

August 14, 2024

OPINION
OF
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Attorney General

Opinion No. 2024-09

To: Honorable Anthony Allison, New Mexico House of Representatives, 4th District

Re: Attorney General Opinion – Whether state political party bylaws are superior to state or federal law

Question

Are the bylaws of a political party such as the Democratic Party of New Mexico or the Republican Party of New Mexico superior to federal or state law?

Answer

No. New Mexico law provides that the bylaws of a political party such as the Democratic Party of New Mexico or the Republican Party of New Mexico may not be inconsistent with prevailing law. Party bylaws that are inconsistent with law are generally unenforceable.

Analysis

I. Unlawful Contract Terms Are Generally Unenforceable

The law recognizes that bylaws are often contractual in nature. *See, e.g., Yedidag v. Roswell Clinic Corp.*, 2015-NMSC-012, ¶ 7 (recognizing that medical staff bylaws are enforceable contracts between the hospital and medical staff); *Star v. Sierra Los Pinos Prop. Owners Assoc.*, A-1-CA-36136, mem. op. ¶ 9 (N.M. Ct. App. Jul. 2, 2019) (nonprecedential) (resolving alleged breaches of bylaw terms as breach of contract claims); Restatement (Second) of Contracts §§ 178, 184 (1981) (acknowledging cases where bylaw terms were treated as contract terms).

A contract term is generally unenforceable when it is illegal or against public policy. *See Fiser v. Dell Comput. Corp.*, 2008-NMSC-046, ¶¶ 20, 22; Restatement (Second) of Contracts §§ 178, 184 (1981). It follows that organizational bylaws that are unlawful or against public policy are invalid and unenforceable. *See also Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, ¶ 8, 117 N.M. 492 (noting that a contract which violates the specific statutory provisions governing it is ultra vires and void).

We apply these general principles to political party bylaws below.

II. Nonprofit Corporation Bylaws

Political parties often organized as nonprofit corporations. For example, the Republican Party of New Mexico is registered as a domestic nonprofit corporation.¹

The Nonprofit Corporation Act (NCA), NMSA 1978, §§ 53-8-1 to -99 (1975, as amended through 2021), governs nonprofit corporations. The NCA allows organizations to form for socially beneficial purposes such as political, charitable, educational, civic, athletic, or cultural purposes, among others. Section 53-8-4.

Nonprofit corporations have specific, enumerated powers, including but not limited to, entering into contracts; buying, leasing, or selling real property; lending or receiving loans for money; electing and appointing officers; and making and altering bylaws. Section 53-8-5.

Section 53-8-12(A) provides that a nonprofit corporation’s bylaws must be adopted by its board of directors, who thereafter can alter or amend the bylaws. *Id.* Section 53-8-12(A) further states that “[t]he bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.” *Id.* Additionally, Section 53-8-5(M), which provides a nonprofit corporation’s authority to enact and amend bylaws, states that any bylaws must not be “inconsistent with [the nonprofit corporation’s] articles of incorporation or with the laws of New Mexico[.]” *Id.* It is apparent from the plain language of these statutes that a nonprofit corporation has power to pass bylaws governing their operations, but those bylaws cannot conflict with state law.

III. Political Party Rules

A state political party is made up of smaller county organizations of that party. *See* NMSA 1978, § 1-7-2 (2011). Here, the Opinion Request appears to raise concerns regarding the authority of a state political party’s bylaws to dictate certain practices of subsidiary county organizations. Thus, to the extent the Opinion Request implicates authority governing a political party’s rules, rather than authority governing a nonprofit corporation’s bylaws, we address that authority.

In New Mexico, an organization cannot become a “qualified political party” unless they comply with specific provisions of the Election Code. *See generally* NMSA 1978, §§ 1-1-10 (1989), 1-7-2. The requirements to become a “qualified political party” are, among others:

[E]ach political party through its governing body shall adopt rules providing for the organization and government of that party and shall file the rules with the secretary of state. Uniform rules shall be adopted throughout the state by the county

¹ New Mexico Secretary of State, Corporations and Business Services, <https://portal.sos.state.nm.us/BFS/online/CorporationBusinessSearch/CorporationBusinessInformation> (last accessed August 31, 2024).

organizations of that party, where a county organization exists, and shall be filed with the county clerks.

