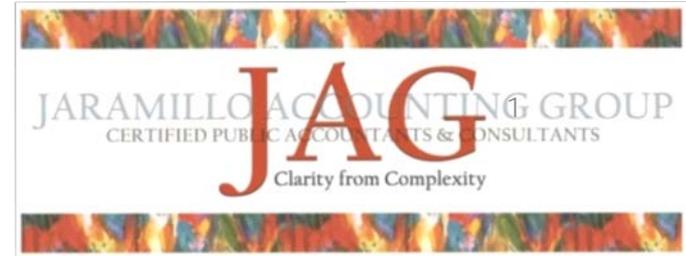


OFFICE OF THE STATE AUDITOR
STATE AUDIT RULE TRAINING
APRIL 4-5, 2016



STATE LAW COMPLIANCE

Presented by:

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CONTENT

Why Are We Here?

NM State Statutes – State Law Compliance

- ▣ NM State Auditor Rule Requirements
 - ▣ Public Monies Act
 - ▣ Anti-Donation Clause
 - ▣ Governmental Conduct Act
 - ▣ Open Meetings Act
- ▣ Inspections of Public Records Act

BEST PRACTICES PITFALLS

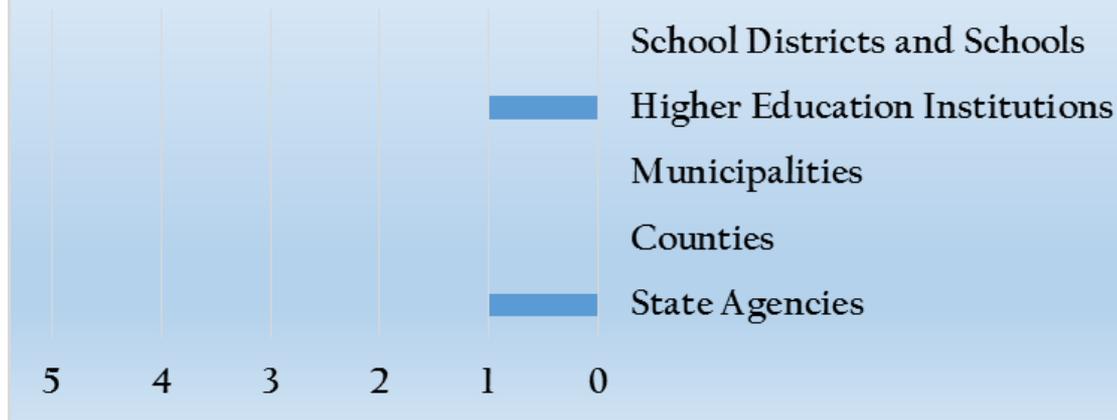
Why We Are Here

“Helping Government Work Better” OSA’s Mission

- OSA GAO Report Findings
- Ethical, Compliant Practices
 - Efficiency & Effectiveness
- Learn Common Compliance Pitfalls
 - Share Best Practices

