to the Board of Registration are made from the lists of county party chairpersons. The BOCC must give preference to the names in the order indicated on the lists (§1-4-34 NMSA).

In March of odd-numbered years the Board of Registration begins to review the voter registration lists and to compile a list of inactive voters. The BOCC is obligated to provide

the necessary clerical assistance needed by the County Clerk to perform all voter registration work, including that of the Board of Registration (§1-4-46 NMSA).

15.4 Automated Voter Records System

The Automated Voter Records System Act (§1-5-1 through 29 NMSA) shall be implemented by order of the BOCC in all precincts of the county. The Act is mandatory and supplemental to the provisions of the Election Code (§1-5-3 NMSA). All voter registration records required by the election code are to be maintained in a county register by the County Clerk. The Secretary of State shall maintain registration lists of state voters based on county lists and all transactions involved (§1-5-3 NMSA).

15.5 Absentee/Early Voting

The County Clerk may create alternate voting locations within the county for early voting (§1-6-5.7 NMSA). Not less than ninety (90) days prior to the election the County Clerk must fix the hours of operation for alternate voting locations; however, they may not open earlier than 7:00 a.m. and may not close any later than 9:00 p.m.

Alternate voting locations must be open for a minimum of eight (8) consecutive hours during each day of early voting. In addition, the alternate voting locations must comply with seven (7) additional requirements that are set forth in the above referenced statute.

15.6 Use of Paper Ballots

The 2006 Legislature amended the election law to require the use of paper ballots in elections covered by the Election Code. The law now provides that voting systems owned or used by a county that do not use a paper ballot, may be used until an adequate supply of voting systems is available and sufficient federal, state, or local funds are available:

- To replace the voting system
- To acquire the necessary software
- For the Secretary of State to purchase the paper ballots for all counties to use on the new voting system for primary and general elections and
- To hold the counties harmless for payments due for voting systems under lease-purchase agreements entered into pursuant to §1-9-17 through §1-9-19 NMSA.

15.7 Provisional Paper Ballots

In 2003, the election code was amended to add methods to enhance voter accessibility to the polls. The use of the provisional paper ballot was authorized for certain situations. One such situation is when a voter requests to vote at a precinct outside their precinct of residence and the poll workers have no way to verify that the voter is indeed registered to vote within the county. The voter is to be allowed to vote using a paper provisional ballot, which will be verified later, maintaining the secrecy of the voter's identity (§1-12-25.2 NMSA). The 2005 amendment to this statute states that beginning with the closing of the polls on election-day through the tenth day following the election, the County Clerk shall notify by certified mail each person whose provisional ballot was not counted of the reason the ballot was not counted. The voter shall have until the Friday prior to the meeting of the State Canvassing Board to appeal to the County Clerk a decision to reject the voter's ballot.

Also, these provisional paper ballots are to be used if polling hours are extended by court order or any other order pursuant to a state law in effect at least ten days before the date of that election. The provisional paper ballot cast pursuant to this section shall be separated and held apart from provisional paper ballots cast by those not affected by the order. The ballot shall be counted if there is no legal challenge to the order extending polling hours within ten days of the election; or a legal challenge to the order extending polling hours is not sustained (§1-12-27.1 NMSA). The voter must complete the outer envelope of the provisional paper ballot with certain minimum requirements as outlined in statute (§1-12-25.3 NMSA).

These include:

- the name and signature of the voter
- the voter's registered address, both present and former if applicable
- the voter's date of birth
- the reason for using the ballot
- the precinct and the polling place at which the voter has voted
- the voter's social security number and
- sufficient space to list the disposition of the ballot after review by the County Clerk.

A provisional paper ballot shall not be rejected for lack of the information required by this section as long as the voter provides a valid signature and sufficient information to determine eligibility.

If a voter is required to vote on a provisional paper ballot, the Election Judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted. Further, the County Clerk shall establish a free access system, such as a toll-free telephone number or internet web site that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted and, if the vote was not counted, the reason it was not counted. Access to information about an individual voter's provisional ballot is restricted to the voter who cast the ballot.

15.8 Voting Machines

The Secretary of State (SOS) is required to provide the County Clerk with a sufficient number of voting systems, as required by the Election Code (§1-1-1 NMSA), for the conduct of primary and general elections. When authorized by the State Board of Finance (BOF) the BOCC may acquire new or previously owned systems.

The Secretary of State prescribes by rule, specifications for the proper storage of voting systems which are held in the custody of the county that uses them. The BOCC is responsible for the cost of properly storing the voting systems. The SOS must pay from the Voting System Revolving Fund for the cost of all hardware, software, firmware, maintenance, and support for voting systems, whether state or county owned, certified for use in state elections (§1-9-7.6 NMSA).

State law governing the minimum number of voting machines requires one voting machine in each polling location (§1-9-5 NMSA) and an adequate number of booths to ensure voting in secret.

15.9 County Canvassing Board

Post-election duties; county canvassing board.

- A. The BOCC is ex officio the county canvassing board in each county.

B. The BOCC may designate the Board of Registration to serve as the county canvassing board for the county. The designation shall be made in the polling place resolution adopted pursuant to §1-3-2 NMSA and is valid for all statewide and special elections conducted within the county until the expiration of the resolution.

History: 1953 Comp., §3-13-1, enacted by Laws 1969, ch. 240, §303; 2019, ch. 212, §120

In practice, the BOCC delegates much of the work of examining the returns to the staff of the county clerk.

NOTES

CHAPTER 16 WEB RESOURCES

NM 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
- 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/>
- Taxation & Revenue (TRD)
<http://www.tax.newmexico.gov/>
- County classifications
http://nmdfa.state.nm.us/County_Classifications.aspx
- TRD/Property Tax Division-PTD
<http://www.tax.newmexico.gov/property-tax-division.aspx>
- NM Finance Authority
<http://www.nmfa.net/>

Federal

- Payment in Lieu of Taxes link to PILT map:
<https://www.tax.newmexico.gov/businesses/wp-content/uploads/sites/4/2022/07/FY2022-NM-Payments-In-Lieu-Of-Taxes.pdf>

Publications

- TRD's publication: FYI-C120, County Gross Receipts Tax Local Options
<https://www.tax.newmexico.gov/businesses/wp-content/uploads/sites/7/2020/11/FYI-C120-County-Gross-Receipts-Tax-Program-Final-Draft.pdf>
- The Open Meetings Act (OMA) Compliance Guide and a Compliance Checklist
<https://nmdoj.gov/publications/compliance-guides/>

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 governing body of the County
- **Board of Finance** - Board of County Commissioners as ex officio
- **Canvassing Board** - Board of County Commissioners with County Clerk 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
- **Fiduciary Responsibility** - the public trust
- **Funds, Designated** - specific to the enabling legislation allowing collection (e.g. Fire, Indigent, Hospital, etc.)
- **Industrial Revenue Bonds**- pursuant to the Industrial Revenue Bond Act, New Mexico municipalities and counties are authorized to issue IRBs to stimulate the expansion and relocation of commercial and industrial projects in the state.
- **Joint Powers Agreement** - an agreement to share power between governmental entities
- **Mill/Tax Rates**- the rates for each county that determine the amount of each property tax bill
- **New Mexico Counties (NMC)** - a private non-profit with a public purpose to serve as resource to New Mexico Counties. NMC was previously known as New Mexico Association of Counties (NMAC)
- **New Mexico Constitution** - foundation for law and government in New Mexico
- **New Mexico Department of Finance and Administration (DFA)**- provides budget direction and fiscal oversight to state agencies and local governments
 - **DFA Local Government Division (LGD)** - provides administrative and technical support to local entities throughout the State of New Mexico
- **New Mexico State Hierarchy**- Governor over Cabinet Secretaries over Departments over Divisions over Bureaus
- **New Mexico State Regulations** - policies made by administrative agencies
- **New Mexico State Statutes** - laws created by the New Mexico State Legislature

- **New Mexico Taxation & Revenue Department (NMTRD)**- charged with the task of collecting tax dollars and distributing them according to state law, TRD administers taxation, revenue and motor vehicle laws passed by the Legislature and signed by the Governor.
 - **New Mexico Property Tax Division (PTD)**- The Property Tax Division of TRD helps local governments in the administration and collection of ad valorem taxes in the State of New Mexico
- **Open Meetings/Public Records Acts** - New Mexico sunshine laws which insure transparency
- **Per Diem and Mileage** - governs reimbursement for travel costs associated with legitimate county business
- **Probate Judge, County** - an elected official required to hold court overseeing matters of estates and wills
- **Public Trust** - the trust placed in a person who is elected to public office; also can be a reference to public coffers
- **Sheriff, County** - an elected official responsible for preserving the peace
- **Special Tax Districts**
 - **Public Improvement District (PID)**- are created to help developers finance infrastructure in new communities such as roads, parks and other amenities. Bonds are sold to finance these improvements and property owners are each assessed a portion of the bonds. This assessment is added to an owner's property tax bill and paid off over time.
 - **Tax Increment Development Districts (TIDD)**- are mechanisms to support economic development and job creation by providing gross receipts tax financing and property tax financing for public infrastructure.
- **Stewardship** - a responsibility to take care of something one does not wholly own
- **Tax Roll** - information for each property that is needed by the Treasurer to generate tax bills. The tax roll must be sent to the Treasurer's office by October 1 of each year
- **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
- **Warrant** – a report delivered to the Treasurer's office with total tax dollars to be collected by the Treasurer for each school/taxing district, municipality, special districts that bill through property taxes and all livestock rendered each tax year.

APPENDIX A:
ADDITIONAL DUTIES OF THE BOARD OF COUNTY
COMMISSIONERS

Some items are discussed in various chapters throughout this book

Specific Duties/Authority Granted to Boards of County Commissioners

There are a large number of statutory references to specific powers granted to the New Mexico Board of County Commissioners (BOCC). The following is a listing of many of the powers, some of which are discussed in more detail elsewhere in this document.

A.1 Agriculture

1. Upon petition, the BOCC is authorized to appropriate funds to support the Cooperative Extension Service (§76-2-4 NMSA).
2. The BOCC may make appropriations to support a County Farm and Livestock Bureau (§76-2-11 NMSA).
3. Upon proper petition, the BOCC shall appoint a County Board of Horticultural Commissioners (§76-3-1 NMSA).
4. Upon proper petition, the BOCC may prohibit the importation of codling moths or other worms or insects destructive to fruit through licenses and other legal means (§76-5-1 NMSA).
5. The BOCC serves as the governing body of a Noxious Weed Control District (§76-7-12 NMSA).
6. The BOCC serves as the governing body of a Wind Erosion District (§73-22-4 NMSA).
7. The BOCC levies taxes as set by the New Mexico Livestock Board (§77-2-15 NMSA).
8. The BOCC is authorized to prohibit the running-at-large of dogs and cats (§77-1-12 NMSA).
9. When petitioned to do so, the BOCC may establish a predator control program (§77-15-7 NMSA) and appoint the members of a Predator Control Board (§77-15-10 NMSA).

A.2 Appointments, Salaries and Other Personnel Matters

A. Appointments

The BOCC has the power to appoint many specific county employees and board members including the following:

1. Board of Registration (§1-4-34 NMSA)
2. Air Quality Control Board, in Class A counties (§74-2-4 NMSA)
3. Zoning Commission (§3-21-7 NMSA)
4. A water or natural gas association (§3-28-1 NMSA)
5. Housing Authority (§3-45-5 NMSA)
6. Board of Trustees of a Special Hospital District (§4-48A-6 NMSA)
7. Board members for county hospitals (§4-48B-10 NMSA)
8. Representatives to have charge of county exhibits at the State Fair (§4-38-15 NMSA)
9. Emergency Flood Superintendents (§4-50-11 NMSA)
10. Two members of a County Special District Commission (§4-53-3 NMSA)
11. County Planning Commission (§4-57-1 NMSA)
12. County Board of Horticultural Commissioners (§76-3-1 NMSA)
13. Predator Control Board (§77-15-10 NMSA)
14. County Road Superintendent (§67-4-3 NMSA)
15. Artesian Well Supervisor (§72-13-3 NMSA)
16. Disaster successors for some offices (§12-11-6 NMSA)
17. Private legal counsel (§36-1-19 NMSA)
18. County Valuation Protest Board (§7-38-25 NMSA)
19. Refuse Manager and collectors (§4-52-11 NMSA)
20. Regional Planning Commission (§3-56-3 NMSA)

B. Filling Vacancies

If a vacancy in any county or precinct office occurs, other than in the office of the County Commissioner, the BOCC is empowered to fill the vacancy by appointment until a new successor is elected (§10-3-3 NMSA).

If a vacancy occurs in the office of a state senator or member of the State House of Representatives, the BOCC fills the vacancy by appointment (NM Const. Art. IV, Sec. 4). In the case of a vacancy in the office of a state senator or representative from a

district composed of two or more counties, the BOCC from each of the counties submits one name to the Governor who, in turn, appoints the individual to fill the vacancy from the recommendations (§2-7C-5 NMSA).

C. Bonds

Before assuming office, each county officer is required to give a bond payable to the state by January 10 following the election or within 10 days of appointment. Bonds are for the faithful performance of duties until a successor is elected or appointed. If a bond is not obtained within the specified periods, the BOCC shall declare the office vacant. The amounts required are set by statute and are very low due to the date the law was enacted. The New Mexico Counties Insurance Authority works with each county pool member and their elected officials to meet the terms of this requirement. See Chapter 2 for additional information.

D. Personnel

The BOCC sets salaries for county employees and may employ and set the salary for a County Manager (§4-38-19 NMSA). The BOCC is authorized to create a merit system by ordinance for county employees (§4-37-1, 4-41-6 NMSA; See also 111 N.M. 278, BOCC v. Padilla). The BOCC may set the office hours of other elected county officials to the extent it does not interfere with the official's ability to perform statutory duties. (AG Opinion No. 90-05; See also BOCC v. Padilla, 111 N.M. 278).

A.3 Buildings and Property

1. The BOCC may authorize the construction and repair of all county buildings (§4-38-16 NMSA) and is responsible for the care of all county property including property jointly owned and managed with a municipality (§4-38-18 and §5-5-5 NMSA).
2. Necessary county buildings include a courthouse, jail, hospital, public libraries, facilities for county fairs, and cultural and athletic events, sewage facilities, water systems, sanitary landfill systems, airports, roads, bridges, and juvenile detention facilities (§4-49-6 NMSA). The BOCC is authorized to issue bonds for the construction and repair of such buildings and facilities (§4-49-1, §4-49-21 NMSA). In counties with a population over 25,000, the BOCC may issue bonds and build a county auditorium (§5-3-11, §41-4-4(I) and (J) NMSA).

3. The BOCC is required to insure county buildings (§13-5-3, § 5-5-5 NMSA).
4. The BOCC may sell county buildings and lands to public entities (§13-6-2 NMSA) at a price set by the BOCC (§4-47-2 NMSA). They may authorize the sale of county buildings and land at public auction (§4-47-3 NMSA).
5. All counties may appropriate money from their general funds to acquire, build, improve, or maintain non-commercially licensed TV translator stations (§5-2-1 NMSA).

A.4 Election Duties

1. The BOCC is responsible for designating polling places and reorganizing precincts (§1-3-2 NMSA), obtaining adequate polling places (§1-3-7 NMSA), creating absentee voter precincts (§1-6-20 NMSA) and designating polling places for the absentee voter precincts (§1-6-22 NMSA).
2. The County Clerk is responsible for the care and custody of voting machines (§1-9-12 NMSA).
3. The BOCC is, ex officio, the County Canvassing Board (§1-13-1(A) NMSA) and the BOCC may designate the boards of registration to serve as the county canvassing board for the county (§1-13-1(B) NMSA). The County Clerk is the Chief Elections Officer for the County.
4. The Voter Records System Act is mandatory and supplemental to the Election Code (§1-5-3 NMSA as amended) and requires records for all voter precincts.

A.5 Fairs

1. The BOCC may appoint a representative to have charge of the county's exhibits at the State Fair (§4-38-15 NMSA) and may annually appropriate up to \$1,000 for activities aiding their county in displaying its products at the State Fair (§4-38-14 NMSA).
2. All counties may maintain and conduct county fairs (§16-6-31 NMSA).

A.6 Finance

1. The BOCC serves as the County Board of Finance ex officio (§6-10-8 through 6-10-10 NMSA). In coordination with, and upon the advice of, the County Treasurer, the Board of Finance determines the qualifications and selection of banks, savings and loan institutions, credit unions, and other institutions to

receive the county's deposits.

2. The BOCC must examine and settle all accounts of the receipts and expenses of the county, and all accounts chargeable against the county (§4-38-16 NMSA). All accounts must be itemized, and the board can disapprove all or part of the accounts (§4-45-3 NMSA).
3. The BOCC is responsible for seeing that a statement of receipts and expenditures is prepared on an annual basis (§4-38-27 NMSA). The fiscal year shall begin on July 1 and end on June 30 of each year. All transactions are public record.
4. If the BOCC approves payment of county funds without the authority of law, they become liable for the amount paid, and sometimes for more (§4-38-28 NMSA).
5. Counties are construed as agents of the United States Government when making expenditures authorized by any act of the U.S. Congress (§4-36-3 NMSA).
6. No county shall issue general obligation bonds unless approved by the voters. However, revenue bonds can be issued by 2/3 vote of the BOCC (§4-62-4 NMSA).
7. The BOCC works with the County Treasurer to set investment policy and to invest county funds in order to obtain the highest return possible. (§6-10-8 through 6-10-10 NMSA and, BOCC v. Padilla, 111 N.M. 278)

A.7 Health and Safety

1. The County may construct, purchase, and/or operate a hospital. The county also has power to make agreements with state, public, and private corporations for the care of the county's sick and of indigent persons (§4-48B-5 and §4-48B-8 NMSA). An agreement may be made for a joint county-municipal hospital (§4-48B-9 and §3-44-4 NMSA). The counties also have the authority to lease hospitals (§4-48B-7 NMSA).
2. A special hospital district may be established to serve one or more counties if approved by the voters of the affected counties (§4-48A-3 NMSA). The governing body of the hospital shall be the Board of Trustees consisting of the greater of either five members or a number equal to the number of counties which agree to

form the hospital district (§4-48A-6 NMSA). All members are elected to a term of five years. Each member must be a resident of the sub-district of the hospital area. The county or counties are responsible for conducting the initial election of a Special Hospital District Board of Trustees (§4-48A-6 NMSA).

