

- 3.5 Ethical Leadership
- 3.6 Consequences of Ethical Breaches

Chapter 4 - ROLES & RESPONSIBILITIES OF

THE NM COUNTY COMMISSIONER.....Page 33

- 4.1 Board of County Commissioners (BOCC) as Legislative Body
- 4.2 County Commissioners as Administrative & Executive Officers
- 4.3 Residency Required to Hold Office
- 4.4 Term of Office
- 4.5 Vacancy in Office
- 4.6 Removal from Office
- 4.7 Abandonment of Office
- 4.8 Oath of Office
- 4.9 Bonds
- 4.10 Compensation
- 4.11 Office of the Chairperson for the Board of County Commissioners
- 4.12 General Powers and Duties of County Commissioners
- 4.13 Specific Duties/Authority Granted to Boards of County Commissioners

Chapter 5 - MEETINGS OF THE BOARD OF

COUNTY COMMISSIONERS.....Page 41

- 5.1 Meetings
- 5.2 Proceedings
- 5.3 Agendas
- 5.4 Rules of Procedure

Chapter 6 - WORKING WITH OTHER OFFICIALS BOARDS.....Page 47

- 6.1 Cooperation among County Offices is Essential
- 6.2 County Manager as Liaison
- 6.3 Protecting Tax Revenues
- 6.4 The BOCC and the County Clerk
- 6.5 Special Boards and Commissions
- 6.6 Volunteer Organizations and Non-profit Entities

Chapter 7 - EMPLOYMENT LAW FOR POLICY MAKERS.....Page 51

- 7.1 Responsibility/Liability for Personnel Administration
- 7.2 County Merit Systems
- 7.3 Federal and State Laws Influence Personnel Administration
- 7.4 The Structure of a Personnel or Human Resources Department
- 7.5 Training Programs
- 7.6 Basic Areas of Operation of a Personnel or Human Resources Department
- 7.7 County Government Benefits
- 7.8 Collective Bargaining in the Public Sector
- 7.9 Salaries
- 7.10 Liability

Chapter 8 - SOURCES & USES OF PUBLIC FINANCE.....Page 63

- 8.1 County Revenue Sources
- 8.2 Property Taxes
- 8.3 Low Income Property Tax Rebate
- 8.4 Fees and Licenses
- 8.5 Lodgers Tax Act
- 8.6 County Gross Receipts Taxes
- 8.7 Bonding
- 8.8 Special Levies
- 8.9 Special Levy by Livestock Board
- 8.10 County and Municipal Gasoline Tax Act
- 8.11 Special County Gasoline Tax
- 8.12 Public Improvement Districts
- 8.13 Tax Increment Development Districts
- 8.14 State Revenue Sources
- 8.15 Gasoline Tax
- 8.16 Cigarette Tax
- 8.17 Motor Vehicle Fees
- 8.18 Law Enforcement Protection Funds
- 8.19 Local Government Corrections Fund
- 8.20 Small County Assistance Act

- 8.21 Miscellaneous Revenues
- 8.22 Severance Tax Bonds
- 8.23 Federal Revenue Sources
- 8.24 Payment-in-Lieu-of-Taxes
- 8.25 Construction Grant Programs
- 8.26 Tax Liability in Federal Areas

Chapter 9 – FINANCIAL ADMINISTRATION.....Page 75

- 9.1 Specific Statutory Duties
- 9.2 County Board of Finance
- 9.3 Deposits and Investments
- 9.4 Filing of Monthly Financial Statements
- 9.5 Budgeting
- 9.6 Accounting
- 9.7 Local Government Permanent Fund
- 9.8 Revenue Collecting
- 9.9 General Obligation Bonds
- 9.10 Revenue Bonds
- 9.11 Purchasing
- 9.12 Resident Preference

Chapter 10 - SERVICES & FUNCTIONS: COUNTY PROPERTY.....Page 85

- 10.1 Unfunded Mandates
- 10.2 Disposal of Property
- 10.3 Insurance
- 10.4 Joint Powers Agreements / Joint Projects
- 10.5 Miscellaneous

Chapter 11 - SERVICES & FUNCTIONS:

ROADS, HIGHWAYS, BRIDGES, AIRPORTS.....Page 91

- 11.1 General Laws Relating to County Roads
- 11.2 Local Government Road Fund (LGRF)
- 11.3 Financial Hardship Qualification
- 11.4 Surplus Personal Property Donation

- 11.5 County Road Fund
- 11.6 Grants and Awards
- 11.7 Reporting of County Maintained Road Mileages
- 11.8 County Road Superintendent
- 11.9 State Transportation Commission Plan
- 11.10 District Road Supervisor Plan
- 11.11 Performance Bonds
- 11.12 Construction Contracts
- 11.13 Discontinuance of a Road
- 11.14 Creation of New Roads and Alteration of Old Roads
- 11.15 Rights-of-Way
- 11.16 Road Maintenance in Subdivisions
- 11.17 Airports
- 11.18 Operation on streets or highways; prohibited areas
- 11.19 Certified County Road Mileage

Chapter 12 - SERVICES & FUNCTIONS: PUBLIC WORKS.....Page 101

- 12.1 Playgrounds and Recreational Equipment
- 12.2 Licensing
- 12.3 Artesian Conservancy Districts
- 12.4 Libraries
- 12.5 Detention Facilities
- 12.6 Local Government Corrections Fund
- 12.7 Fire Districts
- 12.8 Television Translator Stations
- 12.9 County Special District Commissions
- 12.10 Cooperative Extension Service
- 12.11 Foreign Trade Zone
- 12.12 DWI Grant Programs

Chapter 13 - SERVICES & FUNCTIONS:

HEALTH & PUBLIC SAFETY.....Page 107

- 13.1 Ambulance Service
- 13.2 County Supported Medicaid Fund

- 13.3 Safety Net Care Pool Fund
- 13.4 Other Care of Indigent Persons
- 13.5 Duty to Indigent and Unclaimed Decedents
- 13.6 Public Welfare and Assistance
- 13.7 New Mexico State Fair
- 13.8 Health Districts (County Health Offices)
- 13.9 Hospitals
- 13.10 Hospital Funding
- 13.11 City-County Hospitals
- 13.12 County Hospitals
- 13.13 Refuse Collection & Landfills
- 13.14 Animal Control
- 13.15 Environmental Controls
- 13.16 Air Pollution Controls
- 13.17 Flood Plains
- 13.18 Civil Preparedness/Emergency Management
- 13.19 Detention: Juvenile and Adult
- 13.20 Fire Protection and Emergency Medical Services:

Chapter 14 - SERVICES & FUNCTIONS:

PLANNING & ZONING.....Page 119

- 14.1 Planning Commission
- 14.2 Planning and Development Districts
- 14.3 Zoning Commission
- 14.4 Extraterritorial Zoning Authority
- 14.5 Special Zoning District Act
- 14.6 Historic Districts and Landmarks
- 14.7 Subdivision Act
- 14.8 Appeals
- 14.9 Water Development Planning
- 14.10 Manufacturing Housing and Zoning Act

Chapter 15 - SERVICES & FUNCTIONS OF THE COUNTY:

ELECTIONS.....Page 123

- 15.1 Election Officers and Boards
- 15.2 Precincts and Polling Places
- 15.3 Registration of Electors
- 15.4 Automated Voter Records System
- 15.5 Absentee/Early Voting
- 15.6 Use of Paper Ballots
- 15.7 Provisional Paper Ballots
- 15.8 Voting Machines
- 15.9 County Canvassing Board

Chapter 16 - WEB RESOURCES.....Page 129

GLOSSARY OF COMMON TERMS AND WORDS.....Page 130

APPENDICES

- Appendix A Additional Duties of the Board of County Commissioners**Page 131**
- Appendix B General Calendar of the Board of County Commissioners....**Page 140**
- Map of NM Counties

CHAPTER 1

KNOWING YOUR GOVERNMENT

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

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

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

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

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

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

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

1. *Separation of Powers* – Rather than power centralized into one body or institution, the Framers of the Constitution saw a need to divide power between three independent, but interrelated branches: The Legislative (Congress), charged with creating laws; The Executive (President and Administration), charged with approving laws passed by Congress and executing those laws; and the Judicial (Courts), charged with interpreting law.

