PENGAD 800-631-6989 AQD EXHIBIT 10b

DIVISION 4. - CODE OF ETHICS [5]

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Sec. 2-126. - Authority.

This division is enacted under the authority of NMSA 1978, §§ 3-17-1 and 4-37-1.

(Ord. No. 2010-1, § 1, 1-12-10, eff. 2-11-10)

Sec. 2-127. - Declaration of policy.

The proper operation of democratic government requires that candidates, elected officials, employees and volunteers of local governments be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office or the pursuit of public office not be used for personal gains; and that the public have confidence in the integrity of its government. To assist in attaining these goals, there is established a code of ethics for all elected officials and employees and volunteers of county government, including members of boards, committees and commissions. The purpose of this division is to establish guidelines for ethical standards of conduct for all candidates for elected office, elected officials, employees, and volunteers by setting forth those acts or actions which are incompatible with the best interests of the county and by requiring such candidates, elected officials, employees, and volunteers to disclose personal interests, financial or otherwise, in matters affecting the county. It is the further purpose of this code of ethics to protect county employees and volunteers from undue influence, threats or fear of threat or reprisal with respect to the exercise of their constitutional right to support candidates of their choice.

(Ord. No. 2010-1, § 2, 1-12-10, eff. 2-11-10)

Sec. 2-128. - Responsibility of public office.

Elected officials, employees, and volunteers hold office or employment for the benefit of

the public. They are bound to uphold the Constitution of the United States and the New Mexico Constitution; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the nation, state and county; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that the public interest must be their prime concern.

(Ord. No. 2010-1, § 3, 1-12-10, eff. 2-11-10)

Sec. 2-129. - Definitions.

[The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Candidate means any person who has filed a declaration of candidacy for the position of county commissioner, sheriff, treasurer, assessor or clerk, including the period of time from the filing of the declaration of candidacy through being sworn into the elected office.

Elected official means the members of the board of county commissioners, sheriff, treasurer, assessor, and clerk, but does not include the probate judge.

Employee means all persons filling an allocated position of county employment, including appointees of a county commissioner, the board of county commissioners, or any other elected official.

Financial interest means any interest which yields, directly or indirectly, a monetary or other material benefit to the elected official, employee or volunteer, or to any person employing or retaining services of the elected official, volunteer or employee.

Gift means any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of these, or anything of value that is received or given without equivalent consideration or compensation.

Person means any individual, corporation, partnership, joint venture, association or business organization.

Political activity means:

(1) Preparing for, organizing or participating in any political meeting, political rally, political demonstration or other political event.

(2) Soliciting contributions on behalf of a political candidate or political party including, but not limited to, the purchase of, selling, distributing, or receiving payments for tickets for any political fundraiser, political meeting or other political event.

(3) Soliciting, planning the solicitation of, or preparing any document or report regarding any thing of value intended as a political contribution.

(4) Soliciting votes on behalf of a candidate for elective office or a political organization.

(5) Initiating for circulation, preparing, circulating, reviewing or filing any petition on behalf of a candidate for elective office.

(6) Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or for or against any referendum question.

(7) Campaigning for any elective office.

(8) Managing or working on a campaign for elective office.

Privileged or confidential information means any written or oral material, or electronic data or media related to county government which had not become part of the body of public information and which is designated by statute, rule, court decision, lawful order, ordinance, resolution or custom as privileged, confidential or exempt from disclosure pursuant to the New Mexico Inspection of Public Records Act.

Prohibited source means any person or entity who:

(1) Is seeking official action (i) by an elected official or volunteer, or (ii) in the case of an employee by the employee or by an elected official, a county department or an employee's supervisor;

(2) Does business with or seeks to do business (i) with the board of county commissioners, the county, an elected official or volunteer, or (ii) in the case of an employee, with an employee or his/her department, elected office or an employee's supervisor;

(3) Conducts activities regulated (i) by an elected official or volunteer, or (ii) in the case of an employee, with the employee or his/her department or the employee's supervisor; or

(4) Has interests that may be substantially affected by the performance or nonperformance of the official duties of the elected official, volunteer or employee.

Volunteer means any person who is appointed by an individual county commissioner or by a majority of the board of county commissioners to any board, committee or commission for which the individual receives no compensation.