3. Counties may provide ambulance service in the absence of an established service (§5-1-1 NMSA). In addition, the county may enter into a joint powers agreement with another governing body to provide ambulance service. Ambulance service costs for the indigent are to be paid on behalf of eligible indigent county residents by the county. Out-of-state charges may be approved only where no in-state equivalent exists.
4. The county is responsible for providing office space for the District Health Officer and staff. The state employs the District Health Officer. Additional staff may be hired at the county's expense, but they will remain state employees (§24-4-2 NMSA).
5. In Class A counties, the BOCC may create an Air Quality Control Board (§74-2-4 NMSA).
6. The BOCC may establish independent fire districts within the county but outside of the corporate limits of a city, town, or village (§5-7-1 et. seq., §4-37-1 NMSA). The county may purchase firefighting services from municipalities (§4-36-5 NMSA).
7. The BOCC may establish a county water system to supply water to inhabitants of unincorporated areas (§72-4-3 NMSA) and may issue revenue bonds for the water system (§72-4-4, §4-62-1 NMSA).
8. The BOCC has the power to regulate the collection of refuse or to delegate that power to the manager. They also have the power to acquire land or build facilities for the disposal of refuse (§4-52-11 NMSA).
9. The county is responsible for the burial of indigents, subject to the requirements and limitations of the Act (§24-13-1 NMSA).
10. The BOCC may designate and regulate flood plain and mud slide hazard areas (§3-18-7 NMSA).
11. The BOCC may inspect rivers and streams where flood waters are liable to cause damage to property or life, to cause to be constructed dikes, embankments, dams,

ditches, or excavations necessary to control such flood water to prevent damage (§4-50-3 NMSA).

12. Counties are authorized to own, lease, or sell projects for the purpose of reducing, abating, or preventing pollution (§4-60-3 NMSA).
13. The BOCC has the power of eminent domain for taking private land for public purposes (§§42A-1-1 et seq. NMSA and §42-2-1 et. seq. NMSA).
14. The BOCC may maintain and operate a housing project in the interests of the county (§4-37-1; §3-45-3 NMSA).
15. The BOCC may hire personnel to carry out the provisions of the Indigent Hospital and County Care Act to administer claims and make regulations pursuant to the Indigent Hospital and County Health Care Act (§27-5-6 NMSA). This Act recognizes that each county is the responsible agency for ambulance transportation and provision of health care to indigent patients domiciled in the county for at least three months.
16. Counties may issue building permits and inspect building construction for compliance with construction codes (§3-18-6 and 7 NMSA).
17. Counties may provide direct or indirect financial assistance to economic development projects, pursuant to the terms of §5-10-1 through 15 NMSA, in particular: §5-10-10 NMSA.

A.8 Licensing and Regulation of Businesses

1. The BOCC may issue licenses for jewelry auctions to be held outside of municipalities (§61-16-6 NMSA).
2. Counties may exercise a liquor sales local option if approved in an election (§60-5A-1 NMSA). The BOCC does not regulate the sale of alcoholic beverages. That authority is left to the Alcoholic Beverage Control Commission. The BOCC may, however, tax the holders of liquor licenses up to a maximum of \$250 per year (§7-24-2 NMSA).

A.9 Miscellaneous

1. Counties are authorized to enter into Joint Powers Agreements (§5-5-6, §11-1-3 NMSA) with other public entities.
2. The BOCC may establish a county library (§4-49-6 NMSA).

3. The BOCC may establish and equip juvenile detention homes (§33-6-1 NMSA).
4. The BOCC must purchase and provide to other county officers such stationery, postage and office supplies as necessary (§4-44-33 NMSA).

A.10 Municipalities and Unincorporated Areas

1. The BOCC performs a number of functions in the creation of a new municipality (§3-2-1 NMSA) and in the dis-incorporation of an existing municipality (§3-4-1 NMSA).
2. The BOCC also approves subdivisions in unincorporated areas (§3-20-6 NMSA).
3. The BOCC may grant franchises to utilities for their use of the county's streets and other rights-of-way or property, however, the BOCC franchise fee is limited to the County's reasonable actual expenses incurred relating to the granting of the franchise. (§62-1-3 NMSA).

A.11 Ordinances

Counties are granted the same powers as are granted to municipalities (§4-37-1 NMSA). Therefore, the BOCC may enact ordinances addressing the same subject matters as municipalities, unless doing so would be inconsistent with statutory or constitutional limitations placed on counties.

A.12 Planning and Zoning

1. The BOCC may act as the Zoning Commission, designate a Planning Commission to serve as Zoning Commission, or appoint a Zoning Commission (§3-21-7 NMSA).
2. The BOCC may create a County Housing Authority (§3-45-4 NMSA).
3. The BOCC may, by ordinance, create a Planning Commission (§4-57-1 NMSA).
4. The BOCC serves as a scenic highway zoning authority (§67-13-9 NMSA).
5. The BOCC may establish historic districts by zoning (§3-22-3 NMSA).
6. The BOCC may create an enterprise zone (§5-9-1 et. seq. NMSA) to foster job creation.
7. Some counties have adopted land use plans and environmental planning ordinances citing the National Environmental Protection Act and various federal regulations as authority.

A.13 Roads, Bridges, Airports, Public Buildings, Water and Sewer Systems

1. The BOCC may create, alter, or discontinue any road running through one or more precincts in their county (§4-38-24 NMSA).
2. The BOCC may order and direct the construction of bridges (§4-38-25 NMSA).
3. The BOCC may build and maintain a county airport (§4-38-31 NMSA).
4. The BOCC may create scenic highway zones on highways designated as scenic roads by the Legislature (§67-13-4 NMSA).
5. The BOCC may grant rights-of-way to lay and maintain oil and gas pipelines in, on or over the public highways (§70-3-7 NMSA).
6. The BOCC may enter into cooperative agreement with State Department of Transportation for the construction or improvement of highways (§67-3-28 NMSA).
7. Pursuant to Art. IX, Sec. 10, the BOCC may issue general obligation bonds to borrow money for the following purposes:
 - A. Erecting, remodeling, and making additions to necessary public buildings
 - B. Constructing or repairing public roads and bridges
 - C. Constructing or acquiring a system for supplying water, including the acquisition of water and water rights, necessary real estate or rights-of-way, and easements
 - D. Constructing or acquiring a sewer system, including the necessary real estate or right-of-way and easements
 - E. Constructing an airport or sanitary landfill, including the necessary real estate
 - F. Acquiring necessary real estate for open space, open space trails, and related areas or facilities
 - G. Purchasing books and other library resources for libraries in the county

A.14 General Bond Indebtedness

General bond indebtedness shall be incurred only after the proposition to create such debt has been voted on and passed. No bonds shall be issued for more than 20 years and no monies derived from general obligation bonds shall be used for maintaining existing buildings and, if so, such bonds shall be invalid. (§4-49-1 et. seq., §6-15-1 et. seq. NMSA).

A.15 Special Districts or Associations

- The BOCC may appoint members of a water or natural gas association which shall operate at least five miles outside of municipalities (§3-28-1 NMSA).
- The BOCC has certain responsibilities in the formation of drainage districts and in elections involving drainage districts (§73-6-17 NMSA), districts in federal projects (§73-8-7 NMSA), irrigation districts (§73-9-4 and §73-9-5 NMSA), electrical irrigation districts (§73-12-2 NMSA), and special hospital districts (§4-48A-6 NMSA).
- All counties except Class H, under the Public Improvement District Act, are authorized to create improvement districts for the purpose of developing street, road, sidewalk, bridge, water, sewer, gas, telephone and flood control projects (§4-55A-1 through 43 NMSA).
- The BOCC has certain responsibilities in the formation of water and sanitation districts in Class A and most Class B counties and may cause the creation of water and sanitation districts (§73-21-1 through 55 NMSA).

A.16 Accounts and Suits against County; Appeal from Disallowance of Payment on Account

When a claim of a person against a county is disapproved in whole or in part by the BOCC, that person may appeal the decision to the District Court, pursuant to statute (§39-3-1 NMSA).

**APPENDIX B:
GENERAL CALENDAR OF THE BOARD OF COUNTY
COMMISSIONERS**

*NOTE: No attempt has been made to make this calendar complete.

Date	JANUARY Event or Action Required	Statute
First meeting (and usually first order of business) in January	In the absence of an ordinance addressing it, the BOCC votes to choose a Chairperson to preside at their meetings.	§4-38-10
First meeting in January	BOCC orders preparation of statement of County's receipts and expenditures for preceding calendar year. Statement to be signed by Chairperson and County Clerk to publish.	§4-38-27 Note: 1876 law
First meeting in January (or more often)	BOCC to examine orders returned by County Treasurer by comparing with the record of orders in the Clerk's office, along with other financial tracking and recording set forth in the statute.	§4-48(B)-10 Note: 1876 law
Not a January requirement but commonly done at first January meeting; must be done on an annual basis.	BOCC to determine (i.e. by resolution) in a public meeting the reasonable notice it will provide to the public in advance of its meetings.	§10-15-1(D)
January of every odd numbered year	Counties that have not adopted a tax rebate for low-income taxpayers shall conduct a public hearing on the question of whether a property tax rebate should be provided for by ordinance, for the benefit of low-income property taxpayers. Note: to meet the statutory notice requirements, the hearing must be set and published/broadcast well in advance of the	§7-2-14.3(G)
Coincides with Legislative Session	New Mexico Counties Legislative Conference. This annual conference is held in Santa Fe.	
Date	FEBRUARY Event or Action Required	Statute
First regularly scheduled meeting in February of odd numbered years	BOCC appoints three voters and two alternates (See statute for member qualifications) to constitute the County's Board of Registration.	§1-4-34

Date	MARCH Event or Action Required	Statute
Due by end of month	BOCC (their public works or road departments) will be finalizing their report regarding county road mileages, so that BOCC will have time to meet and certify it at a public meeting, to submit it to the State prior to the April 1 deadline.	§67-3-28.3 and §7-1-6.26
Date	APRIL Event or Action Required	Statute
Before April 1	BOCC to certify and submit report of mileages of all public roads (by name, route and location) maintained by their county to the State Transportation Department.	§67-3-28.3 and §7-1-6.26
Before April 1	Counties with state-approved DWI programs are eligible to apply (by April 1st) for a funding distribution. The State distributes the funds quarterly on (or before) Sept. 10, Dec. 10, March 10, and June 10.	§11-6A-6 (C)&(D)
April quarterly meeting	BOCC's second quarterly meeting	§4-38-8 Note:1876 law
Date	MAY Event or Action Required	Statute
By end of month	BOCC (manager or finance staff) finalizing County's budget, so that BOCC will have time to meet and approve it in time to submit to the DFA/LGD by June 1 deadline.	§6-6-2(A)
By end of month	Last month that BOCC may consider imposing an annual liquor license tax (maximum is \$250 per year) on holders of liquor licenses within their county; deadline is June 1.	§7-24-2
Date	JUNE Event or Action Required	Statute
On or before June 1	BOCC files its proposed budget for next fiscal year with DFA/LGD. Note: 6-6-2 (B) requires the State to examine each proposed budget and on or before July 1 of each year, to approve and certify to each local public body an operating budget for use pending final approval.	§6-6-2(A)
On or before June 1	For counties composing local option districts, June 1 is the deadline for the BOCC to pass a resolution imposing an annual non-prohibitive license tax on holders of state liquor licenses.	§7-24-2

Date	JUNE Event or Action Required <i>continued</i>	Statute
Before June 30	In counties operating or maintaining a county hospital, BOCC is to appoint members of its governing hospital board for staggered terms, such that not more than one third of the hospital board's members (or as near thereto as possible) expire on June 30 of each year.	§4-48(B)-1
Before June 30	BOCC is to issue an order imposing the levy of a special tax at a rate fixed each year by the NM Livestock Board	§7-37-7.1 Note: This law is repealed effective July 1, 2006 B See §7-2-28
Typically in June	The New Mexico Counties' Annual Conference is rotated amongst host counties and is held in June.	
Date	JULY Event or Action Required	Statute
	No Events Noted	
Date	AUGUST Event or Action Required	Statute
August 1	Firm deadline after which the State will not distribute funds to any county for road purposes until mileages are certified (by the tardy BOCC) in accordance with this statute.	§66-6-3
Date	SEPTEMBER Event or Action Required	Statute
No later than Sept. 1	Counties adopting an ordinance granting a low-income property tax rebate (See January entry above) shall notify the State about the adoption of the ordinance and furnish a copy of the ordinance no later than September 1 of the first taxable year to which the ordinance applies.	§7-2-14.3(H)
No later than Sept. 6	The Secretary of DFA shall issue a written order each year by 9/1 setting the property tax rates for each county and the budget of each as approved by DFA. Note: A copy of the property tax rate-setting order shall be sent to each BOCC and to each Assessor within five days of the date the order is made.	§7-38-33
Within five days of receiving the written order (See statute above) from DFA	BOCC is to issue a written order imposing the tax rates on the net taxable value of property allocated to the appropriate governmental units. The BOCC also shall immediately deliver a copy of its tax rate-setting order to the Assessor.	§7-38-34

Date	OCTOBER Event or Action Required	Statute
On or before Oct. 1	BOCC receives annual report from its Board of Horticultural Commissioners (about fruit interests in their several districts, pest eradication, pests and diseases and insect quarantines, etc.).	§76-3-8
Not later than first Monday in November in odd-numbered years	BOCC shall (by resolution) designate the ADA accessible polling place for each precinct; create additional precincts to meet the requirements of Section 1-3-1 or upon petition pursuant to Section 4-38-21; create additional polling places in existing precincts as necessary pursuant to Section 1-3-7.1; and divide any precincts as necessary to meet legal and constitutional requirements for redistricting.	§1-3-2
On or before Dec. 1	BOCC submits an approved annual report to the Governor each year. Note: Board of Horticultural Commissioner's annual report is to be incorporated into the BOCC's annual report.	§76-3-8 Note: there may be other statutes that impose this obligation or refer to this report.
No later than Dec. 31	Counties having adopted a low-income property tax rebate ordinance (See January entry above), shall receive from the State a certified report with the amount of revenues lost as a result of the ordinance, and the County shall promptly pay the amount certified to the State.	§7-2-14.3 (I)
At least annually	The Open Meetings Act requires each BOCC to determine at least once annually the reasonable notice it will provide to the public in advance of its meetings. (It is common for such Notice Resolutions to be adopted at the first January meeting of each year as a part of several matters of routine annual business.)	§10-15-1(D)
Once each quarter in January, April, July, and October.	The BOCC shall meet at least once per quarter in these months at the County Seat, and more often as needed.	§4-38-8 Note: Since this law was passed, the number of services and transactions provided by several counties make it necessary to meet more frequently.

Date	PERIODIC Event or Action Required	Statute
Quarterly	Safety Net Care Pool The BOCC must approve payment of funds to qualifying hospitals.	§ 27-5-6.1
Within 10 days of each BOCC meeting and by the next BOCC meeting	The BOCC is to have draft minutes available for review by the public within ten (10) days from the date of its meeting; and the minutes are to be approved at the BOCC's next meeting.	§10-15-1(G)
By tenth of each month	BOCC must prepare and publicize a summary of minutes of all meetings, reflecting all action taken and a statement of all expenditures made, including a list of all warrants issued during the previous month.	§10-17-1 This is antiquated in light of the numerous meetings now held by the BOCCs, the Open Meetings & Inspection of Public Records Acts requirements and the modern technological methods of making public information available for review by the public.
Monthly	After minutes are filed in Clerk's office per §10-17-1, BOCC is to mail them to the newspaper for their use as they see fit	§10-17-2 Note: this is also a 1939 law.
First Monday of each month	All county and precinct officers (except for justices of the peace) must file monthly statements with the County Clerk showing an itemized account of all public monies received and disbursed by them. The BOCC must audit and adjust statements in accordance with the facts.	§10-17-4 Note: even this law may seem antiquated in light of DFA or other regulations enacted since.
At least quarterly	Financial reports are due from each county with pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal monies or grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions, and program numbers.	§6-6-2 (F)
Approximately every two years, but as often as needed, ending four months prior to a Primary Election	Not less than four months before each Primary Election, the BOCC may create, divide, abolish, or consolidate polling places or change boundaries of polling places. Note: It can afterward, but requires filing in District Court for an Order.	§1-3-5

Prior to a Primary, General or Statewide Election	BOCC shall adopt a resolution creating an absent voters precinct for each State Representative District in the County.	§1-6-20
Date	PERIODIC Event or Action Required Continued...	Statute
Prior to Primary and General Elections	Ninety (90) days prior to the election, the BOCC shall apply to the State Board of Finance for additional voting machines required by the Election Code.	§1-9-7
No sooner than six days and no later than 10 days after each Primary, General and Statewide election	The BOCC, sitting as the Canvassing Board, shall meet to proceed to canvas the election returns. Note: in many if not most counties, the Commissioners do not perform the actual tallying tasks, and rather oversee their County Clerk, or other staff to whom they have delegated.	§1-13-13
Annually, bi-annually and upon vacancy	In counties that have established a Planning Commission, the BOCC periodically will re-appoint its five members according to the terms of the ordinance.	§4-57-1
Periodically	BOCC authorizes Chairperson's facsimile signature to be used on behalf of County, and further votes on each individual issue for which the facsimile signature is authorized or required by law to be used.	§6-9-1 et al i.e. §4-48B-29
Once a year	The BOCC must visit and inspect the jail in their respective counties for cleanliness and discipline, and present a report at a regular meeting of the BOCC. Note: Some counties designate subcommittee of the full BOCC to inspect and report back to the full Board.	§33-3-4

Appendix C

Quick Reference for Roberts Rules of Order and Democratic Rules of Order

Parliamentary Procedures At-A-Glance*

To Do This:	You say this:	May you interrupt the speaker?	Do you need a second?	Is it debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Adjourn Meeting	I move that we adjourn	No	Yes	No	No	Majority	No
Call an Intermission	I move that we recess for ...	No	Yes	No	Yes	Majority	No
Complain about Heat, Noise, etc.	I rise to a question of privilege	Yes	No	No	No	No vote	No (usually)
Temporarily Suspend Consideration of an Issue	I move to table the motion	No	Yes	No	No	Majority	No
End Debate and Amendments	I move the previous question	No	Yes	No	No	2/3	No
Postpone Discussion for a Certain Time	I move to postpone the discussion until ...	No	Yes	Yes	Yes	Majority	Yes
Give Closer Study of Something	I move to refer the matter to committee	No	Yes	Yes	Yes	Majority	Yes
Amend a Motion	I move to amend the motion by ...	No	Yes	Yes	Yes	Majority	Yes
Introduce Business	I move that ...	No	Yes	Yes	Yes	Majority	Yes

The motions listed above are in order of precedence. Next page there is no order of precedence.