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

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

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

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

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

While each of the first nine amendments to the Constitution are important in their own right, in this instance, the focus is on the tenth, which further highlights the balance of power between the Federal government and the states:

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

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

1.2 The Role of State & Federal Government

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

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

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

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

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

1.3 The New Mexico State Constitution

Like the US Constitution, the Constitution of the State of New Mexico was born in a place

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

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

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

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

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

While they created a structure of government that is fundamentally similar to that of the Federal Government (separation of powers and checks & balances), there are some key differences, in that it:

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

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

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

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

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

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

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

1.4 County Government in New Mexico

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

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

- A provision that outlines elections and terms of office for county officials (Section Two)

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

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

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

1.5 Organization of County Government

The form of organization for County Government in New Mexico is established by the State Constitution. The powers of the county as a political and corporate entity are exercised by a *Board of County Commissioners (BOCC)* (Section 4-38-1 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, Surveyor, Treasurer, and Probate Judge. Additionally, New Mexico counties also play a role in housing a district attorney and a district judge or judges. Each office is discussed in brevity below:

1.6 County Assessor

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

1.7 County Clerk

The County Clerk serves an important role for the BOCC and the state. The County Clerk is the ex-officio Clerk of the BOCC (§4-40-3 through 8 NMSA) and, therefore, the Clerk must

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

1.8 County Sheriff

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

1.9 County Surveyor

In all counties, the surveyor is no longer elected. Private surveyors, engineering firms, or the county road or public works department now perform these functions (§4-42-11 NMSA). The office of the County Surveyor was created in 1891 (§4-42-1 through 15 NMSA) to conduct official surveys, plats and maps within the county. Historically, all surveying of county roads and bridges was performed by the County Surveyor who was, by virtue of office, mandated to be one of the reviewers in establishing new roads or bridges.

1.10 County Treasurer

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

1.11 Probate Judge

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

1.12 District Judge

There are 13 judicial districts in New Mexico, with one or more District Judges in each

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

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

1.13 District Attorney

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

1.14 Tribal Governments in New Mexico

Written by Fred and LaDonna Harris and used with permission

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

- Around 10% of the two million people who live in New Mexico are Native Americans.
- Reservations in New Mexico include:
 1. Mescalero Apaches
 2. Jicarilla Apaches
 3. Part of the Navajo reservation
 4. Nineteen Pueblos
- Each of the nineteen New Mexico pueblos is a Federally recognized Indian tribe.
- The Navajo tribe is the largest in the United States. Reservations arose when Congress “reserved” or set aside certain lands for Native Americans.
- American Indian tribes are not, as some think, “foreign nations.” For example, they

can't make treaties with foreign governments.

- The Federal Government has exclusive power to deal with Federal and tribal matters, unless it delegates that power to the states - which it rarely does.
- Upon becoming a state, New Mexico adopted a constitutional provision (Article XXI, Section 2) giving up taxing jurisdiction and other authority on Indian reservations.
- Legally, a pueblo and a reservation is the same thing. Pueblo is a Spanish word for village.
- New Mexico was the first in the nation to create a Bureau of Indian Affairs and a Cabinet Level appointment made by the NM Governor. For many years Federal policy sought to assimilate Native Americans. It was felt that Native Americans should become like everyone else.
- Since the 1960's, however, federal policy has changed. Preserving the heritage of Native Americans is encouraged. Native Americans, in addition to being citizens of the United States and the state they live in, are also citizens of the tribes of which they are enrolled as members. Each tribe has the authority to determine who is eligible to be a member.
- Dual citizenship means that Native Americans are entitled to vote in all elections plus tribal elections.
- Native Americans have become active in state and national politics. They are represented in the state legislature. Indian casinos have become a significant source of campaign funds.

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

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

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

- Almost. The Bill of Rights acts as restraint on federal officers. The Fourteenth Amendment acts as restraint on state and local officers. But these amendments do not apply to tribal officials.
- To remedy this, Congress passed the Indian Civil Rights Act in 1968 to put similar restraints on tribal officers. But there are exceptions. For example, an Indian tribe can establish a religion, of whatever kind, although it cannot prohibit other religions. A

Pueblo may choose to have a Catholic priest “bless the canes” (a traditional symbol of authority) for an inauguration of tribal officials.

- Nor is a tribe required to elect its officials. In fact, the majority of pueblos choose their leaders in the traditional (non-elective) way.

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

1.15 Tribal Government Relationships with Other Governments

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

Federal Indian Law --

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

–Cohen’s Handbook of Federal Indian Law.

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

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

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

- The “Rule of Discovery” simply put was the notion of 16th and 17th century

European countries had to simply plant their flag in unknown lands; and, thereby exercise sovereign authority. This simple act of planting the flag divested all existing governments and simply left the inhabitants a Right of Occupancy.

- This rule was tempered somewhat when King George III issued the Proclamation of 1763 to prevent settlements of colonies in the west of the Appalachian Mountains.
- The framers of the US Constitution had examples of how a system of separation of powers in a central government worked. The IROQUOIS CONFEDERATION united several tribes (Mohawk, Oneida, Onondaga, Cayuga, and Seneca nations).

The governance structure of the Confederation had three separate groups:

- A Chief: as the Executive
- Two groups of “lords”: as the Legislature
- Fire Keepers: as the Judiciary

Ratification of the United States Constitution in 1789.

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

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

Johnson v. M’Intosh, 21 U.S. (8 Wheat.) 543 (1823).

Cherokee v. Georgia, 30 U.S. (5 Peters) 1 (1831).

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

Johnson v. M’Intosh

- This case was a land dispute in the nature of ejectment, involving non-Indians --

One party purportedly acquiring title from a tribe through private purchase; and, the other party with a land patent.

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

Cherokee v. Georgia

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

Worcester v. Georgia

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

Self-Determination:

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

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

-Prof. Matthew L.M. Fletcher

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **Tribal Jurisdiction and Regulatory Authority**
Both Civil and Criminal Jurisdiction of Tribes hinge primarily on two factors: who and where.
 - Who (political identity): Member Indian, Non-Member Indian, Non-Indian.
 - Where: Indian Country

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

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

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

- **New Mexico Police Power intergovernmental relations:**
 - N.M.S.A. Section 29-8-3. Mutual aid agreements – a/k/a Cross Commission Agreements. “Any state, county or municipal agency having and maintaining peace officers may enter into mutual aid agreements with any public agency as defined in the Mutual Aid Act, with respect to law enforcement, provided any such agreement shall be approved by the agency involved and the governor.
 - See, *Loya v. Gutierrez*, 2015-NMSC-017, 350 P.3d 1155. The New Mexico Supreme Court only mentioned the Mutual Aid Act in passing. The facts of *Loya* did not include a validly executed Cross Commission agreement. The Court did hold that “Count[ies] must provide [non-county employee peace officers that are commissioned by the Sheriff] ...with a legal

defense, including costs and attorney's fees in conformity with the [New Mexico Tort Claims Act] NMTCA.

Further Resources

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

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

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

Lindsay Robertson, Conquest By Law (2012).

1.16 Cultural Awareness

Researched and Written by Reese Fullerton, JD

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

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

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

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

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

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

So how do we do this?

