

Opinion 12-05

OPINION OF: GARY K. KING, Attorney General

August 16, 2012

TO: The Honorable Dianna Duran, Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501

BY: Elizabeth A. Glenn, Deputy Attorney General

QUESTION:

May a municipality propose a question on the statewide general election ballot?

CONCLUSION:

No. Questions on a general election ballot are limited to those the law authorizes for submission to voters in a general election under the New Mexico Election Code.¹ A municipality has no legal authority to submit questions to voters of the municipality on a general election ballot. Nevertheless, a municipality may submit a question to voters of the municipality on a municipal election ballot in a municipal election held on the same day as a general election.

ANALYSIS:

The New Mexico Election Code, NMSA 1978, Chapter 1 (1969, as amended through 2011), applies to general elections, primary elections, statewide special elections, elections to fill vacancies in the office of representative in Congress and school district elections. NMSA 1978, § 1-1-19(A). The Election Code generally does not apply to municipal elections. Certain provisions of the Code may apply to “municipal officer or municipal bond elections,” but only to the extent that the “separate laws” governing those elections incorporate, adopt by reference or do not specify procedures set forth in the Code provisions. Id. § 1-1-19(B).

State law dictates the candidates and questions that may be decided by the voters in a general election or other election covered by the Election Code. A general election ballot includes candidates for president and vice-president, U.S. senator, U.S. representative, elected statewide office, state senators and representatives, elected district offices, including district judges, and elected county officials. See NMSA 1978, Section 1-10-8. The Election Code also specifies the form of ballot for proposed state constitutional amendments, “questions other than proposed constitutional amendments to be submitted to the voters of the entire state,” and “questions not statewide in application to be submitted to the voters of the county.” Id. §§ 1-16-5, 1-16-8.

Under the Election Code, ballot questions submitted to voters are necessarily limited to those that are decided in an election covered by the Code. As noted above, the Election Code does not cover municipal elections. For municipalities that have not adopted home rule charters, “all aspects of all municipal elections” are governed by the Municipal Election Code, NMSA 1978, Chapter 3, Articles 8 and 9 (1985, as amended through 2009).² See NMSA 1978, § 3-8-1(E). The Municipal Election Code does not apply to a home rule municipality unless it has adopted the Code by reference. Municipal elections conducted by home rule municipalities are governed by the applicable provisions of their charters or ordinances.

“All aspects” of a municipal election covered by the Municipal Election Code include the submission of ballot questions. Those questions are included on the municipal election ballot, as provided in the Municipal Election Code. Id. § 3-8-29(E) (requiring the municipal clerk “to place on the ballot any question in the order designated by the governing body”). See also id. § 3-8-26(B) (municipal election resolution must include any “questions to be submitted to the voters”).

Unless otherwise provided by law, “a municipal election may be held concurrently with, but shall not be held within forty-two days prior to or within thirty days after, any statewide special, general or primary election....” NMSA 1978, § 3-8-9(A). This provision authorizes a municipality to submit a question to municipal voters in a municipal election held on the same day as a general election. The Municipal Election Code provides that when concurrent elections are held:

publications, notices, selection of precinct boards, election schools, ordering election supplies, conduct of the election, canvassing, record keeping and all other election matters shall be conducted to comply with all election requirements for each such election as if it were held separately. However, any requirement may be satisfied by a combined action if such action would satisfy the requirements set by law for each individual election. Allowable combined actions include but are not limited to, combined:

- (1) publications;
- (2) notices;
- (3) appointment of precinct boards;
- (4) ordering of election supplies;
- (5) conduct of election;
- (6) canvassing; and
- (7) record keeping.

Id. § 3-8-9(C).

Although the Municipal Election Code provides legal authority for conducting a municipal election concurrently with a general election, the municipality's governing body is responsible for deciding when to conduct a municipal election, based on its evaluation of the necessity for the election, available financial and personnel resources and other policy considerations.

Gary K. King
Attorney General

Elizabeth A. Glenn
Deputy Attorney General