

The Terry Firm

April 7, 2020

U.S. Mail and Email

Juan Torres, Clerk
Town of Edgewood
P.O. Box 3610
Edgewood, NM 87015

Copy via U.S. Mail and Email to:

Governing Body
Town of Edgewood
P.O. Box 3610
Edgewood, NM 87015

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Re: Timing of Special Election under NMSA 1978, § 3-14-2
Petition to Change the Form of Government to the Commission-Manager Model
Town of Edgewood, New Mexico

Mr. Torres:

I am in receipt of your email, dated April 1, 2020, which:

- (1) encloses a copy of your certification of the petition for a ballot question to change the form of government for the Town of Edgewood to the commission-manager model; and
- (2) acknowledges the Governing Body's requirement to adopt a resolution for a special election within ten (10) days from the date of certification (on or before April 11, 2020) in accordance with the New Mexico Municipal Code.

A copy of your email is enclosed for your reference and convenience. *See Exhibit 1.*

Yesterday, April 6, 2020, I obtained a copy of the Agenda Packet for the Governing Body's special meeting scheduled for Thursday, April 9, 2020, which contains information suggesting that the Town is considering calling for the election on this ballot question at the November 2020

general election, rather than in July or August of 2020 as required by the Article 14, Chapter 3 NMSA 1978 of the Municipal Code.

The purpose of this correspondence is to advise you and the Governing Body of the relevant timelines provided by State law for the Town to call for and hold the special election on this ballot question.

The relevant portion of the Municipal Code governing a change in the form of government for municipalities to the commission-manager model provides as follows:

A. Upon petition signed by qualified electors, not less in number than fifteen percent of the votes cast for the office of mayor at the last regular municipal election, filed with the municipal clerk and verified by the municipal clerk to contain a sufficient number of legal signatures, ***the governing body shall, within ten days of verification, adopt an election resolution calling for the holding of a special election on the question of organizing the municipality under the commission-manager form of government,*** or the governing body may submit to the qualified electors of the municipality the question of organizing the municipality under the commission-manager form of government. The election shall be held in June or July in odd-numbered years or July or August in even-numbered years in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The question to be placed shall read substantially as follows:

"For the commission-manager form of government and providing for the election of five commissioners ____; and

Against the commission-manager form of government and providing for the election of five commissioners ____".

See NMSA 1978, § 3-14-2 (emphasis supplied).

Upon review of the opinion of counsel from the Town's attorney, as enclosed in the Agenda Packet, the Governing Body has been advised that Subsection A of the forgoing statute allows the Town the option or choice of when to hold the election on the ballot question.

Under the Town attorney's interpretation, either:

- (1) a special election can be held in July or August of even-numbered years (2020); or
- (2) the ballot question can be submitted to the Town voters at the November 2020 general election.

The law, as outlined below, is clear and unequivocal that the Town does not have an option as to when the election on the ballot question shall be held.

The express and plain language of the applicable statute requires a special election to be held on the question to change the form of government to the commission-manager model in July or August of 2020 – this being an even-numbered calendar year.

The question presented is a matter of statutory construction and interpretation of NMSA 1978, § 3-14-2(A). *See Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13, 121 N.M. 764 (“In interpreting statutes, we seek to give effect to the Legislature’s intent, and in determining intent we look to the language used and consider the statute’s history and background”) (internal citation omitted); *see also TexasFile LLC v. Lea County*, 2019-NMCA-038, ¶ 16.¹

“Rules of statutory construction dictate that when a statute’s language is clear and unambiguous and it conveys a clear and definite meaning, the statute must be given its plain and ordinary meaning.” *See Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13 (internal citations omitted).

Generally, “[a]ny municipality having a population of three thousand or more persons... may be organized and governed as a commission-manager municipality if the qualified electors of the municipality elect to be governed under the commission-manager form of government.” *See* NMSA 1978, § 3-14-1.

Thereafter, Section 2 of Article 14, Chapter 3 NMSA 1978 outlines the process and procedure by which a change in the form of government is adopted, including the timelines for a special election.

NMSA 1978, § 3-14-2(A) includes the word “or,” suggesting two alternatives for adopting the commission-manager form of government.

Upon receipt of a valid petition supported by the required number of signatures, “the governing body ***shall***, within ten days of verification, adopt an election resolution calling for the holding of ***a special election*** on the question of organizing the municipality under the commission-manager form of government[.]” (emphasis supplied).

