

Governmental Conduct Act and Procurement

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An easily accessible and
transparent database of contract
information will bring sunshine into
the **confusing** and sometimes
shadowy practice of **government
contracting**.

— Sen. Tom Coburn



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Procurement Code

- ❑ “The purposes of the Procurement Code are:
 - ❑ To provide for the fair and equitable treatment of all persons involved in public procurement
 - ❑ To maximize the purchasing value of public funds and
 - ❑ To provide safeguards for maintaining a procurement system of quality and integrity.”
- NMSA 1978 § 13-1-29.



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Governmental Conduct Act

- ❑ Treat positions as a public trust.
 - ❑ Advance only the public interest, not personal benefits.
 - ❑ Earn the confidence of the public.
 - ❑ Maintain integrity and act ethically.
 - ❑ Fully disclose real and potential conflicts of interest.
 - ❑ Do not receive money, anything of value, or a promise in exchange for promised performance of a public act.
- NMSA 1978, § 10-16-3



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In the News

AG documents incriminate legislative, education leader Sheryl Williams Stapleton
 Sherry Robinson All She Wrote
 Published 9:58 a.m. MT Aug 3, 2021

Stapleton focus of kickback probe
 BY MIKE GALLAGHER / JOURNAL INVESTIGATIVE REPORTER
 PUBLISHED: WEDNESDAY, JULY 28TH, 2021 AT 8:49AM
 UPDATED: THURSDAY, JULY 29TH, 2021 AT 7:58AM

POLITICS - GOVERNMENT


“OK to pay,” the search warrant of Sheryl Williams Stapleton

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Sheryl Williams Stapleton Investigation


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- ❑ The following information comes from the affidavits filed in support of the state search warrant.
- ❑ The affidavits include information taken from:
 - ❑ Subpoenas to banks and other businesses;
 - ❑ Video surveillance; and
 - ❑ Documents
- ❑ For this presentation, we assume these allegations are true.
- ❑ But remember, there is a presumption of innocence.




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- ❑ APS entered into contracts with Robotics Management Learning System, a software development company.
- ❑ In 2017, Ms. Williams Stapleton signed a Sole Source Justification Request Form, indicating that the software was unique and thus exempt from many Procurement Code requirements.
- ❑ Ms. Williams Stapleton signed invoices from Robotics and handled paperwork to and from Robotics.




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- ❑ Robotics provided APS with a conflict-of-interest form declaring that no APS employees had a direct or indirect financial interest in Robotics.
- ❑ Also declared that Robotics did not employ any APS employee or close relatives of APS employees.
- ❑ Ms. Williams Stapleton's son is listed as "coordinator" and business contact of the software program.




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- ❑ Robotics' website is not operational.
- ❑ Robotics does not have an Albuquerque or New Mexico business license.
- ❑ A former Washington, D.C. license for Robotics has been revoked.




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- ❑ APS made payments to Robotics at an Albuquerque P.O. Box, owned by Ms. Williams Stapleton's son.
- ❑ Surveillance video shows Ms. Williams Stapleton opening this P.O. Box on multiple occasions.




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- ❑ Video surveillance shows Ms. Williams Stapleton negotiating checks written by APS to Robotics.
- ❑ Ms. Williams Stapleton previously questioned the APS Procurement Department as to why they were "looking into" Robotics.
- ❑ Ms. Williams Stapleton requested procurement of another company that purported to train teachers on use of the Robotics software program.




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- ❑ Ms. Williams Stapleton has direct involvement with the following companies and organization, which received the following amounts of money from Robotics from 2014-2021:
 - ❑ Charlie Morrissey Foundation: \$202,105.76
 - ❑ The Ujima Foundation: \$153,385.10
 - ❑ S. Williams and Associates: \$279,772.20
 - ❑ Taste of the Caribbean: \$319,122.98



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- ❑ April 2021: APS submitted letter to New Mexico Attorney General, stating that it "suspected violation[s] of the Governmental Conduct Act and the Procurement Code, by Sheryl Williams Stapleton."
- ❑ July 2021: Agents served a search warrant on Ms. Williams Stapleton's home, family restaurant, and APS office.
- ❑ July 2021: Ms. Williams Stapleton resigned from the New Mexico House of Representatives.
- ❑ August 2021: APS fired Ms. Williams Stapleton.



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- ❑ September 2021: Ms. Williams Stapleton was indicted on 28 criminal counts (26 felony; 2 misdemeanors), including:
 - ❑ 10 counts of using public office for personal or financial gain;
 - ❑ 5 counts of money laundering;
 - ❑ 2 counts of prohibiting sales to the District;
 - ❑ 1 count of racketeering;
 - ❑ 1 count of fraud;
 - ❑ 1 charge of soliciting or receiving an illegal kickback;
 - ❑ 1 count of bribery; and
 - ❑ 1 count alleging Ms. Williams Stapleton profited from a deal between the district and Robotics.



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Entity Summary

- ❑ APS contracted with **Robotics Management Learning Systems LLC**.
- ❑ Robotics developed and licensed the **CyberQuest** software.
- ❑ SWS requested an additional procurement from **TriTech Enterprises, LLC**.
 - ❑ TriTech works closely with and may be a subcontractor to Robotics.
 - ❑ TriTech provides training for CyberQuest.



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Law

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Buying a product or a service is not procurement, that is purchasing....
“Procurement” solicits for proposals in a **formal** fashion and allows for a **fair, competitive, ethical** environment.

— Victor Manan Nyambala



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How are Procurements Fair and Ethical?

