

SPECIAL MEETING MINUTES  
LIBERTARIAN NATIONAL COMMITTEE  
SEPTEMBER 1, 2022  
VIA ZOOM



CURRENT STATUS:

**FINAL**

PREPARED BY **CARYN ANN HARLOS**, LNC SECRETARY

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**LEGEND:** *text to be inserted*, ~~text to be deleted~~, unchanged existing text, *substantive final main motions*.

All main substantive motions will be set off by *bold and italics in green font* (with related subsidiary and incidental motions *set off by highlighted italics*) and will be assigned a motion number comprising the date and a sequential number to be recorded in the Secretary's Main Motion/Ballot Tally record located at <https://tinyurl.com/lncvotes2022>

Points of Order and substantive objections will be indicated in **BOLD RED TEXT**.

All vote results, challenges, and rulings will be set off by **BOLD ITALICS**.

The Secretary produces an electronic One Note notebook for each meeting that contains all reports submitted as well as supplementary information. The notebook for this meeting can be found at <https://tinyurl.com/1Sept2022LNCMeeting>

The LPedia article for this meeting can be found at:  
[https://lpedia.org/wiki/LNC Meeting 1 September 2022](https://lpedia.org/wiki/LNC_Meeting_1_September_2022)

Recordings for this meeting can be found at the LPedia link.

## OPENING CEREMONY

### CALL TO ORDER AND OPPORTUNITY FOR PUBLIC COMMENT

Chair Angela McArdle called the meeting to order at 8:35 p.m. (all times Eastern).

## HOUSEKEEPING

### ATTENDANCE

The following were in attendance:<sup>1</sup>

**Officers:** Angela McArdle (Chair), Caryn Ann Harlos (Secretary), Todd Hagopian (Treasurer)

**At-Large Representatives:** Rich Bowen, Bryan Elliott, Steven Nekhaila, Mike Rufo

**Regional Representatives:** Miguel Duque (Region 1), Dave Benner (Region 2), Dustin Nanna (Region 3), Carrie Eiler (Region 4), Andrew Watkins (Region 5), Linnea Gabbard (Region 7), Pat Ford (Region 8)

**Regional Alternates:** Kathy Yeniscavich (Region 1), Martin Cowen (Region 2), Connor Nepomuceno (Region 3), Joshua Clark (Region 4), Otto Dassing (Region 5), Mark Tuniewicz (Region 6), Robley Hall (Region 8)

**Absent:** Dustin Blankenship (At-Large Representative), Joseph Ecklund (Region 6 Representative), Donavan Pantke (Region 7 Alternate), Joshua Smith (Vice-Chair)

**Staff:** None

**Additional Attendees:** Richard Brown (Parliamentarian), Oliver Hall (General Counsel), Chase Crum (Unofficial Assistant Secretary)

The gallery contained many attendees as noted in the Registration Roster attached hereto as **Appendix 1** comprising person who registered in advance, though not all of the registrants attended.

### OPPORTUNITY FOR PUBLIC COMMENT

The following persons spoke during public comment:

- Jonathan Jacobs (PA)
- Andrew Jacobs (PA)

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<sup>1</sup> Multiple LNC members arrived after the initial roll call.

## PURPOSE OF SPECIAL MEETING

The meeting was called to consider several previously noticed motions with regards to the ongoing issues with the Libertarian Party of New Mexico.

## NEW BUSINESS WITH PREVIOUS NOTICE

### COMMITTEE OF THE WHOLE

*Secretary Harlos moved to go into Committee of the Whole with Chair McArdle staying the Chair and Secretary Harlos remaining in the Secretary seat with the ability for the Committee of the Whole to go into executive session if necessary.*

A roll call vote was conducted with the following results:

Member / Alternate	Yes	No	Abstain
Benner/Cowen	X		
Bowen	X		
Duque	X		
Eiler	X		
Elliot	X		
Ford	X		
Gabbard	X		
Hagopian	X		
Harlos	X		
Nanna	X		
Rufo	X		
Tuniewicz	X		
Watkins	X		
McArdle			X
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>1</b>

*This motion PASSED with a roll call vote of 13-0-1. [20220901-01]*

## EXECUTIVE SESSION

**WITHOUT OBJECTION**, the LNC went into Executive Session at 9:18 p.m. with Oliver Hall present for purposes of political strategy as moved by Secretary Harlos.

## NEW BUSINESS WITH PREVIOUS NOTICE (CONT'D)

### COMMITTEE OF THE WHOLE (CONT'D)

The Committee of the Whole rose out of Executive Session at 11:11 p.m.

Secretary Harlos moved that the Committee of the Whole rise and report to the LNC that it recommends that no action be taken this evening and that it be considered by the LNC over the next couple of weeks.

## PUBLIC COMMENT AND ADJOURNMENT

The following persons spoke during public comment:

- Tyler Askin (NM)
- Richard Brown (LA – Party Parliamentarian)
- Bryan Elliott (LNC)
- Jonathan Jacobs (PA)
- Frank Martin (NM)
- George Phillies (MA)

The LNC adjourned for the day **WITHOUT OBJECTION** at 11:19 p.m.

