

## May 05, 2006 Independent Candidates for County Commission

Honorable Gloria Vaughn  
N.M. House of Representatives  
503 E. 16th Street  
Alamogordo, NM 88310-6606

Re: **Request for Opinion -Independent Candidates for County Commission**

Dear Representative Vaughn:

You have requested our advice regarding whether an independent candidate for county commission must reside within the county commission district. You have also asked whether an independent candidate for county commission must reside within that district by a certain date. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us, we conclude that an independent candidate for county commission must reside within the county commission district and must reside within that district prior to filing a declaration of candidacy.

There are two rules of statutory construction that apply to this matter. First, a statute should be read according to its plain, written meaning. See Wilson v. Denver, 125 N.M. 308, 314, 961 P.2d 153 (1998). Second, "[a] fundamental rule of statutory construction is that all provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent." Roth v. Thompson, 113 N.M. 331, 334, 825 P.2d 1241 (1992).

The New Mexico Legislature has stated in plain language that a county commission candidate must reside within the county commission district. A commissioner "shall be a resident of the district from which he is elected." NMSA 1978, Section 4-38-3(A), (B) (2002). The New Mexico Supreme Court has upheld this position. See Velasquez v. Chavez, 102 N.M. 54, 691 P.2d 55 (1984) (ruling that a county commission candidate must reside in the district); State ex rel. Rudolph v. Lujan, 85 N.M. 378, 379, 512 P.2d 951 (1973) (candidates for county commission "were required to be resident of the districts from which they sought election."). The rationale is that "requiring candidates to be residents of the district from which they seek election 'insure[s] that each elected commissioner has knowledge of the problems and needs of the district'...." Velasquez v. Chavez, 102 N.M. 54, 55, 691 P.2d 55 (1984).<sup>1</sup>

The New Mexico Legislature has also stated in plain language the date a candidate running for county commission must begin to reside within the county district. "No person shall become a candidate ... [to] have his name printed on the primary election ballot unless his record of voter registration shows his residence in the district of the office for which he is a candidate on the date of the governor's proclamation...." NMSA 1978, Section 1-8-18(A)(2) (1981) (emphasis added). The date of the governor's proclamation is "the last Monday in January...." NMSA 1978, Section 1-8-12 (1983).

Therefore, a candidate's voter registration must show a residence within the district prior to the last Monday in January.<sup>2</sup> However, this statute applies to candidates for a primary election. An independent candidate is a special type of candidate because he is not affiliated with any party that holds a primary election. Indeed, "an independent candidate means a person who is a candidate without party affiliation for an office to be voted on at a general election...." NMSA 1978, Section 1-8-45(A) (1993). Therefore, the plain language does not explain when an independent candidate must reside within a county commission district.

In the absence of plain meaning, one rule of statutory construction is to read several relevant statutes together in order to ascertain the legislative intent. See Roth v. Thompson, 113 N.M. 331, 334, 825 P.2d 1241 (1992). "An independent candidate means a person ... who is a qualified elector registered to vote in New Mexico at the time of filing the declaration of independent candidacy...." NMSA 1978, Section 1-8-45(C) (1993) (emphasis added). An independent candidate must affirm: "I desire to become a candidate ... [and] I actually reside within the district for which I declare my candidacy." NMSA 1978, Section 1-8-48(B)(1998) (emphasis added). An independent candidate must file the declaration of candidacy "on the day following the primary election." NMSA 1978, Section 1-8-52(A) (2005) (emphasis added). Based on reading these statutes together, an independent candidate for county commission must reside within the district when he files his declaration of candidacy (i.e. the day following the primary election).

This interpretation is consistent with the Secretary of State's implementation of the law. The Secretary of State has used the declaration of candidacy forms found in NMSA 1978, Sections 1-8-29, 1-8-48 to provide a printable, up-to-date form for use by candidates. For example, its form for a major party candidate requires a candidate to affirm: "I actually reside at the address designated on my certificate of voter registration." See Secretary of State Form NME 43-P2006, Declaration of Candidacy. Its form for minor party and write-in candidates requires affirmation that: "I reside in that district since the date of the Governor's primary election proclamation." See Secretary of State Forms NME 43M-G2006 & NME 43 WI-P2006, Declaration of Candidacy Minor Party, Declaration of Intent to Be a Write-In Candidate (emphasis added). Its form for independent candidates requires affirmation that: "I actually reside within the district for which I declare my candidacy." See Secretary of State Forms NME 43I-G2006. Therefore, an independent candidate for county commission must reside within the county commission district and must establish residency within that district prior to filing the declaration of candidacy.

An independent candidate, however, should be aware that the date for establishing party affiliation follows the general rule for major party candidates. An independent candidate must affirm: "I have declined to designate my party affiliation as shown by my certificate of registration and I have not changed such declination subsequent to the date of issuance of the governor's proclamation." NMSA 1978, Section 1-8-48(B) (1998) (emphasis added); see also N.M. Att'y Gen. Op. 80-26 (1980) (a candidate whose affidavit of registration showed membership in a major party on the date of the

governor's proclamation was precluded from filing his declaration of candidacy as an independent).

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with 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 general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,

Zachary Shandler  
Assistant Attorney General

cc: Stuart Bluestone, Chief Deputy Attorney General

[1] A determination of residency is based on a set of statutory criteria. See NMSA 1978, § 1-1-7 (1973); see also *Vigil v. Duran*, D-430-CV-2006-16 (4th Judicial District Court 2006) (county commission candidate cannot run in District 1 if he is registered to vote in District 3); *Apodaca v. Chavez*, 109 N.M. 610, 788 P.2d 366 (1990) (county commission candidate can run because his second home is in the county and it is where he is registered to vote, receives mail, and intends to make his permanent residence); *Thompson v. Robinson*, 101 N.M. 703, 688 P.2d 21 (1984) (a candidate whose certificate of registration listed an address in the district, but who actually resided outside the district was disqualified from running for state senate).

[2] Please note, we could not find a judicial decision on whether a candidate can move from Place A to Place B within the district between the governor's proclamation and the filing of the declaration of candidacy. Cf. N.M. Att'y Gen. Op. No. 66-30 (1966) (a candidate for county commission may move within the district up to the date of filing his declaration of candidacy) (decided upon partial reliance of superseded law). On one hand, Section 1-8-18 states that no person shall become a candidate unless his "record of voter registration shows...residence in the district" on the date of the governor's proclamation. NMSA 1978, Section 1-8-18 (1981). The law does not use the verb "match" residence. On the other hand, NMSA 1978, Section 1-8-29 requires the candidate to affirm that: "I actually reside at the address designated on my certificate of voter registration."