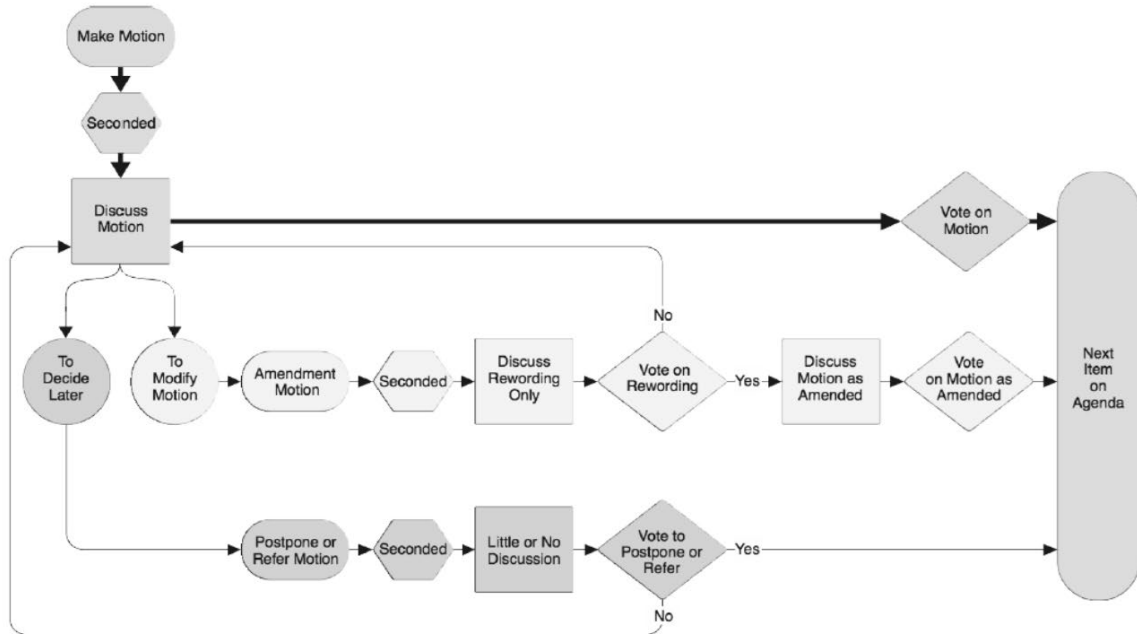
To Do This:	You say this:	May you interrupt the speaker?	Do you need a second?	Is it debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Protest Breach of Rules or Conduct	I rise to a point of order	Yes	No	No	No	No vote (4)	No
Vote on a Ruling of the Chair	I appeal from the chair's decision	Yes	Yes	Yes	No	Majority	Yes
Suspend Rules Temporarily	I move to suspend the rules so that ...	No	Yes	No	No	2/3	No
Avoid considering an improper matter	I object to consideration of this motion	Yes	No	No	No	2/3 (6)	(7)
Verify a voice vote by having members stand	I call for a division Or just say "Division!"	Yes	No	No	NO	No vote	No
Request Information	Point of information	Yes	No	No	No	No vote	No
Take up a matter previously tabled	I move to take from the table ...	No	Yes	No	No	Majority	No
Reconsider a Hasty Action	I move to reconsider the vote on ...	Yes	Yes	(8)	No	Majority	No

Notes:

1. Unless vote on question is not yet taken
2. Unless the committee has already taken up the subject.
3. Only if the motion to be amended is debatable.
4. Except in doubtful cases.
5. A majority vote in negative needed to reverse the ruling of the chair.
6. a 2/3 vote in negative needed to prevent consideration of main motion.
7. Only if the main question or motion was not, in fact, considered.
8. Only if motion to be considered is debatable.

* Reproduced from the "ABC's of Parliamentary Procedure", with permission.
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Flow Chart Using *Democratic Rules of Order*



GOOD ORDER

- Stay on topic
- One speaker at a time, acknowledged by chair
- No interrupting

POINT OF ORDER

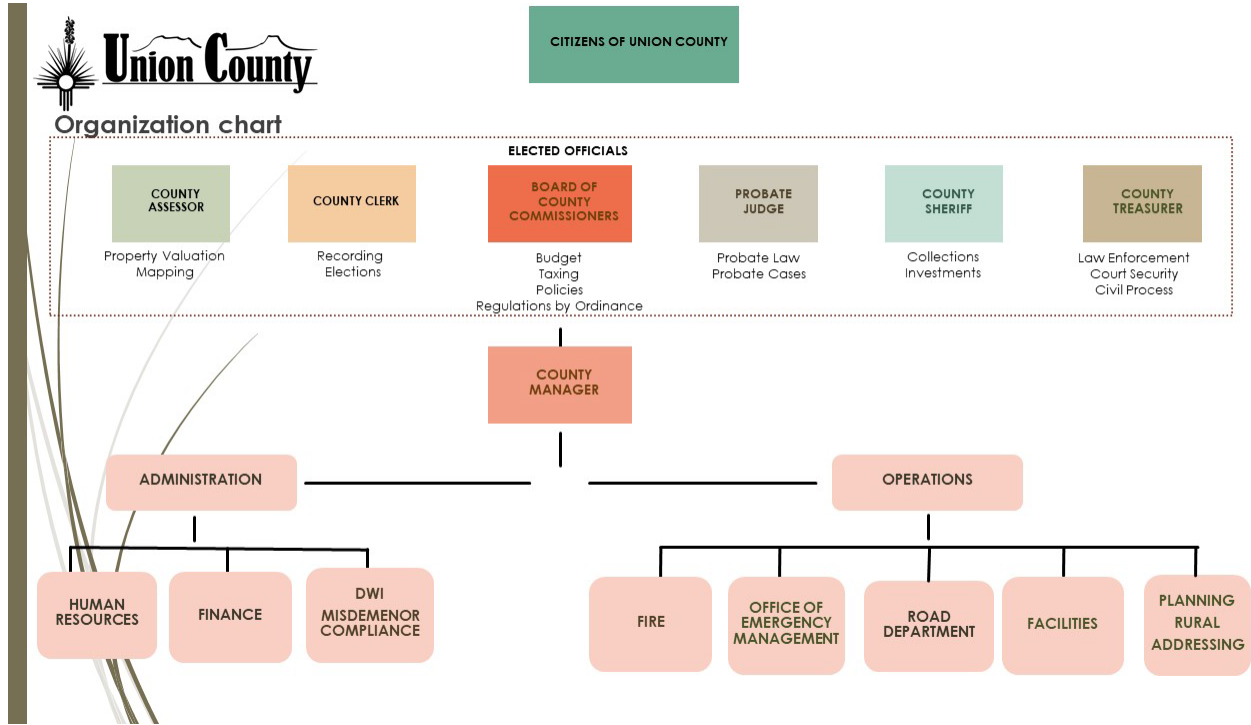
- Member explains how a law or good order is being breached
- Chair rules on point of order
- Vote if necessary



Democratic Rules of Order – Flow Chart by [Fred and Peg Francis](#) is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License](#).
Based on a work at [Democratic Rules of Order](#).

APPENDIX D

SAMPLE COUNTY ORGANIZATIONAL CHART



Appendix E Certification Guidance for the 2022 General Election



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

November 4, 2022

Via Electronic Mail Only, County Managers for Distribution

Re: Certification Guidance for the 2022 General Election

County Commissions:

In an effort to uniformly administer the 2022 General Election, we want to take the opportunity to clarify the role that the County Commissions have in approving the report of the canvass return and declaring the results of the election for the upcoming election.

To begin with the board of county commissioners is *ex officio* the county canvassing board in each county. NMSA 1978, § 1-13-1(A). The County Canvassing Board (“Board”) is responsible for supporting the county clerk in the canvass of the election. The Board does not canvass the election or prepare the report of canvass of the election returns. The Board’s main responsibility is to ensure timely certification of the report of canvass.

If the Board determines, or more likely is made aware by the clerk, that there is an error in the election returns based on the report of canvass prepared by the county clerk, the Board must follow the statutory procedure, which consists of aiding the clerk in ensuring the clerk is provided all the election returns necessary produce the report of the canvass. “Election returns” is a defined term in the election code. It is defined as:

[t]he certificate of precinct board showing the total number of votes cast for each candidate, or for or against each proposed constitutional amendment or other question, and may include statements of canvass, signature rosters, poll books, tally books, machine printed returns and, in any canvass of returns for county candidates, the original certificates of registration in the possession of the county clerk, together with the copies of certificates of registration in the office of the county clerk.

NMSA 1978, Section 1-1-8. It is important to note that actual ballots are not part of the definition of “election returns” and, therefore, the Board does not examine actual ballots, in this process. If an error is found the Board must immediately issue a summons directed to the precinct board if:

- (1) it appears on the face of the *election returns* that any certificate has not been properly executed;
 - (2) it appears that there is a discrepancy within the *election returns*;
 - (3) it appears that there is a discrepancy between the number of votes set forth in the certificate for any candidate and the number of electors voting as shown by the *election returns*;
- or
- (4) it appears that there is any omission, informality, ambiguity, error or uncertainty *on the face of the returns*.

NMSA 1978, Section 1-13-5(A). The election code limits the Board to examine only the “election returns” when finding errors. After issuing the summonses, the Board still *must* proceed with the canvass of all correct election returns, as its duty is to find errors, not correct them. § 1-13-5(C). Additionally, if an error is found and a summons is directed to the precinct board, the Secretary of State must also be notified. NMSA 1978, § 1-13-6. Finally, the Board *must* meet to approve the report of the canvass of the returns and declare the results no sooner than six days and no later than ten days from the date of the election. Though, if a county has more than one hundred and fifty thousand voters, the Board is allowed an addition three days to approve the report of the canvass. If you have any questions about the Board’s role, please do not hesitate to reach out to our office.

Respectfully,



Maggie Toulouse Oliver Secretary
of State



Mandy Vigil
State Elections Director

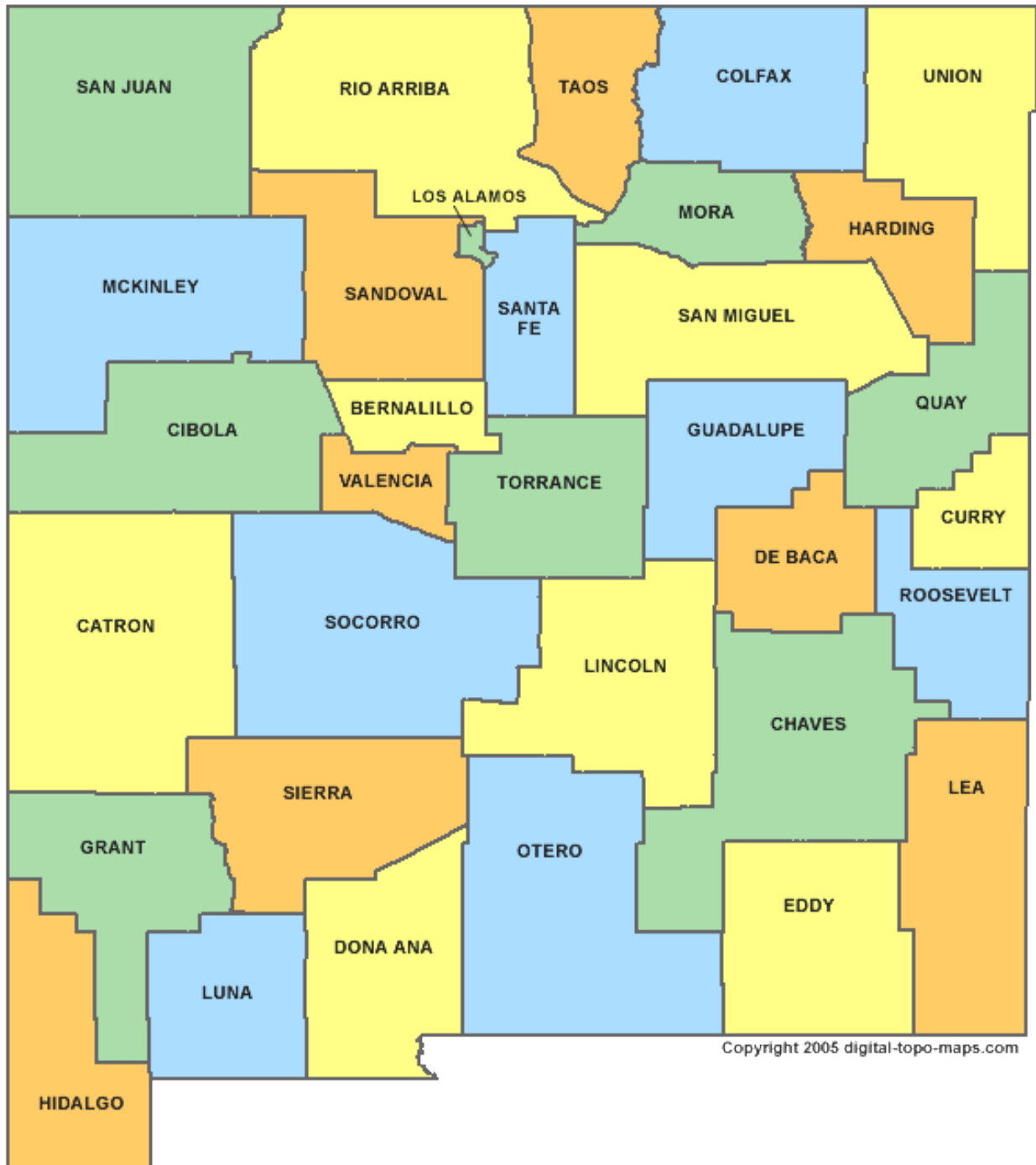
Appendix F
Quick Reference for Getting Started as a New Commissioner

New Commissioner Important Subjects

Recognizing that Commissioners are expected to begin their duties immediately,
the following subjects should be reviewed promptly.

Subject	Refer to Chapter, Page and Section
How To Run a Meeting	Chapter 5 Page 42 Sections 5.1-5.5 Appendix C Page 176
County Commissioner Duties	Chapter 4 Page 36 Sections 4.1-4.3 Appendix A Page 160
Working with County Manager/Administrator	Chapter 4 Page 38 Section 4.3 Chapter 5 Page 44 Sections 5.3-5.4 Chapter 6 Page 54 Section 6.2 Chapter 7 Page 61 Sections 7.4-7.8 Chapter 9 Page 88 Section 9.5
Working with County Attorney	Chapter 5 Page 44 Sections 5.3-5.5 Chapter 7 Page 60 Section 7.3 also Pages 58-68 Sections 7.1-7.9
County Budget Process	Chapter 4 Page 36 Section 4.1 Chapter 9 Page 88-95 Sections 9.5-9.7
Working with the New Mexico Counties organization (NMC)	http://www.nmcounties.org/
New Mexico Counties Staff - contacts	http://www.nmcounties.org/contact/
New Mexico Commissioners - contacts	See NMC Website or contact NMC
New Mexico County Managers - contacts	See NMC Website or contact NMC

Appendix G Map of NM Counties



- Socorro, San Miguel, Taos, Rio Arriba, Valencia, Santa Fe, Doña Ana and Bernalillo Counties were the original 9 counties created in 1852.
- Cibola County was the last county created in 1981.

Appendix H
Attorney General Opinion 90-05

Opinion No. 90-05
March 12, 1990

OPINION OF: HAL STRATTON, Attorney General

BY: Elizabeth A. Glenn, Assistant Attorney General

TO: Mark I. Bannister, Sr., District Attorney, Tenth Judicial District, P.O. Box 1141,
Tucumcari, New Mexico 88401

QUESTIONS

1. May a county commission set the hours that offices of other elected county officials must stay open?
2. May a county commission, its personnel director or other agents exercise supervision over the employees of other elected officials and require those employees to work hours contrary to those established by the officials?
3. May a county commission increase the hours worked by county employees without additional compensation?
4. May a county commission use the budget to control staffing of other elected officials without good cause?
5. In a lawsuit between a county commission and other elected county officials concerning employment terms and conditions, must the county pay both parties' attorneys fees?

CONCLUSIONS

1. Yes.
2. Yes, to the extent permitted by statute, provided the board's supervision over elected officials' employees does not interfere with the duties of those officials.
3. Yes.
4. A county commission may use its control over the county budget to restrict staff employed by other elected officials if its acts reasonably.
5. Each party is responsible for its own fees. The county is responsible for legal fees of its elected officials and employees only to the extent required by statute.

ANALYSIS

The questions presented stem from actions taken by a county commission to require the county clerk, county treasurer and county assessor to keep their offices open from 8:00 a.m. to 5:00 p.m. and to require employees in those offices to work from 8:00 a.m. to 5:00 p.m. with one hour for lunch. Before the commission's action, the working hours of the affected offices had been 8:30 a.m. to 4:30 p.m. with a one hour lunch period. The commission reasoned that its action required the offices to have a 40 hour work week like those of other county employees. We understand that while for bookkeeping purposes wages are calculated on an hourly basis, the employees concerned earn an annual salary.

1. A county commission's authority to control or interfere with the activities of other elected county officials is limited. This office has determined that state law does not grant general

superintending control over elected officials to boards of county commissioners. AG Op. No. 87-18 (1987). In addition, a board of county commissioners is prohibited from employing and paying a person to perform services which the law requires be performed by a county official.

Fancher v. Board of Comm'rs, 28 N.M. 179, 210 P. 237 (1922) (county commission could not employ private persons to perform duties imposed by statute on county clerk and state tax commission); **State ex rel. Miera v. Field**, 24 N.M. 168, 172 P. 1136 (1918) (finding ultra vires a contract between county board and person employed to perform duties required of county assessor).

On the other hand, offices of county officials are provided at county expense, NMSA 1978, § 4-44-34 (Repl. Pamp. 1984), and county boards have broad authority to control county property. They are authorized to "make such orders concerning the property belonging to the county as they may deem expedient," NMSA 1978, § 4-38-13 (Repl. Pamp. 1984); "build and keep in repair all county buildings, and ... to provide suitable rooms for county purposes," *id.*, § 4-38-16; and "represent the county and have the care of the county property and the management of the interest of the county in all cases where no provision is made by law." *Id.* § 4-38-18. In general, unless limited by statute or the constitution, a county board may enact ordinances to discharge the power of the county "to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience" of the county and its inhabitants. NMSA 1978, § 4-37-1 (Repl. Pamp. 1984).

