

January 12, 2026

OPINION
OF
RAÚL TORREZ
Attorney General

Opinion No. 2026-02

To: Dr. David Lepre, Board Chair, New Mexico Tech Board of Regents

Re: Attorney General Opinion – Promotion of Interim President to Permanent President

Question

Is the New Mexico Tech Board of Regents (“the Board”) required to conduct a formal search before it may promote the institution’s Interim President to Permanent President?

Short Answer

Yes. Under NMSA 1978, Section 21-1-16.1(B) (2011), the board of regents governing a state institution of higher education “shall consider in the final selection process at least five finalists” when selecting a person for the position of president of the institution. A board must give twenty-one days notice, *id.*, and hold a public meeting upon its final action, NMSA 1978, § 10-15-1(H)(2) (2013).

Background

The New Mexico Constitution identifies the New Mexico Institute of Mining and Technology (“NMT”) as a state educational institution, N.M. Const. art. XII, § 11, and tasks the Legislature with providing “for the control and management of [such institutions] by a board of regents,” *Id.* § 13. This is in contrast to some other state constitutions that establish boards of regents as bodies corporate and outline their powers within the articles of their constitutions. *E.g.*, Mich. Const. art. 8, § 5 (“The regents . . . shall constitute a body corporate . . . [and] shall have general supervision of its institution . . .”). In such states, the Legislatures’ ability to intervene in presidential searches may be significantly limited. *See, e.g., Fed. Publ’ns, Inc. v. Bd. of Trs. of Mich. State Univ.*, 594 N.W.2d 491, 497 (Mich. 1999) (holding that, given the state constitution’s broad grant of power to Michigan State University, “[l]egislative regulation that clearly infringes on the university’s educational or financial autonomy must . . . yield to the university’s constitutional power”).

However, New Mexico tasks its legislature to “provide” the board’s power. N.M. Const. art. XII, § 13.

It is within the statutes specific to NMT that the Legislature establishes the institution as a body politic with the right “of contracting and being contracted with . . . and of causing all things to be done necessary to carry out the provisions of [Chapter 21, Article 11 of the New Mexico Statutes Annotated].” NMSA 1978, § 21-11-4 (1889). Additionally, legislation empowers the Board “to enact bylaws, rules and regulations for the government of [NMT], not inconsistent with the laws of the state . . . and do all and everything necessary in and about the premises with a view to promoting the best interests of said institution.” NMSA 1978, § 21-11-8 (1947). The Board has the power to remove officers. NMSA 1978, § 21-11-11 (1889). The Board’s Chair is empowered to “direct the affairs generally of [NMT and] shall nominate and, by and with the advice of said board of regents, appoint all professors, instructors, tutors and other employees necessary to the proper conduct of [NMT].” NMSA 1978, § 21-11-6 (1889). Article 11 is, however, silent as to how this process should operate with regard to the President of the institution. *See generally* NMSA 1978, §§ 21-11-1 to -28 (1889, as amended through 2013).

Where Article 11 is silent, the general provisions relating to state educational institutions fill many of these gaps. *See* NMSA 1978, §§ 21-1-1 to -53 (1889, as amended through 2025). Additionally, with regard to hiring, the Board’s process is governed to an extent by the requirements of the New Mexico Human Rights Act, NMSA 1978, §§ 28-1-1 to -15 (1969, as amended through 2024), the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2025), and the Open Meetings Act (“OMA”), NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2013). While the general requirements of the OMA do not apply to “limited personnel matters,” meaning “the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of . . . any individual public employee,” this exception “is not to be construed as to exempt final actions on personnel from being taken at open public meetings.” Section 10-15-1(H)(2).

While other states’ legislatures, limited by their constitutions, may simply codify a board’s constitutional power “to elect [and remove] a president,” without prescribing the method for election, this is not the case in New Mexico, as discussed below. *Contrast* Mich. Comp. Laws sec 390.5 (codifying this power), *with* § 21-1-16.1 (State Institutions of Higher Education; Presidential Searches).

Analysis

Our analysis begins and ends with a plain language reading of Section 21-1-16.1. *Regents of the Univ. of N.M. v. N.M. Fed’n of Tchrs.*, 1998-NMSC-020, ¶ 28, 125 N.M. 401 (“We will not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions.”). We could find no caselaw discussing nor other forms of law interpreting or referencing this statute. However, the statute’s provisions are clear-cut and do not appear to offer much room for exception. Pursuant to Section 21-1-16.1:

At least twenty-one days before the date of the meeting of the governing board . . .
at which final action is taken on selection of the person for the position of president

of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists.

[. . .].

Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

Id. (B), (D).

These clear requirements are only qualified by the Board's ability under OMA to hold closed meetings to discuss this process up until the meeting upon which it takes this final action. Section 10-15-1(H)(2). This allowance is one of the ways New Mexico is distinct from other states where universities have successfully pushed back against legislative oversight of presidential searches. *See, e.g., Fed Publ'ns*, 594 N.W.2d 491. Additionally, New Mexico's legislation carves out an exception to the Public Records Act for this process, the Board is empowered by statute rather than constitution, and the imposition is on the final action of this process, rather than the deliberations that take place before. *Cf. id.* (holding legislature could not impose OMA on deliberation phase of presidential search where board was empowered by state constitution).

Notably, Section 10-15-1(H)(2) requires an open public meeting for the final action to a "hiring, promotion . . . [or] assignment," and Section 21-1-16.1 discusses the "selection" of a new president, encapsulating both hiring and promoting. Thus, the situation is unchanged by the current Interim President's status.

In the absence of any explicit exception to this requirement, the Board must engage with the formal search proceedings described in the foregoing statutory provisions.

Conclusion

Given that the plain language of Section 21-1-16.1 requires a formal process to "select" a president, and there is nothing in our laws to contradict or except this requirement for promotion of an Interim President to the role of Permanent President, the Board is required to engage in the formal process and identify five finalists for the position of Permanent President before making a decision.

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RAÚL TORREZ
ATTORNEY GENERAL

/s/ Henry Chynoweth
Henry Chynoweth
Assistant Solicitor General