April 4, 2000

OPINION

OF Opinion No. 00-01

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Attorney General

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TO: Paula Tackett, Director

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QUESTION:

May a constitutional amendment be proposed during an extraordinary session convened pursuant to Article IV, Section 6 of the New Mexico Constitution?

CONCLUSION:

Yes. An extraordinary session may be convened in accordance with the procedures specified in Article IV, Section 6 “for all purposes,” including the proposal of amendments to the state constitution.

FACTS:

Members of the New Mexico legislature indicated that they were considering convening in extraordinary session to propose a constitutional amendment to address permissible funding sources for public school construction projects. This consideration raised a question regarding the legislature’s authority to act on constitutional amendments during an extraordinary session, which question was viewed as of the utmost importance.

ANALYSIS:

The legislature is required to conduct sessions as provided in the New Mexico Constitution. Article IV, Section 5 governs the regular legislative sessions, which begin each year on the third Tuesday in January and last 60 days in odd-numbered years and 30 days in even-numbered years.

Article IV, Section 6 provides for special and extraordinary sessions. It states, in pertinent 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. Provided,

however, that when three-fifths of the members elected to the house of representatives and three-fifths of the members elected to the senate shall have certified to the governor of the state of New Mexico that in their opinion an emergency exists in the affairs of the state of New Mexico, it shall thereupon be the duty of said governor and mandatory upon him, within five days from the receipt of such certificate or certificates, to convene said legislature in extraordinary session for all purposes; and in the event said governor shall, within said time, Sundays excluded, fail or refuse to convene said legislature as aforesaid, then and in that event said legislature may convene itself in extraordinary session, as if convened in regular session, for all purposes….

(Emphasis added.) The language pertaining to extraordinary sessions was added to this provision by an amendment approved by the voters in 1948.

Reading Article IV, Section 6 alone, the authority granted to the legislature to convene an extraordinary session "for all purposes" could not be broader in authorizing the legislature to address any and all matters it deems necessary, including proposals for constitutional amendments. However, Article XIX, Section 1, which contains the procedures for amending the constitution, has been interpreted to limit the apparent breadth of that authority. Article XIX, Section 1 provides, in applicable part, that amendments "may be proposed in either house of the legislature at a regular session…." (Emphasis added.)

In 1951, an opinion issued by then Attorney General Joe L. Martinez reviewed Article IV, Section 6 and Article XIX, Section 1, and concluded that the legislature could act on constitutional amendments only during the regular sessions provided for under Article IV, Section 5. See N.M. Att'y Gen. Op. No. 5398 (1951). This result, according to the opinion, was compelled by Section 5 of Article XIX, which, at that time, prohibited Section 1 from being "changed, altered or abrogated in any manner" except through a constitutional convention. The opinion reasoned that a construction of Article IV, Section 6 permitting the legislature to act on constitutional amendments during an extraordinary session was not possible because it would amount to an amendment of Article XIX, Section 1 outside of a constitutional convention, contrary to the prohibition in Section 5.

Article XIX, Section 5 was repealed in 1996. Thus, any obstacle raised by that provision to considering constitutional amendments during an extraordinary session has been removed. In addition, Article XIX, Section 5's repeal makes it less likely that a court reviewing the issue would conclude that Article XIX, Section 1 is intended to be the exclusive means for amending the constitution. For these reasons and those discussed below, we believe that the 1951 opinion is no longer valid and hereby overrule that opinion.

Under the applicable principles of constitutional construction, the provisions of the constitution are to be construed as a whole, see In re Generic Investigation Into Cable Television Servs., 103 N.M. 345, 349, 707 P.2d 1155 (1985), and harmonized, if possible. See Denish v. Johnson, 121 N.M. 280, 288, 910 P.2d 914 (1996). In addition, the drafters of the state constitution, "are presumed to give the words their plain, natural and usual significance." City of Farmington v. Fawcett, 114 N.M. 537, 544, 843 P.2d 839 (Ct. App.), cert. quashed, 114 N.M. 532, 843 P.2d 375 (1992).

Applying these rules of construction, we conclude that the plain and usual significance of the phrase "for all purposes" in Article IV, Section 6 authorizes the legislature to propose a constitutional amendment in an extraordinary session. Aside from required certification that an emergency exists, the drafters of Article IV, Section 6 deliberately and expressly did not limit the purposes for which an extraordinary session might be convened. Construing Article IV, Section 6 to permit consideration of amendments in an extraordinary session is consistent with and best effectuates the drafters' evident intent to give the legislature the requisite tools to deal with emergencies effectively.