## TABLE OF NUMBERED MOTIONS/BALLOTS

\*Note that the master log of motions in 2022 can be found here: <https://tinyurl.com/Incvotes2022>

ID#	Motion/Ballot	Result
20220901-01	Go into Committee of the Whole	PASSED

## TABLE OF APPENDICES

Appendix	Title	Author
A	Log of Registrants	Caryn Ann Harlos
B	Notes of Bryan Elliott	Bryan Elliott
C	Notes of Caryn Ann Harlos	Caryn Ann Harlos
D	New Mexico Statute	New Mexico
E	Trademark	US Government

Respectfully submitted,



LNC Secretary ~ Secretary@LP.org ~ 561.523.2250

APPENDIX A – LOG OF REGISTRANTS

REGISTRANTS SHEET

<b><u>NAME</u></b>
Sylvia Arrowwood
Tyler Askin
Whitney Bilyeu
Mason Bishop
Travis Bost
Tyler Braaten
Michael Brigham
Nick Ciesielski
Anthony Degidio
Pixie Dixie
Jim Dolan
Patrick Douglas
Peter Ehlert
Joe Evans
June Genis
Tim Hagan
Shawn Hickman
Susan Hogarth
Janel Holmes
Elizabeth Honce
Andrew Jacobs
Jonathan Jacobs
Paul Jamilkowski
Stephan Kinsella
Charles Lazarra
Paul Lynch
Nathan Maddan
Adrian F. Malagon
Henry Martin
William Ogle
Michael Pakko
Scott Peterson
George Phillies
Amity Pickerall
Devin Rivera
Mimi Robson
Jayson Sorensen
Zach Tatum
Eric Thraen
Jami Van Alstine

<b>NAME</b>
Cynthia Welch
Tyler Werne
Brian Wells



APPENDIX B – NOTES OF BRYAN ELLIOTT

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Bryan Elliott's \$0.02 on NM situation

Executive Summary: I believe we have collectively determined that the entity requesting disaffiliation is not the legitimate representative of the rank and file members of LPNM given the meeting that changed the officers of the entity was not called in accordance with the bylaws of LPNM. A meeting/convention announcement, properly disseminated, and held in a way consistent with the bylaws of LPNM would create a body that legally represents the rank and file. If a proper vote of the membership supported disaffiliation then under our bylaw 5.5 we would grant disaffiliation. But we need to insure that that is the case given the R&F are mostly National Party members as well and we are obligated to protect them.

Details:

1. The LNC is obligated to follow the procedures and processes detailed within its bylaws/constitution. LNC bylaw 5.5 explicitly supports the right of any sub-jurisdiction to secede from a larger jurisdiction at its own discretion as long as the disaffiliation process is consistent with the entity's AND the LNC's governing documents.
2. The LNC has previously recognized the LPNM and its duly elected officers under bylaw 5.2, which requires the LNC to recognize a request to affiliate with a state party as long as the LNC has the state party's bylaws and other governing documents on file. Before we can recognize a change in state party leadership we must insure the changes were in accordance with that state's bylaws.
3. The recent request for disaffiliation came from a body which purportedly consists of the duly elected officers of LPNM. However this body cannot be recognized by the LNC as the governing body of the LPNM as the process that resulted in this body's composition does not conform with the bylaws of the LPNM, and thus also LNC bylaw 5.2. The requested disaffiliation MUST meet our requirements for recognition, and this requesting entity fails that requirement, preventing us from recognizing it as a legitimate entity elected to represent the totality of the membership of the LPNM. Should a duly constituted convention/meeting take place wherein a majority of the state party's members vote to request disaffiliation, the provisions of LNC bylaw 5.5 would be met.

APPENDIX C –NOTES OF CARYN ANN HARLOS

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The March 27, 2021, Constitution and Bylaws defines the scope of the role of both the Executive Committee and Central Committee. Note that it seems that functionally the two bodies are the same as at-large representatives have not been appointed – while this permitted, this just reduced the size of the body once again trying to claim the authority to make this decision for the entire state party. Only five board members are listed on the site. According to some members (and I have no information contrary so this seems to be the case) there were no elections to fill vacancies at the March 2022 convention (another invalid convention so the elections would not be valid but allegedly the effort was never made).

**V.1(a): The Executive Committee shall be composed of the Executive Officers of LPNM: Chair, First Vice-Chair, Second Vice-Chair, Secretary, and Treasurer.**

**V.2(a). The LPNM Central Committee shall be composed of the Executive Committee, nine statewide at-large 78 representatives, one representative from each congressional district, county chair's, and additional at-large members from the various 79 counties. The election or appointment to the Central Committee will be confirmed by their attendance at the next regularly-scheduled 80 quarterly Central Committee meeting.**

The scope of authority of each of these bodies is as follows:

**V.1(b): The Executive Committee is empowered to:**

- i. Carry out the day-to-day operations of the LPNM;**
- ii. Call special conventions to nominate candidates for special elections or for other urgent purposes, and to set the date, time, and 68 place for such conventions;**
- iii. Initiate any special or extraordinary meetings of the Central Committee when there exists business of an urgent or emergent nature;**
- iv. Initiate sessions of the Judicial Council as needed.**

**V.2(d): The Central Committee shall manage the affairs of LPNM as provided for in this constitution, the New Mexico Election 93 Code, and acts of the caucus membership assembled in convention.**

**Disaffiliation does not fall under any of these categories except “acts of the caucus membership assembled in convention.” The board only has those powers that the assembly gives to it either through the Constitution and Bylaws or through acts in convention. Neither apply here.**

The LPNM board set itself up to give itself this power in the illegal convention that was conducted without proper notice and with excluding far more than enough members to affect the results by allegedly adding this provision (which is void and shows an awareness that absent this provision they did not have this power):

**IX- LIBERTARIAN PARTY OF NEW MEXICO AFFILIATIONS**

**Any organization that the Libertarian Party of New Mexico affiliates with is specifically and absolutely without any power to direct**

