

RISK REVIEW: Governor's Contingency Fund



Background:

Requests were made to the Office of the State Auditor (OSA) to review concerns related to the Governor's Contingency Fund ("Fund") and recent expenditures. To frame this review of potential risks associated with the Fund, it is important to note the statutory authority related to expenditures from the Fund is broad as to permissible expenses and remains open to interpretation in certain areas as further described in this review despite improved transparency measures. The statute at issue was effective at the outset of this administration, NMSA 1978, Section 6-4-26, which created the Fund and provided for its administration and expenditure by the Office of the Governor ("Governor's Office"), however, statutory authority remains ambiguous without definitions concerning what constitutes "expenses directly connected with obligations of the elected office of governor", which could be broadly interpreted, or what could be considered "perquisites or allowances for state employees". As a result, the New Mexico State Legislature may wish to review the matter and consider whether further statutory clarification is necessary with respect to the Fund.

Prior to the 2018 legislation that was effective January 1, 2019, NMSA 1978, Section 10-8-5(C) stated:

Money expended by the governor from the appropriations made for his office and contingent and other expenses are not subject to any of the foregoing provisions of this section and are not subject to audit; provided that the governor shall only use contingent and other *expenses for purposes connected with obligations of the office*. An expenditure report on the use of the governor's contingent and other expenses shall be submitted annually to the department of finance and administration. [Emphasis added.]

This allowed significant expenditures without being subject to audit. The expenditure of this fund by prior Governors created controversy and calls for legislative changes, which occurred in 2018.

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Background (continued):

During the 2018 New Mexico Legislative Session, the Legislature passed Senate Bill 52. The legislation became effective on January 1, 2019. The resulting statute, NMSA 1978, Section 6-4-26, states as follows:

The “governor’s contingency fund” is created in the state treasury. The governor’s office shall administer the fund, and money in the fund shall be expended by the governor's office to pay for *expenses directly connected with obligations of the elected office of governor*. Expenditures from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the governor or the governor’s authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the general fund. Money in the fund shall not be used to pay or supplement the salary of the governor or any state employee or as perquisites or allowances for state employees. The fund is subject to the provisions of the Audit Act [12-6-1 to 12-6-14 NMSA 1978], the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] and all other applicable laws and rules. The governor shall provide monthly reports to the department of finance and administration and the legislative finance committee about expenditures from the fund, including an itemized list of expenditures and the balance remaining in the fund. [Emphasis added.]

The new statute included provisions subjecting the Fund to the Audit Act, the Procurement Code, and the Inspection of Public Records Act, and also required the Governor’s Office to submit monthly reports to the Department of Finance and Administration (DFA) and the Legislative Finance Committee (LFC) detailing all expenditures.

Scope:

The objective of the OSA was to complete the following:

- Conduct initial fact-finding procedures.
- Review all expenditures made directly from the Fund for fiscal year 2021.
- Review compliance with all applicable laws, regulations, and policies.

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The OSA reviewed all expenditures from the Fund between July 1, 2020, and February 24, 2021 (the “period”). A total of \$17,546.56 was expended out the Fund during the period of the \$96,000.00 appropriated to the Fund in the General Appropriation Act of 2020. Expenses incurred varied from cleaning supplies, food and alcohol, decorations, office supplies, and equipment. Below is a breakdown of the total dollar amounts expended per category during the period.

Expenditure Items		Amount Spent	Pct. of Total
Alcohol / Liquor	\$	594.85	3.39%
Cleaning / Repair	\$	848.18	4.83%
Decorations / Flowers	\$	3,334.30	19.00%
Food	\$	5,221.72	29.76%
Gifts	\$	2,250.00	12.82%
Governor Wardrobe	\$	369.79	2.11%
Grounds Supplies / Equipment	\$	3,920.34	22.34%
Misc.	\$	545.41	3.11%
Newspaper Subscription	\$	163.07	0.93%
Office Supplies / Postage	\$	298.90	1.70%
Grand Total	\$	17,546.56	100.00%

Alcohol / Liquor Purchases:

Alcohol purchases account for 3% of all expenditures during the period, totaling \$594.85. A total of seven (7) transactions were made during the period. One (1) transaction to Sam’s Club on September 23, 2020, totaling \$451.55 accounted for over 75% of all alcohol purchased.

