

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
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July 29, 2020

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**Re: Opinion Request – Potential Transition to Commission-Manager Form of Government**

Dear Representative McQueen:

You have requested an Attorney General opinion regarding the Town of Edgewood's potential transition from a mayor-council form of government to a commission-manager form of government to be decided as part of a special election to be held on August 24, 2020. Specifically, you are seeking an analysis regarding the effect on the current governing body if the majority of votes cast by the electorate are in favor of the commission-manager form of government, including when the newly elected commissioners will take office after the commission elections held on November 2, 2021. Additionally, you requested analysis regarding the interim responsibilities of the current mayor and town council during the potential transition period from the mayor-council to commission-manager forms of government.

**Background**

On March 23, 2020 a petition was filed with the clerk of the Town of Edgewood seeking to change Edgewood's form of government to the commission-manager form of government. On May 26, 2020, pursuant to NMSA 1978, Section 3-14-2 and an opinion issued by the Secretary of State, the current governing body passed Resolution 2020-09 calling for a special election on August 24, 2020 and placing the ballot question regarding the potential transition on the ballot of that special election.

Edgewood received a subsequent related opinion from the Secretary of State indicating that, due to Edgewood's decision pursuant to the Local Elections Act ("LEA"), NMSA 1978, Section 1-22-3.1(B), to elect its municipal officers during the Regular Local Election

("RLE"), the election of the new commissioners would not be held until the 2021 November election. The Secretary of State indicated that Edgewood is not permitted to elect its municipal officers at any other time unless it officially rescinds its decision regarding municipal officer elections.<sup>1</sup>

### Analysis

As a preliminary matter, there are several rules of statutory construction that guide this analysis. First, in construing a statute, our goal is to give primary effect to the legislative intent, which is evidenced primarily through the statute's language. *See Souter v. Ancae Heating and Air Conditioning*, 2002-NMSC-0078, 132 N.M. 608, 611. Second, under the plain meaning rule, we give statutory language its ordinary meaning unless the Legislature indicates a different meaning is necessary. *See Cooper v. Chevron*, 2002-NMSC-020, 132 N.M. 382, 388. In determining the plain meaning of a statute, the court often turns to the dictionary definition to determine the ordinary meaning of words. *State v. Boyse*, 2013-NMSC-024, ¶ 9, 202 P.3d 830, 832. Finally, statutes regarding the same subject matter should be read together as harmoniously as possible in a way that facilitates their operation and achievement of their goals. *See Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 634-5.

### Commissioners' Term of Office

Should the electorate of Edgewood vote in favor of a commission-manager form of government as part of the August special election, the current governing body is required to:

adopt an election resolution calling for the holding of an election for the purpose of electing five commissioners at the first regular or local or general election following adoption of the resolution. **The election shall be conducted in the same manner as are regular local elections pursuant to the terms of the Local Election Act.** The commissioners so elected shall determine their terms of office by lot, so that three commissioners shall serve until the next regular local election and two commissioners shall serve until the succeeding regular local election.

NMSA 1978, § 3-14-8 (emphasis added). Commissioners "shall hold office for staggered periods of four years and until their successors **are elected and take office** as provided in the Local Election Act." *Id.* at (B) (emphasis added). The LEA states that "[t]he term of office of a candidate elected in a regular local election. . . shall begin on January 1 following the candidate's election." NMSA 1978, § 1-22-18 (emphasis added).

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<sup>1</sup> This opinion does not address the accuracy of the Secretary of State's opinion as Edgewood has officially resolved to hold the commission elections in November 2021 pursuant to the Secretary of State's opinion as well as a writ of mandamus issued by the First Judicial Court in Case No. D-101-CV-2020-01091.

Section 3-14-8 requires that the election of commissioners should occur in the same manner as RLEs held pursuant to the LEA, and that commissioners shall be elected and take office as provided in the LEA. The LEA requires that all candidates elected as part of an RLE will commence their terms on January 1 of the following year. Because Edgewood's first commissioners must be elected as part of an RLE, the plain and harmonious reading of the LEA, in conjunction with relevant commission-manager provisions, requires that the commissioners begin their four-year terms on January 1 after the RLE in which they were elected. The four-year terms will end on December 31 of the fourth year unless a successor is not elected or does not take office. *See* NMSA 1978, § 3-10-1(E).

Although the language in NMSA 1978, Section 3-14-8 regarding the initial election of commissioners potentially permits the commencement of terms soon after the commissioners' election, this likely applies to municipalities that hold their municipal officer elections on municipal officer election day in March pursuant to NMSA 1978, Section 1-22-3.1(A). Municipal officers elected on municipal officer election day would begin their terms on the first day of the following month of the election. NMSA 1978, § 1-22-3.1(F). There is no similar provision in the LEA related to the candidates elected as part of an RLE. In fact, commissioner vacancy will be filled by appointment for a term to last through the following RLE; therefore, no commissioner will take office immediately after their election, except on January 1 after the RLE. *See* NMSA 1978, § 3-14-9.

The Secretary of State determined that should the electorate vote to transition to a commission-manager form of government as part of the special election held in August of 2020, the election of Edgewood's commissioners would occur in November of 2021. For this and the above stated reasons, commissioners elected as part of the RLE held in November of 2021 will commence their terms on January 1, 2022.

#### Expiration of Terms of Current Elected Officers

New Mexico law provides that “[a]ny elected municipal official whose term of office has expired shall continue in that office until a successor is elected and has taken office pursuant to the provisions of the Local Election Act.” NMSA 1978, § 3-10-1(E). This provision applies to both members of mayor-council and commission-manager governing bodies. *See Id.* at (A) & (B).