**Libertarian Party of New Mexico in any manner whatsoever.**

**A ¾ vote of the Central Committee is required to change Libertarian Party of New Mexico affiliated organizations.**

**APPENDIX II**

**AFFILIATED NATIONAL ORGANIZATIONS**

**The Libertarian Party of New Mexico affiliates with:**

- a) The National Libertarian Party.**

APPENDIX D – NEW MEXICO STATUTE

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JUSTIA

[Go to previous versions of this Section](#)

## 2021 New Mexico Statutes

### Chapter 44 - Miscellaneous Civil Law Matters

#### Article 2 - Mandamus

#### Section 44-2-4 - [Purpose of writ; judicial discretion not controlled.]

**Universal Citation:** NM Stat § 44-2-4 (2021)

It may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; but though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

**History:** Laws 1884, ch. 1, § 38; C.L. 1884, § 1993; C.L. 1897, § 2761; Code 1915, § 3413; C.S. 1929, § 86-103; 1941 Comp., § 26-104; 1953 Comp., § 22-12-4.

#### ANNOTATIONS

**Cross references.** — For the court's issuance of the writ while in vacation, *see* 44-2-2 NMSA 1978.

For the supreme court's jurisdiction and authority with respect to the writ of mandamus, *see* N.M. Const., art. VI, § 3 and notes thereto.

For appeal of refused voter registration, *see* 1-4-21 NMSA 1978.

For mandamus to compel canvass by county canvassing board, *see* 1-13-12 NMSA 1978.

For the use of the writ to compel recounts or rechecks of election results, *see* 1-14-21 NMSA 1978.

For use of writ to compel secretary of state to examine referendum, *see* 1-17-3 NMSA 1978.

For right of bond holders to compel tax levy for courthouse, jail or bridge bonds, *see* 4-49-21 NMSA 1978.

For use of writ to compel compliance with the Subdivision Act, *see* 47-6-26 NMSA 1978.

For the right of an employee to use writ to compel the director of the environmental improvement division to initiate emergency procedures pursuant to the Occupational Health and Safety Act, *see* 50-9-14 NMSA 1978.

For mandamus not being permitted to prevent a finding suspending or revoking a liquor license, *see* 60-6C-6 NMSA 1978.

For use of writ by and against public service commission, *see* 62-12-1, 62-12-2 NMSA 1978.

For conservancy districts enforcing regulations by use of writ, *see* 73-14-43, 73-17-9 NMSA 1978.

#### I. GENERAL CONSIDERATION.

**Mandamus involving a suit pending in another court.** — A district court is not uniformly required to deny a petition for mandamus out of deference to a suit that is pending before another district court. Rather, the district court, in exercising its discretion, should take into account the similarities of parties and issues and consider whether the district court first having jurisdiction over the matter is properly situated to settle the whole controversy and address the rights of the respective parties. *Fastbucks of Roswell, N.M., LLC v. King*, 2013-NMCA-008, 294 P.3d 1287.

Where the attorney general filed suit against defendants in the first district court alleging that defendants' lending practices and consumer loans were unconscionable under common law and the Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.; defendants filed a petition for writ of mandamus against the attorney general in the fifth district court to prohibit the attorney general from pursuing the first district court lawsuit on the grounds that defendants' loans complied with the Small Loan Act, Sections 58-15-1 NMSA 1978 et seq., and that the attorney general was acting beyond the attorney general's statutory and constitutional power in bringing the first district court lawsuit; the fifth district court had jurisdiction to consider the mandamus petition and venue was



proper in the fifth district court; defendants had the opportunity to raise the arguments raised in the mandamus petition in their defense to the first district court lawsuit; and the fifth district court dismissed the mandamus petition on the grounds that the writ of mandamus would intrude on the first district court's jurisdiction and that the first district court provided an adequate forum for defendants to raise their challenges to the attorney general's powers, the fifth district court did not abuse its discretion in denying the petition for mandamus. *Fastbucks of Roswell, N.M., LLC v. King*, 2013-NMCA-008, 294 P.3d 1287.

**Writ enforces only clear legal rights.** — It is a well-established doctrine in the law relating to mandamus that only clear legal rights are subject to enforcement by the writ. *Schreiber v. Baca*, 1954-NMSC-110, 58 N.M. 766, 276 P.2d 902.

**Act beyond power or dependent on nonparty's will not required.** — The writ of mandamus will not require the performance of an act beyond the power of the respondent or dependent upon the will of a third person not a party to the suit. *Territory ex rel. Lester v. Suddith*, 1910-NMSC-068, 15 N.M. 728, 110 P. 1038.

**Not issued when no reason to suppose noncompliance with order.** — Where the warden who was sought to be compelled by writ had not appealed and there was no claim that he was not bound by the trial court's decision, the supreme court had no reason to suppose that he would not comply with it, and declined to assume he would not, and thus, defendant had suffered no prejudice by the trial court's denial of the writ, nor was prejudice to him presently threatened. *Apodaca v. Rodriguez*, 1972-NMSC-067, 84 N.M. 338, 503 P.2d 318.