This office has concluded that, because of its powers over property, a county commission has absolute discretion to determine when county offices should be open. AG Op. No. 6221 (1955) (county commission empowered to close county offices on Saturday). Other opinions make it clear, however, that the commission's powers may not be used arbitrarily to interfere with an officer's ability to perform his statutory duties and responsibilities independently from the commission. AG Op. No. 87-18 (1987); AG Op. No. 69-50 (1969) (while county board has authority to manage county property, this does not mean the board may arbitrarily decide how space assigned to the county sheriff may be used). Accordingly, we conclude that a county commission may establish hours for county offices, provided it acts reasonably and does not detrimentally affect the ability of county officials to perform their duties.

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A county commission's authority to control or interfere with the activities of other elected county officials is limited. This office has determined that state law does not grant general superintending control over elected officials to boards of county commissioners. AG Op. No. 87-18 (1987). In addition, a board of county commissioners is prohibited from employing and paying a person to perform services which the law requires be performed by a county official.

Fancher v. Board of Comm'rs, 28 N.M. 179, 210 P. 237 (1922) (county commission could not employ private persons to perform duties imposed by statute on county clerk and state tax commission); **State ex rel. Miera v. Field**, 24 N.M. 168, 172 P. 1136 (1918) (finding ultra vires a contract between county board and person employed to perform duties required of county assessor).

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2. A county board has some authority to supervise employees of other elected officials, including the power to regulate their hours of employment. The county manager's office may assist the board in this function. See NMSA 1978, § 4-38-19(B) (Repl. Pamp. 1984) (a board of county commissioners may employ and set the salary of a county manager "to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to the board").

Our conclusion is based on an opinion issued by this office which determined that a county commission could enact a personnel ordinance governing the terms and conditions of employment of persons hired by other elected county officials, provided the ordinance did not impair the performance of the officials' statutory duties and responsibilities. AG Op. No. 81-29 (1981). The opinion found support in the commission's authority to set the salaries of persons employed by elected officials, NMSA 1978, § 4-38-19 (Repl. Pamp. 1984), and to pay those salaries according to its approved budget. *Id.* § 4-38-17. See also **Sarpy County Pub. Employees Ass'n v. County of Sarpy**, 220 Neb. 431, 435, 436, 370 N.W.2d 495, 498, 499 (1985) (power to set salaries of county employees includes authority to prescribe working conditions). The opinion also determined that a county commission's power to regulate county employees hired by elected officials could be implied from its authority to manage the interests of the county where not otherwise provided by law, NMSA 1978, 4-38-18 (Repl. Pamp. 1984),

and from the grant to counties of "the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties." *Id.* § 4-37-1. As the opinion points out, a municipality may establish by ordinance a merit system regulating municipal employees and may provide for rules and regulations governing classification, service ratings, pay scales, working hours and methods of employment, promotion, demotion, suspension and discharge. NMSA 1978, § 3-13-4 (Repl. Pamp. 1985).

As with the county commission's authority to determine office hours, the authority to regulate employment terms and conditions may not be exercised unreasonably. Cf. **Burch v. Foy**, 62 N.M. 219, 308 P.2d 199 (1957) (attempted statutory classification imposing different minimum wage for similarly situated employees was arbitrary discrimination). The commission also may not act in a manner amounting to supervisory control over other elected officials. Although the board sets employee salaries, elected officials recommend their employees' salaries and retain authority to hire persons to carry out the duties and responsibilities of the offices to which they are elected. NMSA 1978, § 4-38-19(A) (Repl. Pamp. 1984). A county commission may not usurp this authority by effectively controlling the tasks and responsibilities of elected officials' employees.

We conclude, therefore, that although a county commission may not supervise, dictate or otherwise interfere with the substantive duties of employees hired by other elected officials, it may regulate the procedural terms of employment for those employees, including hours.

3. Unless established under an employment contract, the working hours of elected county official's employees may be increased without additional compensation. County boards may set the salaries of such employees and deputies as it feels necessary to discharge the functions of the county, except that elected county officials have the authority to hire and recommend the salaries of persons employed by them to carry out the duties and responsibilities of the offices to which they are elected. NMSA 1978, § 4-38-19 (A) (Repl. Pamp. 1984). Under this provision, although elected county officials may hire employees and recommend their salaries to the board, the board retains the ultimate authority to set employee salaries. AG Op. No. 81-29 (1981); AG Op. No. 75-64 (1975) (board of county commissioners was authorized to adjust the salary of the deputy county assessor).

Whether a public employer can modify compensation and other employee benefits depends on the employment relationship between the parties. In general, an ordinance or rule governing terms and conditions of public employment does not create a binding contract, but is intended merely to declare a policy to be pursued until the Legislature declares otherwise. If contractual rights are to be created by statute, the language of the statute and the circumstances must manifest a legislative intent to create private rights of a contractual nature enforceable against the State.

Wage Appeal v. Board of Personnel Appeals, 676 P.2d 194, 199 (Mont. 1984) (prior law governing Highway Patrol officers' salary did not create vested contract rights impaired by subsequent statute repealing prior law and effectively reducing officer's expected compensation). Absent a binding contract, an employee's right to compensation vests only after the required services for a pay period are performed, and "the government may alter the

salary of a public employee prospectively, prior to the vesting of the salary right." *Id.* at 199-200. See also **Abbott v. City of Tempe**, 129 Ariz. 273, 279, 630 P.2d 569, 575 (Ct. App. 1981) (ordinance providing for certain holiday and vacation pay benefits did not limit power of city to prospectively reduce or modify non-vested benefits); **Keeling v. City of Grand Junction**, 689 P.2d 679, 680 (Colo. Ct. App. 1984) (because salaries fixed by one city council are subject to change by subsequent councils and receipt of salary was contingent on continued employment with city, public employees did not have a vested contractual right in continuance of particular rate or method of compensation); **Grants v. Nellius**, 377 A.2d 354 (Del. 1977) (legislature could rescind statutory cost-of-living salary supplement not designed to compensate state employees for past services rendered or to induce individuals to enter and remain in public service).

We believe these principles apply to the actions of a county commission in changing the hours of elected county officials' employees. Unless the employees can show that their hours were bargained for as part of an employment contract or that their right to a 35 hour work week otherwise had vested, we conclude the county commission may use its discretion to set employee hours prospectively without being restricted by the preexisting policy, even if it arguably affects the employees' compensation. Cf. **State ex rel. Coll v. Carruthers**, 107 N.M. 439, 447, 759 P.2d 1380, 1833 (1988) (Legislature had no authority to alter terms of existing employment contracts between the health and education department and mental health providers); **Hayner v. Board of Comm'rs**, 29 N.M. 311, 313, 222 P. 657, 658 (1924) (there was no vested right to have statute providing for a bounty on specified animals continued in force in the future, but bounty already earned by performing conditions stipulated in the statute held secured against legislative invasion).¹

4. In general, the board of county commissioners controls county finances. Counties and other political subdivisions annually submit a budget for approval of the Local Government Division of the Department of Finance and Administration. NMSA 1978, § 6-6-2 (Repl. Pamp. 1987). Once approved, the budget is binding on all officials and governing authorities. *Id.* § 6-6-6. See also NMSA 1978, § 4-44-31 (Repl. Pamp. 1984) (expenditures from county general fund allowed only in accordance with approved budget). The county board also is charged with settling the county's accounts and allowing accounts chargeable against the county, NMSA 1978, § 4-38-16 (Repl. Pamp. 1984), and with levying taxes for general county purposes, including officer and employee salaries. *Id.* § 4-38-17.

As noted, the board of county commissioners is authorized to set salaries for all county employees, including those employed by other elected officials, and thus has the opportunity to control staff by adjusting the county's budget. A county board may not use its budget to control the salaries of county employees when the salaries are established by statute. AG Op. No. 65-28 (1965) (county board could not, through adjustments in its budget, eliminate deputy treasurer or assessor, or create part-time positions, when a salary was provided by law for those employees). Current provisions, however, only set forth the salaries of county officers. NMSA 1978, §§ 4-44-4 to -14 (Repl. Pamp. 1984 & Cum. Supp. 1989). Thus, no statute controls a county commission's discretion to affect staffing by setting employee salaries.² Again, in exercising its discretion over salaries, a county commission may not act arbitrarily. See **Sarpy County Pub. Employees Ass'n v. County of Sarpy**, 220 Neb. 431, 435, 370 N.W.2d 495, 498 (1985) (county board may not act arbitrarily in exercising its authority to approve employee salaries set by elected officials). Cf. **City of Roswell v. Mitchell**, 56 N.M. 201, 242 P.2d 493 (1952) (policy of installing parking meters is a matter solely for the city, unless it has acted arbitrarily or fraudulently); **Oliver v. Board of Trustees**, 35 N.M. 477, 1

P.2d 116 (1931) (actions of town board in matters submitted to its discretion are conclusive, absent a showing of fraud or conduct so arbitrary as to be the equivalent of fraud). In a case involving a county commission's discretion to refuse to hire employees requested by the county sheriff, Colorado's highest court held that the commission's refusal was justified when the sheriff's request could not be reasonably accommodated within the budget. **Tihnovich v. Williams**, 196 Colo. 144, 582 P.2d 1051 (1978) (en banc). According to the court, pertinent considerations guiding a county commission in approving additional employees or salary increases for employees of county officials include "the amount of revenue available, the needs of other county departments and the ability of the county's taxpayers to fund additional requests, as well as the requesting department's need for the expenditures." 196 Colo. at 151, 582 P.2d at 1056. Unless the commission, in light of all the circumstances, abuses its discretion by acting arbitrarily or unreasonably in deciding on salary increases or additional employees, its decision will be upheld. *Id.*

Accordingly, we conclude that, though a county commission has the authority to control staff of elected officials to some extent through the budget, it must act reasonably in light of other demands on the budget and the needs of the officials.

5. We found nothing in the statutes requiring a county board to pay attorneys fees to employees who sue the county in a dispute over employment terms. Under pertinent provisions regarding litigation in which a county is interested, the district attorney is required to represent the county, except that the board of county commissioners is authorized to contract with private counsel to represent the county in civil matters. NMSA 1978, § 36-1-19 (Cum. Supp. 1989). Unless covered by insurance, the Tort Claims Act requires a county to provide a defense, including attorneys fees, for public employees when liability is sought for torts or any violation of property rights or rights secured by federal or New Mexico law allegedly committed by the employee acting within the scope of his duties. NMSA 1978, § 41-4-4(B) (Repl. Pamph. 1989). These statutes do not require that the county provide legal representation for persons who file suit against the county or county commission or reimburse those persons for amounts spent to obtain counsel. Cf. **Johnson v. Board of County Comm'rs**, 676 P.2d 1263 (Colo. Ct. App. 1984) (award of attorneys fees to county sheriff, deputies and employees in dispute with county board over overtime compensation denied absent statute providing for county to pay costs of litigation instituted by the sheriff).

In general, absent a statute or court rule, each party to a lawsuit must pay its own attorneys fees. **McClain Co. v. Page & Wirtz Constr. Co.**, 102 N.M. 284, 285, 694 P.2d 1349, 1350 (1985); **Martinez v. Martinez**, 101 N.M. 88, 93, 678 P.2d 1163, 1168 (1984). Because there is no provision authorizing or requiring a county to pay attorneys fees for county officials and their employees in litigation against the county, we conclude that the county need not provide funds for that purpose.

ATTORNEY GENERAL

HAL STRATTON Attorney General

GENERAL FOOTNOTES

ⁿ¹ The county board's position that county officials' employees should work an eight hour day seemingly is supported by the state constitution which provides: "Eight hours shall constitute a day's work in all cases of employment by and on behalf of the state or any county or

municipality thereof." N.M. Const. art. XX, § 19. The New Mexico

Supreme Court, however, has determined that this provision is not self-executing, but requires legislation to give it effect. **Jaramillo v. City of Albuquerque**, 64 N.M. 427, 329 P.2d 626 (1958) (affirming judgment that art. XX, § 19 alone did not prevent city employees from working 10 hours a day for four days each week). There is no statute governing county employee hours, and absent legislation, art. XX, § 19 is simply "a declaration of principle or policy as to the number of hours employees of the class named should work to be entitled to a day's wages." 64 N.M. at 430, 329 P.2d at 628. See also AG Op. No. 67-89 (1967) (there is no specific requirement, either constitutional or statutory, requiring that state employees work eight hour day). Cf. **Greub v. Firth**, 717 P.2d 323 (Wyo. 1986) (where statute stated that 40 hours per week constituted a lawful week's work, full-time county employees were not entitled to additional compensation when their hours were raised from 35 to 40 hours per week). But see **Cyr v. Board of County Comm'rs**, 780 P.2d 986, 989 (Wyo. 1989) (statute establishing 40 hour week merely stated standard interval of full-time employment and did not prohibit employment contracts which set a different interval as full-time employment).

n2 A county board's authority to adjust salaries is limited by N.M. Const. Art. IV, § 27, which prohibits laws giving retroactive salary increases to public officers and employees and proscribes increases and decreases in officers' compensation during their terms of office. See, e.g., AG Op. No. 87-5 (1987) (city council members serving during the term in which an ordinance is passed increasing councilors' salaries may not benefit from the increase during that term even if they personally undertake extra duties while in office); AG Op. No. 62-28 (1962) (public employee pay increases cannot be granted for services already rendered).

Appendix I
Attorney General Opinion 77-02

Opinion No. 77-02
January 20, 1977

OPINION OF: Toney Anaya, Attorney General

BY: P. J. Turner, Assistant Attorney General

TO: Thomas C. Esquibel, District Attorney, Thirteenth Judicial District, Post Office Box 718, Los Lunas, New Mexico 87031

LEGISLATORS-COUNTY EMPLOYEES-COUNTY MANAGERS-CIVIL OFFICE-ARTICLE IV, SECTION 28, N.M. CONSTITUTION.-A member of the state legislature during the term for which elected may serve as a county manager.

QUESTIONS

May a member of the state legislature, during the term for which elected, serve as a county manager?

CONCLUSIONS

See analysis.

ANALYSIS

Article IV, Section 28 of the New Mexico Constitution provides:

No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state, nor shall he within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term; nor shall any member of the legislature during the term for which he was elected nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term. (Emphasis added.)

OPINION

The prohibition of Article IV, Section 28 extends only to civil offices. Accordingly, we must determine whether the position of county manager is a "civil office."

The New Mexico courts have often considered the question of whether a position is a "civil office" as opposed to employment. See *State ex rel. Gibson v. Fernandez*, 40 N.M. 288, 58 P.2d 1197 (1936); *Pollack v. Montoya*, 55 N.M. 390, 234 P.2d 336 (1951); *Candelaria v. Board of County Commissioners*, 77 N.M. 458, 423 P.2d 982 (1967); *Lacy v. Silva*, 84 N.M. 43, 499 P.2d 361 (Ct. App. 1972). Although various standards and tests have been used, it is generally agreed that the determinative criteria for a finding that a position is a "civil office" is whether or not some portion of sovereign power is vested in the position. *State ex rel. Gibson v. Fernandez*, supra; *Lacy v. Silva*, supra.

In *Lacy v. Silva*, *supra*, the Court of Appeals of New Mexico quoted from Webster's Third New International Dictionary (1966), defining sovereignty as "'supreme power;' 'freedom from external control: autonomy, independence;' 'controlling influence.'" See *Oceanographic Commission v. O'Brien*, 74 Wn.2d 904, 447 P.2d 707 (1968), for a listing of definitions of sovereign power.

Section 15-37-16.1(B), NMSA, 1953 Comp. provides:

A board of county commissioners may employ and set the salary of a county manager to conduct the business of the county, to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to the board, aiding and assisting it in the exercise of its duties and responsibilities.

That a statute may set forth duties to be performed by one occupying a public position does not of itself establish a delegation of sovereign power. *State v. Page*, 98 Mont. 14, 37 P.2d 575 (1934). The functions specified in Section 15-37-16.1(B), *supra*, do not prescribe any independent, unequaled or superior authority of a sovereign nature. See *State v. Jacobson*, 140 Mont. {*79} 221, 370 P.2d 483 (1962). A county manager exercises no powers or duties independent of the county commissioners by virtue of Section 15-37-16.1(B), *supra*. Section 15-37-1, NMSA, 1953 Comp. vests sovereign power in a board of county commissioners. It provides that:

The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners.

The independent authority necessary to accomplish the purposes of county government has been delegated by the legislature to a board of county commissioners. The administration of the board's authority by a county manager does not constitute a delegation of that authority. Thus, we conclude that the position of county manager is that of a public employee, and not a civil officer within the prohibition of Article IV, Section 28.

A review of former statutory provisions concerning the position of county manager further supports our conclusion. In the Laws of 1953, Ch. 167, §§ 9 and 10, a board of county commissioners was authorized to employ a chief administrative assistant to be known as a county manager and expressly stated that:

. . . said chief administrative assistant shall not be an officer of the county, but shall be an agent of the Board of County Commissioners. (Emphasis added.)

The present statute, Section 15-37-16.1(B), *supra*, similarly authorizes the employment of a county manager and specifies, in a more concise manner, duties of a county manager similar to those described in Laws of 1953, Ch. 167, §§ 9 and 10.

While Section 15-37-16.1(B), *supra*, does not specifically state that the county manager "shall not be an officer of the county," the similarity of specified duties and the identical characterization of the position of county manager as an administrative assistant to the board of county commissioners in both the former and the present statutory provisions lead to the conclusion that the legislative intent expressed in the former statute, i.e., that sovereign power has not been vested in the position and, therefore, a county manager is not an officer of the county, has been retained in the present statute.

Finally, we must consider whether a county manager, while serving as a member of the New Mexico Legislature, may continue to receive the salary set by the board of county commissioners pursuant to Section 15-37-16.1(B), supra.

40A-23-2. PAYING OR RECEIVING PUBLIC MONEY FOR SERVICES NOT RENDERED. -- Paying or receiving public money for services not rendered consists of knowingly making or receiving payment or causing payment to be made from public funds where such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered.

{*80} Nothing in this section shall be construed to prevent the payment of public funds where such payments are intended to cover lawful remuneration to public officers or public employees for vacation periods or absences from employment because of sickness, or for other lawfully authorized purposes.

Whoever commits paying or receiving public money for services not rendered is guilty of a fourth degree felony.

We assume that the duties of a county manager are performed during normal workday hours. The workday of a state legislator extends, likewise, at least throughout the normal working hours during the legislative session. It therefore appears to us that it would be physically impossible for one person to perform the duties of both positions. Thus, we would conclude that it would be violative of Section 40A-23-2, supra, to pay a salary to a county manager during the time he is serving as a state legislator if his duties as a legislator do in fact make it impossible for him to perform the duties for which the salary is paid, unless the salary is lawful remuneration for accrued leave time.