Food Purchases:

Food purchases, comprised of groceries and takeout orders, accounted for thirty percent (30%) of all expenditures during the period. The total amount expended on “high-dollar” grocery items was 3.01% of all food expenses.

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Food Purchases (continued):

Fund reports provided to the OSA by the Governor’s Office showed sixty-six (66) transactions were made totaling \$5,221.72 in food purchases. The average monthly expenditures were \$652.72. Below is a chart that shows a breakdown of the expenditures of each month reviewed.

Month / Year	Amount Spent
July 2020	\$ 700.33
August 2020	\$ 676.72
September 2020	\$ 926.25
October 2020	\$ 727.58
November 2020	\$ 436.72
December 2020	\$ 697.10
January 2021	\$ 732.94
February 2021	\$ 274.08
Grand Total	\$ 5,221.72
Average per Month	\$ 652.72

Governor’s Wardrobe Expenses:

The Governor’s wardrobe expenses comprised of five (5) dry cleaning and shoe repair transactions during the period, totaling \$369.79. According to the Governor’s Office, these expenses were required to maintain a professional image for the Governor during in person and virtual meetings, events, and media appearances.

Ornament Expenses:

The OSA reviewed multiple transactions to the New Mexico Governors Foundation (“Foundation”) for the purchase of Christmas ornaments in December 2020. Ornaments were purchased for \$22.50 each and were given as gifts by the Governor’s Office to officials from other states, as well as members of the Governor’s cabinet. According to the Governor’s Office, the ornaments were purchased to promote the State of New Mexico and were considered by the Governor’s Office to be a “token of goodwill” normally distributed through an in-person holiday event.

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Governor's Mansion Grounds Supplies / Equipment:

The Governor's Mansion grounds supplies and equipment account for 22% of all expenditures during the period, totaling \$3,920.34. Expenditures included kitchen equipment, animal feed, and other household equipment. The OSA also noted several transactions that included expenditures for laundry cleaning supplies. The Governor's Office stated that the purchases were necessary to maintain the residence.

Procurement Card Use:

The OSA reviewed the Governor's Office procurement card ("P-Card") use policy for compliance with applicable statutes, regulations, rules, etc. The Governor's Office P-Card Usage Policy was approved by the DFA's Financial Control Division on June 3, 2020. The OSA noted the policy grants the Governor's Office the authority to expend monies directly from the Fund through the usage of the P-Cards. It also reiterates the usage of the P-Cards is specifically for purpose expending funds directly connected with the obligations of the elected office. Additionally, the OSA noted that the Procurement Code (NMSA 1978, Section 13-1-98(B)) exempts the "procurement of tangible personal property or services for the governor's mansion and grounds".

Food / Alcohol Consumption:

The OSA reviewed the consumption of food and alcohol purchased with public funds from the Fund during the period. According to statements of the Governor's spokesperson in the KOB-TV investigative report, cabinet secretaries, New Mexico State Police (NMSP) Security Detail, and other select state employees were provided meals during staff meetings held at the Governor's Mansion. The OSA confirmed with the Governor's Office, who stated that food purchases made in September 2020 were for the consumption by cabinet secretaries and other select state employees attending work-related meetings at the Governor's Mansion, as well as other individuals. Further, the Governor's Office stated that alcohol purchases were made in anticipation of social events to be held upon the conclusion of current public health emergency. It was also disclosed that the alcohol purchased remains unopened on the Governor's Mansion grounds as of May 2021 and will be used as appropriate pursuant to NMSA 1978, Section 6-4-26.

