

INTERIM LEGISLATIVE ETHICS COMMITTEE

ETHICS ADVISORY OPINION NO. LEC96-1

Pursuant to Section 2-15-9 NMSA 1978, the Interim Legislative Ethics Committee was asked to issue an ethics advisory opinion establishing an appropriate standard of conduct for the use of legislative stationery. This opinion responds to that request.

The request, submitted by Senator Joseph J. Carraro, "seeks guidance for all legislators on when it is, and is not, appropriate to use legislative stationery and when it is necessary to use only personal or 'campaign election committee' stationery." Letter from Senator Joseph J. Carraro to Senator Manny M. Aragon and Speaker Raymond G. Sanchez, dated June 5, 1996, page 1. Senator Carraro voluntarily waived confidential treatment of his opinion request.

The Interim Legislative Ethics Committee met on July 22, 1996 to discuss and review issues relevant to the appropriate uses of legislative stationery.

Advisory Opinion Summary:

The use of official legislative stationery should be limited only to matters that reasonably relate to official legislative business. Official legislative stationery should not be used to solicit campaign election contributions or votes, even if the stationery is paid for by the legislator and a disclaimer expressly noting that fact is printed on the stationery.

Discussion:

The Governmental Conduct Act sets forth basic principles that govern the ethical conduct of legislators, public officers and employees. Section 10-16-1 et seq. NMSA 1978. Guiding principles include the following:

A legislator, public officer or employee shall treat his government position as a public trust. He shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest. . . .

A legislator, public officer or employee shall conduct himself in a manner that justifies the confidence placed in him by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service. [Subsections A and B of Section 10-16-3 NMSA 1978.]

The use of official legislative stationery raises ethical questions that relate to whether the use is consistent with the public trust; advances only the public interest as opposed to personal or other interests; and maintains the integrity of public office and the proper exercise of its powers.

Official legislative stationery includes stationery that carries the official, gold-embossed state seal or a reasonable facsimile of it or states in bold letters at or near the top of the stationery "State of New Mexico," "New Mexico State Legislature," "New Mexico State Senate," "House of Representatives" or some similar heading. All of these are designations that the stationery is an official letterhead of the state and a public body. The stationery accordingly connotes that it is being used for official business of the state and the public body identified on the stationery.

The use of the state seal on official legislative stationery is significant. As the Attorney General has stated, "the state seal historically has been the indicia of authority of the state." Attorney General Opinion No. 6521 (1955). The state seal "is used to authenticate charters, etc., and to authenticate the acts of the state of New Mexico, and it is intended to import authenticity to the fact that the item bearing the same is directly related to the sovereign state of New Mexico." Attorney General Opinion No. 5569 (1952). The use of the state seal thus should be limited to matters that relate to the conduct of official business of the state.

The same conclusion applies to a reproduced copy of the official state seal or even a seal that may be technically different from the official seal but creates a reasonable impression that it is official.

Similarly, stationery that is conspicuously identified, usually at the top of the page, as being from a public body implies that it concerns official business of the body. Thus, stationery that states at the very top "New Mexico State Legislature," "New Mexico State Senate" or "New Mexico House of Representatives" gives the impression it is an official communication from that particular public body. So does a copy of legislative stationery that removes or obscures the state seal or that, because of the type, wording and layout used, leads a reasonable person to believe that the stationery is official.

For these reasons, the use of legislative stationery of a public body that includes the official state seal or a reasonable facsimile of it, or that reasonably appears to be official stationery of a legislative body, should be limited to matters that relate to the conduct of legislative business.

In most instances, this standard should not be difficult to define and apply. Communications that relate reasonably to the exercise of the powers or duties of a legislator include, for example, communications with constituents, other public officials, interest groups,

the media and the general public on issues of public policy. Thus, as noted in House and Senate Ethics Rules 26-1, it is appropriate to use official legislative stationery to send letters to state agencies on behalf of constituents, unless the legislator is acting instead as a paid attorney or similar professional engaged in the conduct of his profession, in which case communications should not be sent on legislative stationery. See Senate Rule 26-1 C (1) and House Rule 26-1 C (1).

Surveys of constituents on current issues, expressions of the legislator's opinions on matters of public policy, and letters of recommendations about current or former legislative staff are generally appropriate uses of legislative stationery. Political communications that are not directly election-related, such as correspondence about scheduling party caucus meetings, are also appropriate uses of legislative stationery.

It would be proper for a legislator to use official legislative stationery, as defined here, to argue for or against a particular ballot question. A legislator could also use official legislative stationery to urge public action on specific public policy issues.

It is not appropriate, however, to use official legislative stationery for campaign reelection purposes. Specifically, it would not be proper to use a legislator's official stationery to solicit campaign contributions or to solicit votes for the legislator's reelection to or election to another public office. Those uses are beyond the scope of official legislative powers or duties and serve instead only partisan election purposes. Likewise, an issues survey of constituents that is printed on official stationery, is sent near the time of an election and includes with the survey a request for reelection support would not be appropriate.

The same conclusion is true even if the official legislative stationery is paid for by the legislator from his own personal or campaign reelection funds and even if the stationery includes a disclaimer to that effect. The disclaimer is usually printed in relatively small type size at the bottom of the page and notes in brackets or parentheses that it was not paid for with public money or taxpayer dollars or was paid for by the legislator personally or from some other nonpublic source.

The problem is that such stationery, even with the disclaimer, still conveys the general impression that it is an official communication from the public body. And that is simply not the case. Official legislative stationery should be limited to communications that concern official legislative business. Campaign reelection purposes are not official legislative business, no matter who pays for the stationery and no matter how the payment is disclosed.

It is nevertheless always true that a legislator does properly hold the title of Senator or Representative, and the legislator is perfectly entitled to be identified as such. Accordingly, if stationery is not printed at public expense and is identified at the top as coming from "Senator X" or "Representative Y," that is entirely appropriate. In that case, the letter is from the person who is a senator or representative, and it does not imply it is an official communication from the public body in which the legislator serves. Such stationery may be used for non-official purposes, even if it notes below the legislator's name his or her chamber, committee memberships and addresses,

including that at the State Capitol. That type of stationery could be used for personal letters or to solicit contributions to worthy nonprofit causes.

Campaign reelection stationery could state at the top something like "Committee to Reelect Senator X". That stationery could then be used for any authorized campaign reelection activities.

It would not, however, be appropriate to include on personal or campaign reelection stationery the official state seal or conspicuously note at the top the name of the public body in which the legislator serves. Those uses could improperly lead a reasonable person to conclude that the stationery is the property of the public body, rather than the legislator personally, and that it concerns official public business.

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 is not intended to reflect on prior uses of legislative stationery, since no opinion or other guidance on the use of legislative stationery has previously been available.

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 committee 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.

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