

DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

(R76-308)  
76-200  
BRUCE E. BABBITT  
ATTORNEY GENERAL



June 29, 1976

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**ARIZONA ATTORNEY GENERAL**

Mr. William Penn  
Commissioner  
Arizona State Real Estate Department  
1645 W. Jefferson  
Phoenix, Arizona 85007

Re: WHETHER OR NOT YOU ARE SERVING AT THE PLEASURE OF THE GOVERNOR

Dear Mr. Penn:

This is in response to your request for our advice regarding whether you are serving at the pleasure of the Governor or whether you are serving under a term.

For purposes of our advice herein, the following statements are assumed to be true:

1. Your appointment was effective April 14, 1975; and
2. On the effective date of your appointment, the applicable statute (A.R.S. Sec. 32-2106.A) read as follows:

"The commission shall:

1. Appoint, with the approval of the governor, and with the advice and consent of the senate, the real estate commissioner who shall serve for a term of four years, unless removed for good cause. Appointment to fill a vacancy occurring other than by expiration of term shall be filled by appointment, as set forth in this chapter, for the unexpired portion of the term only."; and
3. You were appointed for the unexpired portion of the term ending January 31, 1977; and
4. Effective June 13, 1975, the four-year term of office designated for the real estate commissioner was abolished. Specifically, Arizona's Legislature provided:

...



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"The real estate commissioner shall be appointed by the governor, pursuant to Section 38-211. The real estate commissioner shall serve at the pleasure of the governor." (A.R.S. Sec. 32-2106.A)

Did the Legislature, by the enactment in 1975 of the above-quoted language in A.R.S. Sec. 32-2106.A, change Real Estate Commissioner William Penn's status from that of "serving under a term" to that of "serving at the pleasure of the governor"?

In Ahearn v. Bailey, 104 Ariz. 250, 451 P.2d 30 (1969), Arizona's Supreme Court repeated its previously-announced position that "subject to constitutional limitations, the right of the Legislature to create and abolish offices in the public interest necessarily includes the power to fix or alter the term, the mode of appointment and compensation".

In Ahearn, Arizona's Legislature had shortened the terms of the members of the Industrial Commission so that the term of Ahearn, who had been appointed to a six-year term in January, 1966, would have ended on January 8, 1969. Arizona's Supreme Court held that since the action by Arizona's Legislature IN EFFECT constituted a device to unseat an incumbent - not the abolition of an office for reorganization purposes, which is permissible - Arizona's Legislature encroached upon the authority of the Executive to "hire and fire" in a manner inconsistent with the Separation of Powers provisions of Article III of Arizona's Constitution.

On the basis of the Arizona Supreme Court's pronouncement that, subject to constitutional limitations, the Legislature may fix and alter the terms of public offices, and on the basis of the reasoning by Arizona's Supreme Court in Ahearn, we do not think there is any constitutional objection to the Legislature's change of an office-holder's status from that of "serving under a term" to that of "serving at the pleasure of the governor." Accordingly, we think Arizona's Legislature changed your status to that of "serving at the pleasure of the governor" by virtue of the above-quoted 1975 enactment.

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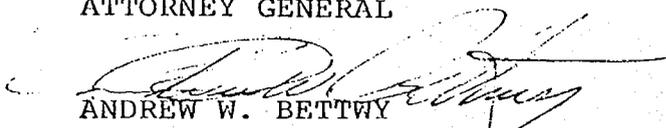
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It is interesting to note that when an office-holder is serving under a term, the Executive's "hire and fire" authority is limited and when an office-holder is serving at the pleasure of the governor, the Executive's "hire and fire" authority is unrestricted. The latter situation may be more in harmony with the spirit of Article III of Arizona's Constitution.

Please do not hesitate to contact us if there are any questions whatsoever regarding the thoughts expressed herein.

Sincerely,

BRUCE E. BABBITT  
ATTORNEY GENERAL



ANDREW W. BETTUY  
ASSISTANT ATTORNEY GENERAL

BEB:AWB:eh