

Land Grant Governance Issues

Identified by the NM Land Grant
Council

Land Grant Elections

- Several Land Grants have had their elections challenged at the District Court Level.
- Anton Chico, San Miguel del Bado & Cebolleta.
- Can take several years to resolve through the Courts and is very costly.
- Courts lack good direction under the law to address land grant election issues.

Election Procedure Problems

- Some issues raised during challenges demonstrate clear violations by boards of trustees of procedural requirements laid out in the Land Grant General Provisions (§49-1-1 et. seq., NMSA 1978)
- Other issues arise out of lack clarity or direction in the statutes themselves.

Identified Land Grant Election Issues and Possible Solutions.

Finalization of Voter Registration Books

- Problem: Some land grants do not properly compile voter registration books prior to an election.
- Potential Solution: Mandate in the statute that the board of trustees meet to finalize by resolution the voting roster at least 5 days prior to the election.
- This would require amending §49-1-5 (C) as follows:
 - After the last sentence in that subsection add “The board of trustee shall meet to finalize, by resolution, the registration books no later than five days prior to the election.”
- Also suggest adding meeting date of the registration books finalization to list of proclamation required elements under §49-1-5(F). To read: “8) the date and time of the meeting to finalize the registration books.”

Definition of Heir

- Problem: Under §49-1-1.1(C) qualified voting members must be heirs. Heir is defined very narrowly in the statute and not all land grant have membership that meets the definition.
- Potential Solution: Amend §49-1-1.1(A) to allow for land grants define heir in their bylaws.
- Suggested Language: “heir” means a person who is a descendent of the original grantees and has an interest in the common of a land grant-merced through inheritance, gift or purchase or as defined in the bylaws of a land grant-merced.

Canvassing – Problem 1

- Problem 1: Language in §49-1-7(A) can conflict with precinct residency requirement under §49-1-4.
- §49-1-7(A) reads: *“The candidates receiving the most votes cast for the open seats on the board of trustees shall be elected to the board.”*
- §49-1-4 in part reads: *“In land grants-mercedes where there is more than one precinct, no more than three members shall be residents of the same precinct.”*

Canvassing Problem 1 – Potential Solution

- Amend §49-1-7 to clearly require both the number of votes and precinct requirements for appointment to the board.
- Suggested language:

“The candidates receiving the most votes cast for the open seats on the board of trustees and that meet any precinct restriction requirements as set forth in §49-1-4 shall be elected to the board.”

Canvassing – Problem 2

- Problem 2: §49-1-7(B) requires that the current board of trustees along with the appointed judges canvass the votes and issues the election certificates.
- As the canvassing board current trustees who may also be candidates may have to vote on issues that could affect the outcome of the election thereby causing an inherent conflict of interest.
- For example: what if any provisional ballots get counted; procedures for breaking a tie.

Canvassing Problem 2– Potential Solution

- Solution Suggestion 1 – Require that land grant terms be staggered and amend §49-1-7 (B) so that only those board of trustee members not up for election to serve on canvassing board.
- This solution would require amending §49-1-5 (A) to establish staggered terms. Suggest adding the following after existing language:

“The terms of office for the board of trustees shall be staggered so that no less than two and no more than three positions for the board of trustees shall be up for election at the same time. Procedures for staggering of terms shall be prescribed in the land grant-merced bylaws.”
- This solution would also require amending §49-1-7(B) to read:

“The election judges and board of trustees, not up for election, shall meet not later than seven days following the election and canvass the votes cast . . .”

Canvassing Problem 2– Potential Solution

- Solution Suggestion 2 – Require that board of trustees appoint individuals (at least 3) to serve on the canvassing board without any participation by the current board of trustees.
- This solution would require amending §49-1-7(b) as follows: “The election judges and the canvassing board shall meet not later than seven days following the election and canvass the votes. . .”
- This solution would also require adding a new subsection to §49-1-5. Suggested language:

“J. The Board of trustees shall appoint at least three individuals to serve as the official canvassing board. No person shall be qualified for appointment or service on the canvassing board who is a spouse, parent, child, brother, sister, parent-in-law, child-in-law, step-child, brother-in-law, or sister-in-law of any candidate to be voted for at the election.”