OSA GAO Report Payroll & Related Liabilities - Findings Rank #1

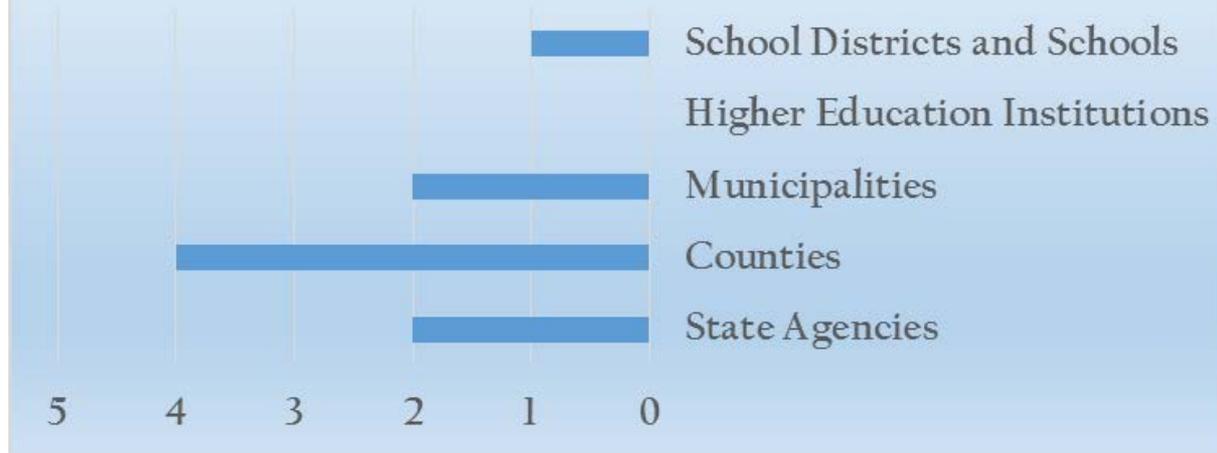
5



An exception or deficiency associated with amounts owed for payroll-related expenditures that are not yet paid, creating a liability or any violation of federal, state, or local requirements regarding employment, required forms, or payroll reporting.

OSA GAO Report Budgetary Compliance - Findings Rank #1, #2, #4

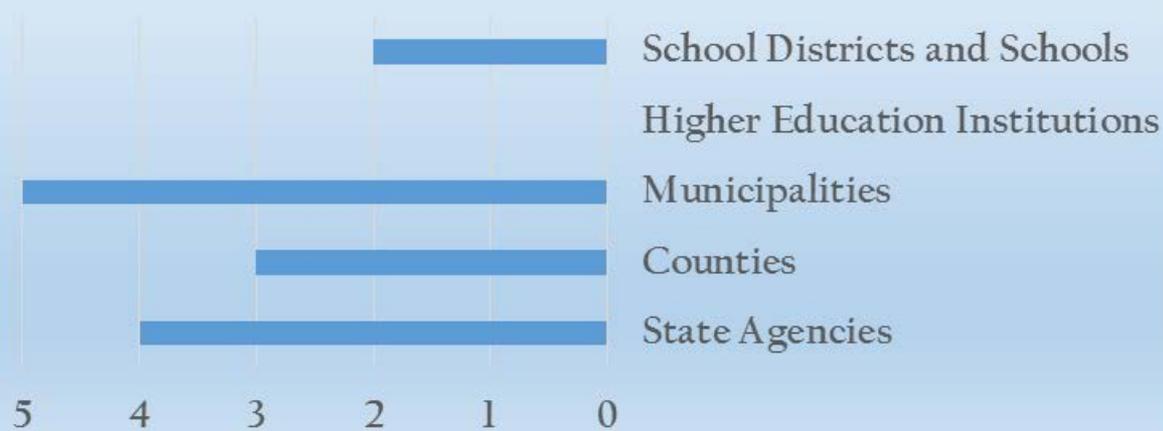
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An exception or deficiency wherein the governmental entity did not comply with state or local governmental budget requirements.

OSA GAO Report State Law Compliance - Findings Rank #2, #3, #4, #5

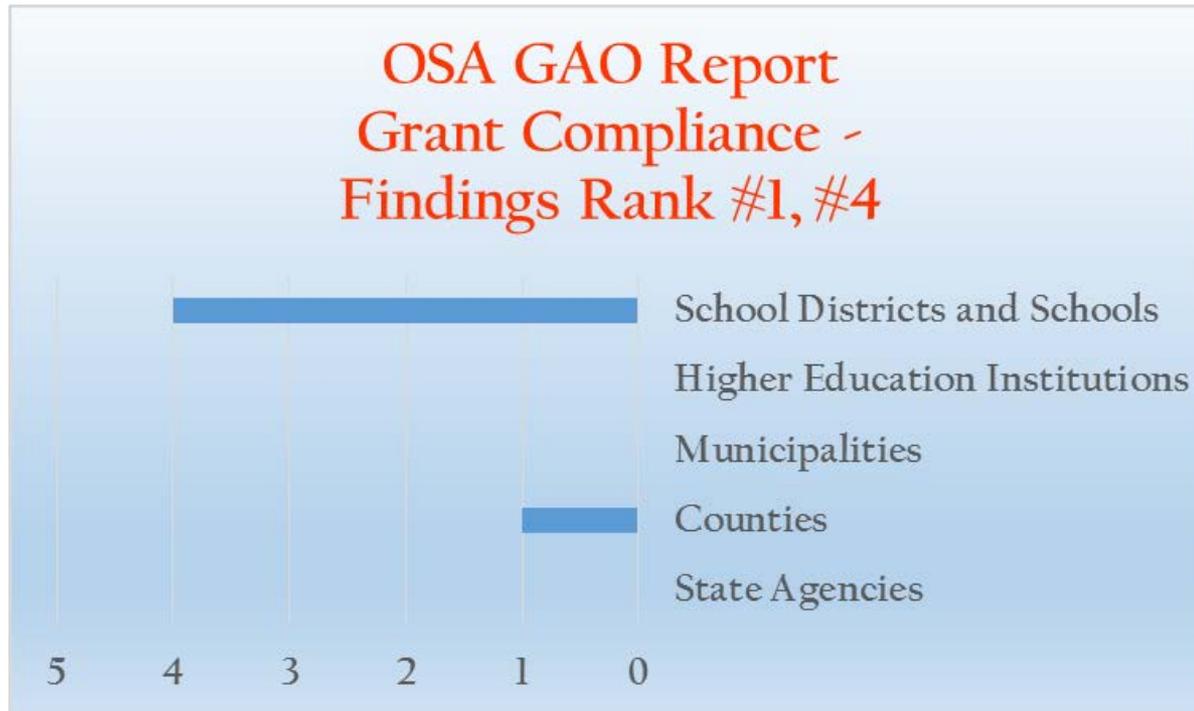
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Any violation of state statutory requirements, including, but not limited to, the Anti-Donation Clause of the NM Constitution, the Governmental Conduct Act, the Open Meetings Act, and the Public Monies Act.