- ❑ The Procurement Code insulates purchases from the users.
 - ❑ School boards and districts are subject to the Procurement Code. NMSA 1978 § 13-1-67.
 - ❑ Procurement shall be performed by a central purchasing office designated by the Board, except as otherwise provided in the Procurement Code. NMSA 1978, § 13-1-97(C).
- ❑ Exceptions remove some or all of the normal procurement safeguards.



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Why Allow Exceptions?

- ❑ Following the Procurement Code is difficult.
- ❑ That difficulty raises the costs of procurement.
- ❑ The Code does not apply to 34 categories listed in the Code (§ 13-1-98).
- ❑ Rules are simplified for:
 - ❑ Small purchases (§ 13-1-125)
 - ❑ Sole source procurement (§ 13-1-126)
 - ❑ Emergency procurement (§ 13-1-127)



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Sole Source Procurement

- ❑ Contracts can be awarded without competition if:
 - ❑ There is only one source for the goods or services;
 - ❑ The goods or services are unique and substantially related to the intended purpose of the contract; and
 - ❑ Nothing else can meet that intended purpose.
 - ❑ The central purchasing office makes these determinations and negotiates the contract.
 - ❑ The contract specifications cannot be narrowly written to circumvent these restrictions.
- NMSA 1978 § 13-1-126.



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Potential Violations

- ❑ Did the central purchasing office independently determine that sole source was justified?
 - ❑ SWS provided a sole source justification form
 - ❑ The contract was sole source from 2006-2017
 - ❑ APS later determined it was a “standard online quiz application”
 - ❑ An RFP was issued in 2019, which the same company won
 - ❑ The cost went from \$468,000/yr to \$40,000/yr



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Employee Participation in Procurements

- ❑ **Procurement Code:** Employees may not participate directly or indirectly in a procurement when the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.
 - NMSA 1978 § 13-1-190.
- ❑ **Governmental Conduct Act:** Employees must disclose real and potential conflicts of interest and may not receive anything of value in exchange for promised performance of an official act.
 - NMSA 1978, § 10-16-3.



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Further Restrictions on Official Actions

- ❑ Public officers and employees cannot take an official action for the primary purpose of their own financial benefit.
- ❑ If their finances would be affected, they are disqualified from related official acts, unless the financial benefit is proportionately less than the benefit to the general public.
- ❑ Public officers and employees cannot acquire a financial interest that will be affected by their official acts.
 - Governmental Conduct Act, NMSA 1978 § 10-16-4.



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Governmental Conduct Act - Definitions

- ❑ The Act applies to family members: spouse, parents, children or siblings.
- ❑ A “financial interest” means an interest held by an individual or the individual’s family that is:
 - ❑ An ownership interest in business or property; or
 - ❑ Any employment or prospective employment for which negotiations have already begun.



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Potential Employee Interest

- ❑ Did SWS have a direct interest in the business?
 - ❑ Video surveillance showed SWS negotiating deposits of checks from APS for Robotics.
 - ❑ Video surveillance showed that SWS had a key to and accessed the Albuquerque P.O. Box to which APS’s checks to Robotics were sent.
- ❑ SWS was associated with entities that received money from Robotics:
 - ❑ The Charlie Morrissey Center (\$202,105.76)
 - ❑ The Ujima Foundations (\$153,385.10)
 - ❑ S. Williams and Associated (\$279,772.20)
 - ❑ The Taste of the Caribbean (\$319,122.98)
- ❑ SWS’s son worked for CyberQuest and received checks from Robotics.



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Potential Employee Involvement

- ❑ SWS signed and approved invoices from Robotics.
- ❑ SWS asked about payments to Robotics and handled paperwork to and from the company, which was not a regular practice.
- ❑ SWS contacted the APS Procurement Department when it asked questions of teachers who used the software.



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Government officials and employees are supposed to manage public property and provide services by applying the law as it is written and in ways that best serve the **public interest** - not to allow officials or their friends or families to profit personally by dealing in their **public trust**.
— NM Attorney General



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The GCA's ... 'guiding principle' of full disclosure, applies to any bias or interest that would adversely affect a government employee's ability to perform the employee's duties **exclusively in the public interest.**

— NM Attorney General



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Search Warrant Conclusions



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Search Warrant Conclusions

- ❑ “APS employees and NMAG Investigators have noted that the procurement process with regard to Robotics was not performed in accordance with state law.”
- ❑ “Sheryl Williams Stapleton participated directly and/or indirectly in the procurement process with APS at a time when she would have known that she or any member of her immediate family had a financial interest in Robotics who had sought and obtained a contract from APS. There is no evidence to indicate that Sheryl Williams Stapleton declared any potential conflict of interest to any party regarding Robotics/CyberQuest.”



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Search Warrant Conclusions

- ❑ “Investigators calculated that approximately 60% of money paid to Robotics by APS between 2014 and 2021 was subsequently redirected to Sheryl Williams Stapletons' direct interests . . . [totaling] approximately \$954,386.04. The evidence also indicates that in some cases that money was further redirected into Sheryl Williams Stapleton's personal bank accounts.”
- ❑ Probable cause exists that there are items of evidence related to felony criminal offenses of, among others:
 - ❑ Unlawful employee participation prohibited (Procurement Code) NMSA § 13-1-190
 - ❑ Ethical principles of public service; certain official acts prohibited (Governmental Conduct Act) NMSA § 10-16-3
 - ❑ Committing an official act to improve one's direct financial interest (Governmental Conduct Act) NMSA § 10-16-4



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The information in this presentation was prepared by Walsh Gallegos Treviño Kyle & Robinson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

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