

January 11, 1955
Letter Opinion
No. 55-3-L

Mr. Harold Neubauer
Chief Civil Deputy
Pima County Attorney
Tucson, Arizona

Re: Qualifications of electors in
special school district elections.

Dear Mr. Neubauer:

Relative to your request concerned with the qualifications of electors in special school district elections, I should like, with your permission, to narrow the question as follows:

"Is a school district elector required to have a genuine residence of six months in the district in which he proposes to vote on a district bond election?"

The 1939 Code, Section 54-414, required a residence of thirty days as a qualification of an elector at any school election. This section was amended in 1954 to require a residence of six months to qualify an elector to vote for a trustee. The 1954 amendment, by failing to refer to special elections, left open the question of residence qualifying an elector at a bond election.

Section 54-419 of the 1939 Code, dealing with special elections uses the terms, "as regular school elections," and refers again to the terms, "qualified electors of the district." Section 54-419, as amended in 1954, uses the identical wording in this regard. It would appear in giving the usual and customary meaning to the terms implied in both sections of the 1939 Code, that it was the intent of the legislature to refer to a regular election of a school district as that election for a school trustee; and, that interpreting Section 54-419, it would be necessary to seek the qualifications of an elector by referring to Section 54-414. There appears to be

55-3-L

no difference in this intent as the two sections were amended in 1954. A regular election in school district parlance is an election for a school district trustee. A special election on the other hand, is an election for an important specific purpose, such as purchase of school sites, or the issuance of district bonds. It involves expenditures of school money and quite readily may be seen to call for the imposition of a higher qualification upon anyone proposing to vote in such special election. It was the obvious intent of the legislature to confine voting on such issues to persons possessing additional qualifications and to deny the right to vote on such issues to the casual or transient resident.

This intent is further demonstrated by the fact that the amended Section 54-414 sets up an additional qualification for voters who would vote for a trustee - that is, at a regular school election; and Section 54-419 again imposes the additional qualification that an elector at a special election shall be required to be a real-property taxpayer within the district in which he proposes to vote. The intent to impose higher qualifications upon an elector is demonstrated by the requirement (spelled out) that the voter is required to sign an affidavit.

The statutes were apparently read together in the past in order to determine the qualifications of an elector at a special district election. There should be no real objection to continuing this practice. The neglect of the legislature to include the words "and is a qualified elector in a school election" should not alter the practice. There is no reason why an elector proposing to vote on the issue of school bonds or the issue of the purchase of a school site should have lesser qualifications than an elector proposing to vote for the election of a school trustee. Such was not the case in the past and such was not the intent of the legislature in effecting the 1954 amendments.

We are aware of a difference of opinion expressed by our predecessors in office (54-79); and it is with some reluctance we are persuaded to the contrary view.

Still there are only two types of school elections:

1. Election of trustee (54-414).
2. Special election (all others) (54-419).

54-419 requires a special election, "shall be called and conducted as regular school elections, except" (the exception is specific). Since there is only one other type of election (trustee) that other one (54-414) must be a "regular" election. Therefore, of necessity, both statutes must be read and applied as a unit to bond elections.

In determining the legislative intent, we must take into consideration the necessary implication as well as that specifically stated in statute.

"What is necessarily implied in the statute is as much a part of it as what is expressed."

COGGINS vs. ELY, 23 Ariz. 155, page 162.

"The implication may be drawn from public policy; past act; the entire terms; propositions and scope of the act to be considered; the inconvenience, inconsistencies and the absurdities involved in the contrary considerations; indeed, from all of the things found in the acts, the conditions surrounding it, the history antedating it, and policy dictating it; . . ."

COGGINS vs. ELY, supra.

We define the public policy in this specific statute as a policy designed to liberalize the qualifications for an elector in permitting those without children of school age attending school in the district to vote and, at the same time, make more stringent the qualifications of an elector with regard to the elector's residence. The past actions are considered in interpreting the two acts together. This applies with equal force to the history antedating the new amendments and the policy dictated in the new amendments. In conclusion, we find the qualifications of a school district elector at any election should be sought for in Section 54-414 and not sought for in the general election code, except insofar as to determine whether or not the elector is otherwise qualified and is a

Mr. Harold Neubauer
Pima County Attorney

January 11, 1955
Page Four

registered voter of the State of Arizona. There is a necessary implication from the last statement that such voter must be registered after January 1, 1954.

Very truly yours,

ROBERT MORRISON
The Attorney General

GORDON ALDRICH
Assistant to the
Attorney General

GA:or

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