(Ord. No. 2010-1, § 4, 1-12-10, eff. 2-11-10)

Sec. 2-130. - Standards of conduct.

(a) *Fiduciary duty.* Elected officials, employees and volunteers shall at all times in the performance of their public duties owe a fiduciary duty to the county.

(b) *Improper influence.* No elected official, candidate, employee or volunteer shall make, participate in making or in any way attempt to use his/her position to influence any county governmental decision or action in which he knows, he/she has reason to know, or should know that he/she has any direct financial interest. No county commissioner shall make, participate in making or in any way attempt to use his/her position to influence any hiring decision or other decision regarding employment for any county employee, except for appointees of the county commissioners, the county manager, the county attorney and the fire chief. The prohibition does not prevent a county commissioner from being listed as a reference for an applicant seeking employment with the county. The prohibition does not prevent a county commissioner from participating in and making comments during any ratification process related to the selection of deputy county managers. The prohibition does not prevent a county commissioner from raising his/her concerns regarding the performance or conduct of a deputy county manager or department director with the county manager, or stating his/her satisfaction, dissatisfaction, compliment, criticism or concern regarding the actions of a deputy county manager or department director publicly.

(c) *Receiving and soliciting gifts or favors.*

(1) Except as otherwise provided in this code of ethics, no candidate, elected official, employee or volunteer shall intentionally solicit or accept any gift or favor from any prohibited source or in violation of any federal or state statute or regulation, or any

county ordinance, rule or regulation. This ban applies to and includes spouses of and immediate family members living with the elected official, employee or volunteer. No prohibited source shall intentionally offer or make a gift that violates this division.

(2) The restriction in subsection (c)(1) does not apply to the following:

a. Opportunities, benefits, and services that are available on the same conditions as for the general public.

b. Anything for which the elected official, employee or volunteer, or his/her spouse, or immediate family member living with him/her pays the market value.

c. Any (i) contribution that is lawfully made and reported in accordance with the Election Code, or (ii) activities associated with a fundraising event in support of a political organization or candidate, unless otherwise prohibited by this code of ethics.

d. Educational materials with a value of less than $100.00.

e. Honorarium with a value of $100.00 or less, unless otherwise permitted by this code of ethics.

f. A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, and including the father, mother, grandfather or grandmother of the individual's spouse and the individual's fiancé or fiancée.

g. Anything provided by an individual on the basis of a personal friendship unless the elected official, employee or volunteer has reason to believe that, under the circumstances, the gift was provided because of the official position, employment or volunteer service, and not because of the personal friendship.

In determining whether a gift is provided on the basis of personal friendship, the elected official, employee or volunteer shall consider the circumstances under which the gift was offered, such as:

1. The history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals;

2. Whether to the reasonable belief of the elected official, employee or volunteer the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and

3. Whether to the reasonable belief of the elected official, employee or volunteer the individual who gave the gift also at the same time gave the same or similar gifts to other elected officials, employees, volunteers or their spouses or immediate family members living with them.

h. Food or refreshments not exceeding $100.00 per person in value in a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they are purchased or prepared or (ii) catered. For purposes of this subsection, "catered" means food or refreshments that are

purchased ready to eat and delivered by any means.

i. Food, refreshments, lodging, transportation, and other benefits resulting from the outside business or employment activities (or outside activities that are not connected to the duties of the official, employee or volunteer as an office holder, employee or volunteer) of the elected official, employee or volunteer, or the spouse of the elected official, employee or volunteer if the benefits have not been offered or enhanced because of the official position or employment of the elected official, employee or volunteer, and are customarily provided to others in similar circumstances.

j. Intra-governmental or intergovernmental gifts.

k. Bequests, inheritances and other transfers at death.

l. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than $100.00.

(3) An elected official, volunteer or employee does not violate this division if the elected official, volunteer or employee promptly takes reasonable action to return the prohibited gift to its source, or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(C)(3) of the Internal Revenue Code of 1986, as now or hereinafter amended, renumbered or succeeded.

(c) *County-owned property.* No candidate, elected official, volunteer or employee shall engage in or permit the unauthorized use of county-owned property for any political activity or in violation of any county policy.

(d) *Use or disclosure of privileged or confidential information.* No elected official, volunteer or employee shall use or disclose privileged or confidential information gained in the course of or by reasons of his position or employment, other than (i) in the performance of his official duties; (ii) as may be required by law; or (iii) as permitted by this code of ethics.

