



February 5, 2024

The Honorable Harold Alan Edmonson, Jr., President
New Mexico Military Institute Board of Regents
101 West College Blvd.
Roswell, NM 88201-5173

Opinion 2024-03

Re: Opinion Request – Distributions from Land Grant Permanent Funds under 2022 Amendment to Article XII, Section 7 of the New Mexico Constitution

Dear President Edmonson:

Your predecessor as President of the NMMI requested an Attorney General opinion regarding the applicability to the New Mexico Military Institute (NMMI) of a 2022 amendment to Article XII, Section 7 of the New Mexico Constitution, which governs the investment and distribution of land grant permanent funds. *See* H.J.R. 1, 55th Leg., 1st Sess. (2021) (HJR 1).¹ The 2022 amendment provides for an additional 1.25% annual distribution from the permanent school fund for purposes related to public school instruction and the provision of early childhood education. Mr. Christmas asked the following two questions:

1. Is NMMI entitled to receive a proportionate share of the 1.25% additional annual distribution authorized by the 2022 amendment?
2. If not, is NMMI entitled to receive a proportionate share of the 60% portion of the additional distribution if NMMI provides for early childhood education?

As answers to these questions likely remain of interest, we have addressed this opinion to you. As discussed in more detail below, based on our review of the applicable law and the information provided and available to us at this time, we conclude:

1. The additional 1.25% annual distribution authorized by the 2022 amendment is made from the permanent school fund, which contains trust lands granted under the Enabling Act and is dedicated to the support of public schools. Because NMMI is not a public or common school for purposes of the Enabling Act, NMMI is not a beneficiary of the permanent school fund and is not entitled to a share of the additional 1.25% distribution.

¹ The Legislature approved the 2022 amendment proposed by HJR 1 during the regular 2021 legislative session, and the amendment was ratified by a majority of voters in the 2022 general election.

2. The 2022 amendment allots a 60% share of the additional distribution for “the provision of early childhood education,” but does not specify the recipients of the distribution. This provision requires Congressional approval in order to be effective. Because Congress has not approved the provision, NMMI is not entitled to a distribution under this section even if it provides early childhood education.

Distributions from the Land Grant Permanent Funds under Article XII, Section 7

Article XII, Section 7(A) of the New Mexico Constitution provides for the investment of “land grant permanent funds,” which are defined as

the permanent school fund described in Article 12, Section 2 of this constitution and all other permanent funds derived from lands granted or confirmed to the state by the act of congress of June 20, 1910, entitled “An act to enable the people of New Mexico to form a constitution and state government and be admitted into the union on an equal footing with the original states.”

The federal act referred to in Article XII, Section 7(A) is the Enabling Act, under which the United States Congress, as part of the terms for the admission of New Mexico as a state, made grants of public land subject to certain terms. *See* Act of June 20, 1910, 36 Stat. 557, ch. 310 (Enabling Act). Section 10 of the Enabling Act requires that the lands be held by the state “in trust, to be disposed of . . . only in [the] manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.” The trust funds from the land grants must be “prudently invested” and “[d]istributions from the trust funds shall be made as provided in Article 12, Section 7” of the New Mexico Constitution. *Id.*

Article XII, Section 7 provides for two distributions from the land grant permanent funds. The first states:

F. The annual distributions from the land grant permanent funds to the beneficiaries specified in the Ferguson Act and the Enabling Act shall be five percent of the average of the year-end market values of the land grant permanent funds for the immediately preceding five calendar years.

The second distribution was added by the 2022 amendment and provides, in pertinent part:

G. In addition to the annual distributions made pursuant to Subsection F of this section, . . . an annual distribution of one and one-fourth percent of the average of the year-end market value of the *permanent school fund* for the immediately preceding five calendar years shall be made *as provided in Subsection H* of this section; . . .

H. Unless suspended . . .,² the additional distribution *from the permanent school fund provided for in Subsection G* of this section shall be as follows and as provided by law:

(1) forty percent of the additional distribution shall be for the public school permanent fund beneficiary for enhanced instruction for students at risk of failure, extending the school year and public school teacher compensation; and

(2) sixty percent of the additional distribution shall be for the provision of early childhood education.

