

Proposed Changes to § 49-1-3. Board of trustees; management of grant; powers

Currentness

The management and control of all land grants-mercedes and tracts of land to which [Sections 49-1-1](#) through [49-1-18 NMSA 1978](#) are applicable is vested in a board of trustees, to be known as the “board of trustees of the land grant-merced del pueblo de ____” (designating the name of the town, colony, pueblo or community), and the board shall have the power to:

~~A. A.~~ control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the common lands may be used and enjoyed and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with applicable statutes for the government thereof;

B. issue citations and prosecute criminal complaints in the magistrate courts for certain violations of the by-laws, rules and regulations of the land grant as permitted under Section 49-1-24 NMSA 1978;

~~C. B.~~ sue and be sued under the title as set forth in this section;

~~D. C.~~ convey, lease or mortgage the common lands of the land grant-merced in accordance with the land grant-merced bylaws;

~~E. D.~~ determine the number of animals that may be permitted to graze upon the common lands and determine other uses of the common lands that may be authorized;

~~F. E.~~ prescribe the price to be paid for the use of the common lands and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;

~~G. F.~~ adopt and use an official seal;

~~H. G.~~ appoint judges and clerks and a canvassing board of election at all elections provided for in [Sections 49-1-1](#) through [49-1-18 NMSA 1978](#), subsequent to the first, and canvass the votes cast in those elections;

~~I. H.~~ make bylaws, rules and regulations, not in conflict with the constitution and laws of the United States or the state of New Mexico, as may be necessary for the protection, improvement and management of the common lands and real estate and for the use and enjoyment of the common lands and of the common waters of the land grant-merced;

~~J. I.~~ determine land use, local infrastructure and economic development of the common lands of the land grant-merced;

~~K. J.~~ determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the board of trustees that considers the health, safety and general welfare of the residents and heirs of the land grant-merced; and

~~L. K.~~ enter into memoranda of understanding, contracts and other agreements with a local, state or federal government or a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources.

Proposed New Provision §49-1-24 Illegal Removal of Resources; Prosecution; Procedures; Penalties and Attorney Fees.

A. Illegal Removal of Resources. No person shall remove rock product, minerals, timber or any other resource(s) from a land grant in violation of the land grant's by-laws, rules and regulations.

B. Authorized prosecutions. In the case of a Land Grant Merced, the board of trustees, or an employee of the land grant authorized by the board of trustees, may issue a criminal citation to any person who is in violation of subsection A of this section and file a criminal complaint in the magistrate court of any county in which the violation occurred. The district attorney or a member of the board of trustees or an employee of the land grant expressly authorized by the board of trustees, may appear and prosecute any misdemeanor proceeding under subsection A of this section, except that no land grant may prosecute through a non-attorney any case that is tried before a jury.

C. Trial procedures. In cases where a non-attorney land grant employee or member of the board of trustees are authorized under subsections A and B to prosecute citations, those employees or members of the board shall be permitted to testify and present evidence to the court. In the court's discretion, such parties may also ask questions of witnesses, either directly or through the court, and may make statements bringing pertinent facts and legal authorities to the court's attention.

D. Criminal Penalty. A person convicted of violating the provisions of subsection A of this section is guilty of a misdemeanor and on conviction, the defendant shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000) or sentenced up to six months imprisonment in the county jail, or both.

E. Civil Penalty. The Board may file a civil complaint seeking a civil penalty not to exceed five thousand dollars (\$5,000) for knowingly, intentionally or willfully violating the provisions of subsection A of this section, which shall be paid to the Board of Trustees.

F. Other remedies. The remedies provided for in this section shall not be construed as limiting the right of the board of trustees from seeking damages. In addition to the remedies provided in this section, the district attorney, or the board of trustees may apply on behalf of the board of trustees and the heirs of the land grant to the district court of the county where the violation occurred for an injunction restraining any person from violating or continuing to violate the provisions of subsection A of this section.

G. Attorney Fees. In any civil suit filed by the board of trustees under this section, in which the board of trustees prevails, the board of trustees shall be entitled to an award of reasonable court costs and attorney fees.

Commented [ALC1]: I am not completely sure how criminal citations work. My experience is limited to citations issued for violations of ordinances. I am not entirely sure whether a complaint needs to be filed in addition to the citation or whether a citation can be issued in lieu of the complaint if it is filed with the court and served in accordance with Rule 1-004. I would appreciate if someone can weigh in on the best way to phrase this and the best process.

Commented [ALC2]:

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