OSA GAO Report Grant Compliance - Findings Rank #1, #4

8



An exception or deficiency wherein the governmental entity failed to comply with state or federal requirements related to a grant agreement.

OSA GAO Report 2015

MOST COMMON CATEGORIES OF FINDINGS

The most common categories of findings overall were as follows:

FOCUS



Payroll and Related Liabilities	252
State Law Compliance	187
Budgetary Compliance	183
Grant Compliance	175
Expenses and Expenditures	147
Capital Assets	145
Financial Reporting	145
Cash and Investments	143
Lack of Policies, Procedures, and Internal Controls	128
Travel and Per Diem	86

OSA GAO Report 2015

Submit
IPA Late

STATE LAW COMPLIANCE FINDINGS	
SUB CATEGORY	Total
Cash Receipts	70
Audit Process	30
Bank Accounts	25
Tax	10
Other	9
Governance	8
PR	7
Expenditures	4
Open Meetings	4
Anti Donation	3
Fraud	3
PPE	3
Budget	2
Credit Card	2
Reimbursements	2
Reporting	2
Stale Dated Warrants	3
Procurement	1
Grand Total	188

24 Hour
Rule

Collateral

72 Findings,
CPOs

Applicable Laws and Regulations for Your Agency

- ✓ INFORMATION: Research applicable State and Federal Laws, Keep them on file – internal drive
- ✓ COMMUNICATION: New employees should read, Department meetings, Sign policies
- ✓ RISK ASSESSMENT: Assess risk periodically
- ✓ CONTROL ENVIRONMENT: Ensure systems are in place to ensure compliance and mitigate risks of fraud, error, non-compliance
- ✓ MONITORING: Oversight and accountability over compliance

Applicable Laws and Regulations for Your Agency

Best Practices

- ✓ Review and be familiar with all laws related to your Agency's financial affairs
- ✓ Know and understand the requirements
- ✓ Know and comply with deadlines
- ✓ Know the consequences of non-compliance
- ✓ Set up trainings, systems, controls, review, monitoring, accountability
- ✓ Don't assume the Agency is in compliance – just because someone “should know” or “that is their job” doesn't mean the specifics are being implemented

Relevant NM State Auditor Rule Requirements

http://www.saonm.org/media/uploads/Audit_Rule_March_15_2016.pdf

- GAGAS 4.23
- AU-C 260.09; AU-C 260.A37 Examples
- AAG-GAS 4.12; AAG-GAS 23.35 Table 23-2
- Section 12-6-5 NMSA 1978 requires that “each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination.”
- GAGAS Section 4.05 (2011 revision) py findings
- Findings are not subject to negotiation. The agency should also prepare “planned corrective actions” as required by GAGAS 4.33

2.2.2.8 J (II) – IPA Contract Submission Due Dates

- RECs, Hospitals, Independent Housing Authorities – April 15
- School Districts, Counties, Higher Ed – May 1
- Local Workforce, LPB not tier – May 15
- COG, District Courts/Attorneys, State Agencies, CAFR – June 1
- LPB Tiered – July 1
- Agencies fiscal year other than June 30 – 30 days before year-end
- Component Units separate audit – on PG due date

