



Attorney General of New Mexico

GARY K. KING
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

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Senator Jacob Candelaria
New Mexico State Senate
3501 Atrisco Drive, NW Apt. 423
Albuquerque, NM 87120

Re: Opinion Request—County Ballot Proposition

Dear Senator Candelaria:

You have asked for this office's position on whether a county may propose a question on the statewide election ballot that does not carry the force of law. As discussed in more detail below, we conclude that a county may propose a question on the statewide general election ballot that does not carry the force of law.

The New Mexico Election Code, NMSA 1978, Chapter 1, applies to general elections, primary elections, statewide special elections, elections to fill vacancies in the office of representatives in Congress, and school district elections. Section 1-1-19(A). The Election Code allows both candidates and questions to be placed on ballots, stating that "questions other than proposed constitutional amendments" may be submitted to qualified electors. Section 1-16-8.

Section 1-16-8 does not discuss what types of questions may be placed on the ballot and therefore does not expressly prohibit questions that merely seek the opinion of voters. Without clear statutory direction and with no case law addressing this matter, we turn to other provisions of the Election Code for guidance.

Certain questions that carry the force of law—such as constitutional amendments and referendums—are specifically authorized outside the bounds of Section 1-16-8 by the legislature. While constitutional amendments are presented to qualified electors as a "question," they are nevertheless governed by every section in Chapter 1, Article 16 except for Section 8, which specifically excludes constitutional amendments. The significance of the exclusion of constitutional amendments from Section 1-16-8 is that constitutional amendments carry the force of law. Similarly, referendums, which are governed by Chapter 1, Article 17, might be

considered “questions” that carry the force of law, yet are not governed by Section 1-16-8. Because neither constitutional amendments nor referendums are governed by Section 1-16-8, yet both are “questions” that carry the force of law, it appears that the legislature intended Section 1-16-8 to cover questions that do not carry the force of law, as well as those that have the force of law but have not been expressly excluded from Section 1-16-8.

Having the authority to submit questions that do not carry the force of law to its qualified electors, counties must meet the strict requirements of Section 1-16-8 before doing so. Under Section 1-16-8, two requirements must be met for a county to legally submit a question “not statewide in application” to the qualified electors of that county: (1) the county must approve and issue a resolution proposing the question, and (2) the county clerk must submit to the Secretary of State, no later than thirty days prior to the election, the form of the ballot for that county and a copy of the county’s resolution. See id.

Noted in your question to this office was a reference to the 2011 election in which the City of Albuquerque submitted to the qualified electors of Albuquerque the question of whether they were “for” or “against” Albuquerque’s “Red Light Camera Program.” The placing of that question on the ballot in 2011 was governed by the Municipal Election Code, NMSA 1978, Chapter 3, and Albuquerque’s Municipal Election Ordinance, Albuquerque, N.M., Code § 2-4-3 (1993), and therefore has no direct effect on the question presented.¹

Your request to us was for an Attorney General Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing 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 to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,



Charles B. Kraft
Assistant Attorney General

¹ See generally Att’y Gen. Op. 12-05 (discussing whether a municipality, rather than a county, may submit a question on a statewide election ballot).