

Opinion No. 03-05

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OPINION OF: PATRICIA A. MADRID, Attorney General

BY: Zachary Shandler, Assistant Attorney General

TO: The Honorable Cisco McSorley, State Senator, 500 Tijeras NE, Albuquerque, NM 87102

QUESTION

Are the commissioners of the Public Regulation Commission ("PRC") who served a two-year term in 1998, and then were re-elected to a four-year term in 2000, eligible to run for another four-year term in 2004?

CONCLUSION

A PRC commissioner elected to consecutive two-year and four-year terms may not now run again for another four-year term until one full term has intervened.

FACTS AND BACKGROUND

The New Mexico Constitution, Article XI, Section 1 sets forth the terms for PRC commissioners and limits them to two consecutive terms. The provision states in full as follows:

The "public regulation commission" is created. The commission shall consist of five members elected from districts provided by law for staggered four-year terms beginning on January 1 of the year following their election; provided that those chosen at the first general election after the adoption of this section shall immediately classify themselves by lot, so that two of them shall hold office for two years and three of them for four years; and further provided that, after serving two terms, members shall be ineligible to hold office as a commission member until one full term has intervened.

N.M. Const. art. XI, § 1. The Legislature has enacted NMSA 1978, Section 8-7-4(A) (2001), which implements the constitutional directive with similar language. It provides, in pertinent part, as follows:

[Commissioners elected at the 1998 election] shall classify themselves by lot so that two commission members shall initially serve terms of two years and three commission members shall serve terms of four years. Thereafter, all commission members shall serve four-year terms. After serving two terms, a commission member shall be ineligible to hold office....

Commissioners who were elected in 1998, the first election for the PRC, drew lots as required by the Constitution to determine who would serve the initial two-year, rather than four-year, terms. The two commissioners who drew the initial two-year terms were re-elected in 2000. The question now posed is whether these two commissioners, who have now served two consecutive terms -- one for two-years and one for four-years -- can run again for re-election in 2004 (another consecutive four-year term) and thus serve a total of 10 consecutive years in office.

ANALYSIS

A fundamental principle of constitutional and statutory construction is to interpret provisions in laws to give maximum effect to each, and to read provisions together as harmoniously as possible. **See High Ridge Hinkle Joint Venture v. City of Albuquerque**, 126 N.M. 413, 415, 970 P.2d 599 (1998). When applying this precept to the governing constitutional and statutory provisions at issue here, the most reasonable conclusion is that the Constitution sets out two relevant general rules for PRC commissioners: (a) they are limited to serving two consecutive terms; and (b) the terms will be staggered four-year terms. The Constitution, however, contains an exception to the latter general rule, which provides that the PRC commissioners who were first elected in 1998 had to draw lots to determine which two of them would hold office for only two years in their first term.

This exception was established so the PRC terms from then on could be staggered, so that in each general election every two years no more than three of the commissioners would be up for election at the same time. The first election of PRC commissioners in 1998 was thus held with the knowledge that two of those commissioners would be limited, as determined by the random drawing of lots, to only a two-year term. The Constitution limits all PRC commissioners to serving only two consecutive terms, and it does not, by any express terms, specify that the initial two-year term was not a term subject to the two consecutive term limit.

Instead, the Legislature and voters are presumed to know how to craft constitutional language to accord with their will. **See Bettini v. City of Las Cruces**, 82 N.M. 633, 635, 485 P.2d 967 (1971). Article XI, Section 1's language demonstrates that they could have, but did not, expressly choose to count only four-year terms for the term limit rule. In fact, they have a history of enacting express constitutional and statutory language when they want to consider only four-year terms for purposes of term limits. See N.M. Const. art. X, § 2. [1] Given that the drafters of Article XI, Section 1 did not, as they did in the other constitutional provisions, expressly limit the specific term limits to four-year terms, the most reasonable interpretation is that the limits apply to both two-year and four-year terms.

In addition, the statutory language demonstrates that legislators could have, but did not, expressly choose to count only four-year terms. The Legislature had a further opportunity to clarify this matter in enacting NMSA 1978, Section 8-7-4(A). This law, in pertinent part, reads:

[T]wo commission members shall initially serve **terms** of two years and three commission members shall serve **terms** of four years. Thereafter, all commission members shall serve four-year **terms**. After serving **two terms**, a commission member shall be ineligible to hold office....

NMSA 1978, § 8-7-4(A) (2001) (emphasis added). First, the Legislature could have inserted "consecutive four-year" between "two" and "terms" in the third sentence. It did not. We believe that this word choice is significant and suggests that the Legislature's understanding of Article XI, Section 1's term limits is the same as described above. Second, the statutory language also expressly states that "two commission members shall initially serve **terms** of two years and three commission members shall serve terms of four years." NMSA 1978, § 8-7-4(A) (2001) (emphasis added). The initial two-year period for two of the commissioners was thus described as a term [2] , albeit a shortened one. The statute then also confirmed, consistent with the Constitution, that "after serving two terms, a commission member shall be ineligible to hold office" until an intervening term was completed. *Id.* Finally, the statute uses the word "terms" interchangeably within the three phrases "terms of two years" and "terms of four years" and "serving two terms." All of these reasons give further weight to the proposition that "two" or "four" year terms should be viewed synonymously during the initial years (as part of setting up the staggered system).

While the Legislature and voters are presumed to be aware of what they are doing in adopting constitutional language, public officials should also likely be presumed to be aware of the limits of their offices. [3] We note that the issue presented here does not involve a person who has been appointed to fill or is a successor to an unexpired term of a previously elected official. Instead, this concerns only officials elected to the PRC who were elected during two consecutive elections, who ran for election knowing there was a two-term limit, and who knew that in the initial election two officials would be limited in their first term to only two years in office.

In conclusion, the Constitution, as confirmed by the implementing statute, limits two initially elected PRC commissioners to two consecutive terms of two-years and four-years. The most reasonable way to read these provisions is to recognize both the general term limit rule and the specific exception for the first two commissioners chosen by lot to serve a first term of only two-years. Any other reading would seem to undermine the Constitution's and the statute's plain terms and provisions for setting up staggered terms with a two consecutive term limit. This means that Article XI, Section 1 precludes a commissioner who has served a two-year term and a four-year term consecutively from serving another four-year term "until one full term has intervened."

[1] The original version of Article X, Section 2 read: "All county officers shall be elected for a term of two years, and after having served **two consecutive terms**, shall be ineligible to hold any county office...." N.M. Const. art. X, § 2 (amended 1992, 1998) (emphasis added). In 1992, the voters amended it to provide for four-year terms for county officers and that: "All county officers ... after having served **two consecutive four-year terms**, shall be ineligible to hold any county office...." *Id.* § 2(D) (emphasis

added). In contrast, Article XI, Section 1 reads: "serving **two terms**...." N.M. Const. art. XI, § 1 (emphasis added).

[2] We believe that Article XI, Section 1's requirement that two commissioners "hold office for two years" is the same as requiring that they serve "two-year terms." **See Denish v. Johnson**, 121 N.M. 280, 286, 910 P.2d 914 (1996) (defining "term" as "the fixed period of time the appointee is authorized to serve in office.").

[3] Case law explains why some public officials have been allowed to serve for a two-year term and two four-year terms. **See Morris v. Gonzales**, 91 N.M. 495, 576 P.2d 755 (1978) (a county commissioner's prior position, and service, was effectively abolished by constitutional change and a new term limit started with the new position and thus a commissioner could serve a two-year term and two four-year terms). **See also** N.M. Att'y Gen. Op. No. 89-28 (1989) (same proposition).