ATTORNEY GENERAL

Toney Anaya, Attorney General

Appendix J
Attorney General Opinion 88-67

Opinion No. 88-67
October 31, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Scott Spencer, Assistant Attorney General

TO: Douglas R. Driggers, District Attorney, Third Judicial District, 135 E. Griggs, 2nd Floor, Las Cruces, NM 88001

QUESTIONS

Whether the contract of employment between the Dona Ana County Commissioners and Charles Russell Lummus, county manager, violates the Bateman Act, Sections 6-6-11 to 6-6-18 NMSA 1978 (Repl. 1987).

CONCLUSIONS

No, as long as only the current fiscal years' funds were available and allocated to make payments under this agreement for its entire term. However, the agreement creates unconstitutional debt and purports to bind subsequent commissions and is therefore void.

ANALYSIS

On February 9, 1988, the board of County Commissioners of Dona Ana County ("Board") adopted Dona Ana County Commission Resolution 88-08, which authorizes an employment agreement ("Agreement") between the board and Charles Russell Lummus for the position of county manager. Paragraph 2 of the Agreement states, in part, "[T]he term of this Agreement shall begin on January 1, 1988, and shall terminate on December 31, 1989." Paragraph 3 states:

Notice. Employer agrees to give employee a minimum of six (6) months notice in the event of its intent not to renew Employee's employment at the natural expiration of this Agreement. Unless a new Employment Agreement is executed, or the terms of the present Agreement extended in writing and signed by both parties, at the natural expiration of this Agreement, any continued employment shall be construed to be on a month-to-month basis. However, if Employee's employment continues on a month-to-month basis, Employer agrees to give Employee a minimum of six (6) months notice in the event of termination without cause. Employee agrees to give Employer a minimum of six (6) months notice in the event he does not desire to renew his employment at the natural expiration of this Agreement or during any period following the natural expiration of this Agreement while employed on a month-to-month basis.

Paragraph 4 of the Agreement states, in part: "For all services rendered by the Employee under this agreement, the Employer shall, effective July 1, 1988, compensate the Employee

the salary of \$55,000 per annum, payable in 26 equal payments to coincide with the County's biweekly pay periods, beginning with the first pay period in July of each year". Paragraph 9 states:

Termination. The Employer may terminate this Agreement for cause at any time, but only in the event that the Employee is convicted of a criminal offense involving moral turpitude, files for bankruptcy under any of the provisions of the Bankruptcy Act, commits a serious infraction of a Dona Ana County rule or policy, fails without cause to perform his duties, becomes drug or alcohol dependent or is committed for detoxification or mental incompetency. Termination under is paragraph shall be subject to the provisions of procedural due process by the Employer.

Employer may terminate this agreement without cause at any time if the Board of County Commissioners of Dona Ana County decides, by a unanimous vote of all five commissioners that it is in the best interests of Employer to so terminate this agreement. Employer agrees, upon such termination without cause, to pay Employee a sum equivalent to one half of Employee's yearly salary, said payment to be made at the end of the bi-weekly pay period during which notice of termination is given.¹

Paragraph 11 states:

"Bateman Act". It is understood and agreed by and between the parties that the Employer's contractual authority is limited by the Bateman Act, Section 6-6-11, NMSA 1978, and that the Employer shall be entitled to terminate this Contract, prior to its natural expiration date, in the event that funds are not available for payment of this Contract. The Employer agrees, however, that this paragraph may not be used by the Employer as a subterfuge to terminate the Employee for reasons other than those specified herein. In the event that the Employer terminates this Contract because of the unavailability of funds, the Employer may not replace the Employee with another individual, or individuals, regardless of the title of such persons(s) for the duration of the period of this Contract.

We have been advised that each member of the current Board was elected in 1986, and their respective terms will expire on December 31, 1988.

1. Bateman Act

Section 6-6-11 of the Bateman Act, Sections 6-6-11 to 6-6-18 NMSA 1978 (Repl. 1987), states:

It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which at the end of such current year is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void. Any officer of any county, municipality, school district or local school board, who shall issue any certificate or other form of approval of indebtedness separate from the account filed in the first place or who shall at any time use the funds belonging to any current year for any other purpose than paying the current expenses of that year, or who shall violate any of the provisions of this section is guilty of a misdemeanor.

Section 6-6-12 states:

Insurance contracts not exceeding five years, lease purchase agreements, lease agreements and contracts providing for the operation, or provision and operation, of a jail by an independent contractor entered into by a local public body set out in Section 6-6-11 NMSA 1978, are exempt from the provisions of Section 6-6-11 NMSA 1978, and such contracts, lease purchase agreements, lease agreements and jail contracts are declared not to constitute the creation of debt.

The legislature enacted the Bateman Act to require municipalities to live within their annual incomes. *City of Hobbs v. State ex rel. Reynolds*, 82 N.M. 102, 476 P.2d 500 (1970). Courts have held that a debt, which can include service contracts, does not violate the Bateman Act if funds are available and allocated to pay the debt when it was incurred. *National Civil Serv. League v. City of Santa Fe*, 370 F. Supp. 1128 (D.N.M. 1973); *Cathey v. City of Hobbs*, 85 N.M. 1, 508 P.2d 1298 (1973); *Capitol City Bank v. Board of Comm'rs*, 27 N.M. 541, 203 P. 535 (1921). For example, in *National Civil Serv. League*, the City of Santa Fe passed a resolution on December 15, 1971 to pay for the plaintiff's contractual services. The contract provided that the plaintiff would draft a municipal ordinance for \$21,000, payable within thirty days after delivery of the ordinance. The resolution "allocated" sufficient funds to pay for the contract. On February 8, 1972, the plaintiff delivered a draft of the ordinance and the city adopted it on February 18, 1972 with a few minor modifications. The city refused to pay the plaintiff, however, because the 1971 funds that it allocated to the contract were no longer available. The court rejected this defense:

The city has not shown that the funds were unavailable at the time that resolution 1971-50 was duly passed by the city council to pay for the contractual services of the plaintiff. Indeed, the fact that the sum of \$21,000.00 was specifically allocated for these services at the time, from "local" funds (Presumably the city budget and treasury) and from "model cities" funds (over which the city was given financial control and supervisory authority), belies any inference that the funds were not available. That these funds may have been diverted from the allocation to pay for the plaintiff's services and are not now readily available for his purpose is of no import. It appears that the funds were available and actually allocated at the time that the resolution was made. This is sufficient. *Capitol City Bank v. Board of Commissioners*, 27 N.M. 541, 203 P. 535, 536 (1921), is still the law in New Mexico and is dispositive of any question of the Bateman Act's application in this case.

Based on these authorities, it is our opinion that the Agreement does not violate the Bateman Act as long as sufficient funds were available and allocated on February 9, 1988 to cover the entire financial obligation of the city under the contract.²

2. Constitutionality.

Even though the Agreement may comply with the Bateman Act, we believe it creates an unconstitutional debt. Article IX, Section 10 of the New Mexico Constitution provides:

No county shall borrow money except for the following purposes:

- A. erecting, remodeling and making additions to necessary public buildings,
- B. constructing or repairing public roads and bridges;
- C. constructing or acquiring a system for supplying water, including the acquisition of water and water rights, necessary real estate or rights-of-way and easements;
- D. constructing or acquiring a sewer system, including the necessary real estate or right-of-way and easements; or
- E. constructing an airport or sanitary landfill, including the necessary real estate.

In such cases, indebtedness shall be incurred only after the proposition to create such debt has been submitted to the qualified electors of the county and approved by a majority of those voting thereon.

In *Shoup Voting Mach. Corp. v. Board of Commissioners of Bernalillo County*, 256 P.2d 1068, 57 N.M. 196 (1953) the Supreme Court held unconstitutional a statute authorizing county commissioners to purchase voting machines over ten years in annual installments. The Court stated:

The above section of the constitution unequivocally forbids contraction of any debt for any purpose other than for erecting necessary public buildings or constructing or repairing public roads and bridges, and then, only after the proposition to create such debt shall have been submitted to the qualified electors of the county and approved by a majority of those voting thereon.

57 N.M. at 199, 256 P.2d at 1071.

In *State ex rel. Capitol Add. Bldg. Comm'n v. Connelly*, 39 N.M. 312, 46 P.2d 1097 (1935), the New Mexico Supreme Court defined "debt" in the constitutional sense. The Court quoted with approval from *Seward v. Bowers*, 37 N.M. 385, 24 P.2d 253, (1933):

"The idea of 'debt' in the constitutional sense is that an obligation has arisen out of contract, express or implied, which entitles the creditor unconditionally to receive from the debtor a sum of money, which the debtor is under a legal, equitable, or moral duty to pay without regard to any future contingency."

39 N.M. at 318, 46 P.2d at 1100. The court further stated:

[W]e are convinced that the term [debt] is used ... as comprehending a debt pledging for its repayment the general faith and credit of the state or municipality, as the case may be, and contemplating the levy of a general property tax as the source of funds with which to retire the same.... [T]he debt whose contracting is inhibited is one which may engage the general taxing power of the state or municipality for its repayment.
Id. at 318-19, 46 P.2d at 1100.

In *State Office Bldg. Comm'n v. Trujillo*, 46 N.M. 29, 120 P.2d 434 (1941), the Supreme Court recognized that a lease that is terminable at will may not be a constitutional debt:

... A lease for a term of years for use of property by a city, school district, etc., which does not involve purchase of the property leased and the yearly rental under which can be met within the constitutional limits of annual indebtedness, and **wherein such city, etc., may at any time recede without involving any financial liability in so receding**, is valid. This is based on the idea that the service charges by the lessor are earned only year by year.... Under such an arrangement, the city, etc., is not legally bound to continue payment of rentals, or to raise money therefore....³

(Emphasis added.) 46 N.M. at 49; 120 P.2d at 446.

The Court in *Trujillo* discussed at length its concern that the state in that case would be obliged to continue payment under the contract until the indebtedness was satisfied. The court quoted with approval from *Brash v. State Tuberculosis Bd.*, 124 Fla 652, 169 So. 218:

"Only where it can be clearly demonstrated beyond a reasonable doubt that a contemplated scheme of embarkation upon new capital ventures will not immediately or mediately, presently or in futuro, directly or contingently, operate to impose an added burden on the taxing power, or have the effect of impairing the public credit in futuro, will the consummation of such a debt incurring scheme be held authorized, absent the approving voice of the freeholders.... And, in the case of enterprises authorized by the Legislature to be embarked upon through state agencies, a particular scheme of financing will be held to be valid only where it is clearly demonstrable from the specific terms of the financing proposal itself that no tax burden or pecuniary liability of the state to appropriate or pay for the indebtedness about to be incurred will ever arise, or be looked to as security, in whole or in part, for repayment of the borrowed moneys."

46 N.M. at 45, 120 P.2d at 444. The court also stated:

This would mean, so long as the agencies did not recede from the lease agreements under the one specified condition, that future legislatures would be bound to provide appropriations for payment of rentals. Such would not be within the conception of expense under a lease as current expense; and a legislature cannot tie the hands of another legislature.

46 N.M. at 52, 120 P.2d at 448.

Paragraphs 3, 9 and 11 of the Agreement are attempts by the Commission to bind itself and future boards beyond the current fiscal year. For example, Paragraph 3 requires six months notice of the county's intent to not renew the contract. Paragraph 9, the termination clause, provides a severe penalty for termination without cause. Furthermore, Paragraph 11 contains a so-called "non-substitution" clause which prohibits the county from hiring a new county manager if it terminates the contract for lack of funds.

These provisions, in our opinion, coerce the current and future commissions to continue the contract for its entire term, and effectively eliminate their right to "recede without involving any financial liability in so receding" as required by Trujillo. They indicate that the county, by entering into this agreement, has contracted a debt in the constitutional sense.⁴ In *Hamilton Test Systems Inc. v. City of Albuquerque*, 103 N.M. 226, 704 P.2d 1102 (1985), the court stated:

While this court has not been called upon to answer the specific question before us now, we have indicated that any agreement by which a municipality obligates itself to pay out of tax revenues, and commits itself beyond revenues for the current fiscal year, falls within the terms of the constitutional debt restriction....

103 N.M. at 228, 704 P.2d at 1104. Because we have no indication that this debt was ever submitted to the voters for approval, the agreement is void. See *Fellows v. Schultz*, 81 N.M. 496, 469 P.2d 141 (1970); *Schmoor v. Griffin*, 79 N.M. 86, 439 P.2d 922 (1968). The commission must have the full discretion to not make funds available in any subsequent fiscal year to continue with the agreement.

3. Prohibition Against Binding Successor Board.

For consideration during future contracting, please be advised that a majority of jurisdictions recognize the common law rule that presently constituted local governing bodies may not bind their successors in office.⁵

See, e.g., *Copper Country Mobile Home Park v. City of Globe*, 131 Ariz. 329, 641 P.2d 243 (1981); *Keeling v. City of Grand Junction*, 689 P.2d 679 (Colo. App. 1984); *McLaughlin v. Housing Authority of Las Vegas*, 68 Nev. 84, 227 P.2d 206 (1951); *Sherman v. City of Picher*, 201 Okla. 229, 204 P.2d 535 (1949); *Bair v. Layton City*

Corp., 6 Utah 2d 138, 307 P.2d 895 (1957). If the contract addresses legislative or governmental functions or individual discretionary matters, a governmental body cannot bind future commissions unless a statute specifically authorizes it to do so. See *Georgia Presbyterian Home, Inc. v. City of Decatur*, 165 Ga. App. 395, 299 S.E.2d 900 (1984); *Sampson v. City of Cedar Falls*, 231 N.W.2d 609 (Iowa 1975); *Lafourche Parish Water Dist. v. Carl Heck Engineers, Inc.*, 346 So. 2d 769 (La. 1977); *City of Louisville v. Fiscal Court*, 623 S.W.2d 219 (Ky. 1981); *Labor Relations Comm'n v. Board of Selectmen*, 374 Mass. 619, 373 N.E.2d 1165 (1978); *Village of Moscow v. Moscow Village Council*, 29 Ohio Misc. 2d 15, 504 N.E.2d 1227 (1984). See also E. McQuillan, *Municipal Corporations* § 29.101 (3rd rev. ed. 1979) ("[I]t is generally held that, independent of statute or charter provisions, the hands of successors cannot be tied by contracts relating to governmental matters.")

Two courts have held that the hiring of a local government's general manager constitutes the exercise of a governmental function, and that employment contracts for these positions must not extend beyond the life of the board unless a statute authorizes such contracts. *Morin v. Foster*, 45 N.Y.2d 287, 403 N.Y.S.2d 159, 380 N.E.2d 217 (1978); *Vieira v. Jamestown Comm'n*, 91 R.I. 350, 163 A.2d 18 (1960). The court in *Morin* stated that the appointment of a county manager is precisely and unmistakably a governmental matter. 45 N.Y.2d at 293, 403 N.Y.S.2d at 160, 380 N.E.2d at 220. We find the reasoning in these cases persuasive.⁶ An agreement may not be construed to bind any successor Board of County Commissioners, even if it does not incur unconstitutional debt.

The Agreement also contains several provisions which conflict with Section 4-38-19(B) NMSA 1978 insofar as it contains language which binds future boards to the current board's hiring decision. That section provides:

A board of county commissioners may employ and set the salary of a county manager to conduct the business of the county, to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to do the board, aiding and assisting it in the exercise of its duties and responsibilities.

It can be implied from that section that each board has discretion to hire its own county manager.

In summary, it is our opinion that, while the Agreement does not violate the Bateman Act, it creates an unconstitutional debt of the county, is an illegal attempt to bind future Boards, and contains provisions which conflict with state law. It is therefore void. See *Ritchey v. Gerard*, 152 P.2d 394, 48 N.M. 452 (1944), *DiGesú v. Weingardt*, 575 P.2d 950, 91 N.M. 441 (1978).

ATTORNEY GENERAL

HAL STRATTON Attorney General

GENERAL FOOTNOTES

n1 This paragraph requires a "unanimous vote of all five commissioners" before the Agreement may be terminated without cause. This is contrary to Section 4-38-2 NMSA 1978 which allows the conduct of business by a quorum of the members of a commission.

n2 In *Cathey v. City of Hobbs*, the city entered into a personal services contract with an engineer. The contract required the engineer to produce plans for a sewage disposal plant. Taxpayers brought an action to prevent the city from paying for the plans, alleging that the city was violating the Bateman Act by attempting to pay for an earlier year's debt out of the current year's funds. The court held that city did not violate the Bateman Act, because the debt could have been paid at the time the parties entered into the contract. This case and other authorities indicate that even if funds originally made available to pay a debt are misappropriated and are no longer available, the Bateman Act is not violated. However, we advise that funds actually be allocated, committed or encumbered at the time the contract is executed to avoid any question as to their availability.

n3 Because this agreement did not set out and specify sources other than the general revenues of the city for repayment, we assume that the "special fund" doctrine as explained in *Trujillo* does not apply.

n4 We note that the mere presence of a non appropriation clause may not remove an agreement from the purview of the constitution. See *McKinley v. Alamogordo Mun. School Dist. Auth.*, 81 N.M. 196, 465 P.2d 79 (1970). We will scrutinize each agreement to determine whether it contains other indicia of debt that would bring it within the constitutional purview.

n5 Section 38-1-3 NMSA 1978 states: "In all the courts in this state the common law as recognized in the United States of America, shall be the rule of practice and decision." The common law prevails where no statutory provision applies. *Sellman v. Haddock*, 62 N.M. 391, 310 P.2d 1045 (1957).

n6 Other New York cases consistently have held that unless specifically provided by statute or charter provisions, city councils cannot contract away or in any manner limit or impair future councils' discretionary authority over governmental or legislative functions. *Morin v. Foster*, 45 N.Y.2d 287, 403 N.Y.S.2d 159, 380 N.E.2d 217 (1978); *Quigley v. City of Oswego*, 71 A.D.2d 795, 419 N.Y.S.2d 27 (1979); *Murphy v. Erie County*, 34 A.D.2d 295, 310 N.Y.S.2d 959 aff'd, 28 N.Y.2d 80, 304 N.Y.S.2d 242, 268 N.E. 771 (1971). *Holmes v. Town of Orangetown*, 134 Misc. 2d 784, 512 N.Y.S.2d 764 (1987).

Appendix K Example of Industrial Revenue Bonds Ordinance

*Doña Ana County, NM
Wednesday, September 14, 2022*

Chapter 56. Industrial Revenue Bonds

[HISTORY: Adopted by the Board of County Commissioners of Doña Ana County 9-9-2009 by Res. No. 2009-87. Amendments noted where applicable.] **GENERAL REFERENCES**

Economic development plan — See Ch. **166**.

Fees — See Ch. **179**.

Foreign trade zone — See Ch. **213**.

Gross receipt taxes — See Ch. **305**, Part **1**.

§ 56-1. Policy and general characteristics.

