



State of New Mexico  
House of Representatives  
Santa Fe

**NATHAN "NATE" P. COTE**

D - Doña Ana & Otero Counties  
District 53

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April 19, 2007

Attorney General Gary King  
408 Galisteo Street  
Villagra Building  
Santa Fe, New Mexico 8750

COMMITTEES:  
Transportation & Public Works  
Taxation & Revenue  
Enrolling & Engrossing (B)

Dear Attorney General King:

We spoke on the phone yesterday and now that I am back in Las Cruces I can send you a formal request for an interpretation of NM Statute Annotated 3-7-17.1 (1998) B. (2) and your opinion about what kind of timeline it establishes for a city council vote on annexation. If you could look into this and get back to me and to the city attorney as soon as possible, I would appreciate it; the annexation vote is scheduled for this coming Monday, April 23.

As I shared with you on the phone, I am concerned about several aspects of this project, not least of which is the city council's rapid progress toward annexation and simultaneous acceptance of a privately developed master plan for almost 10 square miles of land on the eastern edge of Las Cruces. All of this was done with almost no public awareness – if not for the alert response by a private citizen, there would have been no larger public discussion at all. This is in stark contrast to the process involving state lands at Mesa del Sol in Albuquerque.

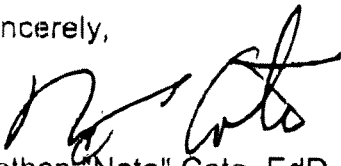
I'm also concerned about the business planning lease extended by the State Land Office to a private developer, specifically:

1. the terms of this lease, which to an untrained eye seem to provide windfall compensation for a few months' work by the developer, realized through the developer's share of subsequent sales of state land
2. the possibilities of conflict of interest between the uses that the developer may advocate for publicly held land, and what might actually be in the public interest
3. the apparently inadequate provision of school sites for the projected number of homes may not be in the public interest (the master plan contains only 2 elementary school sites for a projected 35,000 homes). This may create a future hardship on other state or public agencies that may have to buy back some this land.
4. whether there is a conflict between the operations of the State Land Office and the public interest

5. the many unexamined issues surrounding infrastructure costs to other agencies that have essentially been hidden from public view
6. the process used to sell or contract for services related to the development of the 6,000 acres in question. Was this a competitive bidding process?
7. the appearance that discussions were being held between the developer and selected city councilors and city officials long before the business planning lease was signed
8. the lack of information provided to area legislators about the project, when this is state land, and the legislature has oversight responsibility over the operations of the State Land Office
9. whether the State Land Office is acting in the public interest in the whole area of business planning leases, or whether legislative remedy might be needed.

I am extremely concerned about these issues. Please look into this matter as soon as possible. The impact of this project on Doña Ana County will be enormous, and the public and its elected officials need to be fully informed.

Sincerely,



Nathan "Nate" Cote, EdD  
State Representative, District 53



State of New Mexico  
**House of Representatives**  
Santa Fe

**NATHAN "NATE" P. COTE**

D - Doña Ana & Otero Counties  
District 53

May 9, 2007

**COMMITTEES:**  
Transportation & Public Works  
Taxation & Revenue  
Enrolling & Engrossing (B)

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The Honorable Gary King  
Attorney General  
State of New Mexico  
P.O. Drawer 1508  
Santa Fe, NM 87501

Dear Attorney General King:

As a supplement to my letter to you dated April 19, 2007, this letter is to request an attorney general's opinion on whether the New Mexico commissioner of public lands violated the Enabling Act, the Constitution of New Mexico, New Mexico statutes or the commissioner's administrative rules by entering into business planning lease number BL-1775 ("Business Lease") with Solo Investments, LLC. As you may be aware, the commissioner sought proposals for the leasing of state trust lands near Las Cruces through public notification that advertised a deadline for submission of proposals, yet the commissioner entered into the Business Lease for those state trust lands more than a month prior to the advertised deadline for proposals.

First, should the commissioner have entered the Business Lease only after appropriate public advertisement and a public auction? Section 10 of the Enabling Act, to which the state and its people consented in Article 21, Section 9 of the Constitution of New Mexico, provides that lands held in trust by the state:

shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction . . . notice of which public auction shall first have been duly given by advertisement . . . provided that nothing herein contained shall prevent said proposed state from leasing any of said lands referred to in this section for a term of five years or less without said advertisement herein required.

