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MEMORANDUM

OPA Ethics Opinion 2016-2

DATE: October 3, 2016

FOR PUBLIC RELEASE PURSUANT TO 1 CMC § 8561(j)

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CNMI Office of the Public Auditor

Signature:  Date: 10/3/16

REVIEWED BY: Michael Pai, Public Auditor
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Signature:  Date: 10/3/16

Subject: Government Ethics Code Advisory Opinion

On September 21, 2016, the CNMI Office of the Public Auditor (“OPA”) received a letter from the Acting Director of the CNMI Library Council seeking advice on whether the video teleconference room at the Joeten-Kiyu Library can be used by a political party for a meeting. OPA construes the inquiry as a request for an advisory opinion under the CNMI Government Ethics Code Act of 1992 (“the Ethics Act”). OPA is empowered to offer advisory opinions by statute,¹ however it is not authorized to offer general opinions regarding the legality of actions under other sections of the CNMI Code. Therefore, this opinion will be confined to evaluating the particular facts as presented in the inquiry under the Ethics Act.

The request specified the following information, which OPA will accept as fact for the purposes of this opinion. The CNMI Library Council is a public entity and that the Joeten-Kiyu Library is a public facility. The video teleconference room is approximately 558 square feet, contains a conference table, and seats approximately forty (40) people. The facility is used primarily for library-related purposes, but is from time to time used by schools and non-profit groups.

The Ethics Act squarely prohibits public officials and public employees from using public funds, time, personnel or equipment for any political or campaign activities unless such use is authorized by law or incidental to an activity required or authorized by law. Use of

¹ 1 CMC § 8561(j)

the conference room for a meeting of a political party is an inherently political activity. Thus the question of whether such use is allowable turns on whether the use is by a public official or public employee and, if so, whether it is authorized by law.

In the present situation, the entity requesting use of public equipment for a political purpose is not a public employee or public official.² Instead it is a privately organized political party³ seeking to use the public space. The video conference room has been used for other private activities and nothing in the Ethics Act prohibits its use for a meeting of a private political party. Libraries and other similar public facilities are traditional meeting places for groups of individuals who lack facilities of their own. Such use of public facilities provides a valuable service to the public in general by allowing citizen collaboration and sharing of ideas to serve their common interests.

While nothing under the Ethics Act prohibits its use in the present situation, OPA strongly suggests the CNMI Library Council adopt policies and procedures to govern its use immediately. Such policies and procedures must set forth qualifications for applicants who wish to use the facility, terms and conditions of use of the facility, and most importantly, must ensure use of the facility is available fairly and objectively to all qualified applicants.⁴ To proceed without adequate policies governing proper use of the facility by the public subjects the government staff who manage the facility to unnecessary risk because, without a framework for his or her decision, even fair minded decisions can be criticized as biased. To avoid potential for liability under the Ethics Act (and possible Constitutional implications), the decision making process must be converted to a purely ministerial act, without room for subjective influence. Under any circumstance, when public employees or public officials are allowed to regulate use of the facility based on political or improper preference, the Ethics Act will be immediately offended.

The Ethics Act neither prohibits nor requires the CNMI Library Council to allow use of the video teleconference facility by political parties. The decision lies squarely with the Library Council. OPA cautions the decision should not be taken lightly and if such use, or other public use, is allowed it should be done under a well-crafted set of policies to ensure fairness and compliance with the laws and applicable Constitutional provisions.

² This is distinguishable from a scenario where a public employee or public official is requesting use of the facility for political or campaign purposes.

³ This opinion is limited to use by political groups and does not include use by campaigns for individual political candidates for office.

⁴ OPA notes the policies and procedures must also comply with the requirements of the First Amendment of the United States Constitution and Article I, Section 2, of the N.M.I. Constitution.