The County Industrial Revenue Bond Act, NMSA §§ 4-59-1 through 4-59-16 (the "Act"), authorizes counties to acquire, own, lease or sell "projects" (as defined in the Act) for the purpose of promoting industry and trade and for the purpose of inducing manufacturing, industrial and commercial enterprises to locate and expand in New Mexico. The Act also authorizes counties to issue revenue bonds to finance the acquisition and/or construction of such projects.

§ 56-2. Benefits of industrial revenue bonds.

Industrial revenue bonds have three principal benefits for companies: property tax exemptions, gross receipts tax exemptions and lower interest rates than other types of borrowings. The first two are available for a variety of projects. The third depends on the industrial revenue bonds being tax-exempt, under federal tax regulations, which is a benefit available primarily for certain "small issue" manufacturing projects.

§ 56-3. Projects.

Only "projects" can be financed with industrial revenue bonds.

A.

Projects can include:

(1)

Certain nonprofit facilities [501(c)(3)];

(2)

Facilities that manufacture, process, and/or assemble products such as: biotechnology manufacturing and research; precision metal fabrication of components for the automotive or aerospace industry; food processing and packaging; plastics and paper products;

(3)

Commercial enterprise in storing, warehousing, distributing and logistics;

(4)

Pollution control facilities for industry, commercial enterprises, or utility companies;

(5)

Financial services institutions; and

(6)

Other uses as allowed by state law.

B.

Projects can include land, buildings, furniture, fixtures and equipment. Projects do not need to include land or even buildings; they can be for equipment only. Also, any land included in a project need not be owned in fee.

The costs of projects that can be financed are limited to capital costs. Working capital generally cannot be financed with industrial revenue bonds.

§ 56-4. Volume cap; conduit financing; purpose.

A.

The New Mexico State Board of Finance is the governing body that determines the allocations of the volume cap which is required for an industrial revenue bond [except those for 501(c)(3) entities] to be tax-exempt. For further information on this subject and its procedures, contact the Director of the State Board of Finance at (505) 827-3930 or visit the state website at www.state.nm.us.

B.

Doña Ana County (the "County") offers conduit financing for industrial and nonindustrial projects through the issuance of tax-exempt industrial revenue bonds or taxable industrial revenue bonds. Both types can exempt up to 100% of property taxes, subject to the County's PILT policy as hereinafter set forth.

C.

The County supports the use of this financing tool as a mechanism to attract industrial or commercial operations to locate in the County or expand existing operation in the County, provided that the policy and procedural requirements of this application packet are satisfied.

§ 56-5. Property tax exemption.

Real and personal property included in a project financed with industrial revenue bonds is exempt from property tax for as long as the bonds are outstanding, up to a maximum of 30 years. The property tax exemption results from the fact that title to the project property is held by the County, and the property of a County is exempt from taxation under the New Mexico Constitution. The County may require "payment in lieu of taxes" (PILT) or may shorten the lease term, thereby decreasing the benefit of the property tax exemption.

§ 56-6. Gross receipts and compensating tax exemption.

Furniture, fixtures and equipment purchased with industrial revenue bond proceeds for a project is exempt from gross receipts if purchased in the state and compensating taxes if purchased out of state. Once again, the exemption results from title being held by the County as the issuer. A special nontaxable transaction certificate is required for the gross receipt tax exemption. Building materials incorporated in a project are not exempt from gross receipts and compensating taxes. An additional investment tax credit may be available for manufacturing equipment, depending on the number of new

employees related to the project. Construction is considered services and is therefore not exempt from gross receipts tax.

§ 56-7. Timing.

From start to finish, the issuance of industrial revenue bonds by a county generally takes approximately 120 days. Ordinances do not go into effect until 30 days after adoption. In addition, public notice of the intent to adopt an industrial revenue bonds ordinance must be published at least 14 days prior to consideration. This process takes at least 60 days. These minimum times apply to "self purchases." If a third-party lender is involved, several more weeks should be added; if a credit enhancer is involved, even more time.

§ 56-8. Application.

A.

It is in the public interest that the issuance of industrial revenue bonds be made only after the County has been fully informed concerning the applicant and its current status and future plans; the protection of the County's interests requires thorough investigation of any request for industrial revenue bonds.

B.

Any person or firm desiring to request that Doña Ana County issue industrial revenue bonds shall first secure from the County's Finance Director an application and a copy of the County's Industrial Revenue Bond Policy and Procedures.

C.

The County will use the information provided by the applicant in the industrial revenue bonds application form to evaluate the proposed project in terms of fulfillment of all goals and objectives contained in the County's Industrial Revenue Bonds Policy.

D.

The County will consider and evaluate applications for industrial revenue bonds on the basis of the following criteria:

(1)

The extent to which the proposed project will create new or preserve existing employment opportunities within the community;

(2)

The extent to which the proposed project with industrial revenue bonds will increase the County's tax base compared to the extent to which the proposed project without industrial revenue bonds will increase the County's tax base;

(3)

The extent to which the proposed project will enhance and strengthen the County as a center of commerce, including, but not limited to, research, food processing, and manufacturing or distribution point location; and

(4)

The extent to which the proposed project will upgrade and improve structures, improve site accessibility and usefulness, and otherwise provide for the public health, safety and welfare.

E.

The Board of County Commissioners (hereinafter "the Board") reserves the right to deny any application for financing at any stage of the proceedings prior to the issuance of the bonds.

F.

All applications and supporting materials and documents shall remain the property of Doña Ana County.

G.

Matters of confidentiality for public disclosure, relating to the applicant or his business, shall be honored to the extent that such information withheld is not required to be produced as a public record under the New Mexico Inspection of Public Records Act,^[1] as determined by the County's legal counsel.

[1]

Editor's Note: See NMSA § 14-2-1 et seq.

§ 56-9. Review and analysis of proposed project.

The applicant shall make a request to issue bonds for a project by filing with the County Manager an inducement resolution or notice of intent, seven copies of the project plan and the fees and deposit required by this policy. The County Manager shall review all bond projects to determine that proposed project plans are complete. Within 15 days of receiving the project plan, the County Manager, or his designee, may, in accordance with applicable procurement requirements,^[1] contract with an independent consultant to prepare an economic and fiscal analysis of the proposed project. This analysis shall evaluate the proposed project according to the revenue bond project criteria promulgated by the County Manager.

[1]

Editor's Note: See Ch. 89, Purchasing Policy.

§ 56-10. Board consideration of project plans.

A.

Upon receipt of the completed analysis, the County Manager shall submit to the Board for discussion during a regularly scheduled meeting of the Board:

(1)

The project plan;

(2)

The completed analysis;

(3)

The County Manager's recommendation to approve, conditionally approve, or reject the proposed plan; and

(4)

The Inducement Resolution with the notice of intent to adopt a revenue bond ordinance.

B.

Any person wishing to comment on the proposed plan or the County Manager's recommendation may do so by submitting written comments to the Board with a copy to the County Manager at least eight days before the regular meeting during which the Board is scheduled to consider the bond ordinance which is the final action on the proposed plan. Public input can also be had at the Board's hearing to consider approval of the inducement resolution.

C.

The Manager's recommendation and the Board's final action to approve, conditionally approve, or disapprove a project plan and inducement resolution or revenue bond ordinance shall take into consideration the bond ordinance, the County's development plans and policies and the promotion of the health, safety, security and general welfare of the citizens of the County and the State of New Mexico.

§ 56-11. Payments in lieu of taxes.

A.

As a condition of County approval of an industrial revenue bond, the company may be required to make a payment to the County in an amount to be negotiated by and between the County and the applicant based upon the amount the applicant would otherwise pay to the County for property taxes for disbursements to the County and for the benefit of the local school district in which the project is situated.

B.

Based upon the information submitted by the company, County staff shall determine the amount of property, if any, constituting the project which will be exempt from property taxation, as a result of the financing, and the estimated amount of taxes to the County and the local school district that would be otherwise collected with respect to such property in the first full year after completion of the project, if the project were not exempt. Unless waived by the Board, the company shall be required to pay, as a condition of obtaining the bond financing, PILT, commencing in the first full year after completion of the project, an amount as negotiated, based upon the taxes that would otherwise have been paid to the County and the local school district in such year. In addition, if there is an expansion of the buildings and improvements, which are exempt from taxation, the amount of the PILT allocable to the buildings and improvements shall automatically increase by a percentage equal to the percentage increase in the square footage of the building and improvements. The County staff will notify the company, at least one week prior to the date of consideration of the inducement resolution, of the amount of the PILT.

§ 56-12. Application fees and annual administrative costs.

[Amended 9-27-2011 by Ord. No. 235-2011; 2-26-2019 by Ord. No. 301-2019]

A.

With the submission of the application and in addition to any other fees imposed pursuant to applicable ordinances or resolutions, the applicant shall pay to the County a nonrefundable fee as set forth in Chapter **179**, Fees and Permits, for its internal administrative and other professional consulting services costs associated with obtaining and completing the analysis and processing required by this policy. These fees include, but are not limited to, County staff time, attorneys' fees and financial analyst fees. If the cost of this analysis exceeds the amount set forth in Chapter **179**, Fees and Permits, the applicant shall be billed by the County in intervals or in one lump sum for those additional costs which shall be paid by the applicant upon receipt of billing and at the closing on the bond sale. The billed fees charged are intended to cover the County's internal and external expenses incurred through the bond closing and are to be paid whether or not bonds are issued.

B.

If the project is approved and bonds are issued and a project agreement lease is entered into by and between the County and the applicant, the County may charge the applicant an annual administrative fee for the County's duties and functions associated with administration of the project lease agreement and the bond obligations. That annual administrative fee shall be negotiated by and between the County and the applicant and shall be based upon the estimated number of hours of County staff time to be devoted to such administrative tasks. However, that annual administrative fee, once established, is subject to being increased in the event that it is necessary to spend additional County staff time or it is necessary to employ outside professionals because of extraordinary requests or requirements of the applicant or of the bond trustee or government regulatory agencies or because of involvement in litigation concerning the lease or the bonds. Payment by the applicant shall be made upon its receipt of billings from the County for such annual fees and additional costs.

§ 56-13. Other considerations.

A.

Projects requesting industrial revenue bonds must be located within the legal boundaries of Doña Ana County.

B.

All procedures leading to the issuance of an industrial revenue bonds, as well as the applicant's utilization of the proceeds from any industrial revenue bonds issue, shall be in compliance with applicable federal, state, and local laws, and the policies and requirements as are contained herein. The responsibility for compliance shall in all cases rest with the applicant. The only covenant or warranty which the County shall be required to make in connection with the proposed industrial revenue bond issuance, either to the applicant or to any other interested party, is that said County is a corporation or political subdivision of the State of New Mexico, organized and existing under the laws of said state and has the lawful authority to execute the transaction documents and perform its obligations thereunder.

C.

For a tax-exempt transaction, the applicant must not incur any project costs, other than those authorized by the Internal Revenue Code, prior to the preliminary approval being authorized by the Board.

§ 56-14. Bond ordinance documentation requirements.

A.

Bond counsel, who shall be the applicant's bond counsel, shall submit to the County and its reviewing bond counsel and the County Manager all bond documentation relating to the bonds at least 30 days prior to the date that the County is to submit for publication its consideration of the bond ordinance and agreement and the notice of intent to adopt the bond ordinance.

B.

Any bonds issued by the County under the Act will be payable solely from the revenues generated by the project, revenues from the lease and/or sale of the project to the private party that will operate the project (the "company"), and/or revenues from any credit enhancement or security pledged by the company.

C.

The County will require that it be indemnified for all costs and expenses (including attorney's fees) which it may incur as a result of participating in the financing, including those incurred with respect to any investigation, inquiry or litigation concerning the bonds, any offering document relating to the bonds, or project. The County will require that such indemnification come from an entity with the financial ability to meet the financial burden of such an indemnification.

D.

The bond documents, including but not limited to the lease, will also be required to reflect the PILT and another requirements as determined by the County.

E.

The applicant's bond counsel, at the sole expense of the company, is responsible for making sure that all notices (notice of intent to adopt ordinance, notice of adoption of ordinance, TEFRA, etc.) are properly published in a newspaper of general circulation in Doña Ana County.

§ 56-15. Sale resolution closing.

A.

If the County is requested to adopt a bond sale resolution, applicant's bond counsel shall submit the form of the resolution to the County, its bond counsel and the County Attorney and the attorneys retained by the County, if any, at least two weeks prior to the date the sale resolution is to be adopted (although pricing information may be left blank until the bonds are priced).

B.

Applicant's bond counsel shall submit all closing documents to the County Attorney and the County's bond counsel at least 10 business days prior to the scheduled closing date. Closings by mail, facsimile, or electronic means are acceptable to the County.

§ 56-16. Modification.

The Board reserves the right to modify any term or condition of this policy for a given project where unusual circumstances warrant a modification and the integrity of the policy remains intact.

§ 56-17. Effective date.

This newly enacted industrial revenue bond policy applies to industrial revenue bond applications submitted on or after July 1, 2009.

NOTES

Supplemental Resource Documents

RESOLUTION NO. 2013-81

A RESOLUTION TO AMEND THE CODE OF THE COUNTY OF DOÑA ANA, by deleting and repealing Chapter 14 thereof, Code of Conduct, and replacing it with a new Chapter 14, to be entitled Code of Conduct, which chapter provides for the adoption of the establishment of guidelines for ethical standards of conduct for all County elected officials and employees.

Be it resolved by the Board of County Commissioners of Doña Ana County as follows:

Section 1.

The Code of the County of Doña Ana is hereby amended by deleting and repealing Chapter 14, Code of Conduct.

Section 2.

The Code of the County of Doña Ana is hereby amended by adding thereto a new chapter, to replace Chapter 14 hereinabove repealed, to be Chapter 14, Code of Conduct, to read as follows:

**Chapter 14
CODE OF CONDUCT**

- § 14-1. Purpose.
- § 14-2. Responsibilities of public office.
- § 14-3. Applicability.
- § 14-4. Definitions.
- § 14-5. Responsibilities of public service.
- § 14-6. Avoidance of disclosure of conflicts of interest.
- § 14-7. Procurement and contract issues.
- § 14-8. County operations.
- § 14-9. Code compliance.
- § 14-10 Notice of amended code review.


 COUNTY OF DONA ANA)
 STATE OF NEW MEXICO) ss

RESOLUTION
PAGES: 12



I Hereby Certify That This Instrument Was Filed for
Record On SEP 9, 2013 03:30:14 PM
And Was Duly Recorded as Instrument # 1322890
Of The Records Of Dona Ana County

Witness My Hand And Seal Of Office,
Lynn J. Ellins, County Clerk, Dona Ana, NM

Deputy **Rafael Garcia**

§ 14-1. Purpose.

- A. The purpose of this chapter is the establishment of guidelines for ethical standards of conduct for all elected officials and employees by 1) setting forth those acts or actions that violate public trust and 2) requiring elected officials and employees to disclose personal interests, financial or otherwise, in matters affecting the County. Examples of acts or actions that violate public trust may include, but are not limited to: criminal acts; egregious behavior that reflects badly on the County; attempts by Commissioners to direct the work of County employees or to influence the outcome of a personnel matter; failure to disclose a substantial conflict of interest relating to a matter of importance; and other behavior or acts of omission similar in gravity and effect.
- B. It is the further purpose of this Code of Conduct to protect County employees from undue influence, threats, or reprisal with respect to the work that they perform for the County.

§ 14-2. Responsibilities of public office.

Elected officials and employees hold office or employment for the benefit of the public. They are bound to uphold the Constitutions of the United States and of the State of New Mexico; to impartially carry out the laws of the United States, the State of New Mexico, and Doña Ana County; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that public interest must be their primary concern.

§ 14-3. Applicability.

The Code of Conduct shall apply to all elected officials and employees, as defined below.

§ 14-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ANYTHING OF VALUE

Any money, property, favor, service, payment, forbearance, loan, or promise of future employment/compensation. It does not include such things as compensation and paid expenses by the state or County, expenses, incidental promotional material such as pens, pencils, notepads, or calendars, or any other thing that, in the mind of a reasonable person, is not likely to influence the judgment or conduct of individuals covered by this code.

BUSINESS

A corporation, partnership, sole proprietorship, firm, organization, or individual carrying on a business. Nonprofit entities are included in this definition.

COMMISSIONER

The individual elected from each of the five districts within Doña Ana County to represent the constituents of that district.

CONFLICT OF INTEREST

Any business activity or other relationship with a person that compromises an elected official's or employee's loyalty to the County, and which, in the mind of a reasonable person, is likely to influence or predispose an official action or any use of authority of the office or position for personal reasons.

COUNTY MANAGER

The person retained by the Board of County Commissioners to manage the daily operations of the County. It includes the Assistant County Manager or other designee when acting at the direction of the County Manager.

ELECTED OFFICIAL

The Board of County Commissioners, County Assessor, County Clerk, County Treasurer, and Sheriff but excluding the staff of such officials and the Probate Judge, who is subject to the Code of Judicial Conduct.

EMPLOYEE

Employees, appointees, agents, and volunteers of the County. The inclusion of appointees, agents, and volunteers in this definition is intended only for the provisions of this chapter. It shall not create any employer/employee relationship from which rights of employment arise, including, but not limited to, pay, benefits, or rights under any law which may create rights or benefits for employees of Doña Ana County.

FINANCIAL INTEREST

Any interest which yields, directly or indirectly, a monetary or other material benefit to the elected official or employee or to any person employing or retaining the services of the elected official or employee. It includes benefits to a member of or employer of an elected official's or employee's immediate family.

HONORARIUM

Payment of money, or any other thing of value, in excess of \$100, but does not include reasonable reimbursement for meals, lodging, or actual travel expenses incurred in making the

speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

IMMEDIATE FAMILY

Spouse or domestic partner, parents, children, and siblings. Included herein are those relationships established by blood, marriage (including "step" relationships), and adoption.

OFFICIAL ACT

An official decision, recommendation, approval, disapproval, or other action that involves the use of authority as granted by virtue of the County office or position.

PERSON

Any individual, corporation, partnership, sole proprietorship, joint venture, or business entity, whether nonprofit or for profit.

PRIVILEGED INFORMATION

Any written or oral material related to County government that has not become part of the body of public information and that is designated by statute, court decision, lawful order, ordinance, resolution, or custom as privileged. It includes, but is not limited to, information acquired at closed sessions of any County body.

QUASI-JUDICIAL

Of, relating to, or involving an administrative adjudicatory type hearing or process.

§ 14-5. Responsibilities of public service.

