

Attorney General of New Mexico



PO Drawer 1508
Santa Fe, New Mexico 87504-1508

505/827-6000
Fax 505/827-5826

TOM UDALL
Attorney General

MANUEL TIJERINA
Deputy Attorney General

September 24, 1996

OPINION
OF
TOM UDALL
Attorney General

Opinion No. 96-01

By: Tannis L. Fox
Assistant Attorney General

To: The Honorable Cisco McSorley
New Mexico State Representative
401 Tulane Place, N.E.
Albuquerque, New Mexico 87106

Re: New Mexico Election Code
NMSA 1978, § 1-1-9 (Repl. Pamp. 1995)

QUESTIONS

1. Whether, to be recognized as a major political party in New Mexico, a qualified political party's candidate for the office of governor or United States president must satisfy the minimum vote requirement set forth in NMSA 1978, § 1-1-9 (Repl. Pamp. 1995)?

2. Whether, to maintain major political party status, a qualified political party must meet the foregoing minimum vote requirement with respect to each general election?

3. Whether section 1-1-9 requires a major political party to run a candidate for governor or United States president in each general election in which the office is to be filled?

CONCLUSIONS

1. No. Any candidate of a qualified political party, not only a candidate for the office of governor or United States president, may satisfy the minimum vote requirement for a party to obtain recognition as a major political party.

2. Yes. To maintain major political party status, a qualified political party must satisfy, for each general election, the minimum vote requirement and other requirements set forth in the Election Code.

3. No. Section 1-1-9 does not require that a major political party run a candidate for governor or United States president in each general election in which the office is to be filled.

ANALYSIS

1. Recognition as a Major Political Party

Section 1-1-9 of the New Mexico Election Code states in pertinent part:

"major political party" means any qualified political party, any of whose candidates received as many as five percent of the total number of votes cast at the last preceding general election for the office of governor, or president of the United States, as the case may be and whose membership totals not less than one-third of one percent of the statewide registered voter file on the day of the governor's primary election proclamation;

NMSA 1978, § 1-1-9(A).

In construing a statute, the primary focus is to ascertain and give effect to the intent of the legislature. Roberts v. Southwest Community Health Servs., 114 N.M. 248, 251, 837 P.2d 442 (1992). Intent is derived primarily from the language used by the legislature, and the ordinary meaning of the language is to be applied unless a different intent is clearly expressed. Id. Statutes should be construed in a manner that facilitates the operation and achievement of the legislature's stated goals. Id. The act also must be read in its entirety with each part construed in connection with every other part to produce a harmonious whole. Id. A common sense reading of the statute will suffice if statutory language is clear and the meaning of words used is unambiguous. State v. Richardson, 113 N.M. 740, 741, 832 P.2d 801 (Ct. App.), cert. denied, 113 N.M. 690, 832 P.2d 989 (1992).

Applying relevant principles of statutory construction, we ascribe the ordinary meanings of words to the statute to determine legislative intent. Section 1-1-9(A) expressly provides that a major political party is a qualified political

party,¹ "any of whose candidates" received the minimum votes required. (Emphasis added.) "Any" means "one or some indiscriminately of whatever kind." Webster's Collegiate Dictionary 53 (10th ed. 1994). Based on the express language of the statute, a qualified political party is recognized as a major political party if one or more of its candidates received the minimum votes required, regardless of the offices sought.

In contrast, several other states that use a minimum vote basis for designation as a major political party specifically identify the candidate or candidates who must satisfy the requirement. See, e.g., Mich. Comp. Laws Ann. § 169.210 (West 1989) ("major political party" is one whose candidate for governor received 25% or more of the popular vote cast in the last preceding gubernatorial election); Wash. Rev. Code Ann. § 29.01.090 (West 1993) (to become a major political party, at least one party nominee for president, vice president, United States senator or statewide office must have received at least five percent of the total vote cast at the last preceding general election); Colo. Rev. Stat. Ann. § 1-1-104(22) (West 1994) ("major political party" is one of the two political parties whose candidate for governor at the last preceding gubernatorial election received the first and second largest number of votes). Unlike those statutes, section 1-1-9 expressly provides that "any" candidate may obtain the minimum votes required.