**Will issue if governor exceeds constitutional authority.** — The exercise of the veto power requires judgment and discretion on the part of the governor and he cannot be compelled by the legislature or by this court to exercise this power or to exercise it in a particular manner. However, the manner in which the governor exercises the power is not beyond judicial review or judicial control. When the manner in which it is exercised is beyond the governor's constitutional authority, mandamus is a proper proceeding in which to question not only the constitutionality of legislative enactments, but also the constitutionality of vetoes or attempted vetoes by the governor. *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**When administrative board exceeds its jurisdiction.** — Generally mandamus will not lie to control the discretion of an administrative board. But an exception to the general rule is recognized where the administrative board has acted unlawfully or wholly outside its jurisdiction or authority, or where it had abused its discretion. *Sanderson v. N.M. State Racing Comm'n*, 1969-NMSC-031,

80 N.M. 200, 453 P.2d 370.

**Denomination of pleading irrelevant since allegations and relief determine nature.** —

It matters not what the pleading initiating the proceeding may be denominated. If in truth it discloses by its allegations and the relief sought that it is an action in mandamus, it will be so treated. *Laumbach v. Board of Cnty. Comm'rs*, 1955-NMSC-096, 60 N.M. 226, 290 P.2d 1067.

**If prohibition does not lie on facts then neither does mandamus.** — Relator sought by writ of prohibition to restrain the district judge from granting a new trial in a workmen's compensation action on grounds of lack of jurisdiction under the act, and a motion to dismiss was sustained, under the same facts where prohibition will not lie, mandamus will not lie. *State ex rel. Gallegos v. MacPherson*, 1957-NMSC-068, 63 N.M. 133, 314 P.2d 891.

**If no jurisdictional question or injustice then writ not issued.** — Where there was no jurisdictional question presented nor any showing that grave injustice would result if the case proceeded to trial, the matter was not one calling for the writ; and as the alternative writ of prohibition had been improvidently issued, it was thereby discharged. *Baca v. Burks*, 1970-NMSC-055, 81 N.M. 376, 467 P.2d 392.

**Pro se petitions.** — Pro se petitions are regarded with a tolerant eye. Courts will consider a petition if the essential elements prerequisite to the granting of the relief sought can be found or reasonably inferred. *Martinez v. State*, 1990-NMCA-033, 110 N.M. 357, 796 P.2d 250.

## II. PURPOSE OF SECTION.

### A. IN GENERAL.

**Mandamus is a summary and specific remedy to enforce performance** of a duty incident to an existing right, in cases in which, without such appropriate redress, serious injustice would occur. It is a recognized process to maintain the prima facie title to an office, and it is not within its purview to determine the legality of such claim. *Conklin v. Cunningham*, 1894-NMSC-005, 7 N.M. 445, 38 P. 170.

**For mandamus to lie there must be clear legal right** sought to be enforced, and where college professor's claimed tenure was not as a result of a positive provision of law, no such clear legal right existed. *Lease v. Board of Regents*, 1972-NMSC-042, 83 N.M. 781, 498 P.2d 310.

**Purpose of mandamus is to compel performance of ministerial duty** which one charged

with its performance has refused to perform. *State ex rel. Reynolds v. Board of Cnty. Comm'rs*, 1962-NMSC-030, 71 N.M. 194, 376 P.2d 976.

**Rights may not be adjudicated between parties by mandamus.** — It is only a method of enforcing an existing right. *State ex rel. State Hwy. Comm'n v. Quesenberry*, 1963-NMSC-113, 72 N.M. 291, 383 P.2d 255.

**Writ only lies where duty clear and indisputable.** — Mandamus lies to compel the performance of a statutory duty only when it is clear and indisputable. *Regents of Agric. Coll. v. Vaughn*, 1904-NMSC-023, 12 N.M. 333, 78 P. 51.

**Mandamus lies at request of person beneficially interested to compel** the performance of an affirmative act by another where the duty to perform the act is clearly enjoined by law and where there is no other plain, speedy and adequate remedy in the ordinary course of law. *El Dorado at Santa Fe, Inc. v. Board of Cnty. Comm'rs*, 1976-NMSC-029, 89 N.M. 313, 551 P.2d 1360.

**Writ may be used to question constitutionality.** — Mandamus may not be used to control judicial discretion, but in the proper case, mandamus may be used to question the constitutionality of a state statute. *Montoya v. Blackhurst*, 1972-NMSC-058, 84 N.M. 91, 500 P.2d 176.

**Mandamus affords proper remedy against ex official by de facto officer** having prima facie right to obtain possession of the books, papers and other property of the office, and a pretended retention of the office by the late occupant will not justify him in withholding such property, with a view to compel resort to information in the nature of quo warranto by a party possessing the prima facie title. *Conklin v. Cunningham*, 1894-NMSC-005, 7 N.M. 445, 38 P. 170.

**Mandamus affords proper remedy to compel public body to act.** — When any inferior tribunal, corporation, board, or person fails to perform its duties, the affected parties may apply to the district court for a writ of mandamus to compel the public body to discharge any of its functions. *City of Albuquerque v. AFSCME*, 2015-NMCA-023.

Where labor management relations board, for eighteen months, was not functioning to resolve employee complaints because the board was missing one of its required three members, writ of mandamus was a remedy available to compel the board to discharge its duties. *City of Albuquerque v. AFSCME*, 2015-NMCA-023.

**One who has prima facie title to office may compel** delivery to himself of the property and

paraphernalia of the office by mandamus; the question of actual or ultimate title to the office must be reserved for another proceeding. *Eldodt v. Territory ex rel. Vaughn*, 1900-NMSC-015, 10 N.M. 141, 61 P. 105.

#### B. JUDICIAL ACTS.

**Mandamus is proper remedy to compel district court to take action** or perform duties as required by legislative enactments. *State ex rel. Maloney v. Neal*, 1969-NMSC-095, 80 N.M. 460, 457 P.2d 708.

**Prohibitory mandamus.** — Mandamus is a proper remedy by which to prohibit a public official from acting unlawfully or unconstitutionally. *State ex rel. Clark v. Johnson*, 1995-NMSC-048, 120 N.M. 562, 904 P.2d 11; *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, 125 N.M. 343, 961 P.2d 768.