- A. Elected officials and employees shall use the powers and resources of public office entrusted to them to advance the public interest and will not use those powers and resources to obtain personal benefits or pursue private interests incompatible or competing with the public interest.
- B. No individual member of the Board of County Commissioners has the authority to make representations, assurances, admissions, or waivers on behalf of the Board of County Commissioners without a formal grant of authority.
- C. Elected officials and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people of Doña Ana County and the State of New Mexico, at all times maintaining the highest degree of integrity and discharging their public responsibilities ethically.

- D. Elected officials and employees shall not request or receive anything of value, or promise of such, that is conditioned upon or given in exchange for the promised performance or forbearance of an official act.
- E. Elected officials and employees shall not request or receive an honorarium for a speech or service rendered that relates to the performance of public duties.
- F. Elected officials and employees shall not disclose or use privileged information acquired by virtue of their public office, employment, or position for their own or someone else's gain, or to the County's detriment, unless otherwise required by law. Prior to any such disclosure, the elected official or the employee shall inform the County Attorney.
- G. Elected officials and employees shall not disclose privileged information acquired in a closed session of any County body without the explicit authorization of the County body and the County Attorney.
- H. Elected officials and employees shall not engage in any activity that would compromise the fulfillment of their responsibilities or create an appearance of impropriety when dealing with public policy.
- I. Elected officials and employees shall treat each other and the public with respect, decorum, and fairness at all times. Elected officials and employees shall not make any allegations of misconduct by elected officials or employees, unless they provide, at the time they make the allegation of misconduct or in response to requests by those responsible for the investigation, factual bases for their allegations, including information as to the source of such information.
- J. The Chairperson shall ensure that members of the public treat elected officials and employees with respect at all times, including during public discourse of conflicting views.
- K. Elected officials and employees shall protect and conserve County property and shall not use said property for other than authorized purposes.
- L. Elected officials and employees shall comply with the requirements of the Open Meetings Act.

§ 14-6. Avoidance or disclosure of conflicts of interest.

- A. Full disclosure of real or potential conflicts of interest shall be the guiding principle for determining appropriate conduct. At all times, diligent effort shall be made to avoid undue influence and abuse of office in public service.
- B. When acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act, including discussion or vote, directly affecting a financial interest or any other interest which, in the mind of a reasonable person, would

impair the official's or employee's ability to decide fairly and impartially the matter before him/her. When not acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act affecting a financial interest. Elected officials and employees may not take any official action for the purpose of enhancing their financial interests and shall disqualify themselves from engaging in any official act directly affecting their financial interests.

- C. Elected officials and employees shall not acquire a financial interest in a business or other activity when they believe or have reason to believe that it will be directly affected by their official act.
- D. No County elected official shall accept or receive to their own use, or for or on account of any deputy or deputies, clerk or clerks appointed by them or employed in their office, or for or on account of expenses incurred by them or by any such deputy or deputies, clerk or clerks, or for or on account of their office, any salary, compensation, allowance, fees or emoluments in any form whatsoever for the performance of their official duties, other than as authorized by law. [NMSA § 4-44-21]
- E. Elected officials and employees with a controlling interest or a financial interest exceeding \$10,000 in a business regulated by the official acts of the County, or who do business with the County in an amount greater than \$1,000 per year, shall publicly disclose the precise nature and value of such interest. Disclosure shall be made to the County Clerk in the manner set forth by state statute during the month of January for each year they hold office. [NMSA § 4-44-25(B)]
- F. Every employee of the County who has a financial interest which he/she believes, or has reason to believe, may be affected by the actions of the County shall disclose the precise nature and value of such interest. The disclosures shall be made to the County Clerk before entering County employment, and during the month of January for each subsequent year. The filing of said disclosure is a condition of entering upon and continuing County employment. [NMSA § 4-44-25]
- G. The County Clerk shall maintain the confidentiality of the valuations attributed to the reported interests, as filed by County officials, appointees, employees and agents, except as permitted by statute in official removal proceedings. Such valuations shall be sealed prior to filing. [NMSA § 4-44-25(C)]
- H. Any elected County official who has received an individual campaign contribution shall publicly announce said contribution prior to consideration of any official action by the Board directly relating to that contributor. Personal or professional relationships shall be similarly disclosed. The elected official shall then make a statement whether the disclosed relationship will affect his/her ability to remain fair and impartial. After a disclosure, if three members of

the Board determine that a reasonable person would not be able to remain impartial under the circumstances disclosed, the member determined to have a conflict of interest shall not participate further in any discussion or proceeding relating to the item.

- I. All elected officials and County employees will each year complete the annual disclosure form and submit it to the designated office by 3:00 p.m. on the last Friday of February.

§ 14-7. Procurement and contract issues.

- A. Elected officials and employees shall not enter into contracts with Doña Ana County unless they disclose any financial interest in the business involved and receive the contract with public notice and pursuant to competitive local and state procurement laws. [NMSA § 4-44-22]
- B. Doña Ana County shall not enter into contracts involving, nor take action favorably affecting, any person or business represented by a person who has been an elected official or employee within the preceding year. When it is determined by the County Manager that granting an exception to this provision is in the best interests of the County, the County Manager may waive this prohibition. If the prohibition is waived, the County Manager shall notify the Board of County Commissioners of the waiver within 30 days of the granting of the waiver.
- C. Elected officials and employees shall not accept anything of value exceeding \$25 from any person doing business with the County or any person who is reasonably anticipated to do business with the County in the future. This limitation of \$25 does not apply to meals or campaign contributions.
- D. Elected officials and employees shall be cognizant of the fact that under the New Mexico Criminal Code it is either a misdemeanor or a fourth-degree felony to commit "unlawful interest in a public contract," i.e., the receipt of anything of value, directly or indirectly, from either a seller or a seller's agent, or a purchaser or a purchaser's agents in connection with the sale or purchase by the County of securities, goods, leases, lands, or anything of value. [NMSA § 30-23-6]
- E. Elected officials and employees shall not participate directly or indirectly in any County matter when they know that they or a member of their immediate family has a financial interest in the organization seeking or obtaining a contract, absent a waiver issued pursuant to the statute. [NMSA §§ 13-1-190, 13-1-194]
- F. Elected officials and employees shall not participate directly or indirectly in a County procurement process and contemporaneously seek employment with or be an employee of

the person contracting or seeking to contract with the County, absent a waiver issued pursuant to the statute. [NMSA §§ 13-1-193, 13-1-194]

- G. Doña Ana County shall not accept a bid from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

§ 14-8. County operations.

- A. The Board of County Commissioners employs a County Manager to handle the day-to-day business and general management of the County. It is recognized that for informational purposes dialogue between employees and Board members may be necessary. The Board shall encourage the development, implementation, and enforcement of responsible policies and procedures for efficient operation by the County management staff. [NMSA § 4-38-19]
- B. The County Manager shall report directly to the Board of County Commissioners. No other County employee shall report to the Commission unless so determined by formal action of the Commission. Except for those employees who report directly to the Commission, the County Manager is solely responsible for assignment and direction of work by County employees in accordance with direction set by the Commissioners. The Commission will provide direction for the County Manager in the form of policies or other mutually agreed upon communications. Policies will be formalized in ordinances and resolutions.
- C. The Board of County Commissioners has adopted ordinances and resolutions that govern County personnel matters. It is recognized that these formal acts of the Board of County Commissioners and the collective bargaining agreements entered into by the Board of County Commissioners establish the only procedures for addressing personnel discipline and grievances. It is a violation of the Code of Conduct for any elected official to interfere with these procedures or attempt to influence the outcome of the processes. It is a violation of the Code of Conduct for any elected official to seek information concerning a personnel action except when it is appropriately discussed in closed session of the Board of County Commissioners. It is not a violation of the Code of Conduct for the County Assessor, County Clerk, County Treasurer, or the Sheriff to participate, as permitted by ordinance, resolution, and collective bargaining agreement, in the personnel processes when the involved personnel is an employee of the elected official's office. It is not a violation of the Code of Conduct for an elected official, if he/she desires, to appear as a witness in the personnel disciplinary or grievance processes.
- D. The Commissioner who serves as the Board's Chairperson has certain duties and authority distinct from the other Commissioners. These include: to open all meetings of the Board, call the members to order, announce all business on the agenda and put same to a vote when required; to enforce order and decorum among members of the Board; to sign documents on behalf of the Board; to administer oaths to any person concerning any matter submitted to the

Board or connected with its powers and duties; and to sign all orders on the County Treasury and County documents, as authorized by a majority of the Board. [NMSA § 4-38-11] Unless specifically delegated to the Chairperson by the Board, the Chairperson has no more authority than any other member.

- E. The Board of County Commissioners shall select a Chairperson by simple majority vote at the first meeting of the Board of County Commissioners in January of each year. A Commissioner may serve as Chairperson for two succeeding terms after which a break in tenure of one year is required. In the event the Chairperson resigns, the Vice Chairperson shall serve as the Chairperson until the vacant County Commissioner seat is filled and the Board of County Commissioners selects a new Chairperson by simple majority vote. In the event that a Commissioner is selected to fill out the term of the Chairperson for a period of less than 6 months, said Commissioner may be elected to fill subsequent terms in accordance with this Section.
- F. The Board of County Commissioners shall select a Vice Chairperson by simple majority vote at the first meeting of the Board of County Commissioners in January of each year. A Commissioner may serve as Vice Chairperson for two succeeding terms after which a break in tenure of one year is required. The Vice Chairperson shall exercise the duties and assume the responsibilities of the Chairperson during his or her absence, disability or disqualification. In the event of a vacancy in the position of Vice Chairperson, the Board of County Commissioners shall select a new Vice Chairperson by simple majority vote. In the event that a Commissioner is selected to fill out the term of the Vice Chairperson for a period of less than 6 months, said Commissioner may be elected to fill subsequent terms in accordance with this Section.
- G. A County Commissioner may decline to serve as Chairperson or Vice Chairperson.
- H. The Board of County Commissioners shall recognize that Robert's Rules of Order sets guidelines for the conduct of all County Commission meetings.
- I. Any County Commissioner may place a matter on the agenda for the Board of County Commissioners meetings in any of its official capacities.
- J. The County Assessor, County Clerk, Sheriff, and County Treasurer shall advise the Board of County Commissioners on all matters concerning their respective offices, to include suggestions and recommendations for more efficient administration of County finances, government, or other functions. Cooperation between the various elected officials in the exercise of their respective official duties shall be the goal.
- K. Department heads, managers, and supervisors shall build and maintain a culture of responsible public service by:

- (1) Leading by example, using their behavior as a model for all employees.
- (2) Encouraging employees to bring forth questions, concerns, and suggestions relating to the operation of the County government.
- (3) Ensuring that all employees receive training related to ethical issues related to their work.
- (4) Applying appropriate and consistent disciplinary action, and
- (5) Providing affirmative and appropriate reinforcement for positive accomplishments.

§ 14-9. Code compliance.

- A. The County shall inform all elected officials and employees regarding the terms and provisions of this Code of Conduct.
- B. Any suspected violation of the Code of Conduct by an employee or volunteer firefighter shall be reported to the supervisor of that employee and processed in accordance with procedures established by ordinances, resolutions, and collective bargaining agreements governing such employees/volunteer firefighters.
- C. Suspected violations of the Code of Conduct alleged to have been committed by a County Commissioner or elected official shall be reported to the Chairperson of the Commission. Suspected violations involving the Chairperson shall be reported to the Vice-Chairperson. The Chairperson (or Vice-Chairperson) and one other Commissioner drawn by lot shall review the Code of Conduct violation allegation. If both Commissioners agree that the conduct as alleged would constitute a material violation of the Code of Conduct and that the allegation contains sufficient information upon which to pursue a meaningful investigation, then they shall direct the County Manager to obtain a prompt formal investigation into the allegation by a private sector outside entity with suitable experience in conducting such investigations. A formal investigation shall not be directed if the allegation is unverifiable, or involves a non-material violation of, or conduct not covered by, the Code of Conduct. The Chairperson (or Vice-Chairperson) shall notify the subject Commissioner or elected official as to the general nature of the allegation and whether a formal investigation will be directed.
- D. The results of the formal investigation shall be verbally reported to the Chairperson (Vice-Chairperson) and Commissioner chosen by lot and, if both agree that there is probable cause to believe that the person alleged to have violated the Code of Conduct has committed a material violation of the Code, then they shall direct the investigator to prepare a written report of the investigation, and the matter shall be scheduled for a hearing before the Board of County Commissioners in an open session.

- E. The pursuit of censure or disciplinary corrective action does not foreclose other remedies also available by law.
- F. The District Attorney of the Third Judicial District is authorized to investigate and prosecute any complaint brought involving a violation of NMSA 1978, §§ 4-44-22 through 4-44-27. [NMSA 1978, § 4-44-27] The Attorney General and the District Attorney for the Third Judicial District are both authorized to bring a civil action for the enforcement of the Procurement Code. [NMSA 1978, § 13-1-196] For egregious violations of ethical conduct, the District Attorney may also commence an action to remove a County official from office, in accordance with NMSA 1978, § 10-4-1 et seq.

§ 14-10. Notice of amended code review.

- A. The County Manager shall ensure that each newly elected official and employee is given a copy of this Code of Conduct.
- B. A copy of this Code of Conduct shall be posted in each department, as well as published on the County's Internet website.
- C. The Code of Conduct may be amended at any time at the direction of the Board of County Commissioners, and shall, at a minimum, be reviewed every four years, with the next review due in 2016.

Section 3. Severability.

The provisions of this resolution are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this resolution.

Section 4. Effective Date.

This resolution shall become effective immediately.

RESOLVED this 27th day of August, 2013.

**BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO**



Billy G. Garrett, Acting Chair, District 1

For / Against



Dr. David J. Garcia
 Dr. David J. Garcia, District 2 For / Against

Benjamin L. Rawson
 Benjamin L. Rawson, District 3 For / Against

Wayne D. Hancock
 Wayne D. Hancock, District 4 For / Against

Leticia Duarte Benavidez
 Leticia Duarte Benavidez, District 5 For / Against

ATTEST:
Lynn Ellins
 Lynn Ellins
 County Clerk



RESOLUTION NUMBER 2007- 46

A RESOLUTION ADOPTING POLICY AND PROCEDURES GOVERNING INDUSTRIAL REVENUE BONDS SUPERCEDING POLICY ADOPTED AUGUST 10, 1999

Whereas, the County Industrial Revenue Bond Act, §4-59-1, et. seq., NMSA 1978 (the "Act") authorizes counties to acquire, own, lease or sell "projects" (as defined in the Act) for the purpose of promoting industry and trade and for the purpose of inducing manufacturing, industrial, and commercial enterprises to locate and expand in New Mexico; and,

Whereas, the Act also authorizes counties to issue revenue bonds to finance the acquisition and/or construction of such projects; and,

Whereas, it is in the economic interest of Doña Ana County to promote the growth of responsible manufacturing, industrial, and commercial enterprises in Doña Ana County; and,

Whereas, promotion of economic development through the use of Industrial Revenue Bonds will be facilitated by the adoption of a policy and procedures governing such bonds.

Whereas, an approved policy and procedures will give notice to those entities who would like to consider locating or expanding within Doña Ana County of the requirements of seeking assistance through the use of Industrial Revenue Bonds; and

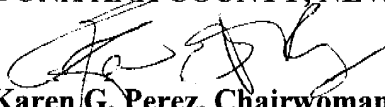
Whereas, the adoption of such a policy and procedures will create a fair and equitable means of evaluating the proposals of such manufacturing, industrial, and commercial enterprises desiring to locate and expand in Doña Ana County.


Therefore be it resolved by the Board of County Commissioners of Doña Ana County that it adopt the Industrial Revenue Bonds Policy and Procedures, dated March 27, 2007, superceding the policy adopted August 10, 1999.

APPROVED AND ADOPTED this 27th day of March 2007.

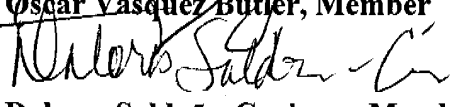
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**BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO**


Karen G. Perez, Chairwoman



D. Kent Evans, Vice-Chairman

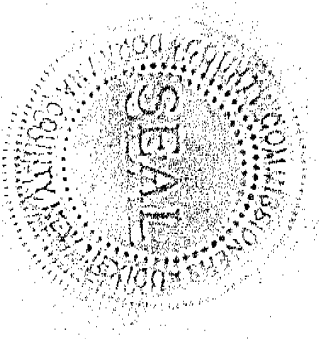

Oscar Vásquez Butler, Member


Dolores Saldaña-Caviness, Member


William J. McCamley, Member

ATTEST:


**Rita Torres
County Clerk**



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**INDUSTRIAL REVENUE BONDS POLICY AND PROCEDURES
DOÑA ANA COUNTY, LAS CRUCES, NEW MEXICO**

I. POLICY AND GENERAL CHARACTERISTICS

The County Industrial Revenue Bond Act, §4-59-1, *et. seq.*, NMSA 1978 (the "Act"), authorizes counties to acquire, own, lease or sell "projects" (as defined in the Act) for the purpose of promoting industry and trade and for the purpose of inducing manufacturing, industrial and commercial enterprises to locate and expand in New Mexico. The Act also authorizes counties to issue revenue bonds to finance the acquisition and/or construction of such projects.

BENEFITS OF INDUSTRIAL REVENUE BONDS

Industrial revenue bonds have three principal benefits for companies: property tax exemptions, gross receipts tax exemptions and lower interest rates than other types of borrowings. The first two are available for a variety of projects. The third depends on the Industrial Revenue Bonds being tax exempt, under federal tax regulations, which is a benefit available primarily for certain "small issue" manufacturing projects.

PROJECTS

Only "projects" can be financed with Industrial Revenue Bonds. Projects can include:

- a. Certain non-profit facilities (501(c)(3));
- b. Facilities that manufacture, process, and/or assemble products such as: Biotechnology manufacturing and research; Precision metal fabrication of components for the automotive or aerospace industry; Food processing and packaging; Plastics and paper products;
- c. Commercial enterprise in storing; warehousing, distributing and logistics;
- d. Pollution control facilities for industry, commercial enterprises, or utility companies;
- e. Financial services institutions; and
- f. Other uses as allowed by State law.

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Projects can include land, buildings, furniture, fixtures and equipment. Projects do not need to include land or even buildings; they can be for equipment only. Also, any land included in a project need not be owned in fee. The costs of projects that can be financed are limited to capital costs. Working capital generally cannot be financed with Industrial Revenue Bonds.

Industrial Revenue Bonds

The New Mexico State Board of Finance is the governing body that determines the allocations of the volume cap which is required for an Industrial Revenue Bond (except those for 501(c)(3) entities) to be tax-exempt. For further information on this subject and its procedures, contact Director of State Board of Finance at (505) 827-3930 or visit the state website at www.state.nm.us.