Appointment of Election Judges & Clerks

- Problem - §49-1-5 (H) – allows for persons related by marriage to serve as elections judges and clerks. This has raised concerns of fairness from candidates and qualified voting members.
- Potential Solution: Amend §49-1-5(H) to restrict appoint of certain relatives by marriage.
- Suggested language: “the board of trustees shall appoint one election judge and at least two election clerks for each polling place. The election judge shall also be present for the canvass of the vote. No person shall be qualified for appointment or service as an election clerk or judge who is a spouse, parent, child, brother, sister, parent-in-law, child-in-law, step-child, brother-in-law, or sister-in-law of any candidate to be voted for at the election.”

Representation by Precinct

- Problem: §49-1-4 has language to ensure equitable distribution of representation on the board of trustees by use of voting precincts, however it does not define what constitutes a precinct and therefore there is confusion about how to ensure compliance with the statute.
- Potential Solution: add a definition of precinct under §49-1-1.1 and amend §49-1-4 to require that land grants-mercedes wishing to use precincts include provisions defining their geographic location and board position distribution in their bylaws.

Precinct Language Suggestions

- Under §49-1-1.1 add new definition: D. “precinct” means a geographic location such as a community or town which is guaranteed an apportioned amount of positions on the board of trustees as defined within the land grant-merced bylaws.
- Amend §49-1-4 to read. “The Board of Trustees shall consist of five members. In land grants-mercedes whose bylaws call for the use of precincts, no more than the apportioned number of members for any given precinct shall serve on the board of trustees. A person shall be qualified to be a member of the board if that person is a qualified voting member, is not in default of any dues, rents or other payment for the use of any of the common lands of the land grant-merced and meets the applicable qualification for public officers found in §10-1-1 through §10-1-13.”

Qualification for Service on the Board of Trustees

- Problem: Chapter 10 of the NMSA sets out the requirements for Public Officers and Employees, land grants that are political subdivisions of the state should now meet the same requirements and therefore §49-1-4 should be amended to include a reference to §10-1-1 through §10-1-13.

Use of Provisional Ballots

- Problem: The land grant general provisions is currently silent on the use of provisional ballots. Provisional ballots are a useful tool when conducting an land grant election to ensure that no potential voter has their voting rights disenfranchised.
- Potential Solution: Add a subsection to §49-1-5 allowing for use of provisional ballots and outlining procedures for doing so.

Use of Provisional Ballots Language Suggestion

- Add new subsection:

K. A person shall be permitted to vote on a provisional paper ballot even though the person's name does not appear on in the land grant registration books, provided:

(1) the person provides proof that they meet the qualified voting member provisions set forth §49-1-1.1 and the land grant bylaws.

(2) the person executes a statement swearing or affirming to the best of the person's knowledge that the person is a qualified-voting member and is currently registered and eligible to vote in the land grant and has not cast a ballot or voted in that election.

Use of Provisional Ballots Language Suggestion

(3) A judge or election clerk shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and, when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the judge or election clerk. The judge or election clerk shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

Use of Provisional Ballots Language Suggestion

- (4) At a minimum, the following information shall be printed on the outer envelope for a provisional paper ballot:
 - (a) the name and signature of the voter;
 - (b) the voter's registered address, both present and former if applicable;
 - (c) the voter's date of birth;
 - (d) the reason for using the ballot;
 - (e) sufficient space to list the disposition of the ballot after review by the canvassing board.
 - (f) A provisional paper ballot shall not be rejected for lack of the information required by this section and shall be qualified as long as the voter provides a valid signature and sufficient information for the judge and canvassing board to determine the voter is a qualified elector.

Use of Provisional Ballots Language Suggestion

(5) Knowingly executing a false statement constitutes perjury as provided in the Criminal Code [Chapter 30 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.

Use of Provisional Ballots Language Suggestion

(6) Upon closing of the polls provisional ballots shall be kept by the election judge until the canvassing of the votes by the election judge and canvassing board, who shall determine if the ballots will be counted prior to certification of the election.

