

THE GOVERNMENTAL CONDUCT ACT – NEW  
ETHICAL REQUIREMENTS FOR LOCAL SCHOOL  
BOARDS AND EMPLOYEES

New Mexico School Boards Association  
2011 LEADER'S RETREAT  
July 15 – 16, 2011

John F. Kennedy  
Cuddy & McCarthy, LLP

# Governmental Conduct Act Amendments

- ▶ SB 432 – Passed by 2011 NM Legislature and signed by Governor Martinez on April 7, 2011. Takes effect July 1, 2011.
- ▶ Amends definitions to:
  - Include “local governmental agency,” including political subdivisions, within scope of Act. See Section 10–16–2G. School Districts are political subdivisions per Section 22–1–2R

# Governmental Conduct Act Amendments

- ▶ Amends definitions to:
  - Expand definition of “public employee” bound by the Act to include employees of local governmental agencies. Local governmental agency employees include officers, elected or appointed officials and those eligible to receive per diem or mileage. See Section 10-16-21 . Prior to 2011, only “prohibited bidding” section (Section 10-16-13) applied to local schools.

# Governmental Conduct Act Amendments

## ▶ General Principles:

- Public employment or office is a public trust. Officers and employees must maintain integrity and high ethical standards. May not use position to advance personal or private interests; must disclose real or potential conflicts of interest. Section 10-6-3 A, B and C.
- 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. 4<sup>th</sup> degree felony penalties! Sections 10-16-3D and 10-16-4A.

# Governmental Conduct Act Amendments

- ▶ Additional Prohibitions – Public Officers and Employees Shall Not:
  - Coerce or attempt to coerce another public officer or employee to pay or contribute anything of value to any person or organization for political purposes. Section 10-16-3.1A.
  - Threaten or deny promotion or pay increase to an employee who does not vote for certain candidates, require contributions to political fund or purchase of fundraising tickets for political event or advise employee to participate in political activity. Section 10-16-3.1B.

# Governmental Conduct Act Amendments

- ▶ Additional Prohibitions – Public Officers and Employees Shall Not (Continued):
  - Use or allow use of governmental property for unauthorized purposes. Section 10-16-3.1C.
  - Engage in official act directly affecting personal financial interest (unless greater benefit accrues to public), or acquire financial interest which will be affected by the officer's or employee's official action. Section 10-16-4B and C

# Governmental Conduct Act Amendments

- ▶ Additional Prohibitions – Public Officers and Employees Shall Not (Continued):
  - Receive payment or honoraria exceeding \$100, exclusive of per diem, mileage and lodging, for speech or service related to performance of official duties. Section 10-16-4.1.
  - Disclose confidential information acquired in an official position for his or another's private gain. Section 10-16-6.

# Governmental Conduct Act Amendments

- ▶ Additional Prohibitions – Public Officers and Employees Shall Not (Continued):
  - If employee or official has authority over public money or issuance of bonds, accept a contribution or anything of value (not including food or refreshments less than \$100 consumed in one day) from business that contracts with governmental entity for financial services involving investment of public funds or issuance of bonds. Section 10-16-13.3B.

# Governmental Conduct Act Amendments

- ▶ Specific Requirements as to Contracts with the School District:
  - Current Officers or Employees:
    - Officer or employee, family members, or businesses in which officer or employee has substantial interest may not enter into contract with School District, unless public disclosure of interest is made, and competitive process used to award contract. Sections 10-16-13.2B and 10-16-7 (similar to current restrictions imposed by Sections 22-21-1 and 13-1.190.)

# Governmental Conduct Act Amendments

- ▶ Specific Requirements as to Contracts with the School District:
  - Current Officers or Employees (Continued):
    - 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 10-16-3.2A.

# Governmental Conduct Act Amendments

- ▶ Specific Requirements as to Contracts with the School District:
  - Current Officers or Employees (Continued):
    - School District 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. Section 10-16-13

# Governmental Conduct Act Amendments

- ▶ Specific Requirements as to Contracts with the School District:
  - Current Officers or Employees (Continued):
    - Officer or employee may not accept an offer of a contract or receive a commission or profit from sale or transaction to sell goods, services, tangible personal property or construction from person over whom officer or employee has regulatory authority. Section 10-16-3.2C and D

# Governmental Conduct Act Amendments

- ▶ Specific Requirements as to Contracts with the School District:
  - Former Officers or Employees:
    - School District may not enter into contract with person or business which:
      - Is assisted in transaction by former employee whose action while employee resulted in the District making or acting on the contract,

# Governmental Conduct Act Amendments

- ▶ Specific Requirements as to Contracts with the School District:
  - Former Officers or Employees (Continued):
    - School District may not enter into contract with person or business which:
      - Is represented by person who was public officer or employee within preceding year if contract exceeds \$1,000 and results from official act of the officer or employee.

# Governmental Conduct Act Amendments

- ▶ Specific Requirements as to Contracts with the School District:
  - Former Officers or Employees may not represent any person in dealings with the School District:
    - On a matter as to which the former officer or employee participated directly or substantially while employed
    - For 1 year period after leaving employment, receive compensation or pay for representation before the School District or School Board.

# Governmental Conduct Act Amendments

- ▶ Disclosure of Outside Employment:
  - All public officers or employees must disclose in writing to the employer (School Board or Superintendent) all employment engaged in by the officer or employee other than the employment with or service to the School District. Section 10-16-4.2

# Governmental Conduct Act Amendments

- ▶ Penalties for Violation:
  - Other than those prohibitions which carry felonies sanctions, as specified above, violation of Act constitutes a misdemeanor (maximum penalties \$1,000 or imprisonment of up to 1 year, or both.)
  - Attorney General may enforce civil penalties.
  - Alleged violations could be basis for initiating recall effort.

# QUESTIONS?

**Thank You!**

**John F. Kennedy  
Cuddy & McCarthy, LLP  
1701 Old Pecos Trail  
Santa Fe, NM 87505**

**(505) 988-4476**

**(866) 679-4476**

**[jkennedy@cuddymccarthy.com](mailto:jkennedy@cuddymccarthy.com)**