



# The Associated Students of New Mexico State University

MSC 7110, P.O. Box 30001 | Las Cruces, NM 88003

T. 575.646.4415 | F. 575.646.5596

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## Office of the Attorney General

### Official Opinion

**TO:** Jay Choate, *GSC Vice President.*

**FROM:** Devon Harrison, *ASNMSU Attorney General*

**DATE:** March 27<sup>th</sup>, 2025

**TITLE:** “Clarification on the Applicability and Hierarchy of Governing Procedures within ASNMSU and College Councils”

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#### Subject:

This opinion addresses the following questions:

1. **Do the ASNMSU Bylaws apply to College Councils?** If the College Council Bylaws do not cover a specific issue, does it automatically mean the ASNMSU Bylaws should be followed, or should Robert’s Rules of Order apply instead?
2. **Does the ASNMSU Open Meetings Act apply to College Councils?**
3. **What types of affairs are governed by the ASNMSU Open Meetings Act? For example, does it apply to impeachments or recalls?**
4. **What is the jurisdiction of Robert's Rules of Order within ASNMSU and the College Councils?**

#### Applicable Bylaw:

#### ASNMSU Bylaws:

#### 1-2. MEMBERSHIP, STRUCTURE, AND LIMITATION OF POWER

#### 1-2-1. MEMBERSHIP



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All students of NMSU who have paid the ASNMSU supporting fees shall be members of the 11 ASNMSU.

## 1-2-2. GOVERNMENTAL STRUCTURE

The governing structure of the ASNMSU shall consist of three branches: the legislative, the executive, and the judicial.

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## 2-8-2. ELECTION BOARD VIOLATION HEARING PROCEDURE

The ASNMSU Election Board is exempt from the ASNMSU Open Meetings Act during deliberation voting; however, the voting record of a final decision must be released upon a case's conclusion. Writing the meeting minutes is the role of the Deputy Elections Officer and the meeting minutes are Public Record that can be sent out by the Elections Department or the Attorney Generals Department.

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## 4-2-6. IMPEACHMENTS

Impeachment charges may be brought against any member of the ASNMSU Supreme Court in accordance with the ASNMSU Constitution by a resolution of the ASNMSU Senate for alleged nonfeasance, misfeasance, or malfeasance:

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B. The ASNMSU Senate may adjourn to a closed meeting for final deliberation of the charges, but the vote for impeachment must be taken in an open meeting; and

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## 4-6. OPEN MEETINGS POLICY

The ASNMSU Supreme Court is exempt from the ASNMSU Open Meetings Act during deliberation and voting. However, the voting record of a final decision must be released upon a case's conclusion.

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## 5-1. ASNMSU OPEN MEETINGS ACT

An act establishing an open meeting policy for the ASNMSU policy-making bodies.



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### 5-1-1. DEFINITIONS

As used in the ASNMSU Open Meetings Act:

A. “Policy-making body” means any ASNMSU board, committee, or other body that recommends or formulates policy, including the development of personnel policy, rules, regulations, discussing public business or for the purpose of taking any action of the authority of the ASNMSU, but not limited to the ASNMSU Senate Committees, the ASNMSU Student Advocacy Board, the Continuing Diversity Board, and the ASNMSU Senate; and

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### 5-1-4. CLOSED DELIBERATION

Any ASNMSU public policy-making body may discuss personnel matters in a closed session, but all decisions must be made public in an open session. For a public body to move into a closed session in the following procedure must be followed:

A. A public body shall only enter a closed session to deliberate on the following:

1. Discussion of the hiring, promotion, demotion, dismissal, assignment, or resignation of an ASNMSU employee, or the investigation or consideration of complaints or charges against an ASNMSU employee; and

2. Deliberations in connection with an administrative adjudicatory proceeding held by the public body; and

3. Discussion of personally identifiable information about an individual student.

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### 5-2-1. DEFINITIONS:

A. “Colleges” means the existing Undergraduate Colleges and the Graduate School of NMSU; and

B. “College Council” means a student organization whose purpose is to promote the interest of the students of their respective College, and which is recognized by NMSU and by the NMSU Dean of the College with whom the College Council is affiliated. A “College Council” shall consist of no less than ten (10) members of the College elected or appointed to such College Council in accordance with the respective College Council's Constitution. The ASNMSU shall recognize no College as having more than one (1) College Council, nor shall the ASNMSU recognize any College Council which represents two (2) or more Colleges; and



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C. “Recall” means the removal from the official Office of an ASNMSU Senator by the College Council of the College that the ASNMSU Senator represents.