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

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

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

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

2.3 Other Law Making Bodies

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

2.4 The Impact of Laws

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

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

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

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

In New Mexico, Article X, Section Eight of the State Constitution holds that the state

government cannot place mandates on local governments unless requisite resources or funding are provided. Note that the language does not apply to un-funded laws passed by the legislature:

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

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

2.5 Encouraging Public Involvement in Policy Making & Transparency

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

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

- Representative government depends upon an informed electorate
- All persons are entitled to the greatest possible information regarding affairs of government and the official acts of public officers and employees; and
- Providing such information is an essential function of government and an integral part of the routine duties of public officers and employees (Section 14-2-5 New Mexico Statutes Annotated)

The act provides explanations for what types of meetings fall under the law, public notice requirements for meetings, and proper issuance of agendas, minutes, and closed meetings. Also covered in the Act are remedies, penalties, and exceptions to the law.

The second is the Inspection of Public Records Act (IPRA), which serves as New Mexico's version of the Federal Freedom of Information Act and is designed to provide the public with access to virtually all public records. Such a law is intended to see that all work and action of the government is visible to the public. Of course, there are some limited restrictions on what is open.

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

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

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

CHAPTER 3

ETHICS & PROFESSIONALISM IN THE PUBLIC SECTOR

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

Introduction - Ethics are Essential to Government

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

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

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

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

- Universal ethical principles
- Ethical principles for public servants
- Ethical requirements in New Mexico law
- Ethical rules for specific areas of public service
- How leaders create a culture of ethics
- Suggested models for ethical decision-making
- Consequences of misconduct

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

3.1 Universal Ethical Principles (PE 120, CPM 139)

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

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

Treat Others as You Would Yourself Wish to Be Treated.

3.2 Ethical Principles for Public Servants (PE 239)

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

- Public service is a trust to be used only to advance public interests, not personal gain.
- Decisions are to be made on the merits, free of partiality or prejudice and unimpeded by conflicts of interest.
- Government is to be conducted openly, so the public can make informed judgments and hold public officials and servants accountable.
- Leaders of governmental agencies are responsible for ensuring that they, and all other public servants under their authority, conduct the public's business efficiently, equitably and honorably.
- All public officials must observe the letter and spirit of the laws.
- Public officials are responsible for safeguarding public confidence in the integrity of government by avoiding appearances of impropriety and conduct unbecoming a public servant.

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

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

A. Governmental Conduct Act:

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

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

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

B. Other Ethics Laws Applicable to Local Government:

The Governmental Conduct Act is not the only New Mexico law that imposes ethical restrictions on officials and employees of local governments. For example, the Whistleblower Protection Act, §10-16C-1 et seq. NMSA 1978, protects public employees against retaliation for disclosing improper conduct at their public agencies. The Open Meetings Act and Inspection of Public Records Act, both described in section 2.5 of this Handbook, are designed to ensure transparency of governmental decision making, so citizens can provide their input and hold their elected representatives accountable for their actions. Local governments who use the State Procurement Code, §13-1-1 et seq. NMSA 1978, are subject to ethical requirements related to their purchasing and contracting practices. A number of

state laws prohibit government employees from committing serious unethical practices such as embezzling funds, receiving kickbacks or unlawful fees, or nepotism. And federal laws also control conduct by local government officials in certain circumstances. One example is the limitation on political activities imposed by the Hatch Act, 5 USC §1502, on officials whose jobs are partially or wholly funded by federal grant money.

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

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

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

A. Conflicts of Interest:

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

B. Abuses of Power (PE 147):

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

C. Managing Public Funds (CPM 142):

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

D. Managing Staff (PE 239):

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

E. Politics:

While elected public officials are expected to campaign for office, it is unethical to use official resources or status in support of one's election or other political objectives.

Officials are prohibited from requesting, or even "advising," any employee to contribute to or to work on a political campaign.

F. Civility (PE 123):

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

Government suffers when lapses occur.

G. Research (CPM 271):

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

H. Transparency (CPM 153):

Government can only be trusted when it operates as much as possible in the open. When citizens understand what officials have decided and, even more importantly, how they decided it, the public will be more inclined to trust the officials' efforts and less inclined to oppose them. This applies both to meetings and government documents, but with exceptions to protect the public interest. See section 2.5 of this Handbook, above.

3.5 Ethical Leadership (PE 239)

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

A. Understand the Importance of Appearances:

Leaders of government organizations must recognize that appearances count for as much as reality. A public official may know, for example, that he will be fair and unbiased when dealing with a request by a relative or close friend for some service.

But to outside observers, just dealing with such a person gives the appearance that the official cannot help but be influenced by the relationship. Unlike in the private sector, public officials are working with the community's resources, not their own. Thus appearances matter.

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

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

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

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

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

Decisions with ethical consequences often come with little warning and under intense pressure, especially for leaders with weighty responsibilities. Decisions are most difficult when there are advocates for both sides, each emotionally involved. It is therefore valuable for those responsible for deciding to understand and commit in advance to use one or more systems of ethical decision-making. While there are different ways to resolve ethical dilemmas, the important thing is to commit to using a

principle-based approach. If the leader is able to articulate a principled, factually supported reason for his or her decision, that reduces the concern that the leader plays favorites or responds without adequately understanding the situation.

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

Examples of principle-based approaches include:

- a “virtuous character” test (what would [insert your personal role model] do in this situation?);
- a “disclosure” test (has the process been open and transparent?);
- a “professional ethics” test (does the decision satisfy the professional requirements in the relevant field?);
- an “intuitive ethics” test (which decision feels right?).

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

3.6 Consequences of Ethical Breaches (PE 110 A & B)

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

A. Education

The first response need not always be punitive. Even employees trained in ethical conduct may not understand the rules, especially when they are new to government. Misconduct may result from honest mistakes. In such cases, education may be sufficient to prevent

further errors, provided that the damage that was done can be repaired. Relying on education where possible also encourages other employees to report problems, since the consequences to the offender may not be criminal charges or administrative discipline.

B. Administrative Sanctions

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

C. Civil Action

When serious infractions have occurred, the Governmental Conduct Act provides for civil cases to be filed. These can be used to recoup losses caused by the unethical conduct and prevent further such actions.

D. Criminal Proceedings

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

Conclusion

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

CHAPTER 4

ROLES & RESPONSIBILITIES OF THE NEW MEXICO COUNTY COMMISSIONER

For more information on this Chapter take NM EDGE class CO 101

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 legislative 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 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.

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
- 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:

- set salaries for county employees, including a 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).

4.3 Residency Required to Hold Office

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 (AG Opinion 1915- 16:335).

4.4 Term of Office

The term of office for a New Mexico County Commissioner is four years. Terms among the members of the 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). 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). County officers are elected for four-year terms.

Once a county official has served two consecutive four year terms, that officer becomes ineligible to hold any county office for the next two years (NM Const. Art. X, Sec. 2). A proposed constitutional amendment which would have allowed county officials to serve three consecutive terms was defeated by the voters in November, 2010. 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). A person is limited to a total of two consecutive terms, regardless of whether they serve them in different counties.

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 (A.G. Opinion 1949-50:5286).

4.5 Vacancy in Office

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.

Circumstances under which a vacancy occurs in local elective office, including that of County Commissioner, are defined as follows:

- Death of the party in office
- Removal of the officer as provided by law (See 4.6 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 (§10-3-1 NMSA).

4.6 Removal from Office

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

- 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).

4.7 Abandonment of Office

If an official fails to devote the usual and normal amount of time during working hours to their duties for a period of thirty or more successive days, they are considered to have resigned from and permanently abandoned public office and employment (§10-6-3 NMSA). However, state statute (§10-3-1 NMSA) provides that a vacancy in a local office requires six months absence from the county and creates an exception in cases where the duties may be carried out by a deputy and when the absence is due to illness or other unavoidable cause.