Section 1-7-2(A). Thus, the Election Code requires that a political party adopt rules governing the organization, and that those rules be adopted by affiliated county organizations.

The Election Code also sets substantive parameters for a political party's rules. It requires that a political party's rules contain a method for nominating candidates for the general election, a method for calling and conducting conventions, a method for selection of delegates, a method for selection of state officers, the powers and duties of other governing bodies, a method for publishing and holding meetings, and a method for amending party rules and regulations. NMSA 1978, § 1-7-3 (1969).

The authority for a county organization to promulgate its own additional or supplemental rules is set forth in Section 1-7-2(B), which states:

Each county political party organization may adopt supplementary rules insofar as they do not conflict with the uniform state rules or do not abridge the lawful political rights of any person. Such supplementary rules shall be filed with the county clerk and the secretary of state in the same manner as other rules are filed.

It is clear from this plain language that a county organization may not adopt rules that conflict with the state party's uniform rules, nor may they adopt rules that "abridge the lawful political rights of any person." *Id.* In other words, a county organization's rules are not compliant with the Election Code if they contradict the uniform state rules of the political party, or if they unlawfully violate the political rights of a person.

IV. Political Committees

We also address, to the extent implicated by the Opinion Request, the statutory authority regarding political committees. This is because the Democratic Party of New Mexico is a registered political committee, at least for the purpose of fundraising.²

The New Mexico Campaign Reporting Act (CRA), NMSA 1978, §§ 1-19-25 to -36 (1979, as amended through 2024), requires organizations operating primarily for the purpose of influencing or attempting to influence an election register with the Secretary of State as political committees, pay a filing fee, and file reports disclosing their activities and contributors. *See N.M. Youth Organized v. Herrera*, 611 F.3d 669, 677 (10th Cir. 2010) (discussing CRA requirements). A "political committee" includes:

- (1) a political party;
- (2) a legislative caucus committee;
- (3) an association that consists of two or more persons whose primary purpose is to make contributions to candidates, campaign committees or political committees or make coordinated expenditures or any combination thereof; or

² New Mexico Secretary of State, New Mexico Campaign Finance System, <https://login.cfis.sos.state.nm.us/#/index> (last accessed July 31, 2024).

(4) an association that consists of two or more persons whose primary purpose is to make independent expenditures and that has received more than five thousand dollars (\$5,000) in contributions or made independent expenditures of more than five thousand dollars (\$5,000) in the election cycle[.]

Section 1-19-26(U).

Political committees include organizations at the federal, state, and local levels. And while political committee operations are governed by the CRA, neither that Act nor its regulations appear to contain any authority specifically governing bylaws. Thus, we read the CRA as governing campaign financing, but not necessarily a political party's bylaws themselves. It follows, therefore, that the principles elucidated above control in the context of political committee bylaws: they cannot conflict with state law, and where they do, they are unlawful.

Conclusion

The bylaws of a political party such as the Democratic Party of New Mexico or the Republican Party of New Mexico may not be inconsistent with prevailing law. Bylaws that are inconsistent with law are generally unenforceable.

Please note that this opinion should not be construed as opining that certain party bylaws are unlawful. The purpose of this opinion is to answer only the legal question of whether a state political party's bylaws are superior to state or federal law. We do not provide factual analysis in Attorney General opinions. *See* NMSA 1978, § 8-5-2(D) (1975) (providing that the Attorney General shall answer "questions of law" submitted by the particular individuals or entities therein). To the extent the Opinion Request asks us to do so, we decline pursuant to Section 8-5-2(D).

This opinion is a public document and is not protected by the attorney-client privilege. It will be published on our website and made available to the general public.

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