Because section 1-1-9(A) makes sense as written, it requires no further interpretation. Richardson, 113 N.M. at 741. Accordingly, we conclude that to satisfy the minimum vote requirement for recognition as a major political party, at least one candidate of a qualified political party, irrespective of the office sought, must have received at least five percent of the total votes cast at the last preceding general election for the

¹A "qualified political party" is one for which the party's governing body has (i) adopted rules and regulations providing for the organization and government of the party; (ii) filed the rules and regulations with the Secretary of State; and (iii) at the same time, filed with the Secretary of State a petition with the hand-printed names, signatures, addresses of residence and counties of residence of at least one-half of one percent of the total votes cast for the office of governor or president at the preceding general election who declare that they are New Mexico voters and want the party to be qualified as a political party in New Mexico. NMSA 1978, § 1-7-2(A).

office of governor or President of the United States, whichever election is applicable.²

2. Maintaining Major Political Party Status

Section 1-1-9 is part of an overall plan developed in the Election Code to advance the state's interests in the equitable and efficient conduct of elections,³ including the state's interest in assuring some level of support for political parties and their candidates.⁴ Section 1-1-9(A) protects those interests by establishing two requirements -- one founded on minimum votes and the other on minimum membership -- for recognition as a major political party.⁵ The minimum vote requirement in section 1-1-9(A) is based expressly on votes cast "at the last preceding general election." General elections are held every even numbered year. N.M. Const. art. XX, § 6. The minimum membership requirement is based on the number of voters in the statewide registered voter file on the day the governor

²Effective January 1, 1996, section 1-1-9(A) also requires that membership in the party total at least one-third of one percent of the statewide registered voter file on the day of the governor's primary election proclamation in order for a qualified party to be a major political party. Therefore, in addition to qualifying as a political party and meeting the minimum vote requirement, the political party must satisfy a minimum membership requirement.

³The legislature has the authority to regulate the manner of conducting elections by enacting "such laws as will secure the secrecy of the ballot, the purity of elections and guard against the abuse of elective franchise." Dillon v. King, 87 N.M. 79, 82, 529 P.2d 745 (1974) (quoting N.M. Const. art. VII, § 1).

⁴The New Mexico Supreme Court has recognized the state's legitimate interest in "assuring at least a modicum of support for a political party and its nominees whose names are placed on the general election ballot." Dillon, 87 N.M. at 82 (quoting People's Constitutional Party v. Evans, 83 N.M. 303, 491 P.2d 520 (1971)).

⁵A qualified political party that does not meet the minimum vote requirement is automatically designated as a minor political party. A "'minor political party' means any qualified political party, none of whose candidates received five percent or more of the total number of votes cast at the last preceding general election for the office of governor, or president of the United States, as the case may be." NMSA 1978, § 1-1-9(B).

issues the primary election proclamation. NMSA 1978, § 1-1-9(A). The proclamation is issued every two years on the last Monday in January preceding a general election. Id. § 1-8-12. By the express terms of section 1-1-9(A), each requirement arises with respect to each general election and must be satisfied prior to the election for a party to maintain recognition as a major political party in that election.

In addition to satisfying the requirements set forth in section 1-1-9, a political party is subject to an ongoing qualification requirement. A qualified political party ceases to be qualified:

if two successive general elections are held without at least one of the party's candidates on the ballot or if the total votes cast for the party's candidates for governor or president of the United States, provided that the party has a candidate seeking election to either of these offices, in a general election do not equal at least one-half of one percent of the total votes cast for the office of governor or president of the United States, as applicable.

NMSA 1978, § 1-7-2(A).⁶

Therefore, to maintain recognition as a major political party in an upcoming general election, a political party must satisfy the same requirements necessary for initial recognition as a major political party. Effective January 1, 1996, the party (i) must have run at least one candidate in one of the last two general elections, with its candidate for governor or United States president, if any, having received the statutorily prescribed minimum number of votes, id. § 1-7-2(A); (ii) must have a candidate who received, in the last preceding general election, the minimum number of votes required, id. § 1-1-9(A), and (iii) must have in its membership, on the date of issuance of the primary election proclamation, registered voters sufficient to satisfy the minimum membership requirement, id.

3. Mandatory Candidacies for the Offices of Governor or United States President

⁶To disqualify the party, the Secretary of State must give notice of disqualification to the state chairman of the party at the chairman's last known address, NMSA 1978, § 1-7-2(C), remove all material concerning the political party from the qualified parties file, id., and notify all county clerks of the removal and nonqualification of the political party, id. § 1-7-2(D).

As noted above, section 1-1-9(A) states in pertinent part:

"major political party" means any qualified political party, any of whose candidates received as many as five percent of the total number of votes cast at the last preceding general election for the office of governor, or president of the United States, as the case may be .