### 5-2-4. PRESCRIBING A RECALL ELECTION

An ASNMSU Senator shall be recalled when:

A. A recall petition containing signatures of students within that ASNMSU Senator’s College, equivalent to at least twenty-five percent (25%) of the total number of votes cast by students in the ASNMSU Senator’s College during the election in which that ASNMSU Senator was elected to their current term is presented to the College Council of the ASNMSU Senator's College; and

B. The College Council verifies the signatures and the petition and endorses the petition by a simple majority of a quorum of the College Council in accordance with the Constitution and Bylaws of the College Council; and

C. The ASNMSU members of the ASNMSU Senator's College express a “no-confidence” by a two[-]thirds (2/3) vote supervised by the College Council; and

D. The ASNMSU Senator must have held office at least during three (3) meetings of the ASNMSU Senate prior to the College's vote on the recall petition; and

E. The ASNMSU Senate judges the election results.

### **ASNMSU College Council Bylaws:**

#### 1-7-5. ENDORSEMENT OF SENATOR RECALL PETITIONS

Each Council shall have the power to endorse a recall petition for a senator in their college in accordance with Section 5-2-4.

A. A recall petition must be presented to the council and have the signatures of at least twenty-five percent (25%) of the students who [are] in that college who voted in the last election during which that senator’s seat was up for election. Such signatures must be verified by the council.

i. A council shall endorse a recall petition by a simple majority of representatives present.

ii. Following the endorsement of a recall petition, a council must formally recall a senator with a two-thirds (2/3) vote of no confidence.

iii. A council shall only recall a senator if the senator who is being recalled has held their office for at least three (3) regularly scheduled Senate meetings.



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## Opinion Rendered:

To address the above questions, I will outline the responses in numbered sections corresponding to each query. Key points are highlighted in **bold** for clarity.

### I. Applicability of ASNMSU Bylaws to College Councils

The **Graduate Student College Council (GSC)**, as a College Council, is a distinct entity from ASNMSU, governed by its own Bylaws and Constitution. However, when a College Council interacts with ASNMSU, as in cases where student organizations seek reimbursement or collaborate with ASNMSU, they are required to adhere to ASNMSU's governing documents, such as the **ASNMSU Financial Procedure Manual**. This is a clear example of ASNMSU's Bylaws applying to entities other than ASNMSU itself.

Each College Council should have its own Constitution, such as the **GSC Constitution**. In cases where these documents lack clarity, or when conflicting procedures arise, the **Attorney General's Office** can provide legal interpretation for correct procedural guidance.

### II. & III. Applicability of the ASNMSU Open Meetings Act to College Councils

The **ASNMSU Open Meetings Act (5-1-1)** applies to **ASNMSU policy-making bodies** that formulate public policy or discuss public business. However, the Act does **not** extend to discussions of matters like recalls, as these are not within the scope of "public policy formulation."

In the case of College Councils, such as the **GSC**, the **ASNMSU Open Meetings Act** does **not apply** to deliberations surrounding recalls. These proceedings are more in line with **personnel matters** as outlined in the New Mexico Open Meetings Act (NMSA 1978), which permits closed deliberations for personnel-related discussions. Thus, **recall deliberations** would fall under this exception, as they do not involve public policy formulation.

Furthermore, the **New Mexico Open Meetings Act (NMSA 1978)** allows for closed sessions in specific contexts, such as discussing personnel issues or complaints, which could apply to matters of student representation. In short, both the ASNMSU and New Mexico Open Meetings Acts allow for closed discussions on recall petitions without violating transparency requirements.

### IV. Jurisdiction of Robert's Rules of Order

**Robert's Rules of Order** is not a primary governing document of ASNMSU as a whole. The official governing documents of ASNMSU include:



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- The **ASNMSU Bylaws** (inclusive of various sections such as the Constitution, Election Code, Executive, Judicial, and Legislative Bylaws, and the Financial Procedures Manual)
- The **College Council Bylaws**

However, **Robert's Rules of Order** are referenced several times within the **ASNMSU Bylaws**, particularly for the **Legislative Branch**. Section 6-12-C-5 explicitly requires temporary select committee meetings to conform to both ASNMSU's Bylaws and Robert's Rules of Order. Additionally, there is an expectation that the **Vice President, Senate Officers, and Senators** maintain a thorough understanding of Robert's Rules of Order for procedural purposes. Therefore, Robert's Rules of Order are primarily applicable within the **Legislative Branch**, rather than across ASNMSU as a whole.

Thank you for your attention to this matter. I appreciate your understanding as we navigate these important changes. Let me know if you have any further questions.

Best,

**Devon L. Harrison** - he / him / his

*ASNMSU Attorney General*

Email: [asnmsuag@nmsu.edu](mailto:asnmsuag@nmsu.edu)

**Ruben Morales** - he / him / his

*ASNMSU Deputy Intern Attorney General*

Email: [asnmsu\\_dag@nmsu.edu](mailto:asnmsu_dag@nmsu.edu)

