

Timothy M. Keller  
State Auditor



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**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

May 18, 2016

Legislative Council  
c/o Raul E. Burciaga  
Legislative Council Service  
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Legislative Council,

The Office of the State Auditor (“Office”) is charged with the constitutional and statutory duty to examine the financial affairs of governmental agencies within New Mexico that receive public money. As such, we write to make you aware of concerns with the primary election process in New Mexico that may cause audit actions and consequences, so that the Legislature may consider these issues proactively.

Chapter 1, Article 8 of the New Mexico Statutes establishes that major political parties nominate their candidates as prescribed in the Primary Election Law (NMSA 1978, §§ 1-8-10 through 1-8-52). The Primary Election Law describes the process for candidates of each major political party to be elected. The process includes the participation of the major political parties in holding a convention to determine ballot order. If a vacancy occurs after a primary election, the central committee of the state or county political party selects the candidate, NMSA 1978, § 1-1-8. Only persons whose major party affiliation is designated on their original certificates of registration are permitted to participate in a primary election. NMSA 1978, § 1-12-7.

As we understand New Mexico law, political parties are not considered to be governmental or quasi-governmental entities. See Attorney General Op. No. 79-02 (“A political party is not, however, a subordinate agency of the state. It is rather a voluntary association of persons who act together principally for political purposes.”). The role that political parties, as voluntary associations, play in the public election process is unique and part of broader election laws.

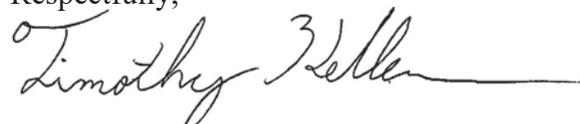
The Office’s Special Investigations Division received an inquiry suggesting that the use of public funds to hold primary elections is a violation of New Mexico’s anti-donation clause. N.M. constitution, Article IX, Section 14. Because only persons who have declared a major party affiliation may vote in a primary election, the complainant suggests that only the members of those voluntary associations benefit from the primary elections. The complainant suggests that in this manner, primary elections are conducted in aid of an association and in violation of the anti-donation clause.

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A definitive legal analysis of this question is outside of the purview of the Office, but we request the attention of the Legislative Council Service because of the nexus between these issues and annual audits. The Audit Rule, NMAC 2.2.2.10.G(9), requires an evaluation of anti-donation clause compliance in each annual audit. If the issue of private benefit arises in the context of the primary election, it could affect the audits of 33 counties and the Office of the Secretary State for Fiscal Year 2016. Additionally, if a court were to hold that the current system violates the anti-donation clause, it may require additional special auditing of current and historical expenditures by these entities.

We thank you for your attention to this matter and look forward to hearing the results of any analysis.

Respectfully,

A handwritten signature in cursive script that reads "Timothy M. Keller". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Timothy M. Keller  
State Auditor

cc: Legislative Finance Committee c/o David Abbey  
The Honorable Brad Winter, New Mexico Secretary of State