4.8 Oath of Office

Each County Commissioner, whether elected or appointed, must take an oath 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 commissioner-elect 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.

4.9 Bonds

Each county officer must provide an official bond payable to the State of New Mexico to assure the faithful performance of the duties required of the officer by law (§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 Association of Counties Insurance Authority, or other insurer.

4.10 Compensation

Maximum salaries of county officials, including the County Commissioners, 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 in even numbered sessions of the legislature 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. 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 amendment was defeated by the voters.

4.11 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 has also 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.”

decisions must be voted on in public meeting, and must have been properly noticed on the agenda for such action. Some of the exceptions include 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 (§10-15-3 NMSA) and is susceptible to being declared to be null and void. 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 published by the Attorney General's Office.

5.2 Proceedings

The BOCC may, and should, establish its own rules and regulations to govern the transactions 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 from and by the BOCC during the first meeting of the year. The BOCC must have a seal which is affixed to all important documents. They may change the seal (§4-38-12 NMSA).

- The Chairperson calls the meeting to order, and determines whether a quorum is present.
- The County Clerk or a deputy must be present at all meetings (§4-40-3 NMSA) to record the proceedings.
- 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.
- Following roll call and determination of a quorum, the draft minutes from previous meeting(s) are discussed, approved, or if necessary, approved subject to certain corrections being made to them.

5.3 Agendas

An agenda is an outline of items to be considered at a meeting. 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 twenty-four hours prior to the meeting unless an emergency requires otherwise.

- H. Petitions, memorials, proclamations and announcements
- I. Approvals of bid awards and contracts
- J. Reports by county officials, boards or commissioners
- K. Approvals of ordinances and resolutions
- L. Public hearings (may fall under ordinance category also)
- M. Closed session, if any (identify subject matter and applicable 10-15-1(H) exemption)
- N. 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 valid vote.)
- O. 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.

5.4 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), 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.

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
 - Objectives to consideration
 - 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.
- **Stating the results.** Immediately after a vote is taken, the Chairperson should state the results.

CHAPTER 6

WORKING WITH OTHER OFFICIALS & OTHER BOARDS WITH COUNTY GOVERNMENTAL RESPONSIBILITIES

For more information on this Chapter take NM EDGE classes CPM 212, CPM 151, CPM 154, CO 102, and CO 103

The ideal relationship between elected county officials and the staff members of their respective departments should be one of reciprocal respect and cooperation. This is to ensure that county residents receive the services to which they are entitled, in the most expeditious and courteous manner possible. For the same reason it is important to give the other elected county officials and their staff the same respect and cooperation. In addition, there are other elected bodies and organizations that interact with the county and the various elected offices throughout your county; i.e., Conservancy Districts, Water and Sanitation Districts, School Boards, State Agencies, non-profits, 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.

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 assesses the net taxable value of property;
- the Treasurer sends out the bill (with the information provided by the BOCC and the Assessor) and collects from the county's property owners;
- the Treasurer distributes the property tax 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.

It takes the offices of three sets of elected officials to accomplish this one major function of county government. It can't be done efficiently without cooperation, and cooperation won't 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.

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 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.

The County Clerk also must sign on the checks as approved/issued by the BOCC (§4-40-1 et. seq. NMSA).

Another example of overlap and the need for cooperation is the planning for, and management of primary, general, 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 for municipal and school elections (§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; 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
- Hospital Boards; etc.

6.6 Volunteer Organizations and Non-profit Entities

As leaders in the community, 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.

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.

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 county-wide 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.

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 state and federal 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 for liability to the county be reduced, but county operations will be more efficient and effective.

7.5 Training Programs

The New Mexico Association of Counties (NMAC) offers a broad array of training and educational opportunities for county elected officials and employees. NMAC's loss prevention department employs five 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. NMAC also provides legal consultation on employment matters and all other areas of county government.

NMAC provides extensive training and education in detention issues, and offers training in consultation with the National Institute of Corrections and other national organizations. NMAC 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. NMAC has developed accreditation programs for sheriffs' departments and adult detention facilities to improve professionalism and operations of these high risk departments.

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.
- **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.
- **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.

7.7 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. The March 2010 issue of La Voz, the PERA newsletter (pera.state.nm.us) includes a detailed description of the effect of the bill on retirees.

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.

7.8 Collective Bargaining in the Public Sector

The Public Employee Bargaining Act, as revived in 2003 after a sunset period, 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

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.

7.9 Salaries (Section 4-38-19)

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.

7.10 Liability

Elected and appointed county officials who are found liable for acts or omissions made while in prudent 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, which was enacted in 2010, creates a new 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 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.

CHAPTER 8

SOURCES OF PUBLIC FINANCE COUNTY TAXES & REVENUES

For more information on this Chapter take NM EDGE classes
CO 141, CO 272, CPM 124, and CPM 224

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

- property taxes
- gross receipts taxes
- fees and licenses

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

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

8.1 County Revenue Sources

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

8.2 Property Taxes

Property taxes represent the single greatest source of county government revenue. Property subject to tax is valued for tax purposes at one-third of the current market value (§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 located on the DFA website:

http://www.nmdfa.state.nm.us/Net_Taxable_Value.aspx

The value 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 property taxes of all taxing districts within the county. Counties are authorized to receive a maximum of \$11.85 per \$1,000 of taxable value for county operating expenses (§7-37-7 NMSA 1978). Current and prior year Certificates of Tax Rates for all NM Counties are located on the DFA website: http://www.nmdfa.state.nm.us/Certificate_of_Property_Tax.aspx

8.3 Low Income Property Tax Rebate

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

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

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

8.4 Fees and Licenses

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

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

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

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

8.5 Lodgers Tax Act

The county may impose an ordinance authorizing an occupancy tax, with some exceptions, not to exceed five percent of gross taxable rent (§3-38-15 NMSA). The proceeds from the tax are primarily for advertising, publicizing, and promoting tourist related attractions, facilities and events. Under certain conditions, lodgers' tax proceeds may also be used to defray costs of police and fire protection for tourist-related events, or for acquiring, constructing and operating tourist-related facilities or services.

8.6 County Gross Receipts Taxes

The majority of the governing body of an eligible county may enact an ordinance imposing an excise tax on the gross receipts of any person engaging in business in the county for the privilege of doing business (§7-20E-21 NMSA). The tax may be imposed in increments of 1/16th of one percent not to exceed an aggregate rate of 7/16ths of one percent (.4375%). In 2004, the legislature removed the gross receipts tax from food and medical services, but voted to hold local governments harmless from the resulting loss of revenue. In 2013, the legislature enacted a significant tax package that included a 15-year phase-out of the hold harmless payments, beginning in July 1, 2015. Cities with populations under 10,000 and counties with populations under 48,000 were exempted from the phase-out, but if they opted to enact the three new County Local Option Hold Harmless tax increments that were a part of the package, they would be subject to the phase-out. Additionally, the 2014 legislature authorized a new 1/12th general purpose GRT increment, county-wide, to be used as payment for the new state Safety Net Care Pool. See 13.3 Safety Net Care Pool Fund.

For a description of each county local option GRT, its reference to statute, and a listing of counties that may, and/or have imposed that increment, see TRD's publication: FYI-C120, County Gross Receipts Tax Local Options, revised June, 2013, at <http://www.tax.newmexico.gov/Forms-and-Publications/>

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 court houses, 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, §13 and §4-49-7 NMSA).
- Second, no bonds can be issued or sold if four years have elapsed from the date on which the first proceedings for the bond election began (§6-15-9 NMSA). This latter restriction does not apply to bond refunding or if the validity of the bonds or the bond election is in litigation.