2.2.2.9 A – Report Due Dates

- RECs, Independent Housing Authorities – September 30
- Hospitals – October 15
- Counties – November 1
- School Districts, Higher Ed – November 15
- District Courts/Attorneys, Los Alamos C/M – Dec 1
- State Agencies – 60 days after DFA Readiness Letter, no later than Dec 1
- COGs, Workforce, LPB incl Municipalities – Dec 15
- Agencies fiscal year other than June 30 – no later than 5 months after year-end
- Component Units separate audit – 15 days before PG due date

2.2.2.10 J – Exit Conference and Confidentiality

- MUST have an exit with your IPA
 - School Districts required to meet with your IPA for an entrance, an exit, and monthly in-between with the audit committee
- MUST be in person if contract is > \$5,000
 - No phone or webcam
- MUST include Component Unit representatives
 - Or CU Govn authority and top management
- Extraordinary Circumstances = IPA request in writing 48 hours in advance.
- Do not release audit info to the public, must be closed executive session or no quorum
- Once released by OSA, 5 day waiting period
- The IPA MUST present the audit report to the governing authority at a meeting in accordance with the Open Meetings Act and this should be documented in the minutes.

2.2.2.10 K – Possible violations of criminal statutes

- 1 – GAGAS 2011 Revision, Paragraphs 4.06 to 4.08 – audits extend procedures to abuse – behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable/necessary business practice. Abuse can also be misuse of authority or position for personal financial interests or those of a close family member or business associate.
- 2 – 12-6-6 NMSA 1978 – Auditee or Auditor shall notify the state auditor immediately in writing upon discovery of any violation of a criminal statute in connection with financial affairs.

2.2.2. 10 N – Budgetary Presentation

- Amount of prior year cash or fund balance used
- Difference Budget to GAAP basis FUND LEVEL
 - Original, Final, Actual, Variance
- Legal Level of Budgetary Control – if over = FINDING
 - Only GF and Major SRF in front
- Special, deficiency, specific, capital outlay appropriations funded by STBP or GO Bonds
 - Include Appropriation, period, exp to date, o/s encumbrances, unencumbered in SI or Note to FS
- Accounting treatment of unexpended balances s/b disclosed

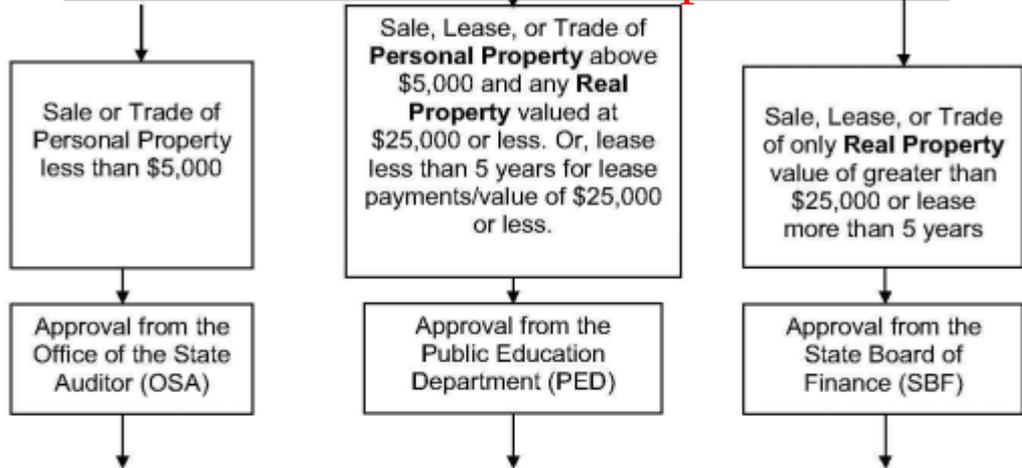
2.2.2. 10 S – Disposition of Property

Sections 13-6-1 and 13-6-2 NMSA 1978

- Notify OSA at least 30 days prior
- Must be approved first by each member of the authority approving the action (governance)
- Certify wiped hard drive/memory
 - Recommend form, committee
- Donations – have documentation signed

2.2.2.9 S and 2.2.2.10 U NMAC Sections 13-6-1 and 13-6-2 NMSA 1978 Property Dispositions (Except Municipalities per 13-6-4 A NMSA 1978)

Required Approval of Property Dispositions School Districts Example



- ◆ The school board or governing council must pass a "Resolution" explaining why it is disposing of the items.
- ◆ The district or charter school must send the resolution to the OSA with a letter explaining the district's or the school's intentions (must be done at least 30 days prior to the actual disposition).