Upon obtaining recognition as a major political party for a general election, the party may run a full slate of candidates, including a candidate for the office of governor or United States president, as applicable. See, e.g., *id.* § 1-8-13. However, neither the express language of section 1-1-9 nor any other relevant provision of the Election Code supports an interpretation that a major political party must run a candidate for governor or United States president in every applicable general election.

A statute must be construed according to the purpose for which enacted. See, e.g., *State v. Shafer*, 102 N.M. 629, 637, 698 P.2d 902 (Ct. App.), *cert. denied*, 102 N.M. 613, 698 P.2d 886 (1985). The purpose -- and express language -- of section 1-1-9(A) do not establish mandatory candidacies for those offices. Rather, section 1-1-9(A) establishes a minimum vote requirement for a party to qualify as a major political party.

Moreover, the minimum vote requirement in that section is not based on votes for a party's candidate, which would imply that the party must run a candidate in order to have a basis on which to calculate future minimum votes. The requirement is based, instead, on a fixed percentage of the total votes cast for the office of governor or United States president, whichever is applicable. *Id.* Thus, the references in section 1-1-9 to the offices of governor and United States president are for the purpose of establishing a common base on which to determine whether statewide support for a political party is sufficient to recognize it as a major political party.⁷

⁷The Tenth Circuit Court of Appeals upheld the constitutionality of a similar "level of support" requirement with respect to qualification of new political parties in Oklahoma in *Arutunoff v. Oklahoma State Election Board*, 687 F.2d 1375 (10th Cir. 1982).

No other provision of the Election Code requires a major political party to run candidates for particular offices,⁸ and no other provision establishes consequences for the failure of a major political party to nominate a candidate for governor or United States president. While legislative silence, by itself, expresses no intention one way or the other, see, e.g., Leyba v. Renger, 114 N.M. 686, 688, 845 P.2d 780 (1992), other Election Code provisions recognize that a political party may not have run a candidate for governor or United States president in the preceding election. For example, the number of signatures required on nominating petitions is based on the greater of the sum of all votes cast for all of a party's candidates for governor "at the last preceding primary election at which the party's candidate for governor was nominated" or specific numbers set forth in the statute. NMSA 1978, § 1-8-33. Similarly, to continue its status as a qualified political party, the total votes cast for the party's candidates for governor or president of the United States in the last general election must meet the statutory minimum, "provided that the party has a candidate seeking election to either of these offices." Id. § 1-7-2(C) (emphasis added).⁹ The phrases "at the last preceding primary election at which the party's candidate for governor was nominated," in section 1-8-33(A), and "provided that the party has a candidate seeking election to either of these offices," in section 1-7-2(C), would be rendered surplusage under an interpretation that the Election Code requires a major political party to run candidates for the office of governor or United States president in every applicable general election. A statute must be construed so that no part of the statute is rendered surplusage or superfluous. Katz v. New Mexico Dept. of Human Servs. Income Support Div., 95 N.M. 530, 624 P.2d 39 (1981).

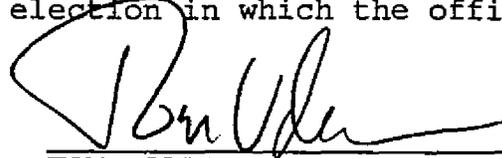
The interpretation that section 1-1-9 does not impose mandatory candidacies on major political parties is reasonable

⁸Such a requirement could result in frivolous candidacies and could give the appearance that a party's strength and diversification are greater than their true measure. The state has a legitimate interest in protecting the integrity of the political process from frivolous candidates, see, e.g., Anderson v. Hooper, 498 F. Supp. 898, 904-05 (D.N.M. 1980), and avoiding voter confusion, see, e.g., Jenness v. Fortson, 403 U.S. 431 (1971).

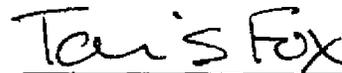
⁹While section 1-7-2(C) requires a party to run at least one candidate in one of the last two general elections in order to avoid disqualification, it does not require a party to run a particular candidate.

Hon. Cisco McSorley
September 24, 1996
Page 8

and consistent with other relevant provisions of the Election Code. We believe the intent of the Election Code is to permit qualified political parties to run candidates for governor or United States president but not to mandate that they do so. Accordingly, we conclude that section 1-1-9 does not require a major political party to run a candidate for governor or United States president in each general election in which the office is to be filled.



TOM UDALL
Attorney General



Tannis L. Fox
Assistant Attorney General