Issuance of these bonds and other public securities, such as notes and certificates of indebtedness require that the BOCC approve a resolution authorizing the issuance and that

the notice of adoption be published in a local newspaper (§6-15-4 NMSA). Refunding of these bonds also requires a resolution from the BOCC (§6-15-12 NMSA).

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

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

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

8.8 Special Levies

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

8.9 Special Levy by Livestock Board

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

8.10 County and Municipal Gasoline Tax Act

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

8.11 Special County Gasoline Tax

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

8.12 Public Improvement Districts

This Act (§4-55-1 et seq. NMSA) provides a process by which the property owners within a particular geographical area are assessed a special levy, which pays for needed or desired improvements financed through the issuance of public improvement bonds as authorized in the Act. The Act allows residents to petition, or the BOCC to order, the creation of a public improvement district (PID). If the district is created, the parcels within the district are assessed a special levy over a ten or twenty-year period to repay the bonds issued to finance the construction of the drainage/flood controls, road paving, sidewalks or other public improvement.

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

8.13 Tax Increment Development Districts

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

8.14 State Revenue Sources

County governments in New Mexico share in a number of state government-administered- and -collected taxes. Major state revenue sources include the gasoline and cigarette taxes and motor vehicle registration and transaction fees. State-shared revenues account for

approximately one-fifth of all county revenues. The New Mexico Legislature also has traditionally provided funds to counties for use in capital improvements on an individual county needs basis, although these funds have recently been severely curtailed, and in some cases, voided, because of the shortfall in state revenues.

8.15 Gasoline Tax

An excise tax of 17 cents per gallon is levied by the State on all gasoline received in New Mexico and is paid by gasoline distributors (§7-13-3 NMSA). Gasoline sold for export from the State and then sold to the federal government or its agencies is exempt from the tax with some credits and refunds allowable. Currently, 5.76% of the net receipts attributable to the gasoline tax are deposited by the State in the county government road fund (§7-1-6.19 NMSA). Revenues are distributed from the fund to each county based upon population and the proportionate share of roads in each county relative to the total miles of county roads in the State (§7-1-6.26 NMSA).

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

8.16 Cigarette Tax

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

8.17 Motor Vehicle Fees

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

8.18 Law Enforcement Protection Funds

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

8.19 Local Government Corrections Fund

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

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

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

8.20 Small County Assistance Act

This Act (§4-61-1 NMSA) provides funds to assist small counties meeting the specific requirements of a population of 48,000 or less, which impose property taxes of at least \$8.85 per \$1,000 of net taxable value. 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/forms-publications.aspx> for a description of these increments. The small county funds are provided from compensating taxes collected by the State.

8.21 Miscellaneous Revenues

Counties may also receive funds from the State in minor amounts from the Fire Protection Fund (§59-53-1 et seq. NMSA), the State Racing Commission, and for housing felony offenders in county detention facilities (§33-3-25 NMSA). An increase in the amount of

money payable to county government from the Fire Protection Fund, which had in part been going to the State General Fund, was authorized by the legislature in 2007, but has been delayed because of State General Fund deficits. The annual authorization for the County Detention Facility Fund has been shaved several times, also because of state revenue shortfalls.

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

8.22 Severance Tax Bonds

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

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

8.23 Federal Revenue Sources

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

8.24 Payment-in-Lieu-of-Taxes

As a result of the Payment-in-Lieu-of-Taxes Act, codified at 31 U.S.C. 6902 et seq., counties receive a significant amount of revenue for federally owned lands that are located within the counties. Payments in Lieu of Taxes (PILT) are federal payments to local governments

that help offset losses in property taxes due to nontaxable federal lands within their boundaries. The Department of Interior distributed \$32,205,935 to New Mexico counties in 2010. This was a significant reduction from the \$37,013,334 distributed the previous year. Chart of PILT distribution available at:

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

The only New Mexico county not qualifying for PILT funding is Curry County because it does not contain qualifying non-taxable federal lands.

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

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

After the determination regarding the amount of the payment for federally-owned land is made as described above, a third factor is introduced into the formula: population according to the most recent US 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 CO 141, CPM 143, CPM 145, CPM 146, CPM 241, and CPM 242

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 o the collection of special levies or assessments
- the collection of property taxes and other income due the county.

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

9.1 Specific Statutory Duties

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

- The BOCC serves ex officio as the County Board of Finance (§6-10-8 NMSA).
- The BOCC must examine and settle all accounts of receipts and expenses of the county and all accounts chargeable against the county (§4-38-16 NMSA).

- Accounts must be itemized and the Board can disapprove all or part of the accounts (§4-45-3 NMSA)
- The BOCC is responsible for assuring that a statement of receipts and expenditures is prepared on an annual basis (§4-38-27 NMSA)
- If the BOCC approves the payment of county funds without the authority of law, they are liable for the amount paid out, as well as the costs and fees associated with collecting those funds (§4-38-28 NMSA)
- The BOCC may impose, by ordinance, various local option gross receipts tax increments, as described in FYI-C120.
- The BOCC may issue revenue bonds upon approval from a majority of all the members of the Board (note: this is different from a majority vote of the Board present, which might be a majority of a quorum and less than the full Board) and may issue general obligation bonds after election and voter approval
- The BOCC, and/or its staff, serve as an agent of the United States Government for the expenditure of money authorized by U.S. Congress (§4-36-3 NMSA)
- Despite this seemingly extensive authority, the BOCC, as manager of the county's funds, is subject to many other internal and external controls. For example:
 - The BOCC has no authority to divert money from one fund to another.
 - If Commissioners attempt to pay warrants drawn from improper funds, the county Treasurer must refuse to pay the warrants.
 - If a county has a history of problems with the budget and/or violates LGD's rules and regulations on a regular basis, the State (through the DFA Secretary) has the right to step in and take over the county's fiscal matters, in accordance with the statutory processes for same (§10-5-2 NMSA).

9.2 County Board of Finance

The BOCC constitutes the ex officio Board of Finance.

- The purpose of the Board of Finance is to coordinate with the Treasurer to determine the qualifications and selection of banks, savings and loan institutions, credit unions and other institutions to receive the county's deposits.
- The County Treasurer is responsible for the investment and safekeeping of public funds.
- The County Clerk serves ex officio as the Clerk for the Board of Finance. Board meetings are held upon request of the Treasurer or whenever the Board deems it necessary (§6-10-8 NMSA).

9.3 Deposits and Investments

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

County funds must be deposited in one or more accounts in federally insured banks, saving and loan institutions or federally insured credit unions within the county. Statute allows the requirement of additional security for the deposit of public money (§6-10-16 NMSA). Deposits to interest earning accounts may be made to qualified institutions, but must be distributed equally throughout the county (§6-10-36 C NMSA). No county may make such deposits in institutions outside of that county (§6-10-31 NMSA).

The rate of interest on all interest bearing accounts shall be set at least quarterly by the New Mexico Board of Finance (NMBOF) and in no case shall the rate be lower than 100% of the price of the United States treasury bills. Any institution not paying this rate forfeits any right to an equitable share of deposits. Also, if the financial institutions do not pay the interest rate set by the NMBOF, then statute allows the county to place money not immediately needed into a short term investment fund at the State Treasurer's Office (§6-10-10.1 NMSA). These short term investments should not exceed thirty days. Deposits of funds may be made in non- interest-bearing checking accounts to one or more qualified financial institutions located within the boundaries of the county (§6-10-36B NMSA). In all cases of deposits or investments, bank statements are due on the first day of each month and shall be provided to the State Board of Finance and to the County Treasurer (§6-10-29 NMSA), as well as to the County Manager and Finance Director.