- ◆ Contact OSA at (505) 476-3800 for additional requirements.
- ◆ Provide a copy of the OSA's approval letter to the PED.

- ◆ One copy of the PED form 947.
- ◆ Provide board or governing council minutes or resolution indicating it has approved of the proposed disposition and reason.

- ◆ Provide an appraisal indicating market value.
- ◆ Provide a copy of the quitclaim deed. Do not use warranty deeds.
- ◆ Provide a copy of the legal advertisement (for auction or RFB).
- ◆ Provide selection process used, purchase price, and sale, exchange or lease agreement, if applicable.

- ◆ Upon receipt of approval, provide the approval letter to OSA.

- ◆ The SBF, requires the same information as PED, a cover letter explaining the transaction and additional information relevant to the specific transaction

- ◆ SBF requires 1 hard copy of the submittal package and a .pdf copy with bookmarks.
- ◆ Complete packages must be submitted to the SBF on or before its submittal deadline.
- ◆ Districts and charter schools should contact the SBF at (505) 827-4980 for assistance and additional information.

2.2.2. 10 T – JPAs & MOUs

SI in Audit must disclose for each JPA/MOU:

- a. Participants
- b. Party responsible for operations
- c. Description
- d. Beginning and ending dates
- e. Total estimated amount of project and portion applicable to the agency
- f. Amount the agency contributed in the current fiscal year
- g. Audit responsibility
- h. Fiscal agency if applicable
- i. Name of govn agency where revenues/expenses are

2.2.2. 10 U – Capital Assets Inventory

Section 12-6-10 NMSA 1978

- Capitalize > \$5k
- Separate Accountability < \$5k
- Annual physical inventory at the end of each fiscal year – the correctness must be Certified
- Reconcile Capital Outlay, Search R&M and Contractual Services

GASB 54 – Fund Balance Reporting

- Nonspendable – inventories, prepaids
 - Restricted – can be spent only for specific purposes stipulated by constitution, *external* resource providers, and enabling legislation
 - Committed – can be spent only for specific purposes determined by *internal* formal action of the govn highest level of decision-making authority

GASB 54 – Fund Balance Reporting

- Assigned – specific purposes (In gov'n funds other than General Fund that are not restricted or committed)
- Unassigned – residual classification for the General Fund and all spendable amounts not in the other classifications

NOTE ➤ *Must disclose the process through which constraints are imposed for Committed and Assigned*

2.2.2.10 M – Public Monies Act

DEFINITION

ALL monies coming into agencies (vending, fees for copies, phone charges, etc.) shall be considered public monies and be accounted for as such.

Deposit within 24 hours

12-6-5 NMSA 1978

List of Individual Deposits
and Investment Accounts

Very specific listing a-f of
items to disclose

NOTE > *Check what
types of Investments your
type of agency can use*

6-10-17 NMSA 1978

Collateral requirements
must be in the Footnotes

SI or Note to the FS must
disclose Pledged Collateral by
each financial institution. If
not => 1/2 of Public \$ in each
account = FINDING

Specific disclosure/types
State Treas GFIP refer FS

6-10-(H)10 NMSA 1978

Collateral for Repurchase Agreements

SI or Note to the FS must disclose Pledged Collateral by each financial institution. Must be 102% of Pledged Collateral

Specific disclosure/types

Anti-Donation Clause

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit *or make any donation to or in aid of any person, association or public or private corporation* or in aid of any private enterprise for the construction of any railroad.

Anti-Donation Clause EXCEPTIONS – NM Constitution (Art.IX, Sec. 14)

- Care and maintenance of sick and indigent persons
- Vietnam conflict veteran's scholarship program
- Loans to students of the healing arts
- New job opportunities

Non-Appropriation Clause

Early Termination language in contracts/leases

NM Legislature actions: deauthorization, reauthorization, or revocation of a prior authorization or non-appropriate funds

NM does not go into debt unless voter-approved

Section 13-1-190

Procurement Code Restrictions - Employees

Unlawful Employee Participation

- Local public body employees (including Board members) may NOT participate in a procurement (authorize procurement or approve the contract) when the employee has a family member of the employee's immediate family has a financial interest in the business seeking or obtaining the contract.
- “Financial interest” means officer, director, trustee, partner or management position or 5% or more ownership interest. [Section 13-1-57](#)

Section 13-1-190

Procurement Code Restrictions - Employees

Contemporaneous Employment [Section 13-1-193](#)

- Local public body employees (including Board members) may NOT participate in a procurement and may not be or become the employee of a person or business contracting with the governmental body.

