

INTERIM LEGISLATIVE ETHICS COMMITTEE
ADVISORY OPINION 08-01

Pursuant to Section 2-15-9 NMSA 1978, the Interim Legislative Ethics Committee was asked to issue an advisory opinion on the ethical implications of the introduction of a capital outlay request by a legislator that benefits a member of that legislator's family. This advisory opinion responds to that request. The committee met on September 11, 2008 to discuss the request and its response.

Advisory Opinion Summary

While it is difficult to draw a bright line between capital outlay requests that are appropriate to sponsor and those that are not, the committee believes that the more direct the benefit to the legislator's family member, the less appropriate it is for the member to sponsor the request.

Discussion

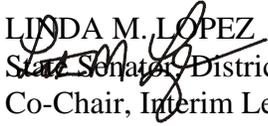
The committee assumed for the purposes of its analysis that the capital outlay appropriation in question would be made in such a way as to ensure that it met all the necessary legal requirements. The specific question asked of the committee involved a capital outlay request intended to benefit a private nonprofit youth sports organization in which the legislator's child participates. The request did not detail whether the youth sports organization is generally open to all youth or if it is more exclusive. The committee noted that such appropriations could be for a wide range of purposes with varying degrees of benefit to the legislator's child and with varying degrees of benefit to other children, including children who may benefit in future years.

New Mexico's system of allocating capital outlay funds relies heavily upon the individual judgment of legislators as to the most pressing capital needs of their districts and the state. This system means that legislators' decisions may be subject to more scrutiny and, ultimately, criticism that their decisions are made for reasons of self-interest as opposed to the interests of the district or the state. Such criticism would be more justified in cases when the benefit to a legislator's family member is more direct and in cases when a small number of people benefit; such criticism would be less warranted when the benefit to a legislator's family member is more indirect and when the family member is part of a larger group of people who benefit.

The committee understands that this general guidance leaves much to the judgment of individual legislators, and it is confident that members will apply this standard wisely. Further, the committee recommends that this topic be included in ethics training offered to legislators.

Pursuant to the provisions of Paragraph (3) of Subsection D of Legislative Council Policy No. 16, advisory opinions issued by the Interim Legislative Ethics Committee are prospective only. This advisory opinion does not reflect on prior capital outlay requests. In the future, as provided in Paragraph (4) of Subsection D of Legislative Council Policy No. 16, any legislator who acts in good-faith reliance upon this advisory opinion shall be immune from sanctions for conduct allowed by the opinion unless this advisory opinion is subsequently rejected by the relevant house of representatives or senate standing committees prior to the conduct in question.

A copy of this advisory opinion shall be mailed to all legislators and shall be retained in the library of the Legislative Council Service.


LINDA M. LOPEZ
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Co-Chair, Interim Legislative
Ethics Committee


NICK L. SALAZAR
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Co-Chair, Interim Legislative
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DATE: January 9, 2009