

INTERIM LEGISLATIVE ETHICS COMMITTEE

ETHICS ADVISORY OPINION NO. LEC97-2

Pursuant to Section 2-15-9 NMSA 1978, the Interim Legislative Ethics Committee was asked to issue an ethics advisory opinion regarding whether it was appropriate for a legislator to write a letter to a state agency on behalf of a constituent who is a member of the legislator's immediate family. The legislator submitting the request has not waived confidential treatment of the advisory opinion request. This opinion responds to that request.

The Interim Legislative Ethics Committee met on August 4, 1997, September 19, 1997 and January 19, 1998 to discuss and review issues relevant to this request.

Advisory Opinion Summary

Legislators should refrain from using official legislative stationery to write letters to state agencies on behalf of constituents who are immediate family members. Only when an immediate family member is a part of a larger class of similarly situated constituents may a legislator use official legislative stationery on his behalf.

Discussion

This request involves a letter written by a legislator on official legislative stationery on behalf of a constituent who also happens to be a member of the legislator's immediate family. The question is whether such a letter is appropriate under Ethics Advisory Opinion No.

LEC96-1, which establishes a standard of conduct for the use of official legislative stationery.

In September 1996, the Interim Legislative Ethics Committee issued Ethics Advisory Opinion No. LEC96-1 regarding the use of official legislative stationery. That opinion defined "official" legislative stationery as stationery that contains "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...The stationery accordingly connotes that it is being used for official business of the state and the public body identified on the stationery". (LEC96-1 at page 2.) LEC96-1 goes on to state that such stationery must only be used for matters that reasonably relate to the conduct of official legislative business. As one example of a use that reasonably relates to official legislative business, the opinion states that it is appropriate to send letters on official legislative stationery to state agencies on behalf of constituents, as long as the legislator is not acting as a paid attorney or similar professional engaged in the conduct of his profession. (LEC96-1 at page 3.)

Thus, the question the committee must decide is whether it is appropriate for a legislator to use official legislative stationery to write a letter to a state agency on behalf of a constituent if that constituent also happens to be a member of the legislator's immediate family. We do not believe that it is ordinarily appropriate unless that immediate family member is a part of a larger class of similarly situated constituents.

In arriving at this conclusion, the committee considered and reviewed the Governmental Conduct Act, Section 10-16-1 et seq. NMSA 1978, which sets forth the basic ethical principles that govern the conduct of legislators. Subsections A and B of Section 10-16-3 NMSA 1978

read as follows:

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.

The committee also considered and reviewed the "Oath of Ethical Conduct", which is administered to each legislator upon assuming office and requires legislators to "scrupulously avoid...any act which gives the appearance of impropriety". (Section 4, Oath of Ethical Conduct.) The use of official legislative stationery by a legislator to write a letter to a state agency on behalf of an immediate family member raises a question as to the appearance of impropriety. We have concluded that an appearance of impropriety ordinarily is enough to prohibit the use of legislative stationery in cases like this.

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 uses of legislative stationery for these purposes.

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.

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Co-Chair, Interim Legislative
Ethics Committee

R. DAVID PEDERSON
State Representative
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DATE: January 19, 1998