9.4 Filing of Monthly Financial Statements

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

9.5 Budgeting

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

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

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

The fiscal year begins on July 1 and ends on June 30 (§6-10-1 NMSA). The statute provides that LGD must receive an approved, preliminary, proposed budget from each BOCC by June 1st. 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 county-wide throughout the year.

Once a budget is approved, a transfer of funds from one-line item to another is not allowed unless approved by LGD (§6-6-2G NMSA). No expenditures or claims shall be made in excess of the operating budget. At the end of the year, excess monies, if any, shall be

applied to the budget estimate for the next succeeding year (§4-51-1 NMSA) or may be deposited in a Local Government Permanent Fund (§6-6-19 NMSA).

9.6 Accounting

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

Every four years, or at the end of term of the elected Treasurer, the County Treasurer is required to make a full and complete settlement with the BOCC and deliver in the presence of the County Clerk all books, papers, and other property to the new Treasurer. The BOCC is then required to file a comprehensive financial statement with the State Auditor including all unfinished business of the previous County Treasurer that is passed on to a successor. The books must be balanced before being passed on to the successor (§4-43-4 NMSA).

The LGD prescribes the form for all budgets, books, records, and accounts used by county governments (§6-6-2 NMSA). The Statewide Uniform Budgeting System is a means of evaluating the total performance of a county government; it introduces other measures such as budget performance, outstanding encumbrances, fixed assets, control and usage of funds and efficiency of programs and services.

9.7 Local Government Permanent Fund

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

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

9.8 Revenue Collecting

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

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

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

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

9.9 General Obligation Bonds

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

- Erecting, remodeling and making additions to necessary public buildings
- Constructing or repairing public roads and bridges

- Constructing or acquiring a system for supplying water, including the acquisition of water and water rights, the necessary real estate or rights-of-way and easements
- Constructing or acquiring a sewer system, including the necessary real estate or rights-of-way and easements
- Constructing an airport or sanitary landfill, including the necessary real estate or rights-of-way and easements
- The purchase of books and other library resources for libraries in the county.

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

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

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

A sinking fund may be used to secure payment of the principal, or principal plus interest, on general obligation bonds, and may be created by a resolution or ordinance by the BOCC (§6-15-22 NMSA). The income generated by the sinking fund may be invested, reinvested, or deposited in a bank under an escrow agreement.

9.10 Revenue Bonds

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

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

- Utility Revenue Bonds
- Project Revenue Bonds

No county can issue revenue bonds pledging revenues that are not being collected or received. In addition, the County Industrial Revenue Bond Act (§4-59-1 NMSA et seq.) authorizes counties to induce industry to locate to their county in order to spur economic development. This Act, 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.

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 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. 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.

CHAPTER 10

COUNTY SERVICES AND FUNCTIONS: COUNTY PROPERTY

For more information on this Chapter in part take NM EDGE classes
CPM 143 and CPM 212

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 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 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.

One such mandate is 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), and providing 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 Association of Counties has created two self-insurance pools that are available to counties for covering their obligation regarding property, errors and omissions; workers compensation; etc. These self-insurance pools, although technically not insurance companies, 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). An example of a multiple county JPA is the creation of the Workers Compensation Pool and the Multi-Line Pool for insurance coverage. 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).

A 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

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).

The exception includes 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 second and 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

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 State Treasury 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. The State requires a twenty-five percent (25%) county match of any entitlement amount given to county projects.

11.3 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.

11.4 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.

11.5 County Road Fund

The account for roads and bridges is referred to as the County Road Fund (§67-4-1 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 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).

11.6 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 \$300,000 each year for such prioritized projects (§67-3-28.2 NMSA).

11.7 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).

11.8 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).

11.9 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.

11.10 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).

11.11 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.

11.12 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 contracts 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).

11.13 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 formation of a road.

11.14 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. 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, assesses the damages and benefits accruing to the owner of any lands over which the proposed road will pass, and assesses the cost of opening the road (§67-5-10 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.

11.15 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 state and federal 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).

11.16 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).

11.17 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.

11.18 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; or
 - 2. paved street or highway except as provided in Subsection B, C or D of this section.
- 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; and
 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.
- 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 Chapter 17, Article 6 NMSA 1978.
- 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.
- G. Unless authorized, a person shall not:
1. remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or
 2. install any off-highway motor vehicle-related sign.

11.19 Certified County Road Mileage

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 [Section 66-6-23](#) NMSA 1978 (see 7-1-6.26. County government road fund; distribution). NMSA 1987, Section 66-6-23, as amended by the 1999 Legislature, requires all counties to certify and submit their maintained miles by April 1 of each year. Check with your County Manager for current Certified County Road Mileage.

CHAPTER 12

COUNTY SERVICES & FUNCTIONS: PUBLIC WORKS AND OTHER CONCERNS

For more information on this Chapter take NM EDGE class CO 102

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 (Section 5-4-1 New Mexico Statutes Annotated). 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

Detention administration in New Mexico has undergone significant change in the last decade. 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 (§33-3-1A 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). The Detention Administrator submits proposed rules and regulations for the punishment of persons violating the rules of the

jail 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 inmates, 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.

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). The Gross Receipts Tax Law (§7-20F-3 NMSA) allows the BOCC to impose by ordinance a county correctional facility gross receipts tax in an amount up to one-eighth percent (in one sixteenth percent increments) of the gross receipts of persons engaging in business in the county, including all municipalities within the county. An ordinance imposing a county correctional facility gross receipts tax pursuant to this section shall be subject to optional referendum selection by the governing body, as provided in Subsection A of Section 7-20E-3 NMSA. The tax must go into effect in either January or July.

The revenues generated by such a tax may be used for the purpose of operating, maintaining, constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional or a county correctional facility, or the grounds of a judicial-correctional or county correctional facility, including acquiring and improving parking lots, landscaping or any combination of the foregoing; for the purpose of transporting or extraditing prisoners; or to pay principal and interest on revenue bonds or refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

In 2007, the legislature enacted the County Detention Fund Reimbursement Act (NMSA 1978 §33-3B-1 et seq.) 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 Association of Counties.

12.6 Local Government Corrections Fund

The Local Government Corrections Fund helps counties finance detention center operations (NMSA 1978 §33-3-25). 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 (NMSA 1978 §3-17-6 and 3-18-11). Independent fire districts may be established. Fire District Revenue Bonds may be issued upon two-thirds vote of the Commissioners, after designation of the source of pledged revenue (NMSA 1978 §5-7-6). An independent fire district is entitled to share in the distribution of monies from the Fire Protection Fund. 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 (NMSA 1978 §59-15-9). 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 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) has existed in New Mexico since 1915, when funds were appropriated to provide a partnership among the counties of New Mexico, the Land Grant University (New Mexico State University), and the United States Department of Agriculture.

This historical agreement was constituted through the Congressional Smith-Lever Act of 1914 and Public Law 83 in 1953. The purpose of the partnership is to transmit practical information produced by university research centers to the public. The goal is to help people identify and solve problems for a better quality of life.

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 Association of Counties, by statute, is entitled to a membership on the Grant Council.

CHAPTER 13

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

For more information on this Chapter take NM EDGE class CO 103

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.” (Section 4-37-1 New Mexico Statutes Annotated).

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).

13.3 Safety Net Care Pool Fund

In the 2014 legislative session, the Legislature established the Safety Net Care Pool Fund in the State Treasury, which fund 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). In requiring the dedication to the safety net care pool fund, the Legislature authorized the counties to enact a general purpose 1/12th increment, without referendum, until June 30, 2017. (§ 7-20E-9 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.

In each county, the County Health Care Board is composed of the members of the BOCC, with the County Chairperson serving as the chair of this board (§27-5-5 NMSA). The County Health Care Board is authorized to create a preferred claim against the state of an indigent patient, or a lien against any real property owned or later acquired by a person receiving benefits, in order to recover the costs for medical care and ambulance service received. A fourteen-year limitation of actions applies to such claims (§27-5-14 NMSA).