**Simple ministerial task of setting case down for jury trial** is an act which may be compelled by writ of mandamus. *State ex rel. Cardenas v. Swope*, 1954-NMSC-028, 58 N.M. 296, 270 P.2d 708.

**Remedy for erroneous refusal of appeal or supersedeas is mandamus** and not by writ of error. *Albright v. Territory ex rel. Sandoval*, 1905-NMSC-010, 13 N.M. 64, 79 P. 719, appeal dismissed, 200 U.S. 9, 26 S. Ct. 210, 50 L. Ed. 346 (1906); *Gutierrez v. Territory ex rel. Curran*, 1905-NMSC-005, 13 N.M. 30, 79 P. 299, *appeal dismissed*, 202 U.S. 614, 26 S. Ct. 766, 50 L. Ed. 1171 (1906).

**Writ lies to compel fixing amount of supersedeas bond.** — Mandamus will be granted to command the trial court to fix the amount of the supersedeas bond, where an order and judgment granting a mandatory injunction have been appealed. *State ex rel. Martinez v. Holloman*, 1918-NMSC-138, 25 N.M. 117, 177 P. 741.

#### C. ACTS BY PUBLIC OFFICIALS.

**Mandamus is proper remedy to compel performance of official act** by a public officer. *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, 85 N.M. 747, 517 P.2d 69.

**Governor's duty under primary election law to issue proclamation was mandatory** and mandamus was properly granted to compel the governor to specify in his proclamation the boundaries of the district making up the office of county commissioner and terms of that office.

*State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

**Writ lies to contest failure to certify nominees.** — Mandamus is a proper action to contest the validity of the secretary of state's action in failing to certify a party's nominees. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

**Mandamus compelling payment serves function of writ of execution.** — Mandamus is one of the remedies and often the only one available to compel a governmental body to pay a money judgment. Mandamus issued to enforce payment of a money judgment against a governmental agency is only ancillary to and in aid of the judgment, and serves the same purpose as a writ of execution. *State ex rel. State Hwy. Comm'n v. Quesenberry*, 1963-NMSC-113, 72 N.M. 291, 383 P.2d 255.

**Writ lies where board has duty and mistakes its power.** — Where appeal has been taken from the granting of an alternative writ of mandamus, and the answer shows that the respondent had failed to perform a clear legal duty, and was mistaken as to its power, and that it erroneously alleged that relator had other legal remedy, this court will not interfere, and a peremptory writ will issue. *State ex rel. Thompson v. Beall*, 1932-NMSC-082, 37 N.M. 72, 18 P.2d 249.

**Another's license not revoked for commercial advantages.** — Commercial advantages, which the holder of a retail liquor license might gain by elimination of competition of another holder of a license, were too illusive and uncertain to entitle it to maintain mandamus proceedings, as a person enforcing special interest or private right, to compel revocation of the license of another. *Ruidoso State Bank v. Brumlow*, 1970-NMSC-042, 81 N.M. 379, 467 P.2d 395, *overruled on other grounds by De Vargas Sav. & Loan Ass'n v. Campbell*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

**Mandamus lies to compel board of county commissioners to perform** a duty required by statute. *Codlin v. Kohlhausen*, 1899-NMSC-008, 9 N.M. 565, 58 P. 499, appeal dismissed, 181 U.S. 151, 21 S. Ct. 584, 45 L. Ed. 793 (1901).

**To compel canvass of votes.** — A board of canvassers may be compelled by mandamus to canvass votes, and to direct how they shall be returned and in whose favor an election certificate shall be issued. *In re Sloan*, 1891-NMSC-011, 5 N.M. 590, 25 P. 930; *Territory ex rel. Lewis v. Board of County Comm'rs*, 1888-NMSC-015, 5 N.M. 1, 16 P. 855.

**To compel tax levy.** — A writ of mandamus is properly directed to the mayor and city council to compel a tax levy. *Territory ex rel. Parker v. Mayor of Socorro*, 1904-NMSC-012, 12 N.M. 177, 76

P. 283.

**Writ remedy to teacher for refusal to rehire.** — A teacher's remedy for refusal of the local school board to give her a hearing and a statement of reasons for its refusal to rehire her was to pursue mandamus. The jurisdiction of the state board is limited to review of decisions of the local school board made after an informal hearing, and the jurisdiction of the court of appeals is limited to review of decisions of the state board. *Bertrand v. N.M. State Bd. of Educ.*, 1975-NMCA-145, 88 N.M. 611, 544 P.2d 1176, cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

**To compel grievance proceeding under city merit system.** — City may be compelled to hold a grievance proceeding under a city merit system, where there was evidence that the city officials had failed in their duty to provide a required remedy, and, the alternative, a suit in contract, would not have been plain, speedy, or adequate. *Lovato v. City of Albuquerque*, 1987-NMSC-086, 106 N.M. 287, 742 P.2d 499.

**Writ cannot make collateral attack on judgment.** — Where judgments have been rendered against a county on certain of its bonds, attack may not be made on their validity by mandamus to compel payment. *Territory ex rel. Coler v. Board of County Comm'rs*, 1907-NMSC-018, 14 N.M. 134, 89 P. 252, *aff'd*, 215 U.S. 296, 30 S. Ct. 111, 54 L. Ed. 202 (1909).

