

May 03, 2006 Term limits for elected municipal officials

The Honorable Don Tripp
New Mexico House of Representatives
P.O. Box 1369
Socorro, New Mexico 87801

RE: **Opinion Request – Term limits for elected municipal officials**

Dear Representative Tripp:

You have requested our opinion regarding whether term limits apply to municipal elected officials. As discussed below, after reviewing the New Mexico Constitution, statutory provisions and case law, and on the information available to us, we believe that term limits for municipal elected officials are illegal under New Mexico law. The New Mexico Court of Appeals reached the same conclusion in the 1995 Cottrell v. Santillanes case.

The rationale for the conclusion is based on Article VII, Section 2(A) of the New Mexico Constitution, which lists the eligibility requirements for holding any elective office in the state. “Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any elective public office except as otherwise provided in this constitution.” The term “qualified” has been interpreted to mean “eligible”. See, Gibbany v. Ford, 29 N.M. 621, 225 P. 577 (1924). This “Qualifications Clause” gives every person with the necessary qualifications the right to hold office. In Gibbany, the Supreme Court stated that “[t]he Legislature has no power to add restrictions upon the right to hold office beyond those provided in the Constitution, because the constitutional provision [Article VII, §2] is not a negative one, providing that no person shall be eligible to hold an office unless he possess certain qualifications, as is often the case in other states, but is a positive provision, giving the right to every person possessing the qualifications therein set forth to hold office, except as otherwise provided in the Constitution itself. Manifestly therefore, the Legislature is without power to make added restrictions as a qualification to the right to hold the office of [city councilor]. To permit it to do so would authorize the super-addition of requirements to hold office beyond those provided by the Constitution.” *Id.* at 625.

The only New Mexico case addressing the constitutionality of term limits and the ability of a home rule municipality to amend its charter accordingly is Cottrell v. Santillanes, 120 N.M. 367, 901 P.2d 785, 787 (Ct. App., 1995). In Cottrell, Albuquerque, a home rule municipality, amended its city charter to limit city councilors to two terms. The District Court upheld the language but the Court of Appeals held that Article VII, Section 2 of the New Mexico Constitution preempted a home rule municipality’s power to adopt additional qualifications of elected office within the state beyond those set forth in the New Mexico Constitution. Cf. Dutmer v. City of San Antonio, 937 F.Supp. 587 (1996)(term limits held constitutional as Texas Constitution allowed home rule city charter to provide for length of term of office.)

The Supreme Court has held that it is only through a constitutional amendment that additional qualifications for holding elective office could be adopted. Gibbany, at 625 . The Legislature or a home rule municipality is without power to add any restrictions as a qualification to the right to hold office. See Cottrell. See also N.M. Att'y Gen. Op. 85-4 (1985). (Municipality cannot add additional qualification that barred incumbent councilors from running for mayor.) Therefore, the City does not have the power under the statute to adopt any additional requirement to the elected municipal officers for term limits.

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 public 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,

Mona N. Valicenti
Assistant Attorney General

cc. Stuart Bluestone, Chief Deputy Attorney General