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(M) 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 state, 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 is under the exclusive control of the State, which administers all state welfare activities as provided by the Public Assistance Act (§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 Procurement Code generally do not apply to the private organization. If the county retains majority control, the sunshine laws and 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 Procurement Code and the sunshine laws.

13.10 Hospital Funding

Because of the recently enacted federal Health Care Reform Act and its four-year period of implementation, it is not possible, nor is it intended that this chapter or manual will provide the reader with a complete understanding as to all the hospital funding options available to counties, nor all the requirements counties may be subject to, relating to hospitals, health care, methods of meeting the obligation to provide medical care to the indigent population, etc.

A brief description of some of the current 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.
 - Counties may levy up to 4 1/4-mils of property tax.
 - Class A counties are authorized to levy up to 6 ½ mils.A single mil of property tax is calculated as one dollar (\$1.00) for every one thousand dollars (\$1,000.00) of assessed property value.

- 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 this chapter), and matching funds for the sole community provider program (as discussed above 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 the various taxes can be managed (§27-5-7 NMSA).
- The Local County Hospital Gross Receipts Tax Act (§7-20C-1 et. seq. NMSA) authorizes certain Class B counties to enact a gross receipts tax for designing, constructing and equipping hospitals.
- The Special County Gross Hospital Receipts Tax Act (§7-20E-13 NMSA) is similar and also authorizes certain Class B counties to impose a gross receipts tax for

hospital operations and maintenance.

- Both 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 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. So as not to violate the unfunded mandate clause of the NM Constitution, and to aid in the creation of permitted landfill facilities, there is a grants program established through the Environment Department to aid counties to meet the regulations (§74-9-40 NMSA). Also, counties have the ability to impose a local one-eighth of one percent environmental gross receipts tax (§7-20E-17 NMSA).

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 the many counties, which is a real health issue, some counties have mandated residential curb side trash pick-up through adoption of an ordinance, and then contracted the hauling to private haulers. Other counties have mandated residential curb side 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 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 inmates 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 inmates. Some practices to consider employing 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, 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). In addition, each county may impose the County Correctional Facility Gross Receipts tax in one-sixteenth percent increments up to a total of one-eighth percent (§7-20F-1 et. seq. NMSA). Because of the amendments to this statute in 2004, this tax may now be dedicated to:

- operating, maintaining, constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a correctional facility; for the purpose of transporting or extraditing prisoners; or,
- to pay for revenue bonds or refunding bonds issued to build a jail (§7-20F-3(C) (3) NMSA).

County Commissioners also 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. For others and in areas of large population, a full time employee for fire and EMS is needed. 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 moneys with which to pay salaries and wages.

There are various funding sources that limit the use 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 utility and training expenses.

Employee wages, salaries and benefits are not available from the normal sources, and grants are usually self-reducing, requiring the county to continue to pay employment for several years out of the General Fund. The County Fire Protection Excise Tax is a gross receipts tax that must be dedicated for the purpose of financing the operational expenses (this does not include wages, salaries and benefits), ambulance services, or capital outlay costs of fire districts or ambulance services (§7- 20E-15 and 16 NMSA).

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

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 (Section 4-57-1 New Mexico Statutes Annotated). 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 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, 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 unzoned portion of a county to establish local zoning where the county has not adopted a general zoning ordinance (§3-21-16 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 subdivider's disclosure statement in addition to that required in Section 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 Section 47-6-11 NMSA
- recording all conveyances of parcels with the County Clerk
- financial security to assure the completion of all improvements that the subdivider proposes to build or to maintain
- fencing subdivided land, where appropriate, in conformity with Section 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). Subdividers 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 Section 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). Mobile homes, that is, homes built to lesser standards, may, however, be excluded by zoning from such residential use districts (§3-21A-4 NMSA).

CHAPTER 15

COUNTY SERVICES & FUNCTIONS: ELECTIONS

**For more information on this Chapter take NM EDGE
class CO 101**

The election code applies to the following types of elections

- General Elections
- Primary Elections
- Statewide Special Elections
- Elections to fill vacancies in the office of Representative in Congress
- School District Elections (§1-1-19 NMSA)

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 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, §1-2-10 NMSA) for a term of two years. The Precinct Board shall consist of a presiding judge, one or more election judges representing each major party and one to three election clerks, depending on the need in that particular precinct (§1-2-2 NMSA).

15.2 Precincts and Polling Places

The polling place for each precinct is designated by the Board of County Commissioners (BOCC) before the first Monday in November of each odd-numbered year. If no public building or public school building is available, the BOCC must provide some other suitable place (§1-3-7 NMSA). However, no polling place can be selected outside the boundary of the precinct unless approved by the District Court of the county where the precinct is located.

Upon application of the BOCC, the governing board of any school district must permit the use of any school building for registration and voting purposes (§1-3-7 NMSA). The BOCC may create an alternative polling place within a precinct upon receiving a petition

signed by at least ten percent of the qualified electors of that precinct (§1-3-7.1 NMSA).

The BOCC may create additional polling places or additional precincts and may divide or consolidate precincts as necessary to meet legal requirements (§1-3-2,3 NMSA). In 2009, the Election Code was changed to provide for the designation of an election precinct as a “mail ballot election precinct” by the BOCC, upon the request of the County Clerk, if the BOCC finds that the precinct has fewer than 50 voters and the nearest polling place for an adjoining precinct is more than 30 miles driving distance from the polling place designated for the precinct in question.

The BOCC is permitted by law to consolidate up to 10 precincts into one polling place called a Voter Convenience Center (§1-3-4 D (2) NMSA). Those consolidated precincts are subject to the same rules that apply to precincts generally in terms of their creation, publication of the location and hours of operation, and all other requirements. Additionally, the BOCC may designate certain rural precincts as mail ballot only precincts (§1-6-22.1 NMSA).

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).

The Board of Registration begins, in March of odd-numbered years, 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

Before any general, primary, or statewide special election, the BOCC must adopt a resolution creating precincts for absentee voting purposes. An absentee voter precinct is created for each state representative district in the county. The boundaries of that precinct must coincide with the boundaries of the state representative district, except in multi-county districts. In these districts, the precinct boundaries coincide with the boundaries of that portion of the district lying within the county.

Each precinct must be identified by county name and district number (§1-6-20 NMSA). At the time that absentee voter precincts are created or consolidated, the BOCC must designate a polling place in each absentee voter precinct (§1-6-22 NMSA). The BOCC must also permit absentee voting for all bond elections (§6-15-26 NMSA). Any voter may vote absentee ballot in any election (§1-6-3 NMSA).

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 Sections 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

The BOCC is ex-officio the County Canvassing Board (§1-13-1 NMSA). The Board must meet within three days after the election to proceed to canvass the election returns (§1-13-3 NMSA). Basically, this public meeting in many counties is a formality conducted to officially delegate the actual task of tallying the votes to the County Clerk's staff. The members of the different canvassing boards have different approaches--some Commissioners may stay in attendance the entire time with the staff to observe and monitor, while other Commissioners may come and go, supervising the canvass more distantly.

The job of the Canvassing Board and/or its staff is to examine poll books and tally books of each precinct to determine if they contain the properly executed certificates required

by the Election Code, as well as to ascertain whether any discrepancy, omission, or error appears in the election returns (§1-13-4 NMSA). The Canvassing Board cannot adjourn until it has canvassed all the returns of the election (§1-13-12 NMSA); however, the board must complete the canvass of the returns and declare the results within ten days from the date of the election (§1-13-13 NMSA). The expense of any proceedings necessary to complete or correct any returns or certificate is to be paid from the county General Fund upon a voucher signed by the County Clerk (§1-13-20 NMSA).

