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STATE CAPITOL  
PHOENIX, ARIZONA

August 8, 1972

DEPARTMENT OF LAW OPINION NO. 72-22 (R-63)

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REQUESTED BY: COUNTY ATTORNEYS

ARIZONA STATE BOARD OF EDUCATION

THE HONORABLE WELDON P. SHOFSTALL  
Superintendent of Public Instruction

- QUESTIONS:
1. Which school district elections are to be conducted by the county school superintendents under the provisions of Chapter 138, Laws of 1972?
  2. Are absentee ballots required in all school elections pursuant to Chapter 54, Laws of 1972?

- ANSWERS:
1. See body of opinion.
  2. Yes.

This is the second in a series of opinions which the above agencies have requested concerning school district elections.

I

Chapter 138, Laws of 1972, is entitled in part as follows:

Relating to education; providing for powers and duties of county school superintendent; prescribing procedures for change of district boundaries; prescribing election procedures and changes in certain school district election laws. . . .

This chapter amends 22 existing sections of our state law relating to education and adds one new section. Although the thrust of the Act relates specifically to the election of boards of trustees and boards of education and to elections affecting the boundaries of school districts, there are certain sections or provisions of sections which use the phrase "special school district elections" or "special elections".

A.R.S. § 11-512 provides:

The county school superintendent shall:

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15. Be responsible, in cooperation with the boards of trustees, boards of education and the board of supervisors, for all special school district elections.

A.R.S. § 15-475 provides:

15-475. Notice of special election

A. The county school superintendent shall cause notices of a special election to be posted at least ninety days previous to the date of the election. The notices shall be posted in at least three public places in the district. One notice shall be posted at the school house if there is one.

B. The notices shall specify the day and place of the special election and the time the polls will be open.

C. If the superintendent fails to give notice as provided by subsections A and B, any two qualified electors who reside within the district may give similar notice of the special election at least seventy-five days prior thereto.

A.R.S. § 15-476 provides:

15-476. Special election officers; compensation

In those special school district elections held at a time and place other than general elections, the county school superintendent shall appoint an inspector, two judges and two clerks as election officers. If no officers are so appointed, or if those appointed are not present at the opening of the polls, the

electors present may select them. In all special school district elections each election officer shall receive the same compensation as other election officers of a general election.

A.R.S. § 15-479 provides:

15-479. Cost of elections

A. The cost of all special elections provided in this chapter, including the preparation of ballots, shall be charged against the funds of the district or districts involved.

B. The county school superintendent shall contract with the board of supervisors for holding regular school district elections. The contracted cost of such school elections shall be a charge against the superintendent who shall prorate such costs to the districts.

Although the Arizona Revised Statutes have long provided for various types of school elections, it must be assumed that when the phrase "regular school district elections" is used in the law, it means the elections conducted at regular statutory periods of time for the election of the members of the governing body of the school district. This is so for the reason that this is the only kind of school election that is mandatory for all school districts. Our main concern then is: "What did the Legislature intend the phrase 'special school district elections' to mean as used in Chapter 138, Laws of 1972?"

Looking to the provisions of Title 15, which relate to what is commonly called the "under four" school bond elections, we find that the statutory time sequence for the calling and holding of the election and the provisions thereof for giving notice of the election differ radically from the provisions contained in Chapter 138. The provisions of Title 35, relating to what is commonly called "over four" school bond elections, contain similar conflicts with the provisions of Chapter 138.

In view of the conflict between the requirements of Chapter 138 regarding "special school district elections" and the provisions of Titles 15 and 35, relating specifically to school district bond elections, it is appropriate to refer to the rules of statutory construction to determine what the Legislature meant by the use of the phrase "special school district elections" in Chapter 138.

It has been stated generally that no single statute should be interpreted wholly by its own terms thus, in the interpretation of a statute, it is sometimes regarded as proper to consider statutes upon cognate subjects, although not strictly in pari materia. 50 Am.Jur., § 347, in part.

It is therefore our opinion that, while school bond elections might be characterized in the vernacular as special elections, the Legislature did not intend Chapter 138 to apply to these school elections, and that the phrase "special school district elections" in Chapter 138 refers only to those elections specifically referred to by name in Chapter 138 other than the regular school district elections.

