

March 26, 2007

Via Facsimile (505) 821-0106 and
(505) 986-4610

The Honorable Larry A. Larrañaga
State Representative - District 27
7716 Lamplighter, NE
Albuquerque, New Mexico 87109

Re: Opinion Request – Legislative Authority to Override Veto during Special Session

Dear Representative Larrañaga:

You have asked whether the Legislature may override a veto of any legislation passed by the First Regular Session of the 48th Legislature during this First Special Session of the 48th Legislature, which is currently underway. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, we conclude that the Legislature may override a veto of legislation only if the legislation in a special session relates to an object specified in the Governor's proclamation for the special session.

While it is well established that the legislature has the constitutional authority to override a governor's veto by a two-thirds vote, it may do so only in the context of its lawmaking authority.¹ See N.M. Const., art. IV, § 22; see also State ex rel. Taylor v. Johnson, 125 N.M. 343, 354 (1998). The Legislature's authority to enact laws during a special session is limited by Article IV, Section 6 of the New Mexico Constitution. It states in relevant part:

Special sessions of the legislature may be called by the governor, but **no business shall be transacted except such as relates to the objects specified in this proclamation.**

(emphasis added).

¹ When the Legislature overrides a governor's veto, it is in essence enacting new law. See N.M. Const. art. IV, § 22.

Under the rules of constitutional construction, if the language of the constitution is plain, definite, and free from ambiguity, the intent is to be found in the instrument itself, and it is not necessary to resort to such extrinsic aids as the conditions of its adoption. City of Farmington v. Fawcett, 114 N.M. 537, 544, 843 P.2d 839 (Ct. App.), cert. quashed 114 N.M. 432 (1992) (citations omitted).

Applying these rules of construction, we find the language of Article IV, § 6 unambiguous and clear. It unmistakably provides that the Legislature may act only on those bills that are related to the objects or purposes specified in the governor's proclamation for a special session. Even though New Mexico courts have not interpreted this specific provision, courts in other jurisdictions with similar provisions have concluded that a legislature may not act on bills that are not related to the objects or purposes specified for the special session. See, e.g., Commonwealth v. Sanders, 743 A.2d 970, 971-2 (PA. 1999) (amendments to Post Conviction Relief Act (PCRA) were not outside scope of designated matter of legislature's special session and thus, did not violate constitutional prohibition against legislation on subjects outside parameters of special session where governor's proclamation sought to toughen criminal laws, and resulting legislative process involved revising postconviction relief statutes); Arrow Club Inc. v. Nebraska Liquor Control Comm'n, 131 N.W.2d 134 (Neb. 1964) (the Legislature while in special session can transact no business except that for which it was called together); see also N.M. Atty. Gen. Op. 78-4 (1978) (in special session of legislature convened pursuant to Article IV, Section 6, the Legislature may not consider amendment to a bill when such amendment is not related to the purpose specified in the Governor's proclamation). The Legislature is free to determine only the manner it shall accomplish the object or purpose, and may enact legislation consistent with or germane to, the Governor's call. See Arrow Club Inc. v. Nebraska Liquor Control Comm'n, 131 N.W.2d at 137.

With respect to the Governor's call, "a proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the Legislature's considerations" to a narrowly defined area. See N.M. Atty. Gen. Op. 78-4 (quoting Arrow Club Inc. v. Nebraska Liquor Control Comm'n, 131 N.W.2d 134 (1964)). An examination of the Governor's proclamation calling for the First Special Session of the 48th Legislature reveals that the Governor called the special session for the limited purpose of considering and enacting legislation in eight specific areas. Therefore, any veto override contemplated by the Legislature must be directly related to one of the eight specific issues noted in the Governor's proclamation for this special session. We are therefore unable to opine or render an analysis on a specific override until it is actually introduced.

Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you 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

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to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,

Sally Malavé

Assistant Attorney General

cc: Gary K. King, Attorney General
Stuart M. Bluestone, Chief Deputy Attorney General
Elizabeth Glenn, Civil Division Director