(a) A provisional paper ballot shall not be counted if the registered voter did not sign either the signature roster or the ballot's envelope.

(b) If there is no record of the voter ever having been registered with the land grant-merced, the voter shall be offered the opportunity to register and the provisional paper ballot shall not be counted.

(c) If the voter was registered with the land grant-merced and the canvassing board determines that the individual was left of the voting registration books in error the provisional paper ballot shall be counted.

Elections Resulting in a Tie Vote

- Problem: There are currently no provisions in §49 NMSA that provide for how to resolve a tie vote. Therefore if a land grant does not have provisions in their bylaws there is no clear guidance on how to resolve the issue.
- Potential Solution: Borrow applicable language from §1-13-11 NMSA and add to new subsection of §49-1-7.
- Suggested language: “C. In the event of a tie vote between any candidates for the board of trustees, the determination as to which of the candidates shall be declared to have been elected shall be decided by lot. If the method of determining by lot is not set forth in the land grant-merced bylaws then the method shall be agreed upon by the tied candidates. The canvassing board shall issue the certificate of election to the candidate chosen by lot.

Contesting Elections

- Problem: Land Grant General Provisions do not give any clear guidance as to who can contest the outcome of an election and how. Therefore it is unclear who has standing to challenge the outcome of a land grant election which has resulted in lawsuits being filed by heirs and candidates alike. District court challenges to land grant elections are lengthy and expensive.
- Solution: Add a new subsection to §49-1-7 to clearly define who has standing to challenge a land grant election.

Contesting Elections – Suggested Language

- Add to §49-1-7 new subsection D which language similar to:

“D. Any unsuccessful candidate for election to the board of trustees or any qualified voting member of a land grant-merced, who believes that a land grant-merced election violated any portion of the Land Grant General Provisions, may contest the outcome of an election provided that:

 - (1) Any action to contest an election shall be commenced by filing a verified complaint with (Treaty Division/Land Grant Council/District Court) within thirty days from the issuance of the certificate of election to the successful candidates by the canvassing board.
 - (2) the person(s) holding the certificate of election shall take possession and discharge of the duties of the office until the contest is decided.
 - (3) Would also need to add language about how election challenges shall be procedurally conducted by the entity with authority to render a decision or ruling.

Application of the Election Code

- Problem: There is an old Supreme Court Case from the 1932, Montoya v. Gurule that found that the election code does not apply to land grants.

The contest provisions of the election code are inapplicable to land grant elections, not because the particular grant *{*44}* statute fails to require issuance of certificates of election, but because the Legislature, in framing the contest and recount provisions of the code, contemplated their applicability to those elections only for which the code makes provision, the general elections for state, district, and county offices.

- While that held true when they were quasi-municipal entities it should not apply for those that are now political sub-divisions of the state.
- Potential Solution : specifically add land grants to §1-1-19 (B)(2) as also applying to land grants-mercedes.
- Also consider referencing adherence to the election code in the absence of certain election provisions in either the Land Grant General Provisions or bylaws of a land grant-merced.

Vacancies

- Problem: §49-1-13 currently requires that appointments to the board of trustees only lasts until the next regular election. This poses a problem for land grants that stagger terms as it has the potential to throw off the staggering.
- Potential Solution: Amend statute to allow for appointees to serve the remainder of the unexpired term of the person on the board whom they are replacing.
- Suggested language: Amend second sentence of §49-1-13 to read: “the person appointed shall hold office for the remainder of the unexpired term of the trustee for whom they are replacing.”

Other General Governance Issues

- Guaranteed revenue stream for land grants-mercedes.
- Requirement for bi-annual training for board of trustee members.
- Make land grants-mercedes eligible to receive federal property disposals received by the State as well as for the DOT hardship auction.
- Establish a process for land grant-mercedes to reclaim former common lands abandoned by government entities, churches, and non-profits.
- Heirs of the Manzano Land Grant have raised issue of concern with regard to how elections are being run and limitations due to the antiquity of their statute.