



**Timothy M. Keller**  
State Auditor

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Deputy State Auditor

**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

May 13, 2016

The Honorable Brad Winter  
Secretary of State  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87501

Re: Chronic Budgetary Shortfalls Associated with Election Expenses

Dear Secretary of State Winter:

The Office of the State Auditor ("Office") reviewed the Office of the Secretary of State's ("SOS") annual financial audit reports for fiscal years 2009, 2010, 2011, 2012, 2013, 2014, and 2015. The Office also scrutinized each year's general appropriation act and other relevant legislation through which the SOS received election funding. The purpose of this letter is to draw your attention to patterns of under-budgeting and emergency appropriations, and to encourage the Office of the Secretary of State to immediately implement best practices to facilitate accurate budgeting of election costs.

Over the years, the SOS has established a pattern of chronic budgetary shortfalls associated with election expenditures totaling \$24,793,877 over ten fiscal years, representing a 43 percent increase over the SOS's regular budget. The budgetary shortfalls and subsequent actions necessary to fund the SOS's election activities are summarized below. Additional detail is provided in the attached table.

<b>Fiscal Year</b>	<b>Funding Type</b>	<b>Funding Source</b>	<b>Amount</b>
2008	Emergency Loan	Board of Finance	\$550,105
2008	Supplemental/Deficiency Appropriation	General Fund	\$500,000
2009	Emergency Loan	Board of Finance	\$150,000
2009	Emergency Loan	Board of Finance	\$41,111
2009	Special Appropriations	General Fund	\$3,000,000
2009	Special Appropriations- Emergency	General Fund	\$1,637,400
2009	Supplemental/Deficiency Appropriation	General Fund	\$99,300
2009	Special Appropriations	General Fund	\$1,000,000
2010	Emergency Loan	Board of Finance	\$385,861
2010	Special Appropriations	General Fund	\$1,000,000

<b>Fiscal Year</b>	<b>Funding Type</b>	<b>Funding Source</b>	<b>Amount</b>
2010	Special Appropriations	Public Election Fund	\$1,912,000
2010	Special Appropriations	General Fund	\$500,000
2010	Special Appropriations	Public Election Fund	\$217,700
2011	Special Appropriation	General Fund	\$250,000
2011	Supplemental/Deficiency Appropriation	General Fund	\$300,000
2012	Fiscal Year 2012 appropriations	Public Election Fund	\$1,050,000
2012	Supplemental/Deficiency Appropriation	General Fund	\$1,013,000
2013	Fiscal Year 2013 Appropriations	Public Election Fund	\$1,696,000
2013	Special Appropriation	Public Election Fund	\$300,000
2013	Supplemental/Deficiency Appropriation	General Fund	\$1,100,000
2014	Fiscal Year 2014 Appropriations	Public Election Fund	\$1,250,000
2014	Special Appropriation	General Fund	\$700,000
2014	Special Appropriation	General Fund	\$200,000
2015	Fiscal Year 2015 Appropriations	Public Election Fund	\$1,950,000
2015	Special Appropriation	General Fund	\$541,400
2016	Fiscal Year 2016 Appropriations	Public Election Fund	\$1,250,000
2016	Special Appropriation	General Fund	\$950,000
2016	Supplemental/Deficiency Appropriation	General Fund	\$500,000
2017	Fiscal Year 2017 Appropriations	Public Election Fund	\$750,000
<b>TOTAL</b>			<b>\$24,793,877</b>

As detailed in the attached table, the SOS's inability to secure adequate funding for election expenses is especially prevalent in connection with primary elections. The SOS's budgetary practices create a substantial financial burden that must be absorbed "after-the-fact," sometimes years after the election occurred, by the Legislature and the State Board of Finance ("BOF") through special and supplemental appropriations and emergency loans and grants.

In the case of emergency loans, \$576,972 in loans made in fiscal years 2009 and 2010 were converted to grants (i.e., forgiven) in fiscal year 2012. Section 6-1-2 NMSA 1978 governing loans and grants of emergency funds defines "emergency" as "an unforeseen occurrence or circumstance severely affecting the quality of government services and requiring the immediate expenditure of money." Given the routine and regular nature of the election cycle it is unclear how the SOS's repeated failure to accurately budget election expenses can be construed as an "emergency."

Furthermore, the Legislature used "notwithstanding" language on multiple occasions to redirect \$10,375,700 from the Public Elections Fund to the elections program of the SOS for election expenses. In accordance with Section 1-19A-10 NMSA 1978, the Public Election Fund is to be used solely for the purposes of (1) financing the election campaigns of certified candidates for covered offices; (2) paying administrative and enforcement costs of the Voter Action Act; and (3) carrying out all other specified provisions of the Voter Action Act. As a result of these transfers out of the Public Elections Fund, the fund balance of the fund decreased over 80% from a high of \$2,555,515 as of June 30, 2010 to a low of \$496,909 at June 30, 2015. While the Legislature is well within its authority to redirect funds in this manner, these provisions do not address the long-term problems regarding budgeting for election expenses.

This is a critical juncture for the SOS to break the cyclical pattern of under-budgeting followed by emergency measures. In the current environment of extremely limited resource availability, funding for special and supplemental appropriations is minimal. The budgetary constraints that the State of New Mexico is facing for the upcoming fiscal year 2017 will be exacerbated if the SOS's pattern of under-budgeting election expenses continues. We understand that this requires coordination among New Mexico's county clerks and the SOS, and we stand ready to be of assistance in that process.

Respectfully,

A handwritten signature in black ink that reads "Timothy M. Keller". The signature is written in a cursive style and is followed by a horizontal line.

Timothy M. Keller  
State Auditor

cc: Director David Abbey, Legislative Finance Committee  
Director Leila Burrows Kleats, State Board of Finance