Doña Ana County (the "County") offers conduit financing for industrial and non-industrial projects through the issuance of tax-exempt Industrial Revenue Bonds or taxable Industrial Revenue Bonds. Both types can exempt up to 100% of property taxes, subject to the County's PILT policy as hereinafter set forth.

The County supports the use of this financing tool as a mechanism to attract industrial or commercial operations to locate in the County or expand existing operation in the County, provided that the policy and procedural requirements of this Application Packet are satisfied.

PROPERTY TAX EXEMPTION

Real and personal property included in a project financed with Industrial Revenue Bonds is exempt from property tax for as long as the bonds are outstanding, up to a maximum of 30 years. The property tax exemption results from the fact that title to the project property is held by the County, and the property of a County is exempt from taxation under the New Mexico Constitution. The County may require "payment in lieu of taxes" (PILT) or may shorten the lease term, thereby decreasing the benefit of the property tax exemption.

GROSS RECEIPTS AND COMPENSATING TAX EXEMPTION

Furniture, fixtures and equipment purchased with Industrial Revenue Bond proceeds for a project is exempt from gross receipts if purchased in the state and compensating taxes if purchased out of state. Once again, the exemption results from title being held by the County as the issuer. A special nontaxable transaction certificate is required for the gross receipt tax exemption. Building materials incorporated in a project are not exempt from gross receipts and compensating taxes. An additional investment tax credit may be available for manufacturing equipment, depending on the number of new employees related to the project. Construction is considered services and is therefore not exempt from gross receipts tax.

TIMING

From start to finish the issuance of Industrial Revenue Bonds by a County generally takes approximately 120 days. Ordinances do not go into effect until 30 days after adoption. In addition, public notice of the intent to adopt an Industrial Revenue Bonds Ordinance must be published at least 14 days prior to consideration. This process takes at least 60 days. These minimum times apply to "self purchases." If a third party lender is involved, several more weeks should be added; if a credit enhancer is involved, even more.

II. THE APPLICATION

1. It is in the public interest that the issuance of Industrial Revenue Bonds be made only after the County has been fully informed concerning the applicant and its current status and future plans; the protection of the County's interests requires thorough investigation of any request for Industrial Revenue Bonds.
2. Any person or firm desiring to request that Doña Ana County issue Industrial Revenue Bonds shall first secure from the County's Finance Director an application and a copy of the County's Industrial Revenue Bond Policy and Procedures.
3. The County will use the information provided by the applicant in the Industrial Revenue Bonds Application Form to evaluate the proposed project in terms of fulfillment of all goals and objectives contained in the County's Industrial Revenue Bonds Policy.

4. The County will consider and evaluate applications for Industrial Revenue Bonds on the basis of the following criteria:
 - a. The extent to which the proposed project will create new or preserve existing employment opportunities within the community.
 - b. The extent to which the proposed project with Industrial Revenue Bonds will increase the County's tax base compared to the extent to which the proposed project without Industrial Revenue Bonds will increase the County's tax base.
 - c. The extent to which the proposed project will enhance and strengthen the County as a center of commerce, including but not limited to, research, food processing, and manufacturing or distribution point location.
 - d. The extent to which the proposed project will upgrade and improve structures, improve site accessibility and usefulness, and otherwise provide for the public health, safety and welfare.
5. The Board of County Commissioners reserves the right to deny any application for financing at any stage of the proceedings prior to the issuance of the bonds.
6. All applications and supporting materials and documents shall remain the property of Doña Ana County.
7. Matters of confidentiality for public disclosure, relating to the applicant or his business, shall be honored to the extent that such information withheld is not required to be produced as a public record, as a matter of law, as determined by the County's legal counsel.

III. REVIEW AND ANALYSIS OF PROPOSED PROJECT

The Applicant shall make a request to issue bonds for a project by filing with the County Manager an Inducement Resolution or Notice of Intent, seven copies of the project plan and the fees and deposit required by this policy. The County Manager shall review all bond projects to determine that proposed project plans are complete. Within 15 days of receiving the project plan, the County Manger, or his designee, may in accordance with applicable procurement requirements, contract with an independent consultant to prepare an economic and fiscal analysis of the proposed project. This analysis shall evaluate the proposed project according to the "Revenue Bond Project Criteria" promulgated by the County Manager.

IV. BOARD CONSIDERATION OF PROJECT PLANS

1. Upon receipt of the completed analysis, the County Manager shall submit to the Board for discussion during a regularly scheduled meeting of the Board (1) the project plan, (2) the completed analysis, (3) the County Manager's recommendation to approve, conditionally approve, or reject the proposed plan, and (4) the Inducement Resolution with the notice of intent to adopt a revenue bond ordinance.
2. Any person wishing to comment on the proposed plan or the County Manger's recommendation may do so by submitting written comments to the Board with a copy to the County Manager at least eight (8) days before the regular meeting during which the Board is scheduled to consider the bond ordinance which is the final action on the proposed plan
3. The Manager's recommendation and the Board's final action to approve, conditionally approve, or disapprove a project plan and Inducement Resolution or revenue bond ordinance shall consider the bond ordinance which is the into consideration the County's development plans and policies and the promotion of the health, safety, security and general welfare of the citizens of the County and the State of New Mexico

V. PAYMENTS IN LIEU OF TAXES

As a condition of County approval of an Industrial Revenue Bond, the Company may be required to make a payment to the County in an amount that it would otherwise pay to the County for property taxes for disbursements to the County and for the benefit of the local school district in which the project is situated.

Based upon the information submitted by the Company, County staff shall determine the amount of property, if any, constituting the project which will be exempt from property taxation, as a result of the financing, and the estimated amount of taxes to the County and the local school district that would be otherwise collected with respect to such property in the first full year after completion of the project, if the project were not exempt. Unless waived by the County Commission, the Company shall be required to pay, as a condition of obtaining the bond financing, PILT, commencing in the first full year after completion of the project, equal to the taxes that would otherwise have been paid to the County and the local school district in such year. Such PILT shall automatically increase every five (5) years by a percentage equal to the lesser of the percentage increase in the assessed value of the exempt project site and improvements during the previous five (5) years, or five percent (5%). In addition, if there is an expansion of the buildings and improvements, which are exempt from taxation, the amount of the PILT allocable to the buildings and improvements shall automatically increase by a percentage equal to the percentage increase in the square footage of the building and improvements. The County staff will notify the Company, at least one week prior to the date of consideration of the inducement resolution, of the amount of the PILT.

VI. FEES AND DEPOSIT

1. In addition to any other fees imposed pursuant to ordinance or resolution, the Applicant shall pay the County (1) a non-refundable fee equal to one-tenth of one percent of the face amount of the bonds to be issued to compensate the County for its reasonable administrative expenses incurred in the approval of the project and the issuance of the bonds provided that the fee shall not be less than \$2,500.00, and

- (2) a deposit of \$10,000.00 to be applied against the payment of costs associated with obtaining the analysis required by this policy and for any attorney fees associated with processing the request. If the cost for conducting an analysis of the project exceeds this deposit, the Applicant shall pay the County, before the analysis is initiated, any additional amount that is necessary to conduct the analysis and pay any attorney fees incurred by the County associated with processing the request.
2. In addition to the fees and deposits set forth in this Section, the Applicant shall pay all attorneys fees and expenses of the County's Bond Counsel, who shall serve as bond counsel for the transaction, and all other counsel retained by the County whether or not the bonds are issued.

VII. OTHER CONSIDERATIONS

1. Projects requesting Industrial Revenue Bonds must be located within the legal boundaries of Doña Ana County.
2. All procedures leading to the issuance of an Industrial Revenue Bonds, as well as the applicant's utilization of the proceeds from any Industrial Revenue Bonds issue, shall be in compliance with applicable federal, state, and local laws, and the policies and requirements as are contained herein. The responsibility for compliance shall in all cases rest with the applicant. The only covenant or warranty which the County shall be required to make in connection with the proposed Industrial Revenue Bond issuance, either to the applicant or to any other interested party, is that said County is a corporation or political subdivision of the State of New Mexico, organized and existing under the laws of said State and has the lawful authority to execute the transaction documents and perform its obligations thereunder. .
3. For a tax-exempt transaction, the applicant must not incur any project costs, other than those authorized by the Internal Revenue Code, prior to the preliminary approval being authorized by the BOCC.

VIII. BOND ORDINANCE DOCUMENTATION REQUIREMENTS

Bond Counsel who shall be the County's Bond Counsel shall submit to the Applicant and its Counsel, and the County Manager all bond documentation relating to the bonds at least thirty (30) days prior to the date that the County is to introduce consideration of the bond ordinance and agreement to publication of the notice on intent to adopt the bond ordinance.

Any bonds issued by the County under the Act will be payable solely from the revenues generated by the project, revenues from the lease and/or sale of the project to the private party that will operate the project (the "Company"), and/or revenues from any credit enhancement or security pledged by the Company.

The County will require that it be indemnified for all costs and expenses (including attorney's fees) which it may incur as a result of participating in the financing, including those incurred with respect to any investigation, inquiry or litigation concerning the bonds, any offering document relating to the bonds, or project. The County will require that such indemnification come from an entity with the financial ability to meet the financial burden of such an indemnification.

The County will require that the bond documents reflect that the County is to be paid an administrative fee, upon the closing of the bonds, of 1/8 of the aggregate principal amount of the bonds issued with a minimum of Seven Thousand Five Hundred Dollars (\$7,500) and that it be paid an annual fee equal to 1/8th of 1% of the outstanding principal amount of the bonds on the anniversary date of the issue of the bonds and each year thereafter (but before any principal reduction on such date).

The bond documents, including but not limited to the lease, will also be required to reflect the PILT and any other requirements as determined by the County.

The Bond Counsel at the sole expense of the Company is responsible for making sure that all notices (notice of intent to adopt ordinance, notice of adoption of ordinance, TEFRA

notice, etc.) are properly published in a newspaper of general circulation in Doña Ana County.

SALE RESOLUTION CLOSING

If the County is requested to adopt a Sale Resolution, Bond Counsel shall submit the form of the resolution to the Applicant, its Counsel and the County Attorney and the attorneys retained by the County, if any, at least two weeks prior to the date the sale resolution is to be adopted (although pricing information may be left blank until the bonds are priced).

Bond Counsel shall submit all closing documents to the County Attorney, at least ten business days prior to the scheduled Closing Date. Closings by mail, facsimile, or electronic means are acceptable to the County.

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EXHIBIT A

APPLICATION FOR INDUSTRIAL REVENUE BOND FINANCING

Doña Ana County, New Mexico

How to Apply to DAC Industrial Revenue Bond Program

Complete the Application

Each applicant seeking assistance from DAC Industrial Revenue Bond Program must complete the application. A non-refundable application fee of 1/10 of 1% of the principal amount of the proposed bonds, minimum of \$2,500 must be included with this application. Make the check payable to Doña Aña County.

Information in the application may be subject to public review under New Mexico State Law, except for information that is considered deniable by the Inspection of Public Records Act.

Complete New Mexico State Environmental Assessment

Mail the completed Application and a check for the application fee payable to:

Doña Aña County

Attn: County Manager

845 N. Motel Boulevard, Room 2-140

Las Cruces, New Mexico 88007

Please answer all questions in typed format. Use "None" or "Not Applicable" where necessary. Information in this application may be subject to public review under New Mexico State Law, except for information that is considered deniable by the inspection of public records act.

I. APPLICANT DATA

A. Applicant Name

Address _____

City/State/Zip _____

B. Applicant's Officer Responsible for Completing this Application

Name _____

Title _____

Mailing Address _____

City/State/Zip _____

Telephone _____

E-Mail _____

Applicant's Tax ID No. _____

C. Business Type

Sole Proprietorship

Partnership

Privately held Corporation

Public Corporation

Not-for-Profit-Corporation

LLC

Other

D. State of Incorporation

E. Principal Stockholders (Owners of 20% or more of Stock Outstanding)

Name

Corporate Title

F. Has the Applicant (or any related entity) received previous DAC Industrial Revenue Bond assistance?

Yes ___ No ___

If yes, please give year(s) and project location

G. Applicant's Legal Counsel

Firm Name _____

Address _____

City/State/Zip _____

Telephone _____

Attorney's Name _____

Fax _____

E-Mail _____

II. PROJECT & OCCUPANCY DATA

A. Location of proposed project facility (address if available)

B. Tax Parcel Code Number _____

C. Indicate municipal jurisdiction

Town _____

Village _____

City of Las Cruces _____

School District _____

D. Current Legal Owner of property

E. Who are the principal user(s) of the facility (the "company")? If there are multiple users, please indicate on attached sheet. If same as applicant indicate "same" below.

Company Name _____

Address _____

City/State/Zip _____

SIC/NAICS Code _____

Contact Person _____

Telephone _____

E-mail _____

% Of facility occupied by company _____

F. Are other facilities or related companies located within New Mexico State?

Yes ___ No ___

Location _____

If there are other company facilities within the State, will any of these close or be subject to reduced activity?

Yes ___ No ___

G. Has the company actively sought sites and/or facilities in another county or state?

Yes ___ No ___

If yes, please describe on separate sheet.

H. Description of project (check one or more)

New construction

Addition to existing facility

Renovation and modernization of existing facility

Acquisition and modernization of existing facility

New machinery and equipment

Other (specify) _

I. Attach a general narrative description of the project and background on user(s) of the facility. Provide Confidential Information Form (Appendix A) for user(s) of the facility.

J. Have any of the principals of the Applicant filed for Bankruptcy under the Federal Bankruptcy Code within the Past 10 years? If the answer is yes, please provide details.

K. Have any of the principals been convicted of a State or Federal Felony within the past 10 years? If yes, please provide details.

L. Is the Applicant or any of the principals of the Applicant a defendant in any civil proceedings or the subject of any state or federal administrative actions? If the answer is yes, please provide details.

III. COMPANY EMPLOYMENT INFORMATION

Total **current** employment within Doña Ana County is:

Full-Time / _____ Part-Time

Projected Employment:

Note: If the project accommodates only a portion of the total, such as a division or department, please provide that employment information in the "impacted" column.

	Total	Impacted	1 st Yr.	2 nd Yr.	3 rd Yr.	Extend through the proposed term of the Bonds and attached as an Appendix
Full Time						
Part Time						
Total						

Company Representative responsible for completing employment information:

Name _____
 Signature _____
 Date _____

IV. PROJECT COSTS AND FINANCING, AND EMPLOYEE BENEFITS

A. Estimate the costs necessary for the construction, acquisition, rehabilitation, and improvement and/or equipping.

Estimated Costs Eligible Gross Receipts Tax Exemption Benefit

a. Building Construction or Renovation Costs	a. \$
b. Site work	b. \$
c. Non-manufacturing equipment	c. \$
d. Furniture, Fixtures	d. \$
e. Land and/or Building Purchase	e. \$
f. Manufacturing Equipment	f. \$
g. Soft Costs (Legal, Architect, Engineering)	g. \$
h. Other (specify)	h. \$
Total Project Costs	\$

Please provide a narrative describing the proposed employee benefits. Include medical insurance benefits, vacation policy, policy for national holidays, and 401K or other pensions or profit sharing benefits.

B. Indicate how the project will be financed

- | | |
|---------------------------------------|-----------------|
| a. Tax-Exempt Industrial Revenue Bond | a. \$ _____ |
| b. Taxable Industrial Revenue Bond | b. \$ _____ |
| c. Bank Financing | c. \$ _____ |
| d. Equity | d. \$ _____ |
| TOTAL SOURCES | \$ _____ |

C. If applicant expects to benefit the Tax-Exempt Industrial Revenue, what is the total dollar value of “capital expenditures” that the applicant and company, or any related company or person, has expended within the last three years in the County in which the proposed project is to be located and expects to expend in that County three years after the bond issue?

D. Has the applicant made any arrangements for the financing of the project?

Yes _____ No _____

If so, please specify bank, underwriter, etc.

V. PROJECT CONSTRUCTION INFORMATION

A. What is the proposed commencement date of construction or acquisition of the project?

B. Outline the timetable for the project, indicating when project will be in full use.

C. What are the water and waste water requirements for the project?

D. Who are the providers of water and waste water?

VI. ENVIRONMENTAL ASSESSMENT

Must be completed and submitted along with this application. If not completed, please state when the Environmental Audit will be completed.

Name of Applicant's Officer Responsible for Completing Application:

(Please print)

Signature

Date of Application

For Office Use Only: Total Assessed Value:

Land

Building

APPENDIX A

CONFIDENTIAL INFORMATION ANNUAL COMPANY REVENUE AND EXPENSE ESTIMATES ASSOCIATED WITH THIS PROJECT (Approximated)

Note: Please print or type answers

**Extended through
the proposed term of
the Bonds and
attached as an
Appendix**

Present

1st Yr.

2nd Yr.

3rd Yr.

Sales (\$000)

% Sales Generated by
local workforce from
clients outside of Doña
Ana County

Work contracted out to
local vendors (\$000)

Local employee
payroll (\$000)

All other local
expenditures (\$000)

OCCUPATIONAL CATEGORIES/PAY RANGES ASSOCIATED WITH PROJECT

Job Category	Number of Jobs	Salary Range	Educational Requirements
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How many jobs will be lost at other Company locations in the County because of the project? _____

How many jobs will be lost at other Company locations in New Mexico because of the project? _____

FEE SCHEDULE

Non refundable application fee (Send with completed application)	1/10 th percent of 1% of the principal amount of the bonds with a minimum of \$2,500.
Bond Counsel's retainer once the County Commission adopts inducement resolution.	\$5,000.000
Independent consultant	\$5,000.00
Bond closing fees	1/8 th of 1% percent of bonds outstanding with a minimum of \$7,500.00
Annual administrative fees	1/8 th of 1% of outstanding bonds

State of New Mexico
 County of Dona Ana
 11229
 I hereby certify that this
 instrument has been duly
 recorded and duly recorded in
MAR 29 2007
 1:47
 800 1920-39
 Shivers

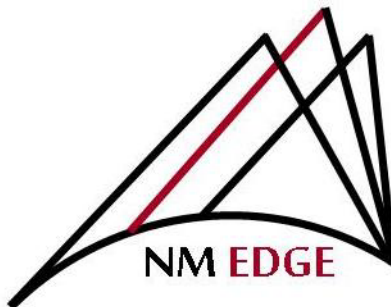


The NM EDGE County College

A Collaborative Program of
NM Cooperative Extension Service & NM Counties

Visit our website at NMEDGE.NMSU.EDU
Contact us at 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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NMSU and the U.S. Department of Agriculture cooperating.