Waivers [Section 13-1-194](#)

- Make a determination (resolution) that the conflict has been disclosed and the person can perform the procurement function without bias or favoritism (usually by abstaining from involvement in the process) and that the waiver is in the best interest of the entity (ex \$).

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act (Section 10-16-1) Amendments

Section 10-16-2(I) “Public employees” include employees of local governmental agencies, officers, elected or appointed officials, and those eligible to receive per diem or mileage.

Section 10-6-3(A,B,C) Public employment or office is a public TRUST. Officers and employees must maintain integrity and high ethical standards. May not use their position to advance personal or private interests, and must disclose real or potential conflicts of interest.

Section 10-16-2(I) May not offer, request or receive any money or thing of value in exchange for performance of an official act, or take official act which primarily enhances personal financial interest. Imposes 4th degree felony penalties! Sections 10-16-3D and 10-16-4A

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act Amendments

Public Officers and Employees Shall NOT:

Section 10-16-3.1A Coerce (or attempt to) another officer or employee to pay/contribute anything of value to any person/organization for political purposes.

Section 10-16-3.1B Threaten or deny promotion or pay increase to an employee who does not vote for certain candidates, require contributions to a political fund or purchase of fundraising tickets for a political event, or advise employees to participate in political activity.

Section 10-16-3.1C Use or allow use of governmental property for unauthorized purposes.

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act Amendments

Public Officers and Employees Shall NOT:

Section 10-16-4B,C Engage in an official act directly affecting personal financial interest (unless greater benefit accrues to the public) or acquire financial interest which will be affected by the officer's or employee's official action.

Section 10-16-4.1 Receive payment or honoraria exceeding \$100, exclusive of per diem, mileage and lodging, for speeches or services related to performance of official duties.

Section 10-16-6 Disclose confidential information acquired in an official position for his or another's private gain.

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act Amendments

Specific Requirements as to Contracts:

Section 10-16-3.2A Officer or employee may not sell or be party to contract to sell goods, services, tangible personal property or construction directly or indirectly through family or business to an employee supervised by the officer or employee.

Section 10-16-13 The Agency may not accept a bid or proposal from a person who directly participated in preparing the specifications, evaluation criteria or qualifications for the bid or RFP.

Agency may not enter into contract with person or business which is assisted in the transaction by a former employee whose action while a public employee resulted in the Agency making or acting on the contract.

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act Amendments

Public Officers and Employees Shall NOT:

Former officers or employees:

The Agency may not enter into contract with person or business which is represented by person who was public officer or employee within the preceding year, if the contract amount exceeds \$1,000 and results from the official act of the officer or employee.

For one year period after leaving employment, former officers or employees may not receive compensation or pay for representation before the Public Employer.

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act Amendments

Disclosure of Outside Employment:

Section 10-16-4.2 All public officers or employees must disclose in writing to the employer all employment engaged in by the officer or employee, other than the employment with or service to the Public Employer.

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act Amendments

GCA PENALTIES

- Other than those prohibitions which carry felony sanctions, violation of the Act constitutes a Criminal misdemeanor (max \$1,000 or Imprisonment of up to 1 year or Both)
- Discipline, Dismissal, Demotion, or Suspension
- AG may enforce Civil penalties (\$250 per violation up to \$5,000)
- Basis for Recall efforts of board members from alleged violations
- Section 10-16-3.1 Official Acts for personal financial interest – Knowing and willful violation is a 4th degree felony

SB 432 – 2011 NM Legislature – 7/1/2011 Governmental Conduct Act Amendments

BEST PRACTICES: KEY IS TO DEVELOP POLICIES AND PROCEDURES AND MONITORING TO ENSURE COMPLIANCE

- ✓ Avoid conflicts and improper interactions with employees
- ✓ Abstain from decision affecting personal financial interest
- ✓ Be careful with political campaigns
- ✓ Public disclosures of financial interest, non-profit, memberships and gifts received

Open Meetings Act (OMA) Section 10-15-1

- Meeting notices 72 hours in advance (no amendments)
- AG must be informed of Emergency meetings within 10 days
 - “unforeseen circumstances that will likely result in injury or damage to persons or property or substantial financial loss to the public body”
- HB 378 (2015) Mandatory Public Comment period - died

