

March 21, 2005: Branch Community College Election Using Single Member Districts

The Honorable Timothy Z. Jennings
State Senator
P.O. Box 1797
Roswell, NM 88202-1797

RE: Opinion Request on Branch Community College Board

Dear Senator Jennings:

You requested our advice on whether the board of the branch community college at Eastern New Mexico University – Roswell (“Board”) could hold an election using single member districts. Your letter likewise notes, by way of contrast, that the Community College Act allows other sorts of community colleges to use single-member districts. NMSA 1978, § 21-13-8.1 (1987). Your question requires us to construe the election section of the branch community college provisions, NMSA 1978, § 21-14-2.1 (1985). As discussed below, we believe that the election about which you inquire may not utilize single-member districts.

First, there appears to be no question that § 21-14-2.1 – not § 21-13-8.1 – controls. Branch community colleges are governed by §§ 21-14-1 to –15; community colleges other than branch community colleges are covered by the Community College Act (“CCA”), NMSA 1978, § 21-13-1 to -26. The branch community college provisions provide in pertinent part: the majority of the local board of education or the combined boards of education acting as a single board shall elect five persons as members of the branch community college board. The persons elected shall be assigned position numbers one through five. . . . The members of the board shall continue to serve until the next regular branch community college election . . . at which time five board members shall be elected by the registered voters of the branch community college district. § 21-14-2.1(A) (emphasis added). The unambiguous language of this section clearly establishes that all five board members must be elected at large, and not within single-member districts. When statutory language is clear and unambiguous, courts give “effect to that language and refrain from further statutory interpretation.” *State v. Jonathan M*, 109 N.M. 789, 790, 791 P.2d 64, 65 (1990). Moreover, the words “[s]hall” and “must” express a duty, obligation, requirement or condition precedent.” NMSA 1978, § 12-2A-4 (1997).

Even if the statute were ambiguous, and further interpretation required, the result would be the same. Under doctrine of *expressio unius est exclusio alterius*, where a legislature provides authority to do a particular thing and the mode of doing it, the legislature did not intend to include other modes. *Bettini v. City of Las Vegas*, 82 N.M. 633, 635, 485 P.2d 967 (1971). If the legislature had intended to grant authority for single member districts, it could have done so expressly. Compare § 21-13-8.1 (“The community college board of any community college organized pursuant to the Community College

Act may . . . establish a governing board composed of five or seven members elected from single-member districts for staggered terms.”) (emphasis added); § 21-16-5.1 (Regarding technical and vocational schools, “[a] district board shall be composed of five or seven members elected for four-year terms who shall reside in and be elected from single-member districts as provided in this section.”) (1994, as amended through 2000) (emphasis added).

While we appreciate the Board’s desire for proportional representation, we have found no legal authority to suggest that, notwithstanding § 21-14-2.1(A), the Board may utilize single member districts. Absent express or implied statutory authorization to that effect, the use of single member districts would be improper.

We hope this response is helpful. If we may be of further assistance, please let us know. You requested a formal Attorney General’s Opinion on the matter discussed above. Such an opinion would be a public document available to the general public. Although we are providing our legal advice in the form of a letter instead of an Attorney General 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,

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cc: Stuart M. Bluestone, Chief Deputy Attorney General