¹ In *TexasFile LLC v. Lea County*, the New Mexico Court of Appeals was presented with the question of whether a request for public records to Lea County, and the County’s response, was governed by the Inspection of Public Records Act (IPRA), or the State’s Recording Act where the Plaintiff was requesting electronic copies of documents recorded with the County Clerk’s Office. The Court of Appeals noted that “IPRA and the Recording Act establish statutory schemes with distinct scopes and objectives[.]” and “various statutory provisions [may be] at play” and subject to interpretation under a given set of facts. 2019-NMCA-038, ¶¶ 12, 15 (finding that “IPRA’s electronic production directives are at odds with the Recording Act, which contains no requirement that records be produced in electronic form under any circumstances”).

“*[O]r*, the governing body may submit to the qualified electors of the municipality the question of organizing the municipality under the commission-manager form of government.”

See NMSA 1978, § 3-14-2(A) (emphasis supplied).

In either case, “[t]he election shall be held in... July or August in even-numbered years in accordance with the provisions of the Local Election Act.” *Id.*

Under a plain reading of the applicable law, NMSA 1978, § 3-14-2(A) creates two methods whereby a municipality may change its form of government to the commission-manager model. Either:

- (1) by citizen petition; or
- (2) as proposed by a municipality’s governing body.

In either case, a determination of whether the change is made must be submitted to the voters by way of special election in July or August of 2020 because no other timelines are prescribed by law to hold an election to change a municipality to the commission-manager form of government.

The Town attorney’s assertion that the Governing Body is not required to hold a special election on the ballot initiative in July or August of this year, and that such question can be submitted to the Town voters in the November 2020 general election, is based on a misapprehension of the Municipal Code.

The Town attorney interprets the word “or” in NMSA 1978, § 3-14-2(A) to permit the Town to alter the timelines for the special election despite the fact this statutory section mandates the time for which any election provided thereunder shall be held.

A plain reading and interpretation of the word “or” in this portion of the Municipal Code provides an alternative *method* by which the question on the change of government can be posed to the Town electorate, not an alternative time period.

Whereas, the Town attorney asserts that the Governing Body has a choice as to the timing of the election, the law actually provides that the choice afforded to the Town under the Municipal Code is whether to pose the question to the voters upon a voter petition, or upon action by the Governing Body.

The question presented, therefore, is whether the term “or” as used in Subsection A creates of a choice or option as to “how” a change in the form of government is presented, as opposed to “when.”

New Mexico law provides that “[a]t all elections at which any ballot question is submitted to the voters, the election shall be called, conducted and canvassed in accordance with the Election Code.” *See* NMSA 1978, § 1-16.1.

The Election Code identifies what types of actions must be presented to the voters of the state or local governments through ballot questions; and further provides that “[a] local government ballot question includes any... other questions, as provided by state statute or the constitution of New Mexico.” *See* NMSA 1978, 1-16-2(B)(8).

Clearly, Article 14, Chapter 3 NMSA 1978 of the Municipal Code is another state statute that expressly provides for a ballot question to be submitted to the Town voters.

The Town attorney’s opinion letter advises the Governing Body that the Election Code provides alternative timelines for ballot questions that are submitted to the voters at either:

- (1) a general election or regular local election; or
- (2) a special election pursuant to the Special Election Act, NMSA 1978, § 1-24-1 *et seq.*

See NMSA 1978, § 1-16-3(B), (C).

While this opinion is technically correct in the abstract, it is not applicable to the current petition, which you have already certified as valid.

It is clear that that NMSA 1978, § 3-14-2(A) requires the governing body to call “for the holding of *a special election* on the question of organizing the municipality under the commission-manager form of government” where a petition has been submitted by the qualified electors of the Town, “filed with the municipal clerk and verified by the municipal clerk to contain a sufficient number of legal signatures[,]” which is the case in this instance.

Even if the Town attorney’s opinion that the Governing Body can choose, of its own accord, to submit a ballot question on the change of government to the commission-manager model, and that such election should be governed by the timelines in NMSA 1978, § 1-16-3(B) (general election or regular election scheduling), such action cannot be accomplished *ex post facto* or retroactively to supersede or set aside the current petition, which you have already certified.

Stated another way, to the extent that the Town had any choice in the timing of the ballot question to change the form of government to the commission-manager model at some other time than the time as provided under the Municipal Code, that choice expired or lapsed upon the Town’s certification of the petition as valid.

Where two separate statutes cover the same subject matter, the New Mexico Supreme Court has held that:

In ascertaining legislative intent, the provisions of a statute must be read together with other statutes *in pari materia*² under the presumption that the legislature acted with full knowledge of relevant statutory and common law... Thus, two statutes covering the same subject matter should be harmonized and construed together when possible, in a way that facilitates their operation and the achievement of their goals.