### III. TYPE OF DUTY.

#### A. MINISTERIAL.

**Writ does not lie unless specially enjoined upon warden.** — Plaintiff could not prevail in petition for writ of mandamus where the act sought to be compelled was not one specially enjoined by law upon the warden. *Apodaca v. Rodriguez*, 1972-NMSC-067, 84 N.M. 338, 503 P.2d 318.

**Act to be compelled by mandamus must be ministerial**, that is, an act or thing which the public official is required to perform by direction of law upon a given state of facts being shown to exist, regardless of his own opinion as to the propriety or impropriety of doing the act in the particular case. *El Dorado at Santa Fe, Inc. v. Board of Cnty. Comm'rs*, 1976-NMSC-029, 89 N.M. 313, 551 P.2d 1360.

**A ministerial act, as applied to a public officer**, is an act or thing which he is required to perform by direction of law upon a given state of facts being shown to exist, regardless of his own opinion as to the propriety or impropriety of doing the act in the particular case. *Sender v. Montoya*, 1963-NMSC-220, 73 N.M. 287, 387 P.2d 860; *State ex rel. Reynolds v. Board of Cnty.*

*Comm'rs*, 1962-NMSC-030, 71 N.M. 194, 376 P.2d 976.

**Writ lies to compel acts committed to official's discretion.** — Acts and the duties under them are no less ministerial because the public official, upon whom the duty is enjoined, may have to satisfy himself as to the existence of facts necessary to require his action. Where he refuses to act after such a determination is made, mandamus is the proper remedy, and where he refuses or delays, mandamus will issue to compel acts committed to his discretion if the law requires him to act one way or another. *El Dorado at Santa Fe, Inc. v. Board of Cnty. Comm'rs*, 1976-NMSC-029, 89 N.M. 313, 551 P.2d 1360.

**To compel particular act upon shown facts.** — While mandamus will not lie to correct or control the judgment or discretion of a public officer in matters committed to his care in the ordinary discharge of his duties, it will lie to compel the performance of mere ministerial acts or duties imposed by law upon a public officer to do a particular act or thing upon the existence of certain facts or conditions being shown, even though the officer be required to exercise judgment before acting. *State ex rel. Reynolds v. Board of Cnty. Comm'rs*, 1962-NMSC-030, 71 N.M. 194, 376 P.2d 976.

**Mandamus lies to compel judicial officer or court to perform** an act or duty which is ministerial and does not include the exercise of discretion. Likewise, it will lie to require a court to perform its judicial duties, but not to do so in any particular way. *State ex rel. Maloney v. Neal*, 1969-NMSC-099, 80 N.M. 460, 457 P.2d 708.

**Discharge hearings under the School Personnel Act are mandatory unless prejudicial.** — Where petitioner filed a request for a discharge hearing, pursuant to 22-10A-27(B) NMSA 1978, two days after the five-day time limit had passed after receiving notice of the Santa Fe Public schools' intent to discharge him from his teaching and coaching positions, mandamus was proper where respondent had a duty to hold a discharge hearing, where respondent had not been prejudiced by the late request for hearing, and where petitioner had no other adequate, speedy remedy at law. *Nat'l Educ. Ass'n of N.M. v. Santa Fe Pub. Sch.*, 2016-NMCA-009.

**County commissioners' duties as to subdivisions formerly only ministerial.** — Before the passage of the 1973 New Mexico Subdivision Act (47-5-9, 47-6-1 to 47-6-29 NMSA 1978), a board of county commissioners had nothing to do but the ministerial act of endorsing its approval on plats which complied with all statutory requirements for rural subdivisions, and mandamus was a proper remedy when it refused to do so. *El Dorado at Santa Fe, Inc. v. Board of Cnty. Comm'rs*, 1976-NMSC-029, 89 N.M. 313, 551 P.2d 1360.

B. DISCRETIONARY.

**Mandamus will not direct performance of particular act** from among two or more allowed alternatives. *El Dorado at Santa Fe, Inc. v. Board of Cnty. Comm'rs*, 1976-NMSC-029, 89 N.M. 313, 551 P.2d 1360.

**Discretion in performing an act arises** when it may be performed in one of two or more ways, either of which would be lawful, and where it is left to the will or judgment of the performer to determine in which way it should be performed, but when a positive duty is enjoined and there is but one way in which it can be performed lawfully, then there is no discretion. *State ex rel. Reynolds v. Board of Cnty. Comm'rs*, 1962-NMSC-030, 71 N.M. 194, 376 P.2d 976.

**Where discretion is as to existence of facts entitling relator** to the thing demanded, if facts are clearly proved or admitted, mandamus will lie to compel action according to law, for in such case the act to be done becomes purely ministerial and the duty to perform is absolute. *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, 85 N.M. 747, 517 P.2d 69.

**Writ lies to compel act even if exercising judgment required.** — While mandamus will not lie to correct or control the judgment or discretion of a public officer in matters committed to his care in the ordinary discharge of his duties, it is nevertheless well established that mandamus will lie to compel the performance of mere ministerial acts or duties imposed by law upon a public officer to do a particular act or thing upon the existence of certain facts or conditions being shown, even though the officer be required to exercise judgment before acting. *Sender v. Montoya*, 1963-NMSC-220, 73 N.M. 287, 387 P.2d 860.

**Mandamus is not available to control judicial discretion** unless there is a clear abuse of that discretion, or unless such action would prevent the doing of useless things. *State ex rel. Peters v. McIntosh*, 1969-NMSC-103, 80 N.M. 496, 458 P.2d 222.