CHAPTER 16 WEB RESOURCES

A partial list of General Sites

NM Association of Counties

<http://nmcountries.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/>
- Tax and Revenue (TRD)
<http://www.tax.newmexico.gov/>
- To download a pdf of the county classifications please go to:
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:
<http://www.tax.newmexico.gov/Businesses/maps.aspx>

Publications

- TRD's publication: FYI-C120, County Gross Receipts Tax Local Options
<http://www.tax.newmexico.gov/Government/local-option-taxes.aspx>
- The Open Meetings Act (OMA) Compliance Guide and a Compliance Checklist
<http://www.nmag.gov/open-meetings-inspection-of-public-records-acts>

GLOSSARY

COMMONLY USED WORDS & TERMS

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

APPENDIX A:

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 (Section 76-2-4 New Mexico Statutes Annotated).
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 (§76-12 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 (§77-2-15NMSA).
8. The BOCC is authorized to prohibit the running-at-large of dogs and cats (§77-1-2 NMSA) and of livestock within certain areas (§77-14-4, 5 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. Board of Directors of a Transportation Development District (§73-23-7 NMSA)
21. 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 Association of 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, §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 NMSA).
3. The BOCC is required to insure county buildings (§13-5-1, §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 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.

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, §4-48B-8 NMSA). An agreement may be made for a joint county-municipal hospital (§4-48B9, §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, §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).
14. The BOCC may maintain and operate a housing project in the interests of the County (AG Opinion No. 57-25; 4-37-1; §3-45-3 NMSA).
15. The BOCC acts as the County Indigent Hospital and Health Care Board (§27-5-5 NMSA) to administer claims and make regulations pursuant to the Indigent Hospital and County Health Care Act (§27-5-1 through 18 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 (§3-18-7 NMSA).
17. Counties may provide direct or indirect financial assistance to economic development projects, pursuant to the terms of §5-10-1 through 13NMSA.

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 (§60-54-1 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, and may charge a fee limited to the County's reasonable actual costs relating to administration 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 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 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 spacetrails, 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, §73-9-5 NMSA), electrical irrigation districts (§73-12-1 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 COMMISSIONER

*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 Jan. 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)
By January 15	Counties that authorize payment for services to a sole community provider hospital shall provide the State the budgeted amount of sole community provider payments, by hospital, for the next FY.	§27-5-12.2 (E)
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 Association of Counties Legislative Conference. This annual conference is held at the State Capitol 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

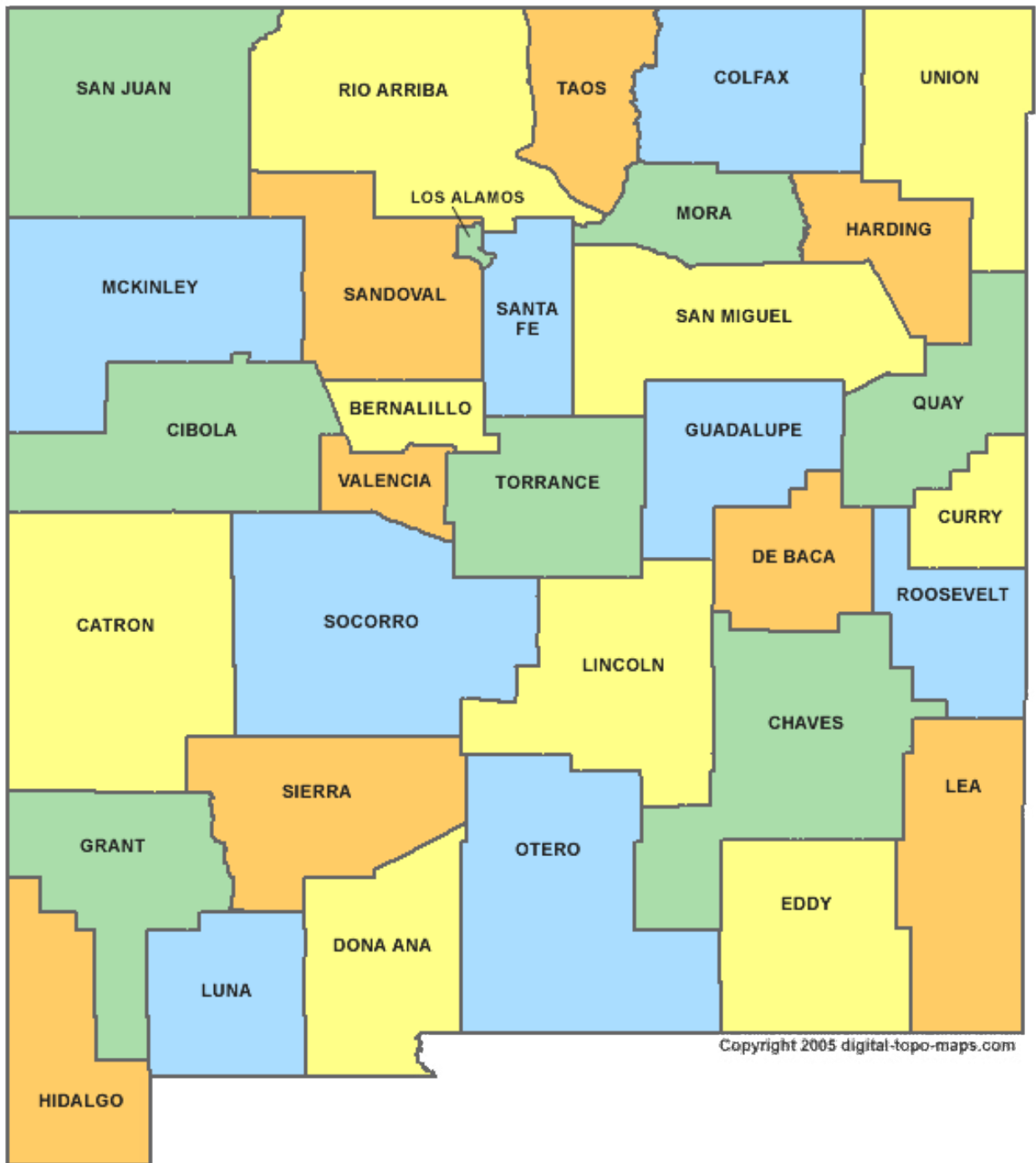
Date	JUNE Event or Action Required continued	Statute
Before June 30	In counties operating or maintaining a county hospital, BOCC is to appoint members of its governing hospital board for staggered terms, such that not more than one third of the hospital board=s members (or as near thereto as possible) 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, 2006B See §7-2-28
Typically in June	The New Mexico Association of 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 may expect to receive an annual report from the County's Board of Horticultural Commissioners (on the condition of fruit interests in their several districts, pest eradication, quarantines against insects, pests and diseases, etc.).	§76-3-8
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
Date	NOVEMBER Event or Action Required	Statute
Not later than first Monday in Nov. 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
Before Dec. 1	BOCC may expect its staff to be presenting for its approval a proposed annual report to be sent to the Governor at year's end. Note: Board of Horticultural Commissioners' annual report is to be incorporated into the BOCC's annual report.	§76-3-8
On or before Dec. 1	BOCC submits an approved annual report to the Governor each year. Note: Board of Horticultural Commissioners' 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)

Date	PERIODIC Event or Action Required	Statute
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	§10-15-1(D)
Once each quarter in Jan., Apr., Jul. and Oct.	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.
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.

Date	PERIODIC Event or Action Required Continued...	Statute
At least quarterly	Financial reports are due from each county regarding the 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	§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
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
Within three 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

MAP OF NM COUNTIES



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

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

The NM EDGE County College

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

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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.