(e) *Conflicts of interest.*

(1) No elected official, volunteer or employee shall make, or participate in making, any county governmental decisions with respect to any matter in which the elected official, volunteer or employee, or their spouse or dependent, has any direct financial interest. For purposes of this section "dependent" shall have the same meaning as provided in the Internal Revenue Code, as amended.

(2) Any employee who has a conflict of interest as described in subsection (1) above shall advise his/her supervisor of the conflict or potential conflict. The immediate supervisor shall either:

a. Assign the matter to another employee; or

b. Require the employee to eliminate the economic interest giving rise to the conflict and only thereafter shall the employee continue to participate in the matter.

(3) Any elected official or volunteer who has a conflict of interest as described by subsection (1) above shall disclose the conflict of interest and shall not take any action or make any decisions regarding that particular matter.

(f) *Interest in county business.*

(1) No elected official, volunteer or employee shall have any financial interest in his/her own name, or in the name of any other, in any contract, work or business of the county or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to

or administered by the county. Compensation for property taken pursuant to the county's eminent domain power shall not constitute a financial interest within the meaning of this section if sold pursuant to a process of competitive bidding following public notice. No elected official, volunteer or employee shall have a financial interest in the purchase of any property that (i) belongs to the county; or (ii) is sold for taxes or assessment; or (iii) is sold by virtue of legal process at the suit of the county.

(2) For purposes of this section, "financial interest" shall not include the interest of the spouse of an elected official, volunteer or employee which interest is related to the independent occupation, profession or employment of the spouse.

(g) *Political activity.*

(1) No candidate, elected official, volunteer or employee shall compel, coerce or intimidate any elected official, volunteer or employee to make, or refrain from making, any political contribution. No candidate, elected official, volunteer or employee shall directly solicit any political contribution from county employees or the spouses or immediate family living with county employees. Nothing in this subsection shall be construed to prevent any elected official, volunteer or employee from voluntarily making a contribution or receiving a voluntary contribution.

(2) No candidate or elected official shall accept any campaign contribution in excess of $1,000.00, per primary, general or special election, from any prohibited source or in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes spouses of and immediate family members living with the candidate or elected official. No prohibited source shall offer or make a gift that violates this division. No candidate or elected official shall accept a campaign contribution from an individual or group of individuals when the candidate or elected official knows, or has reason to believe, that the original source of the campaign contribution was a prohibited source.

(3) No employee with contract management authority or property management authority shall serve as a paid political consultant or as a member of the political fundraising committee of any elected official or candidate for federal, state, city or county office.

(4) No employee shall be permitted to serve as a paid campaign consultant, paid campaign treasurer or paid campaign manager for a candidate for federal, state, city or county office. No employee shall be permitted to receive more than $250.00 in reimbursement from any political campaign or political candidate, in any 12-month period.

(5) County employees shall not intentionally perform any political activity during any compensated time (other than annual leave, personal leave, holidays or other time off). County employees shall not intentionally misappropriate any county property or resources by engaging in any political activity for the benefit of any campaign for elective office or any political organization.

(6) At no time shall any elected official, volunteer or employee intentionally misappropriate the services of any county employee by requiring that employee to perform any political activity (i) as part of the employee's county duties; (ii) as a condition of county employment; or (iii) during any time off that is compensated by the county (such as annual leave, personal leave or holidays).

(7) A county employee shall not be required at any time to participate in any political activity.

(8) A county employee shall not be awarded any additional compensation or employment benefit in the form of a salary adjustment, promotion, or continued employment in consideration for the employee's participation in any political activity.

(9) Nothing in this section prohibits activities that are otherwise appropriate for a county employee to engage in as a part of his official county employment duties or activities that are undertaken by an employee on a voluntary basis as permitted by law.

(10) No candidate shall engage in any conduct that would, to an objective third-party, constitute an undue threat to a county employee's continued employment.

(11) County employees who receive compensation or reimbursement from a political candidate or political campaign in excess of $250.00 shall be required to report such compensation or reimbursement to the county manager, which shall include disclosure of the nature of the compensation or reimbursement.

(Ord. No. 2010-1, § 5, 1-12-10, eff. 2-11-10; Ord. No. 2011-3, 3-22-11)

Sec. 2-131. - Disclosure of certain financial interests.