Given that Edgewood has decided to elect each of its municipal officers at RLEs, it is unlikely that the terms of the members of the current mayor-council governing body would expire prior to the next RLE in November of 2021, or the end of a normal member term on December 31, 2021. *See* NMSA 1978, §§ 1-22-2(D) (“regular local election” means the biennial local election at which local governing body members are elected pursuant to the provisions of the Local Election Act”); 3-10-1(D) (“the terms of office for the mayor and members of the governing body shall be four years. The term of office for members of the governing body shall be staggered so that the terms of office for one-half of the members

of the governing body will expire every two years”). Therefore, each current member or subsequently elected member of Edgewood’s mayor-council governing body should remain in their official position until the new Commission takes office on January 1, 2022. However, should a member’s term expire prior to the new commissioners taking office, Edgewood should adhere to either the LEA or vacancy provisions related to mayor-council governing bodies in order to fill the open seat until the terms of the new commissioners begin. *See* NMSA 1978, §§ 1-22-3 (RLE provisions); 1-22.3.1 (election of municipal officers); 3-12-1 (vacancy on a governing body).

#### Status and Duties of Current Elected Officers During Transition

Except with respect to “home rule municipalities”<sup>2</sup>, all of the powers and authority of a municipality, including implied powers necessary to implement expressed powers, are granted by the Legislature. *City of Albuquerque v. New Mexico Public Regulation Com’n*, 2003-NMSC-028, ¶ 3, 134 N.M. 472, 476; *see also Morningstar Water Users Ass’n Inc. v. Farmington Mun. School Dist. No. 5*, 1995-NMSC-052, ¶ 37, 120 N.M. 307, 316; *State v. ex rel. Haynes v. Bonem*, 1992-NMSC-062, ¶ 11, 114 N.M. 627, 631 (powers of “home rule municipalities”).

Members of governing bodies of mayor-council municipalities have been granted specific powers and duties by the Legislature. *See* NMSA 1978, §§ 3-12-3 (powers of the governing body); 3-11-4 (powers of the mayor); 3-11-7 (additional powers of the mayor). Conversely, members of governing bodies of commission-manager municipalities have been granted entirely distinct powers and duties. *See* NMSA 1978, §§ 3-14-12 (powers of commission); 3-14-14 (duties of manager). These two forms of government are distinct as are the official positions held by their members. NMSA 1978, § 3-10-1 (explicitly identifying offices in both forms of government).

In addition to the general powers and duties provided to governing bodies of municipalities, the Legislature has also provided many specific powers and duties. Among those is the organization of a commission-manager form of government. Specifically, if the electorate votes in favor of a commission-manager form of government, “the governing body shall proceed to **organize** the municipality under the commission-manager form of government.” NMSA 1978, § 3-14-3 (emphasis added). “The governing body of a municipality organizing under the commission-manager form of government shall district the municipality into five commissioner districts.” NMSA 1978, § 3-14-6. “Organize” is not specifically defined in any related or general statute. However, the dictionary definitions include, in relevant part, “to arrange by systematic planning” and “to set up an administrative structure for.” *Merriam Webster Dictionary Online*, <https://www.merriam-webster.com/dictionary/organize> (last visited July 17, 2020).

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<sup>2</sup> “Home rule municipalities” are those that have adopted a charter pursuant to the Constitution of New Mexico, art. 10, § 6. Edgewood is not believed to have adopted a “home rule” charter as of the date of this opinion.

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Edgewood's current governing body consists of duly elected officers, including a mayor and multiple city council members. Those individuals are only empowered to take actions explicitly or implicitly authorized by the Legislature for those specific offices. Therefore, except where the powers are identical or overlap, the members of the current governing body should not assume any powers granted to the future commission and manager. Except with respect to the duties arising from the transition to a commission-manager form of government, the current governing body should operate as normal until such time as the first commissioners have taken their offices.

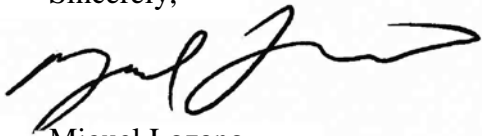
During the transition period, the current governing body should utilize its powers and authority to arrange for, or set up an appropriate administrative structure in order for the new commission to assume governing authority over the town of Edgewood on January 1, 2022. This explicitly includes the districting of Edgewood into 5 separate commissioner districts, as well as any additional actions necessary to provide for the election of new commissioners, and the transition to a commission-manager form of government.

### **Conclusion**

If the Edgewood electorate votes in favor of a commission-manager form of government, the first commissioners will be elected as part of the November 2021 election and will take office on January 1, 2022. The members of the current governing body should remain in their official positions until the expiration of each of their terms, presumably on December 31, 2021. Additionally, the current governing body should continue normal operations in their official positions until the newly formed commission takes office. As part of the transition, the current governing body will be tasked with preparing for the formation and operation of a commission-manager form of government, including the districting of the town and the election of commissioners out of the 5 separate commissioner districts.

Please be advised that this opinion is a public record, not subject to the attorney-client privilege. As such, we may provide copies to the public. If this office may be of further assistance, or if you have any questions regarding the matters discussed herein, please do not hesitate to contact our office.

Sincerely,



Miguel Lozano  
Assistant Attorney General

Cc: Mayor John Bassett, Town of Edgewood  
Secretary of State Maggie Toulouse Oliver