

## January 5, 2011 Advisory Letter---Charter Amendment Ballot Questions

The Honorable Jeannette O. Wallace  
State Representative  
1913 Spruce Street  
Los Alamos, NM 87544

**Re:** Opinion Request – Charter Amendment Ballot Questions

Dear Representative Wallace:

On behalf of the Los Alamos County Council, you requested our advice concerning the propriety of two ballot questions for the amendment of the Los Alamos County Charter.[1] According to your request, the Los Alamos County Attorney believed that each question was contrary to law because it presented multiple subjects. As discussed below, in contrast to New Mexico case law addressing similar issues, your request does not implicate the New Mexico Constitution or state law. The propriety of the two ballot questions depends solely on the interpretation and application of local law, including the Los Alamos County Charter. Consequently, we conclude that it is more appropriate for the Los Alamos County Council and County Attorney, rather than the Attorney General's Office, to determine whether the ballot questions are proper.

### Ballot Questions for Proposed Charter Amendments

According to your request, each ballot question asked voters whether a new section should be added to the County Charter. The first question described a new Section 705, titled "The Annual Election on Capital Projects and the Conveyance, Lease or Change in Use of Public Lands." As proposed, Section 705 required the County to hold an annual election on capital projects costing \$1,000,000 or more, capital projects with a cost of between \$300,000 and \$1,000,000 that were petitioned for by registered County voters, and the conveyance, lease or major change in the use of public lands. The remaining provisions of Section 705 governed the publication and form of ballot measures for covered proposals, petition requirements, and the County's execution of a project following voter approval.

The second question set forth a new Section 706, titled "County Responsibilities to the Petitioners." The new section designated the County Clerk as administrator of the petition process, required publication of the entire text of petitions, allowed solicitation of petition signatures on publicly accessible property, limited the use of County resources to publish information about a petition, and barred the support of or opposition to a petition in the County's name. Section 706 also contained a provision requiring the County to use equal resources for the presentation of arguments for and against all ballot measures and prohibiting the support of or opposition to ballot measures in the county's name.

### Prohibitions Against Logrolling

The practice of joining multiple measures in a single ballot proposition is typically referred to as “logrolling.” The primary concern logrolling raises is that “those who support any one measure will feel obliged to vote for the other in order to secure passage of the measure they favor.” Ryan v. Gonzales, 114 N.M. 346, 347, 838 P.2d 963 (1992). The New Mexico Supreme Court has noted that logrolling induces fraud and makes it “uncertain whether ... two or more propositions could have been carried by vote had they been submitted singly.” State ex rel. Clark v. State Canvassing Bd., 119 N.M. 12, 15, 888 P.2d 458 (1995) (citations omitted).

The New Mexico Supreme Court has held that logrolling is impermissible under provisions of the New Mexico Constitution that restrict state and local government indebtedness. The leading case is Lanigan v. Town of Gallup, 17 N.M. 627, 131 P. 997 (1913), where the Court addressed the propriety of a ballot question in a municipal bond issue election under Article IX, Section 12. Under that provision, municipalities were prohibited from contracting debt “except by ordinance ... which shall specify the purpose to which the funds to be raised shall be applied...” (emphasis added). The ballot question at issue in Lanigan was posed as a “joint proposition” to issue bonds “for the double purpose of constructing a water works system and building a system of sewers.” Id. at 642. The Court determined that “the two propositions should have been separately submitted so that the voter could have expressed his choice upon each question independent of the other.” Id. at 644. Accord Ryan v. Gonzales, 114 N.M. at 348 (construing Art. IX, § 8, which prohibits state debt unless “authorized by law for some specified work or object”); Carper v. Board of County Comm’rs of Eddy County, 57 N.M. 137, 145, 255 P.2d 673, 678 (1953) (construing Art. IX, § 10 and implementing statute to require that a petition for a county bond election on the construction of two hospitals set forth “the construction of each hospital ... as a separate and independent proposition”).

The Supreme Court has similarly held that the state constitution prohibits logrolling in elections on proposed amendments to the state constitution. See State ex rel. Clark v. State Canvassing Bd., 119 N.M. 12, 888 P.2d 458 (1995); State ex rel. Chavez v. Vigil-Giron, 108 N.M. 45, 766 P.2d 305 (1988); City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967). The Court’s opinions on this issue stem from the express terms of Article XIX, Section 1, which provides, in pertinent part: “If two or more amendments are proposed, they shall be so submitted as to enable the electors to vote on each of them separately....” The Court has affirmed that “the constitutional prohibition against joinder goes to heart of the amendment process mandated by the people in the adoption of their Constitution.” Chavez, 108 N.M. at 48. The prohibition applies when a proposed amendment has more than one object: “when distinct changes to the Constitution are not dependent on each other, and there is no direct, necessary or logical connection between the operation of each, they should be submitted separately to the voters.” Id.

#### Logrolling in Elections to Amend an Incorporated County Charter

There are no constitutional or statutory requirements for amending the Los Alamos County Charter that are comparable to those addressed in the above-cited cases.

Article X, Section 5 of the state constitution, which governs incorporated counties such as Los Alamos County, simply states that the “charter of an incorporated county shall be amended in accordance with the provisions of the charter.” On its face, Article X, Section 5 does not limit or control the procedures for amending an incorporated county’s charter. As a result, state law does not require an incorporated county to submit proposed charter amendments to the electorate for approval or, if it does, prohibit the county from proposing amendments with multiple objects.

The drafters of the Los Alamos County Charter opted to require an election on proposed amendments to the Charter. See County Charter, Article IX, Section 900. Because, as discussed above, state law does not govern the proper interpretation and application of Section 900, the issues raised in your request are outside the province of the Attorney General’s Office. Whether Section 900 should be construed to prohibit logrolling generally and whether the proposed amendments described in your request comply with Section 900 are questions best addressed by the Los Alamos County Council with the assistance of the County Attorney.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ELIZABETH A. GLENN  
Deputy Attorney General

[1] We understand that the County Council has decided not to proceed with the ballot questions at this time but still would like our advice. Telephone conversation with Mary M. McInerny, County Attorney (May 10, 2010).