**Mandamus not available to limit prosecutorial discretion.** — Although a prosecutor is required to present direct exculpatory evidence to the grand jury, he is invested with wide discretion as to the selection and presentation of evidence. Mandamus will not lie where the effect of its issuance would be to improperly limit the scope of the state's prosecutorial discretion. *Kerpan v. Sandoval Cnty. Dist. Att'ys Office*, 1988-NMCA-007, 106 N.M. 764, 750 P.2d 464.

**Where officials have discretion, no clear legal duty exists.** — Mandamus is a remedy for the violation of a clear legal duty, and where no such legal duty is required, as where village officials may exercise discretion, it follows that it would be improvident to issue the writ. *State ex*



*rel. Sun Co. v. Vigil*, 1965-NMSC-012, 74 N.M. 766, 398 P.2d 987.

**No basis for writ if official has discretion.** — Under former Section 42-1-23 NMSA 1978, if the state highway commission (now state transportation commission) has a clear legal duty to sell to the property owner, the writ of mandamus may compel the discharge of the duty, but if there is discretion to sell, rather than a clear legal duty to do so, there is no basis for the writ. *State ex rel. State Hwy. Comm'n v. Clark*, 1968-NMSC-057, 79 N.M. 29, 439 P.2d 547.

**Mandamus is appropriate only when that duty is clear and indisputable.** — Mandamus lies to compel the performance of an affirmative act by another where the duty to perform the act is clearly enjoined by law and where there is no other plain, speedy and adequate remedy in the ordinary course of law; mandamus does not apply to compel an executive officer acting within his or her discretion. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

Where the secretary of the public education department implemented new regulations governing the evaluation of teachers in public schools, and where 22-10A-19 NMSA 1978 requires the public education department to adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees, the secretary was acting within her statutory authority and exercising her discretion under the statute as long as the teacher evaluation program was objective and uniform; the district court did not err in denying the petition for a writ of mandamus. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

**Law reviews.** — For comment, "Civil Procedure - Dismissal and Nonsuit - Mandamus," see 4 Nat. Resources J. 413 (1964).

For article, "Mandamus in New Mexico," see 4 N.M.L. Rev. 155 (1974).

For note, "Mandamus Proceedings Against Public Officials: State of New Mexico ex rel. Bird v. Apodaca," see 9 N.M.L. Rev. 195 (1978-79).

For article, "Habeas Corpus in New Mexico," see 11 N.M.L. Rev. 291 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 52 Am. Jur. 2d Mandamus §§ 4, 63 to 93.

Mandamus to compel construction or repair of school buildings, 1 A.L.R. 1559.

Election of remedies as between mandamus and an action for damages, 1 A.L.R. 1698.

Mandamus to compel court to assume or exercise jurisdiction where it has erroneously dismissed

the cause or refused to proceed on the ground of supposed lack of jurisdiction, 4 A.L.R. 582, 82 A.L.R. 1163.

Mandamus to compel a court to take jurisdiction of cause that it has erroneously dismissed for supposed insufficiency or lack of service of process, 4 A.L.R. 610.

Inadequacy of remedy by appeal or writ of error as affecting right to mandamus to inferior court, 4 A.L.R. 632.

Mandamus to compel a court to reinstate or proceed with the hearing of an appeal that it has erroneously dismissed, 4 A.L.R. 655.

Salary of public officer or employee, mandamus to compel payment of, 5 A.L.R. 572.

Mandamus as proper remedy to compel payment of soldier's bounty, 13 A.L.R. 604, 35 A.L.R. 791, 22 A.L.R.2d 1134.

Mandamus to compel performance of duties after resignation of officer, 19 A.L.R. 48.

Officer's liability to penalty, fine or imprisonment as affecting right to mandamus to enforce performance of public duty by him, 19 A.L.R. 1382.

Partner's right to maintain mandamus against copartners, 21 A.L.R. 129.

Mandamus to enforce stockholders' right to inspect books and records, 22 A.L.R. 43, 43 A.L.R. 786, 59 A.L.R. 1373, 80 A.L.R. 1517, 174 A.L.R. 291, 15 A.L.R.2d 11.

Unfitness as affecting right to restoration by mandamus to office from which one has been illegally removed, 36 A.L.R. 508.

Action or suit as abating mandamus proceeding or vice versa, 37 A.L.R. 1432.

Mandamus to compel enrollment or restoration of pupil in state school or university, 39 A.L.R. 1019.

Mandamus to compel court or judge to require witness to testify, 41 A.L.R. 436.

Mandamus against municipality to compel improvement or repair of street or highway, 46 A.L.R. 257.

Mandamus to compel legislature to make apportionment of representatives or election districts, 46 A.L.R. 964.

Mandamus as remedy for interference with right-of-way, 47 A.L.R. 557.

Mandamus to compel institution of proceedings to oust public officer, 51 A.L.R. 561.

Mandamus as a remedy for exclusion of eligible class or classes of persons from jury list, 52 A.L.R. 928.

Remedy by mandamus of creditor against officer who fails to levy under execution, 57 A.L.R. 836.

Mandamus to compel collection of taxes, 58 A.L.R. 117.

Mandamus as remedy delay in bringing accused to trial or to retrial after reversal, 58 A.L.R. 1510.

Enforceability of right to inspect public records by mandamus, 60 A.L.R. 1356, 169 A.L.R. 653.

Failure properly to index conveyance or mortgage of realty as affecting constructive notice, 63 A.L.R. 1057.

Mandamus to compel general course of conduct or performance of continuing duty or series of acts, 64 A.L.R. 975.

Mandamus to prevent records clerk from continuing to permit use of his office by abstract company, 80 A.L.R. 784.

Mandamus to compel consideration, acceptance or rejection of bids for public contract, 80 A.L.R. 1382.