Open Meetings Act (OMA) Section 10-15-1

General Rules:

- Informed electorate
- Public entitled to the greatest possible information including the official acts of officers and employees
- Formulation of public policy or conduct of business by vote shall be done in open meetings
- All persons shall be permitted to attend and listen, reasonable efforts shall be made to accommodate use of audio and video devices



Open Meetings Act (OMA) Section 10-15-1

Meeting Notices - Sections 10-15-1 (D), (F):

- Notice/Agenda 72 hours
- Specific items of business
- OMA Resolution approved annually specifies compliance

Minutes

- Date, time, place, names (attending and absent), substance of proposals considered, record of votes
- Prepared within 10 days and approved next mtg

Open Meetings Act (OMA) Section 10-15-1

Exceptions - Section 10-15-1 (E) – Closed Session, Final action in public

- Licensing determinations
- Limited personnel matters
- Admin adjudication deliberations
- Collective bargaining
- Certain procurement discussions
- Attorney-client discussions
threatened/pending litigation
- Real property / Water discussions
purch/acq/disposal

Open Meetings Act (OMA) Section 10-15-1

Exceptions - Section 10-15-1 (E) – Closed Session

- Requires majority vote of a quorum
- Subject stated and authority reference
- Reasonable specificity
- AG, DA, District Court, or individual enforcement
- Media/Foundation for Open Government (FOG)
- Penalties = misdemeanor and/or fines (up to \$500 each), attorney fees and costs (10-15-3, 4)

Open Meetings Act (OMA) Section 10-15-1

Best Practices

- ✓ Conduct business in Open session
- ✓ Early, substantive, specific notice
- ✓ Don't dialogue on issues raised by public not on agenda
- ✓ Posting board packets

Open Meetings Act (OMA) Section 10-15-1

Best Practices

- ✓ No Rolling Quorums
 - ✓ Email
 - ✓ Telephone calls
 - ✓ Text messages
 - ✓ Facebook/Twitter posts

10-15-1(A) Problem: Soliciting input/discussion of Govn business in a setting in which the public cannot “attend and listen”.

Open Meetings Act (OMA) Section 10-15-1

Best Practices

- ✓ Public Forums – Fundamental Right of All Americans

US Const. Amend I: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Open Meetings Act (OMA) Section 10-15-1

Best Practices

- ✓ “Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements” of the OMA.

Inspection of Public Records Act (IPRA) Section 14-2-5

Why IPRA

- ✓ Draft documents are public
- ✓ No “rule of reason”
- ✓ Limited “executive privilege”
- ✓ All persons entitle to greatest possible info
- ✓ Essential function of a representative gov'n
- ✓ Must designate public records custodian

Inspection of Public Records Act (IPRA) Section 14-2-5

Exemptions

- ✓ Letters of reference
- ✓ Opinion letters in personnel/student files
- ✓ Tactical response plans
- ✓ “As otherwise provided by law”
 - ✓ Ex) FERPA, attorney-client communications, medical, financial, privacy laws, etc.

Inspection of Public Records Act (IPRA) Section 14-2-5

Details

- ✓ Written requests require response 14-2-8
- ✓ No later than 15 days
- ✓ Give notice if longer than 3 days
- ✓ Enforcement action AG, DA, or requestor
- ✓ Document denials
- ✓ Penalties: up to \$100/day, costs, attorney fees

Inspection of Public Records Act (IPRA) Section 14-2-5

New Mexico

INSPECTION OF PUBLIC RECORDS ACT *COMPLIANCE GUIDE*

PROVIDED BY THE OFFICE OF THE NEW MEXICO ATTORNEY GENERAL



Inspection of Public Records Act (IPRA) Section 14-2-5

Best Practices

- ✓ Written communications – Be Professional
- ✓ Always use government email for gov business
- ✓ Centralized public records custodian
- ✓ Maintain role as core admin duty
- ✓ Maintain interaction with internal legal counsel

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BEST PRACTICES PITFALLS

PITFALLS

- Turnover without written procedures
 - Lack of policies, systems
- Not knowing the Laws, Regs, Rules
- Not staying up to date, lack of training
- Thinking your Auditor does this for you
- Lack of Communication internally and/or externally
- Lack of Oversight and Accountability



Questions
Comments?

Thank you for serving our
Great State of New Mexico!

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