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Federal Authority:

The OSA researched and reviewed federal authority related to furnishing of meals and light refreshments using appropriated funds. The OSA reviewed the Governor's Office compliance with 26 U.S.C. § 119, related to meals furnished for the convenience of the employer. The statute requires such meals furnished by employers to be excluded from employees' gross income compensation only if the meals are furnished on business premises of the employer or in the case of lodging where the employee is required to accept such lodging on the business premises as a condition of employment. Based on information from the Governor's Office, meals and food consumed by State employees appears to have been furnished on business premises.

Results of Review:

1. Consumption of Food:

In addition to the applicable statute, the OSA reviewed federal authority concerning meals furnished on the business premises for guidance related to consumption of food by the Governor and State employees. If meals were furnished on business premises for the convenience of the employer in conjunction with activities related to the public health emergency and associated obligations of the Governor's Office, such meals would be excluded from employees' gross income and would not be considered a supplement to salary. Non-state employees were confirmed to consume some of the food purchased during the period, but based on the statute at issue, there is no indication whether such consumption is prohibited if connected with obligations of the Governor's Office and no indication of any violation of the applicable statute.

2. Alcohol Purchases:

The OSA was unable to locate any restrictions regarding the purchase of alcohol from the Fund. It is unclear whether or not the consumption of the alcohol may be considered a perquisite, however, the Governor's Office noted the alcohol has not been consumed and indicated it would be ultimately consumed in a manner consistent with applicable statutory authority.

3. Christmas Ornaments:

The OSA reviewed the gifting of the Christmas ornaments, including to cabinet secretaries, in December 2020 together with the Model Accounting Practice Manual (MAPs). MAPs FIN 5.6 regarding employee service awards establishes a limit of \$75 for any employee award and prohibits financial awards to the recipient for any purpose other than as an award to the recipient, and indicates items such as clocks, watches, artwork, or gift cards should not be used as employee service awards. It is unclear whether ornaments for cabinet secretaries were a permissible token of goodwill in the form of employee service awards or improper perquisites or gifts.

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Results of Review (continued):

4. Fund Expense Reports:

The OSA reviewed concerns that the Governor's Office failed to submit monthly Fund expense reports to the LFC as required pursuant to NMSA 1978, Section 6-4-26. According to the LFC, monthly reports for fiscal years 2019 and 2020 were submitted at the end of year, while fiscal year 2021 reports to date were submitted on March 5, 2021. The Governor's Office acknowledged that the reports had not been submitted monthly but were instead submitted to the LFC upon request from the LFC. The Governor's Office pledged to submit all future reports monthly as required by statute. Additionally, the OSA reviewed the Fund Reports for compliance with statute, which requires an itemized list of each expenditure and the balance remaining within the fund at the end of each month. Documentation received from the Governor's Office included a list of P-Card transactions and receipts for each transaction. However, the Fund's remaining balance at the end of each month was not included. The OSA reviewed Fund reports submitted to the LFC for fiscal year 2019 and 2020. Those reports did include all required information. It is unclear if documentation submitted to the LFC and DFA for fiscal year 2021 included the Fund's remaining balance at the end of each month.

Recommendations:

The OSA strongly recommends that any use of taxpayer funds always be carefully contemplated in light of applicable authority and documented to ensure appropriate use for the benefit of the State and taxpayers. Given the potential for varying interpretation, the New Mexico State Legislature may wish to review the matter and consider whether further statutory clarification is necessary with respect to the Fund. Ultimately, the statute at issue may not provide adequate guardrails, including with regard to defining "expenses directly connected with obligations of the elected office of governor" and "perquisites or allowances for state employees", and the Legislature may choose to further define those terms, but in the absence of such guardrails, where we are unable to draw legal conclusions on such definitions, there is no indication any of the expenses violated NMSA 1978, Section 6-4-26.