



The Associated Students of New Mexico State University

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Office of the Attorney General

Official Opinion

TO: Ethan Ortiz-Ulibarri, *Graduate Student*

FROM: Devon Harrison, *ASNMSU Attorney General*

DATE: September 6th, 2024

Subject:

official opinion on the following matters:

- Definition of "officers of the Senate" under the current Law Book.
- Eligibility criteria regarding the payment of ASNMSU fees for Senators or candidates.
- Compliance of the newly passed Election Packet with the ASNMSU Law Book.
- Consistency of the fee-paying requirement across all Senate roles.
- Precedence between the Election Packet and the ASNMSU Law Book in case of conflict.
- Implications for candidates regarding the fee requirement and upcoming deadlines.

Applicable Bylaw:

1-3. LEGISLATIVE

...

1-3-2. SENATE MEMBERSHIP QUALIFICATIONS AND OFFICERS

The Senate of the ASNMSU shall be composed of Senators of the ASNMSU elected by the ASNMSU members of the university's Undergraduate Colleges and the Graduate School, hereafter referred to collectively as the "Colleges." Senators of the ASNMSU shall be elected for a term of one (1) year and shall take office at the last Senate of the ASNMSU meeting of the semester of their election. **No person shall be a Senator of the ASNMSU who is not, when elected and while in office, a member of the ASNMSU, not**



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under academic or disciplinary probation, and a student of the College by which they are elected. No Senator of the ASNMSU shall hold an additional elected office or appointed position of the ASNMSU except as may be provided through the bylaws. No person shall be a Senator of the ASNMSU if they are enrolled in a recurring class scheduled to overlap for up to more than 90 minutes from the start time of a regularly scheduled Senate meeting and assigned committee meetings. The members of the Senate of the ASNMSU shall be apportioned among the several Colleges in direct proportion to their respective enrollments as determined by the current official fall semester enrollment figures from the NMSU registrar, but each College shall have at least two (2) Senators of the ASNMSU. Amendments to the apportionment shall be passed by a vote of three-fourths of the Senate of the ASNMSU membership present and voting. When a vacancy occurs in the Senate of the ASNMSU, the College Council of the College of the vacated position may select an interim Senator of the ASNMSU to serve the remainder of the unexpired term. The Vice President of the ASNMSU shall be President of the Senate of the ASNMSU but shall have no vote unless the Senate of the ASNMSU is equally divided. The Senate of the ASNMSU shall choose its other officers and a President Pro Tempore of the ASNMSU who shall serve in the absence of the Vice President of the ASNMSU or when the Vice President of the ASNMSU shall exercise the Office of President of the ASNMSU.

...

6-2. OFFICERS OF THE SENATE

The ASNMSU Vice President shall be the President of the ASNMSU Senate but shall vote only when the ASNMSU Senate is equally divided. The other officers of the ASNMSU Senate shall be the ASNMSU Chief Senate Clerk, Deputy Senate Clerk, President Pro Tempore, Parliamentarian, and Sergeant-At-Arms and such other clerical help and employees as deemed necessary by the ASNMSU Senate. The ASNMSU Senate shall fix compensation for these employees of the ASNMSU Senate at the beginning of each session. All such officers and employees shall serve at the pleasure of the ASNMSU Senate except when otherwise provided by the ASNMSU Constitution. The ASNMSU Parliamentarian may not be elected to or assume the duties of the ASNMSU Senate's Presiding Officer.

6-3. LEGISLATIVE QUALIFICATIONS ACT

A. The ASNMSU Legislative Qualifications Act shall be in order for all salaried officers of the ASNMSU Senate; and

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C. ASNMSU Senate Officers shall have been ASNMSU fee-paying members for the fall or spring semester prior to their election or hiring;

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E. ASNMSU Senate Officers shall meet any other qualifications outlined by the NMSU Human Resource Services Position Classification Description.

Opinion Rendered:

As stated in my official opinion to ASNMSU Vice President Miller, on August 22nd, my understanding regarding the classification of Senate positions as salaried roles goes as follows. Based on **Section 6-2**, it seems that the Pro Tempore Diaz as well as Senator Sergeant-At-Arms Taylor are considered salaried Senate officer, despite being compensated through the Senate Scholarship rather than an hourly wage (salaried). Although Senators themselves are not explicitly listed, the Pro Tempore's inclusion as a salaried position suggests a broader interpretation of what constitutes a salaried role under the use of the term within the Bylaws.

6-3 E supports this understanding as in the NMSU Human Resources Services Position Classification, which is found in the NMSU Student Employment Handbook, applies the qualifications that “[a]n undergraduate student must be enrolled for at least 6 credits throughout the semester. A graduate student must be enrolled for at least nine (9) graduate credits throughout the semester.” as well as “Undergraduate students must maintain a 2.0 CUMULATIVE GPA; graduate students must maintain a 3.0 CUMULATIVE GPA. This does not apply to students enrolled (or about to enroll) in their first semester who have not yet established an earned GPA at NMSU”, which are two qualifications all senators have historically been held to despite it pertaining to Senate Officers in the Bylaws; so, historically it has been implied that Senators are Senate Officers. This should answer your first, second, and fourth question. Yes, per the bylaws Senators are considered Senate Officers and must meet the qualifications stated in **6-3**, which is also stated in **1-3-2** as it clarifies “[n]o person shall be a Senator of the ASNMSU who is not, when elected and while in office, a member of the ASNMSU” and to be an ASNMSU member you must have paid the ASNMSU fee.

In terms of implications, candidates currently running or who have already filed for election, especially if they did not meet the fee-paying requirement the semester prior, as per the Election Packet and the Bylaws will be seen as invalid. **6-3 C** states “ASNMSU Senate Officers shall have been ASNMSU fee-paying members for the fall or spring semester prior to their election”. So, if a candidate has not paid their ASNMSU fee before their election they will not meet the qualifications check for their Senate seat and therefore be unqualified to win their election. This should answer your sixth question.

Yes, the current Election Packet is in accordance with the Bylaws given that Senate has passed the packet on the second meeting of the 68th Senate. There is a currently one minor discrepancy between the Election Packet and the Bylaws, which is **2-7-1 General Rules Sec. C Subject. 1** it states:



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" C. Campaigning shall begin no earlier than two (2) weeks before the start of the ASNMSU general election date in which they are running:

1. Petitioners are allowed to inform individual students from whom they are seeking signatures as to why that student should sign their election petition. However, **it is illegal for candidates to use the term "vote".**"

This is inconsistent with the election packet because the packet states: "**A candidate may only begin to utilize the word "vote" at the start of campaign week**"; however, there is proposed bill to change this that will be passed before campaign week whenever this section of the election packet is important. If it is not passed then, to answer your fifth question, since Senate does not have the ability to hear violations and has already passed this amendment proposed by the Election Board the Election Packet will take priority. Essentially, in the event of a conflict between the Election Packet and the Bylaws, precedence will depend on the specific issue. Election violations fall under the Election Packet, while other matters are governed by the Bylaws.

Thank you for your attention to this matter. Should you require further information or have additional questions, please do not hesitate to contact me.

Devon L. Harrison - he / him / his

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