Within ten days after swearing in of any elected official, the elected official shall file a statement of economic interest with the Bernalillo County Clerk. Amended statements of economic interest shall be filed on an annual basis or before the 11th day of January of each year.

(1) *Form of statement.* The elected official shall provide the following information to the county clerk:

a. Interest in Land. A description of all parcels of real estate within the county in which the person owns any interest including an option to purchase.

b. Elected officials shall identify all corporate interests in any business organization, either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two-percent ownership interest of any other business that is doing business with the county in an amount in excess of $7,500.00 annually.

c. The identity of each person from which the individual who is required to file received, directly or indirectly, any gift or gifts having an aggregate value of more than $250.00 within the taxable year preceding the time of filing, except that such disclosure is not required for any gift from a parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew, spouse, boyfriend, girlfriend, domestic partner, fiancé or fiancée.

(2) *Amended statements.* Any person required to file a statement hereunder shall not be required to file an amended statement unless that person undergoes a change in those economic interests that are required to be disclosed by this section. Such persons shall file the amended statement in the manner prescribed above within 90 days of the date of any change in circumstances requiring filing thereof.

(3) *[Compliance.]* All elected officials shall comply with the provisions of this section within 30 days after the requirements hereof are imposed upon such office or position.

(Ord. No. 2010-1, § 6, 1-12-10, eff. 2-11-10)

Sec. 2-132. - Reporting violations of code of ethics.

(a) Any person who has reason to believe the code of ethics has been violated by anyone to whom the code of ethics applies may report the suspected violation in the following manner:

(1) By submitting to the internal audit contractor (IAC), a sworn and signed complaint alleging facts which, if true, would constitute a violation of the code of ethics. The mailing address, contact information and direct e-mail link to the IAC shall be posted on the county's website. Upon receipt of such a complaint, the IAC shall immediately forward the complaint to the members of the ethics board.

(2) By submitting to the IAC, a confidential statement of facts which, if true, would constitute a violation of the code of ethics. Upon receipt of such statement of facts, the IAC shall immediately investigate the allegations and complete its investigation within 60 days. If the IAC determines that additional time is needed for its investigation, it shall report to the chair of the ethics board to advise that the investigation will not be completed within 60 days and shall state the reasons why additional time is required to complete the investigation and provide a date upon which the IAC reasonably believes the investigation will be completed. If the IAC's investigation results in a finding of facts that constitute a violation of this code of ethics, the IAC will prepare a sworn complaint and submit it to the ethics board.

(b) All confidential reports submitted to the IAC shall be provided to the target or subject of the confidential report prior to being interviewed by the IAC.

(c) All sworn and signed complaints are public records and shall be made available in accordance with the provisions of the Inspection of Public Records Act.

(d) A statement of facts submitted in accordance with section 2-132(a)(2) shall be subject to inspection in accordance with the provisions of the Inspection of Public Records Act upon completion of the IAC's investigation, in those instances when the IAC does not file a sworn complaint with the ethics board.

(e) Any person who submits a signed and sworn complaint shall expect and agree that his or her name will be disclosed as part of a public record, upon request. A confidential statement of facts may be submitted anonymously. However, an individual submitting a confidential statement of facts may also include his/her name, address, telephone number and email address to permit the IAC to contact the individual as part of the investigation or for purposes of receiving a response from the IAC upon completion of the IAC's investigation.

(Ord. No. 2010-1, § 7, 1-12-10, eff. 2-11-10; Ord. No. 2011-4, 3-22-11)

Sec. 2-133. - Ethics board.

(a) There shall be an ethics board which shall consist of five members who shall be appointed by the board of county commissioners, with each commissioner appointing one member from his/her commission district. The citizen members shall not be affiliated with county government in any capacity including, but not limited to, employment (including employment for which the salary is in any way funded by or through the county), appointment or election. The members of the ethics board may not hold elected public office or office with any political party within the county. Terms of office of citizens shall be two years, subject to reappointment thereafter. Regardless of the date of appointment, the term of any individual appointed to the ethics board shall expire when the commissioner making the appointment leaves office or his/her term expires.

(b) The ethics board shall elect its own chair and vice-chair. If any member of the ethics board petitions the ethics board for a hearing and advice regarding his or her own conduct or the conduct of others, such member shall not be eligible to sit in such cases, and an alternate member shall be seated from that commission district when the need arises.