Mandamus to compel appropriation for payment of salary of public officer or employee, 81 A.L.R. 1253.

Mandamus to compel consideration, allowance or payment of claim under workmen's compensation acts, 82 A.L.R. 1073.

Mandamus to compel court to assume jurisdiction where it has erroneously refused to proceed on ground of lack of jurisdiction, 82 A.L.R. 1163.

Mandamus as proper remedy to compel service by public utility, 83 A.L.R. 947.

Mandamus to compel service by telephone or telegraph company, 83 A.L.R. 950.

Mandamus to put one in possession of office, title to which is in dispute, 84 A.L.R. 1114, 136 A.L.R. 1340.

Right of several having interests to join as relators in mandamus proceedings, 87 A.L.R. 528.

Right to mandamus to compel full payment of claim when fund out of which obligation is payable is insufficient to pay all obligations of equal dignity, 90 A.L.R. 717, 171 A.L.R. 1033.

Mandamus to compel official to approve bond proffered in legal proceedings, 92 A.L.R. 1211.

Mandamus as a proper remedy for return of a tax illegally or erroneously exacted, 93 A.L.R. 585.

Mandamus to compel delivery of papers and records to corporation, 93 A.L.R. 1061.

Mandamus to enforce payment of special assessment against public property, 95 A.L.R. 700, 150 A.L.R. 1394.

Mandamus to restore license as proper remedy where professional license has been wrongfully revoked, 95 A.L.R. 1424.

Mandamus as remedy for purging of registration list, 96 A.L.R. 1050.

Mandamus to compel payment of state, county, municipal or quasi-municipal corporation warrant, 98 A.L.R. 442.

Mandamus by creditor of corporation to reach fund or securities deposited with state official as security for corporate obligations, 101 A.L.R. 500.

Change of incumbent of office or of personnel of board or other official body as affecting mandamus proceeding previously commenced, 102 A.L.R. 943.

Mandamus to compel performance of public or ministerial duty, 105 A.L.R. 1124.

Determination of canvassing board or election official as regards counting or exclusion of ballots as subject of review by mandamus, 107 A.L.R. 618.

Right of holder of license from public to question propriety of issuing license to other persons, 109 A.L.R. 1259.

Court's control over mandamus as means of avoiding enforcement of strict legal right, to detriment of the public, 113 A.L.R. 209.

Mandamus as taxpayer's remedy in respect of valuation of property for taxation, 131 A.L.R. 360.

Mandamus to compel action regarding free transportation of school pupils, 118 A.L.R. 818, 146 A.L.R. 625.

Mandamus to members or officer of legislature, 136 A.L.R. 667.

Mandamus against unincorporated association or its officers, 137 A.L.R. 311.

Mandamus to compel reinstatement of suspended or expelled members of labor union, 141 A.L.R. 617.

Right to go behind money judgment against public body in mandamus proceeding to enforce it, 155 A.L.R. 464.

Mandamus as subject to statute of limitations, 155 A.L.R. 1144.

Remedies for exclusion of eligible class of persons from jury list in civil case, 166 A.L.R. 1422.

Private rights and remedies to enforce right based on civil rights statute, 171 A.L.R. 920.

Legislature's express denial of right of appeal as affecting right to review on the merits by certiorari or mandamus, 174 A.L.R. 194.

Default as condition of right to compel governmental body to pay, or make provision for payment of, its obligations, 175 A.L.R. 648.

Corporation as necessary or proper party defendant in proceedings to determine validity of election or appointment of corporate director or officer, 21 A.L.R.2d 1048.

Remedy for refusal of corporation or its agent to register or effectuate transfer of stock, 22 A.L.R.2d 12.

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties, 23 A.L.R.2d 803.

Compelling municipal officials to enforce zoning regulations, 35 A.L.R.2d 1135.

Remedy by appeal or writ of error as affecting mandamus to enforce right to jury trial, 41 A.L.R.2d 780.

Mandamus as remedy to compel assertedly disqualified judge to recuse self or to certify his disqualification, 45 A.L.R.2d 937, 56 A.L.R. Fed. 494.

Venue of actions or proceedings against public officers, 48 A.L.R.2d 423.

Compelling holding of stockholders' meetings, 48 A.L.R.2d 615.

Private person's right to institute mandamus to compel a magistrate or other appropriate official to issue a warrant, or the like, for an arrest, 49 A.L.R.2d 1285.

Availability of mandamus to review order of reference to master or auditor, 76 A.L.R.2d 1120.

Remedy to review verdict at coroner's inquest, 78 A.L.R.2d 1218.

Compelling admission to membership in professional association or society, 89 A.L.R.2d 964.

Compelling ascertainment of compensation for property taken or for injuries inflicted under power of eminent domain, 91 A.L.R.2d 991.

Remedy to review ruling on change of venue in civil case, 93 A.L.R.2d 802.

Mandamus to compel discovery proceedings, 95 A.L.R.2d 1229.

Mandamus to compel disciplinary investigation or action against physician or attorney, 33 A.L.R.3d 1429.

Mandamus to protect charitable or eleemosynary corporation against use of same or similar name by another corporation, 37 A.L.R.3d 277.

Mandamus, under 28 USCS § 1361, to obtain change in prison condition or release of federal prisoner, 114 A.L.R. Fed. 225.

55 C.J.S. Mandamus §§ 51 to 239.

### **Attorney general opinions.**

**Mandamus lies to compel official's performance.** — It is the general rule that mandamus will lie to compel the performance by a public body or official of a clear, plain duty. 1961 Op. Att'y

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