Thus, that phrase refers to: (1) elections to fill a vacancy on the board of trustees or board of education occasioned by other than the expiration of the term of office, A.R.S. § 11-512.7; (2) an election regarding a change in boundaries, A.R.S. § 11-403; (3) an election to determine the question of consolidation of existing school districts, A.R.S. § 15-410; (4) the election of a governing body for a consolidated district, A.R.S. § 15-411; or (5) an election to determine whether a school district board should be increased from three to five members, A.R.S. § 15-431.

It must be noted, however, that levy elections and capital outlay elections must also be held in compliance with the provisions of Chapter 138. This is not because such elections are specifically referred to in Chapter 138, nor because the Legislature necessarily intended that these elections were to be governed by Chapter 138, but because of the language of the levy and capital outlay election laws:

A.R.S. § 15-1302.B states:

When the election is called to decide upon locating or relocating school buildings, or the purchase or sale of school sites or school buildings, the election shall be called and conducted as regular school elections except as to the time of holding the election, and the board of trustees shall be governed by the vote of the majority of the qualified electors, as defined in § 15-473, on all questions submitted.

A.R.S. § 15-445.C states:

The board shall require a vote of the qualified electors of the district prior to the expenditure of funds for purposes prescribed by this section for the following:

1. Purchase of sites.
2. Erecting of school buildings.
3. Improving and furnishing of buildings used for school purposes when such buildings are leased from the national park service.

Titles 15 and 35, relating respectively to "under four" and "over four" school bond elections, provide an internal method of holding such elections, as does A.R.S. § 15-1202, relating to 6% override elections. Unfortunately, the same does not hold true for levy or capital outlay elections.

The only statutory procedures for holding these two types of elections are the provisions relating to general school elections. But these statutory procedures change as of the effective date of Chapter 138. This being the case, we are of the opinion that elections pursuant to A.R.S. §§ 15-1302 and 15-445 held other than as a part of a bond election must be held in conformity with the provisions of Chapter 138, since there is no other election procedure available for the holding of such elections.

II

Chapter 54, Laws of 1972, is entitled as follows:

An act relating to education; providing for voting by absentee ballot in school district elections; prescribing time for filing nominating petitions; amending Title 15, Chapter 4, Article 3, Arizona Revised Statutes, by adding section 15-473.01, and amending section 15-474, Arizona Revised Statutes.

At first reading it would appear that Section 15-473.01, contained in this Chapter, would require that the privilege of absentee balloting be made available to all qualified electors in all school district elections of any nature whatsoever for the reason that Section 15-473.01.A reads as follows: "A qualified elector, who meets the requirements therefor, may vote by absentee ballot in any school district."

The title of the Act, however, makes specific reference to the amending of Title 15, Chapter 4, Article 3. The article to be amended by this Act is entitled "Election of trustees". Chapter 54, standing alone, provides only for absentee voting in school district elections concerning the election of the members of the governing board of the school district.

We note, however, the provisions of A.R.S. § 15-1302, entitled "Special elections on bond issues and school property":

B. When the election is called to decide upon locating or relocating school buildings, or the purchase or sale of school sites or school buildings, the election shall be called and conducted as regular school elections except as to the time of holding the election. . . .

A.R.S. § 15-1302 authorizes boards of trustees and boards of education to call school district elections for the purpose of choosing or changing the location of school houses, purchasing or selling school sites or school houses, and selling bonds for buying land, building school houses, supplying school houses, improving school grounds or liquidating existing indebtedness.

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It is immediately apparent that the requirement of A.R.S. § 15-1302.B that elections be conducted in accordance with the rules pertaining to regular school elections does not specifically refer to bond elections or levy elections; however, it is almost impossible to conceive of either bond elections or levy elections that do not in some manner relate to the "locating or relocating [of] school buildings or the purchase or sale of school sites or school buildings."

In ambiguities of this nature the prudent construction is one which broadens the voting franchise. It is therefore our conclusion that, inasmuch as the law relating to regular school elections now requires that the privilege of absentee voting be extended to all qualified electors, absentee voting is now mandatory at all bond elections, levy elections and capital outlay elections, and other school district elections.

Respectfully submitted,

  
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The Attorney General

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