

**October 4, 2010 Advisory Letter---Residency Requirement/Board of Regents
NNMC**

September 30, 2010

The Honorable Debbie Rodella
New Mexico State Representative
16 Private Drive 1156
Española, NM 87532

Re: Opinion Request—NMSA 1978, Section 21-1-15

Dear Representative Rodella:

You have requested our advice about the residency requirement provided for the Board of Regents for the Northern New Mexico College (“NNMC”). Your letter asks: (1) Is El Rito, New Mexico the legal seat of NNMC? (2) Is the city or town based on the constitutional provisions or any other aspect of the law or on the basis of any court pertinent rulings? (3) By virtue of the creation/existence of a campus of NNMC in Espanola (now the site of the defacto primary administrative offices of the school) does Espanola now qualify--regardless of the constitutional provision cited above—as the legal seat of NNMC? (4) Does the law, in fact, require that at least one member of the NNMC Board of Regents be a resident of the community of El Rito? (5) Would a member of the NNMC Board of Regents residing in Espanola (or any other community distant from El Rito) meet the eligibility requirement for a member who must be a resident of the town or city at or near which the institution is located? (6) Does the community of El Rito qualify as a city or town as those terms employed in the statute? (7) Since El Rito is not an incorporated community with precisely defined boundaries, how would residency in El Rito be determined for purposes of determining eligibility for membership on the NNMC Board of Regents?

Based on our examination of the relevant New Mexico law and on the information available to us at this time, we conclude that the above-cited requirements are met if one NNMC Board of Regent member resides in or near El Rito or in or near a town or city, where any campus of NNMC is located, such as Espanola.

There are two different approaches to reach this conclusion. First, one could assert that the state constitution provides that NNMC is located at El Rito, New Mexico. Under Article XII, Section 11:

The university of New Mexico, at Albuquerque; the New Mexico state university, near Las Cruces...the northern New Mexico state school [northern New Mexico college], at El Rito, formerly known as Spanish-American school; are hereby confirmed as state educational institutions.

(Emphasis added).

The constitution states that the legislature “shall provide for the control and management of each of said institutions...by a board of regents for each institution, consisting of five members....” N.M. Const. art. XII, § 13. It further provides that the “governor shall nominate and by and with the consent of the senate shall appoint the members of each board of regents of each of said institutions.” *Id.* The legislature, in turn, has enacted a law that reads: “At least one member of the ... [Board of Regents] shall be a resident of the town or city at or near which the institution is located.” NMSA 1978, § 21-1-15 (1889, amended through 1953). The legislature, however, did not provide a definition for “at” or “near” in the law. One rule of statutory interpretation is that language should be read according its ordinary and plain meaning unless the legislature indicates a different interpretation is necessary. See Cooper v. Chevron, 2002-NMSC-020, 132 N.M. 382, 388. The plain dictionary meaning of “at” is “in, on, or near” and the definition of “near” is “at a short distance.” **Webster’s Ninth New Collegiate Dictionary** 325, 37, 393 (9th ed. 1983). Therefore, we conclude that Section 21-1-15 means that at least one NNMC Board of Regent member may live in or a short distance away from El Rito, New Mexico.[1] It is reasonable to conclude that Espanola is a short distance away and thus Espanola is a permissible place for the board of regent member to reside.

The second approach reaches the same conclusion. Section 21-1-15 states that one member of the board of regents shall be a resident of the town or city at or near which the institution is located. The law does not restrict the location of the institution to that listed in the constitution. The “[p]rinciples of statutory construction require that a statute be interpreted with logic and common sense to avoid an absurd result.” State v. Portillo, 110 N.M. 135, 137, 793 P.2d 265 (1990). We note that Section 21-1-15 was first adopted in 1889 and thus it is unlikely that the territorial legislature could have foreseen the development of New Mexico cities and the development of branch institutions, branch campuses and shared campuses. Therefore, we conclude that the statutory requirements are met if one board member resides in or near a town or city where any branch campus of NNMC is located. Thus, Espanola is a permissible place for the board of regent member to reside.

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

[1] Based on our above-stated conclusions, this letter does not have to address the status of El Rito as a city/town or the status of its boundaries, or whether it is the “legal seat” of NNMC.