

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

August 16, 1972

DEPARTMENT OF LAW OPINION NO. 72-23 (R-66)

REQUESTED BY: COUNTY ATTORNEYS

ARIZONA STATE BOARD OF EDUCATION

THE HONORABLE WELDON P. SHOFSTALL
Superintendent of Public Instruction

QUESTION: In view of the conflicting amendments to A.R.S. § 15-474 found in Chapters 54 and 138 of the Laws of 1972, what percentage of the total votes cast at the last election of school board trustees represents a sufficient number of signers on a nominating petition for school board trustee?

ANSWER: Three percent.

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

A.R.S. § 15-474, as amended by Chapter 54, Laws of 1972, reads as follows:

§ 15-474. Nominating petitions; ballots

A. Nominating petitions may be filed not later than sixty days prior to the election. Nominating petitions shall be signed by not less than ten per cent of the qualified electors of the district as shown by the poll list of the last election of school trustees, and shall be filed with the clerk of the board of trustees or the clerk of the board of education in union high school districts.

B. The clerk with whom the nominating petitions are filed shall cause ballots to be prepared, and the names of all persons whose petitions have been filed shall appear thereon.

A.R.S. § 15-474, as amended by Chapter 138, Laws of 1972, reads as follows:

§ 15-474. Nominating petitions; ballots

A. Nominating petitions may be filed not later than sixty days prior to the election. Nominating petitions shall be signed by a number of qualified electors of the district equal to not less than three per cent of the total votes cast at the last election of school trustees, and shall be filed with the county school superintendent.

B. The superintendent may cause separate ballots to be prepared, or such school district candidates' names may be included as a part of the regular ballot. In any event the names of all persons whose petitions have been filed shall appear on a ballot, without partisan or other designation except the title of the office.

The general rule of statutory construction is that statutes which relate to the same subject matter should be read together and harmonized where possible. See, e.g., Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 459 P.2d 509 (1969). And this rule applies a fortiori where the two statutes were adopted at the same legislative session. State v. Jaastad, 43 Ariz. 458, 32 P.2d 799 (1934). There is, however, no possible way these conflicting amendments can be harmonized, and a different rule of construction must be used.

Although repeal of a statute by implication is not favored, if repugnancy or inconsistency such as we have here is found between the earlier law and the later law, so that it appears that the Legislature could not have intended the two statutes to be contemporaneously operative, it will be implied that the Legislature intended to repeal the earlier law by the later law. State v. Morf, 80 Ariz. 220, 295 P.2d 842 (1956). Similarly, in determining the intent of the Legislature, it is proper to look back into the history of a statute. Frohmler v. Hendrix, 59 Ariz. 184, 124 P.2d 768 (1942).

Looking to the history of these two amendments, we note that Chapter 54, which leaves the ten percent requirement, was approved by the Governor and filed with the Secretary of State on April 14, 1972, while Chapter 138, which requires only three percent, was approved by the Governor on May 13, 1972, and filed with the Secretary of State on May 15, 1972.

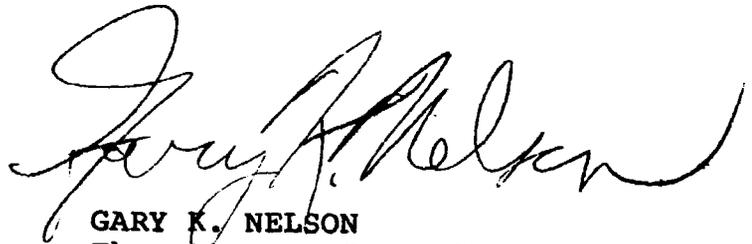
Thus, the latest expression of legislative intent is that only three percent of the total votes cast in the preceding election is sufficient for a nominating petition.

The fact that Chapters 54 and 138 both become effective ninety days after the adjournment of the Legislature, to-wit, August 13, 1972, does not change this result. The Arizona Supreme Court resolved a similar conflict in 1941 in a case involving the Unemployment Compensation Act, saying:

In 1941 the legislature amended the Act by chapters 27 and 124 of the regular session laws of that year, the former being approved March 10, and the latter March 27. Neither of these chapters carried the emergency clause and both, therefore, became effective ninety days after the adjournment of the legislature. But since chapter 124 was the last approved by the governor, we think that all conflicts between the two must be resolved in favor of the last indicated will of the legislative authority. . . . (Emphasis added.) Irvine v. Frohmiller, 58 Ariz. 391, 397, 120 P.2d 404 (1941).

It is thus the opinion of this office that the amendments to A.R.S. § 15-474 contained in Chapter 138, Laws of 1972, will govern, and that three percent of the total votes cast in the preceding election is sufficient for a nominating petition.

Respectfully submitted,



GARY K. NELSON
The Attorney General

GKN:JGB:ell