



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

May 1, 2020

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VIA EMAIL ONLY

RE: Timing of Special Election to Change Form of Government to Commission-Manager Model

Dear Mayor Bassett and Edgewood Council Members,

The Office of the Secretary of State has received correspondence from representatives of concerned citizens about a misunderstanding of the procedures that must be followed when a local governing body changes its form of governance from a mayor-council form of government to a commission-manager model.

My understanding is that a verified Petition was filed with the Town Clerk of Edgewood on March 23, 2020 seeking to change Edgewood's form of government to commission-manager model. The Petition was certified by the Town Clerk as having the required number of signatures pursuant to NMSA 1978, Section 3-14-2 and presented to the Council at a meeting on April 9, 2020. The governing body of Edgewood passed Resolution 2020-06 affirming that the Petition had satisfied the requirements of Section 3-14-2, and placing it as a ballot question on the November 3, 2020 General Election Ballot.

The statute governing the change in form of government is Section 3-14-2 which states in relevant part:

Upon petition signed by qualified electors, . . . 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.

NMSA 1978, § 3-14-2(A) (2018) (emphasis added). This provision allows a change in the form of the governing body to originate either from the electorate by petition or directly from the governing body. If the change is requested by the electorate, the governing body **must** hold a special election within the dates specified in the last sentence. Use of the word “shall” makes this mandatory. The governing body could also initiate the change, but that would be a discretionary action as evidenced by use of the word “may.”

Regardless of the source of the requested change in the form of the governing body, a special election must be held in July or August of 2020. “Special local election” is defined in the Local Election Act as a “local election conducted at a time other than a statewide election at which only ballot questions are considered pursuant to the provisions of the Special Election Act.” NMSA 1978, § 1-22-29(F)(2019).

Prior to the 2018 amendment, the statute provided that a special election on the question of organizing a municipality under the commission-manager form of government shall be held “within ninety days after the verification of the petition.” Effective July 1, 2018, the “within ninety days after the verification of the petition” was deleted in Subsection A, and the last sentence specifying that a special election shall be held in June or July of odd-numbered years and July or August of even numbered was added. This conforms the dates of a special election to be held according to the time restrictions in Section 1-24-1 (2019). “No special election shall be held beginning the seventieth day prior to any statewide election . . .” *see* NMSA 1978, § 1-24-3(C).

These interconnected statutes, statutory construction, and the plain meaning of Section 3-14-2 support the conclusion that after the governing body of the Town of Edgewood issued a Resolution affirming the Petition, the Council is required to issue a public proclamation calling a special election and filed with the county clerk no later than seventy days prior to the date for the special election. NMSA 1978, § 1-24-29(A)(1). In addition, the election must be held no later than August 24, 2020 to satisfy Section 1-24-1(C)(2).

As the Chief Election Officer of the State, I am required to obtain, and maintain uniformity in the application, operation and interpretation of the Election Code. Although the SOS does not have jurisdiction or enforcement authority over municipalities or local governing bodies to enforce compliance of the Municipal Code, the electorate may seek redress through the judicial system. I urge the governing body of the Town of Edgewood to conduct a special election on the certified petition within the statutory timeframes.

Thank you for your consideration of this matter.

Respectfully,



Maggie Toulouse Oliver
Secretary of State

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