Moreover, Article IV, Section 6 and Article XIX, Section 1 are easily harmonized. Article XIX, Section 1 does not, by its terms, necessarily limit consideration of amendments to regular sessions convened under Article IV, Section 5. As noted above, Article IV, Section 6 was amended in 1948 to add the extraordinary session procedures. Prior to 1948, there were only two types of sessions – regular sessions convened by the legislature and special sessions that were called by the governor and limited to the objects specified in the governor's proclamation. Given this, the reference in Article XIX, Section 1 to a "regular session" was probably simply intended to exclude consideration of amendments at a special session. Particularly with the repeal of Article XIX, Section 5, discussed above, Article XIX, Section 1 does not foreclose the legislature from considering proposed constitutional amendments under authority granted by other provisions of the constitution such as Article IV, Section 6.

Our conclusion is further supported by the stipulation in Article IV, Section 6 that, should the governor fail or refuse to call an extraordinary session, "the legislature may convene itself in extraordinary session, as if convened in regular session, for all purposes." (Emphasis added.)[12] This underscores the drafters' intent that an extraordinary session be conducted like a regular session without any limitation on subject matter.[13]

We believe our conclusion is correct; however, in addition to the 1951 Attorney General Opinion discussed above, legal authority to the contrary is arguably found in a 1988 New Mexico Supreme Court decision that addressed Article XIX, Section 1. See State ex rel. Chavez v. Vigil-Giron, 108 N.M. 45, 766 P.2d 305 (1988). The specific issue in that case was whether the legislature was restricted by Article XIX, Section 1 to considering constitutional amendments only during 60-day regular sessions. The Court concluded that the legislature could act on amendments during any regular session held under Article IV, Section 5, regardless of whether the session was 60 days long or 30 days long or held in an odd-number year or an even-numbered year. 108 N.M. at 50. In reaching this conclusion, the Court observed that the "legislature, which has the primary responsibility to adhere to constitutional processes in proposing amendments, consistently has interpreted the term 'any regular session [in Article XIX, Section 1]' to mean 'other than a special or extraordinary session.'" Id. The Court then went on to state: "We believe … that the purpose and intent of the framers of the Constitution was to limit introduction of amendments to regular as opposed to special sessions…." Id.

We do not believe that the statement in the decision regarding extraordinary sessions constitutes persuasive authority for prohibiting the legislature from considering constitutional amendments during those sessions. As the Court acknowledged, its opinion did not address that issue. 108 N.M. at 50. The Court's actual conclusion was limited to distinguishing regular sessions from special sessions, and is consistent with our discussion above regarding the drafters' intent in Article XIX, Section 1. At best, the Court's statement regarding extraordinary sessions is dictum, and is not binding as a rule of law. See, e.g., Kent Nowlin Constr. Co. v. Gutierrez, 99 N.M. 389, 390-91, 658 P.2d 1116 (1982), appeal dismissed, 462 U.S. 1126 (1983). Further, even if the legislature did interpret Article XIX, Section 1 in the manner the Court described in 1988, that interpretation likely stemmed from the restrictions on the manner of amending Section 1 then contained in Article XIX, Section 5. As discussed above, Article XIX, Section 5 was repealed in 1996 and no longer supports the argument that constitutional amendments may be considered exclusively during regular sessions.

After considering the applicable constitutional provisions and other legal authority on both sides of the issue, we believe that, on balance, the conclusion we have reached is the most reasonable and justifiable. Accordingly, in our opinion, Article IV, Section 6 authorizes the legislature, in addressing an emergency in the affairs of the state, to consider, among any other legislative remedies, proposed constitutional amendments during an extraordinary session convened by the governor or by the legislature itself.

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[1] The omission of the phrase "as if convened in regular session" in the description of extraordinary sessions convened by the governor has no bearing on the objects that can be discussed in such sessions. Procedurally, the governor is required to convene an extraordinary session under Article IV, Section 6 within five days of the receipt of the legislature's certification. If the governor fails or refuses to perform this mandatory, ministerial duty, Article IV, Section 6 authorizes the legislature to convene itself in extraordinary session. An extraordinary session is convened by the legislature "as if convened in regular session" in the sense that the legislature, not the governor, convenes a regular session. In other words, this phrase addresses merely the procedural formality of how an extraordinary session is convened. As a procedural matter, regular sessions are always convened at 12:00 noon on the third Tuesday in January. N.M. Const. Art. IV, § 5. Special sessions are convened as set forth by the governor in his proclamation. Id. Art. IV, § 6. Extraordinary sessions may be convened one of two ways: either by the governor, as he performs his nondiscretionary duty after reviewing the requisite certificates, or by the legislature itself if the governor fails to act within the required five days. Id. In either case, Article IV, Section 6 is clear that an extraordinary session, regardless of how it is procedurally convened, is held substantively "for all purposes."

[2] Thirty-day regular sessions, which are limited to certain topics, did not exist until 1964 when they were added to Article IV, Section 5. Until 1948, therefore, there were only two types of legislative sessions – a 60-day regular session held every other year with no limits on the business that could be conducted and special sessions called by the governor for limited purposes.