I. As used in this section, “early childhood education” means nonsectarian and nondenominational education for children until they are eligible for kindergarten.

N.M. Const. art. XII, § 7(G)-(I) (emphases added).

The distribution described in Article XII, Section 7(H)(1) went into effect upon approval by the voters. Article XII, Section 7(H)(2), however, provides for a new use of the permanent school fund, which, as discussed below, the Enabling Act currently limits to support of the public schools. *See* Enabling Act, § 6. Section 3 of the Joint Resolution recognizes that Congressional approval is necessary for any amendment to the state constitution that would change the terms of the Enabling Act. *See* Enabling Act, § 2; N.M. Const. art. XIX, § 4; N.M. Const. art. XXI, § 10.³ As such, the distribution for early childhood education in Article XII, Section 7(H)(2) is not effective “without the consent of congress.” H.J.R. 1, § 3, 55th Leg., 1st Sess. (N.M. 2021); *see* N.M. Const. art. XII, § 7 annot. (noting that the 2022 amendment “required congressional approval for distributions from the permanent school fund for the provision of early childhood education”).

Entitlement to a Share of the 1.25% Distribution from the Permanent School Fund

NMMI is a beneficiary of the land grant permanent funds, *see* Enabling Act, § 7 (grant of land for “military institutes”), and receives a proportionate share of the annual distribution from the funds authorized under Article XII, Section 7(F). *See* NMSA 1978, § 19-1-17(B)(19) (2005) (including the “New Mexico military institute permanent fund” in the list of funds credited with a

² The additional distribution must be suspended “in any fiscal year if the average of the year-end market values of the land grant permanent funds for the immediately preceding five calendar years is less than seventeen billion dollars,” and the Legislature may suspend “any additional distribution” by a three-fifths’ vote of the members of each house. N.M. Const. art. XII, § 7(G), (J).

³ A bill to provide the consent of Congress to the distributions for early childhood education under the 2022 amendment was introduced in the Senate on December 15, 2021, *see* S. 3404, 117th Cong. (2021), and referred to the Senate Committee on Energy and Natural Resources. The Committee reported favorably on the bill, and it was added to the Senate Legislative Calendar on Oct. 18, 2022. This appears to be the last action taken on S. 3404 to date. *See* <https://www.congress.gov/bill/117th-congress/senate-bill/3404/all-info>.

proportionate share of money derived from state lands). However, NMMI is not a common school within the meaning of Section 6 of the Enabling Act. NMMI's entitlement to a share of the additional 1.25% distribution provided in Article XII, Section 7(G) depends both on whether the drafters of the 2022 amendment intended to include NMMI as a recipient and on whether the Enabling Act permits such a distribution.

We first address the intent of the drafters of the 2022 amendment. The same rules used to determine the legislative intent underlying a statute apply to interpreting provisions of the state constitution. *See State ex rel. Richardson v. Fifth Jud. Dist. Nominating Comm'n*, 2007-NMSC-023, ¶ 17, 160 P.3d 566 (stating that the rules of statutory construction “apply equally to constitutional construction”). The principal goal of constitutional construction is to give effect to the intent of the provision's drafters and “the voters of New Mexico who approved it,” *State v. Ameer*, 2018-NMSC-030, ¶ 9, 458 P.2d 390, “using the plain language of the [provision] as the primary indicator of legislative intent,” *State v. Gutierrez*, 2023-NMSC-002, ¶ 22, 523 P.3d 560; *see Starko, Inc. v. Cimarron Health Plan, Inc.*, 2005-NMCA-040, ¶ 12, 110 P.3d 526 (stating that effect must be given, “when possible, . . . to the clear and unambiguous language of the constitutional provision”). In determining legislative intent, “contemporaneous documents, presented to and presumably considered by the [L]egislature during the course of enact[ing] a statute may . . . be considered.” *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 35, 117 N.M. 346.