(c) The jurisdiction of the ethics board is limited to acting within the scope of matters covered by this code of ethics.

(d) The ethics board may recommend amendments to this code of ethics to the board of county commissioners.

(e) Upon the sworn complaint of any person alleging facts which, if true, would constitute a violation of this code of ethics, or upon the filing of a complaint by the internal audit contractor, the ethics board shall conduct a "due process" public hearing.

(f) All investigations required with respect to any alleged violation of the code of ethics shall be conducted by the county's internal audit contractor.

(g) The ethics board shall adopt rules of procedure for conducting "due process" hearings. The rules of procedure shall be consistent with the rules for conducting administrative hearings in the State of New Mexico.

(h) The ethics board shall have the power to issue administrative subpoenas compelling the attendance of witnesses at hearings and the production of documents, and the authority to seek enforcement of those subpoenas by the Second Judicial District Court.

(i) If the ethics board finds that an employee violated this code of ethics, the ethics board upon a majority vote of the entire membership, shall forward its written findings of fact and conclusions of law to the county manager for appropriate action.

(j) If the ethics board finds, upon a majority vote of the entire membership, that a candidate or elected official has violated this code of ethics, the ethics board may impose any of the following penalties after the entry of written findings of fact and conclusions of law:

(1) A civil fine not to exceed $1,000.00;

(2) A written finding of censure; or

(3) Make a referral to the appropriate governmental office.

(k) No action may be taken by the ethics board on any complaint which is filed later than one year after a violation of this code of ethics is alleged to have occurred or which is filed later than six months from the date of the discovery, upon due diligence by the complaining party, of the facts constituting a violation, whichever event occurs later.

(l) The ethics board may also provide advisory opinions regarding the applicability or interpretation of the provision of this code of ethics upon the request of any elected official, volunteer or employee.

(m) On a quarterly basis, the board of county commissioners shall be provided with a report stating the number of complaints that were submitted alleging a violation of the ethics ordinance.

(Ord. No. 2010-1, § 8, 1-12-10, eff. 2-11-10)

Sec. 2-134. - Right of appeal.

Any decision of the ethics board finding a violation of this code of ethics, with respect to an elected official, candidate or volunteer may be appealed to the Second Judicial District Court. Any decision regarding an employee shall be covered by the terms of the employment rules and regulations or collective bargaining agreement, as applicable.

(Ord. No. 2010-1, § 9, 1-12-10, eff. 2-11-10)

Sec. 2-135. - Nonretaliation.

The board of county commissioners does not tolerate retaliation against any person who has reported a violation of this code of ethics in good faith. This nonretaliation provision applies whether the complaint is ultimately determined to be well founded or unfounded. All county personnel and elected officials are specifically prohibited from taking any adverse employment action or other retaliatory action against anyone in retaliation for reporting a good faith claim of violation. Anyone who feels that they have been retaliated against in violation of this policy should submit a sworn complaint to the ethics board setting forth the claim of retaliation.

This nonretaliation provision is not applicable to claims that were not submitted in good faith and where the ethics board makes a specific finding that the complaint was frivolous.

(Ord. No. 2010-1, § 10, 1-12-10, eff. 2-11-10)

Sec. 2-136. Restrictions on employment and appointment after leaving office.

(a) No former county commissioner shall accept or enter into any arrangement or agreement for remuneration with the county for consultant work, part-time or full-time employment in any capacity for a period of 12 months from and after leaving office.

(b) This provision shall have retroactive effect to January 1, 2011.

(Ord. No. 2011-5, 3-22-11)

Editor's note—Ord. No. 2011-5, adopted March 22, 2011, retroactively effective January 1, 2011, did not specifically amend the Code, hence; inclusion as § 2-136 was at the discretion of the editor.

Secs. 2-137—2-200. - Reserved.

FOOTNOTE(S):

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[5] ***Editor's note—*** *Ord. No. 2010-1, §§ 1—10, adopted Jan. 12, 2010, effective Feb. 11, 2010, repealed the former Div. 4, §§ 2-126—2-132 and 2-171—2-185, and enacted a new Div. 4 as set out herein. The former Div. 4 pertained to similar subject matter and derived from Ord. No. 85-3, adopted Feb. 5, 1985.* (Back)