

## October 31, 2005: Taxpayer Elector of Water and Sanitation District

Honorable Vernon Asbill  
New Mexico State Senate  
1502 Mountain Shadow  
Carlsbad, NM 88220

Re: **Request for Opinion – Taxpayer Elector of Water and Sanitation District**

Dear Senator Asbill:

You have requested our advice regarding the term “taxpayer elector of a district” as found in the Water and Sanitation District Act (“Act”), NMSA 1978, Sections 73-21-1 to – 55 (amended through 2005). The 2005 New Mexico Legislature amended this term in NMSA 1978, Section 73-21-4(D) to allow residents and nonresidents to vote in the district elections. More specifically, you have asked: (a) can Water and Sanitation District boards (“WSD boards”) require a nonresident to submit a certificate of eligibility form? (b) can WSD boards require this form be submitted fifteen (15) days-to-sixty (60) days prior to the election? (c) can WSD boards accept a real estate contract as evidence of eligibility? Is there a chance for fraud? (d) can WSD boards accept the eligibility of a person who timely pays a standby payment for someone else’s rates, tolls, or charges? (e) can WSD boards accept the eligibility of a corporation or trust? 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 the Act authorizes WSD boards to create procedures for handling these matters.

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, rules must be consistent with the directions of the governing statute. Chalamidas v. Environmental Improvement Div., 102 N.M. 63, 66, 691 P.2d 64 (Ct. App. 1984).

Our research shows that the prior definition of “taxpayer elector of a district” in the Act made no mention of resident or nonresident status. See NMSA 1978, Section 73-21-4(D) (1985). In 1999, the New Mexico Court of Appeals opined that the term meant only residents. See Hughes v. Timberon Water and Sanitation District, 128 N.M. 186, 189, 991 P.2d 16 (1999) (the Act used “interchangeably the phrases ‘taxpaying elector of a district’ and ‘taxpaying elector residing within the district,’ and like terms”). In 2005, the Legislature amended the definition to read:

D. “taxpaying elector of a district”, “qualified elector” or “elector” means a person, [qualified] registered to vote [at general elections] in any precinct in the state, who:

(1) is a resident of the district;

(2) is a nonresident of the district who pays, or will be liable for paying, rates, tolls or charges set by the board; or

(3) is a nonresident of the district who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding a designated time or event or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding a designated time or event.

NMSA 1978, Section 73-21-4(D) (2005) (underline and strikethrough added). The Legislature also deleted language in the statute for “taxpaying elector ~~residing within of~~ the district” and “taxpaying elector ~~residing within the boundaries~~ of the district” in order to have every reference read “taxpaying elector of the district.” NMSA 1978, Section 73-21-9(A), (F), (H) (2005) (underline and strikethrough added).

The Act further states: “the board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication and shall arrange such other details in connection therewith as the board may direct.” NMSA 1978, Section 73-21-14 (1985).<sup>1</sup> Based on this statutory authority, it appears that WSD boards may create procedures for handling and determining the eligibility of nonresident voters.<sup>2</sup> For example, it appears permissible for WSD boards to create procedures governing whether a nonresident must submit a certificate of eligibility prior to the election. It also appears permissible that WSD boards may create procedures where a real estate contract can be evidence of eligibility. See NMSA 1978, Section 73-21-4(D)(3) (2005) (“who is purchasing real property within the district...”). If the Legislature had been concerned about the potential for fraud with real estate contracts (i.e. a voter intentionally revokes the contract after the election) it could certainly have deleted this provision as part of the 2005 amendments.

Each special district statute is unique in its plain language. For example, the plain language of NMSA 1978, Section 73-21-4 uses the phrase “a person registered to vote.” Thus, it is permissible for WSD boards to create procedures for those persons (as opposed to a corporation or trust) who are registered voters in a General Election. The statute also uses the phrase “nonresident of the district who pays, or will be liable for paying, rates, tolls or charges.” This means it is permissible for WSD boards to create procedures for a voter who fits within these requirements.<sup>3</sup>

In sum, we conclude that the Act authorizes WSD boards to create procedures for handling these matters as long as the procedures are consistent with the plain language of the law.

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  
Sam Thompson, Attorney General Public Information Officer  
Don Trigg, Assistant Attorney General

[1] The initial organizational election and selection of board members is administered through a petition and a court order. See NMSA 1978, Section 73-21-9 (A) –(F) (amended through 2005). After this election, WSD boards run the election. See NMSA 1978, Section 73-21-14 (1985).

[2] Your letter notes that municipalities have a statutory procedure for defining and certifying a “nonresident municipal elector” in municipal elections involving the creation of debt. See NMSA 1978, Section 3-30-2 to –4 (1965). Our research shows that very few special districts distinguish between a “resident” taxpayer/property owner and a “nonresident” taxpayer/property owner. The term “nonresident” is found in the statutes for: (a) Drainage District, NMSA 1978, Section 73-6-5 (1953) (regarding notice to nonresident landowners of a petition for creation of a district); (b) Conservancy District, NMSA 1978, Sections 73-18-30 (1993) (“the board of directors of the conservancy district shall, by resolution, adopt a plan with necessary rules and regulations by which nonresident owners of class ‘A’ lands or other owners of class ‘A’ lands, who are unable to personally attend the election, may vote for directors....”); and (c) Soil and Water and Water Conservation District, Section 73-20-27(E) (1997) (defining a landowner as a resident and nonresident).

[3] It may also be prudent for WSD boards to work together to create one template for a uniform application of NMSA 1978, Section 73-21-4.