Article XII, Section 7(G) provides for an additional annual distribution of 1.25% “of the average of the year-end market value of the *permanent school fund* for the immediately preceding five calendar years” (emphasis added), which is in contrast with Article XII, Section 7(F)'s distribution from “the land grand permanent funds.” Under Article XII, Section 7(A), the “permanent school fund” means “the permanent school fund described in Article 12, Section 2 of this constitution.” As described in Article XII, Section 2, the permanent school fund consists of the proceeds of lands granted under the Enabling Act “for the support of common schools,” Enabling Act, § 6; *see id.* § 7 (providing that distributions from “the permanent school fund . . . shall be used for the maintenance of the common schools”), which are now referred to as public schools, *see Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 12, 458 P.3d 406 (“During the early nineteenth century, public education was provided in public schools known as common schools.”). The proceeds of land grants covered by the Enabling Act may be used only for the purposes specified in the Act.

In other words, the additional distribution of 1.25% provided for in Article XII, Section 7(G) is made from the permanent school fund and must, therefore, be limited to the support of public schools. Although Article XII, Section 7(H) does not repeat at every opportunity that the additional distribution is so limited, it does expressly state that “the additional distribution *from the permanent school fund provided for in Subsection G* shall be as follows *and as provided by law.*” (Emphases added.) Indeed, the purpose of Article XII, Section 7(H) is simply to provide further detail regarding the additional distribution identified in Article XII, Section 7(G). Any reading that expands the distribution beyond the permanent school fund would render the language in Article XII, Section 7(G) and (H) superfluous and internally inconsistent, which reading we are to avoid. *See State v. Sinyard*, 1983-NMCA-150, ¶ 6, 100 N.M. 694 (stating that a “well-established principle of statutory construction is” to read the statute “as a whole,” to construe each section or part “in connection with every other part or section so as to produce a harmonious whole,” and to

“give effect to all provisions of a statute and to reconcile different provisions so as to make them consistent”). Because NMMI is not a public school or otherwise a beneficiary of the permanent school fund, it is not included among the intended recipients of the additional distribution. As such, based on the language of Article XII, Section 7, NMMI is not entitled to a share of the 1.25% additional distribution authorized by the 2022 amendments.

Turning then to the question of whether the Enabling Act would permit such a distribution, we are further assured that NMMI is not authorized to receive a portion of the additional distribution. As indicated above, the Enabling Act currently limits the use of the permanent school fund to the support of the common schools. Enabling Act, §§ 67. Article XII, Section 7(G) and (H) establishes an additional distribution from the permanent school fund. *See* N.M. Const. art. XII, § 7(G) (identifying an additional distribution from “the permanent school fund . . . as provided in Subsection H”); § 7(H) (setting forth how “the additional distribution from the permanent school fund” shall be made); § 7(H)(1) (providing that 40% percent of the additional distribution “shall be for the public school permanent fund beneficiary for enhanced instruction for students at risk of failure, extending the school year and public school teacher compensation”). Thus, because the constitutional amendment establishes an additional distribution *from the permanent school fund*, because the Enabling Act limits use of the permanent school fund for the common or public schools, and because NMMI is not a common or public school as that term is used in the Enabling Act, the Enabling Act does not permit a portion of the additional distribution to be made to NMMI. *See also* Fiscal Impact Report (FIR) H.J.R. 1, p. 2, 55th Leg., 1st Sess. (N.M. 2021) (available at nmlegis.gov) (explaining that because the amendment allows “the additional distribution to come only from the permanent school fund,” land grant permanent fund beneficiaries other than the public schools “will not receive increased distributions”).

Entitlement to a Share of the Distribution for Early Childhood Education

As noted above, Article XII, Section 7(H)(2) is not effective without Congressional approval. It is thus unnecessary to determine whether distributions under this paragraph are limited to the public schools or to address any other legal requirements to qualify for a distribution. NMMI is not entitled to distributions under this provision because it is not in effect.

You have requested an opinion on the matters discussed above. Please note that a formal opinion issued by this office is a public document available to the general public. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Respectfully,



Aletheia V.P. Allen
Solicitor General