Public Service Co. v. New Mexico Public Utility Commission, 1999-NMSC-040, ¶ 23, 128 N.M. 309 (internal citation omitted).

Additionally, the State Supreme Court has long held that:

A well established principle of statutory construction recognizes that when one statute deals with a subject in general terms and another deals with a part of the same subject more specifically, the more specific statutes will be considered an exception to the general statute, and will apply.

Production Credit Ass'n v. Williamson, 1988-NMSC-041, ¶ 5, 107 N.M. 212 (internal citation omitted) (holding that a statute that “explicitly and specifically address[ed] the kind of notice to be employed” in foreclosure sales superseded the Court’s rules of procedure that made “no specific reference to foreclosure sales”); *see also Lopez v. Barreras*, 1966-NMSC-209, ¶ 12, 77 N.M. 52 (“Conflicts between general and specific statutes are resolved by giving effect to the specific statute”); *Varney v. City of Albuquerque*, 1936-NMSC-010, ¶ 7, 40 N.M. 90 (“A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject-matter supersedes a general statute which does not refer to that subject although broad enough to cover it”).

According to the express language of NMSA 1978, § 3-14-2(A), upon a certified petition, “the governing body **shall**, within ten days of verification, adopt an election resolution calling for the holding of **a special election**[.]” (emphasis supplied).

Similar to the Supreme Court’s decision in *Varney v. City of Albuquerque*, the provisions under the Municipal Code in Article 14, Chapter 3 NMSA 1978 were enacted for the primary purpose of dealing with a change in the form of government to the commission-manager model and, therefore, supersede the general provisions of the Election Code, even though its terms are broad enough to cover other ballot questions.

The citizens of the Town of Edgewood were denied their opportunity to vote in March 2020 upon the Governing Body’s ill-advised decision to extend their terms of office by nearly two (2)

² “On the same subject; relating to the same matter. It is a cannon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject.” *See Black’s Law Dictionary* 794 (7th ed. 1999).

years, rather than shortening them by approximately three (3) months, when opting-in to the Local Election Act.

That decision, in part, has led to the petition to change the form of government to the commission-manager model, which serves the purpose of restoring this fundamental right to Edgewood voters, as well as providing additional citizen rights and remedies that are not afforded under our current mayor-council form of government.

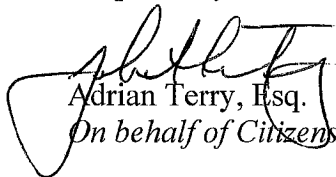
If the Town votes to approve an election resolution on the ballot question for November 2020, instead of August 2020, it will further demonstrate a dismissive attitude and open disdain for the public interest and the core tenants of representative government by a majority of the members of this Governing Body, notwithstanding the fact that such action is contrary to law as outlined in this letter.

Equally troubling, is the Town attorney's suggestion that the Governing Body's consideration of whether to adhere to the strict requirements of the Municipal Code, or to delay the election to a later date, is based entirely on cost and convenience.

In this case, I implore you and the Governing Body to do what is right and what is required by law; not what is expedient or easy.

For the reasons stated above, and as acknowledged in your April 1st email to me, the Governing Body is required to call for and hold a special election in August of this year, and during the window of time as identified in the Town attorney's letter.

Respectfully Submitted,



Adrian Terry, Esq.

On behalf of Citizens for an Open and Responsible Edgewood

cc: Geraldine Salazar, Clerk

Santa Fe County

100 Catron Street

Santa Fe, NM 87501

gsalazar@santafecountynm.gov



Adrian Terry <adrian@terryfirm.net>

Petition Certification

1 message

Juan Torres <JTorres@edgewood-nm.gov>

Wed, Apr 1, 2020 at 3:51 PM

To: Jerry Powers <jerrydpowers@aol.com>, Adrian Terry <adrian@terryfirm.net>

Cc: Carla Salazar <clerk@edgewood-nm.gov>

Good afternoon Mr. Powers and Mr. Terry,

Attached is a copy of the petition certification. The petition is valid and the governing body was informed that they would have to pass a resolution by April 11, 2020. We are working on a way to hold a meeting and to be in compliance with the current health order. I will let you know when we have a date and time set for the special meeting.

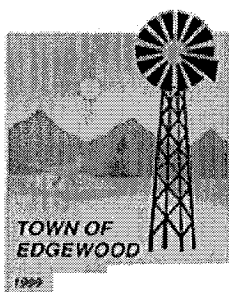
Thank you,

Juan Torres

Clerk/Treasurer

Town of Edgewood

(505) 286-4518

**Petition Certification.pdf**

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