Although Section 8 of the Business Lease limits the term of the lease to five years or less, the commissioner is required by Section 14.5 to pay an "improvement value credit" to the lessee after the expiration of the lease term. Can the Business Lease be construed as being in effect for a term longer than five years due to the right of the lessee to receive the improvement value credit and the duty of the commissioner to pay that credit? Furthermore, if the subject land is to be developed for residential purposes with the sale of homes to private owners, is there a clear

The Honorable Gary King

May 9, 2007

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implication that the Business Lease will be in effect for more than five years? Although the Business Lease has a nominal term of only five years, did the process by which the commissioner entered into the lease, without offering the lease to the highest and best bidder at a public auction, violate the Enabling Act and the Constitution of New Mexico?

Second, notwithstanding the term of the lease, did the commissioner violate the Enabling Act, the Constitution of New Mexico, New Mexico statutes or the commissioner's administrative rules by entering into the Business Lease prior to the deadline advertised by the State Land Office for submission of requested proposals? According to news reports in the *Albuquerque Journal*, the State Land Office published advertisements on December 22, 25 and 27, 2006 in the *Las Cruces Sun-News* seeking proposals for the lease of the subject state lands. Even though the notices stated that proposals must be submitted to the State Land Office by February 1, 2007, the commissioner entered into the Business Lease on December 26, 2006. Did the commissioner violate New Mexico law by failing to comply with the publicly advertised competitive bid process for the lease of the subject state lands?

Third, the appearance of undue influence in the commissioner's award of the Business Lease is troubling to me. Once again, according to news reports from the *Albuquerque Journal*, in August and September of 2006, the lessee under the terms of the Business Lease contributed \$20,500 to a political action committee, which committee contributed \$15,500 in cash and \$2,142.50 in campaign materials to the commissioner's re-election campaign. I respectfully request that your office advise me whether the circumstances of the commissioner's entering into the Business Lease with Phillip Phillippou's Solo Investments, LLC, constitutes a violation of the Governmental Conduct Act.

Finally, in the event that you are of the opinion that the commissioner acted improperly in any way regarding the Business Lease, I am interested in being advised of the possible consequences of any improper action and potential legal remedies. Thank you for your attention in this matter. I look forward to a response at your earliest convenience.

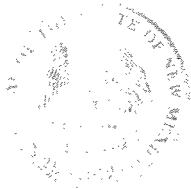
Sincerely,



NATHAN P. COTE  
State Representative, District 53

cc: Hector Balderas, State Auditor

NPC:dmh



# New Mexico State Senate

State Capitol  
Santa Fe

**SENATOR MARY JANE M. GARCIA**  
MAJORITY WHIP  
D-Doña Ana-36

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May 10, 2007

The Honorable Gary King  
Attorney General  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508

Dear Attorney General Gary King:

I am contacting your office in regards to the annexation of land that the Las Cruces City Council is currently deliberating. Previously, I and several other local legislators requested an Attorney General opinion related to annexation procedures. This opinion helped clarify existing discrepancies related to the annexation issue. I want to extend my gratitude to you and your staff for addressing our concerns in a very expeditious manner.

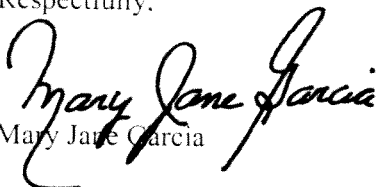
I also must tell you that there has been a large public outcry concerning events that have been associated with the annexation. The public concern primarily relates to an agreement that the Commissioner of Public Lands contracted with the developer. Many people in my community are concerned that the contract may undermine certain procurement code requirements. Frankly, this concerns me as well. Please provide me with any information that relates to a land transaction contracted by the state and a sole developer, without a bidding process.

Another question that the public is demanding answers to regards the Blue and Red PAC that the developer had contributed to. There has been an uneasy sentiment in the community because of alleged improprieties related to this PAC. I want to be sure that all campaign finance requirements were adhered to by the parties involved.

With this, I respectfully request that the New Mexico Office of the Attorney General initiate a full investigation of the above mentioned concerns. I hope that through your investigation, the public's concern will be satisfied and all New Mexico laws will be upheld.

Please be sure to contact me at 649-8475 if you have any questions.

Respectfully,

  
Mary Jane Garcia

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