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76-233
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BRUCE E. BABBITT
ATTORNEY GENERAL

July 23, 1976

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ARIZONA ATTORNEY GENERAL

Honorable Robert M. Hall
Navajo County Attorney
300 Navajo Boulevard
Holbrook, Arizona 86025

Dear Mr. Hall:

We have reviewed your School Opinion No. 6/76 which answered two questions relating to nominating petitions for the office of school district governing board member. We concur in the results you reach with respect to both questions and only add the following.

Subsection A of A.R.S. § 15-474 states that a nominating petition for a school board member must be signed by a number of qualified electors of the district equal to not less than one percent of the total votes cast in the last election of school board members. However, paragraph 9 of subsection A of A.R.S. § 16-305 specifies that the number of signatures must be equal to at least three percent. These provisions are in direct conflict. As you point out, however, subsection A of A.R.S. § 15-474 was amended by the Legislature in 1975 (Laws 1975, ch. 131, § 1) by substitution of the one percent requirement for what had been a three percent requirement. On the other hand, A.R.S. § 16-305 was last amended in 1974 (Laws 1974, ch. 134, § 18) in a manner that did affect the required minimum percentage for school board nominating petitions. As a consequence, subsection A of A.R.S. § 15-474 clearly sets forth the most recent expression of the will of the Legislature. It, thus, should be given effect.

Should you have any questions concerning the foregoing, please let us know.

Sincerely,

BRUCE E. BABBITT
Attorney General

Alan S. Kamin

ALAN S. KAMIN
Assistant Attorney General



ASK:gs

SCHOOL OPINION #6/76

Requested by: Dr. Arvin Palmer
Acting Navajo County School Superintendent

Opinion By: Robert M. Hall

Question #1: Which procedure should be followed for nominating school board trustees, that outlined in A.R.S. §15-474 or that outlined in A.R.S. §16-305?

Question #2: Assuming A.R.S. §15-474 governs, is the percentage basis for the number of names required for the nomination petition the number of votes cast in the last school election or the number of people qualified to vote in the election?

Answer to question #1: A.R.S. §15-474 governs.

Answer to question #2: The percentage basis is the number of votes cast in the last election.

There is an obvious conflict between the provisions of A.R.S. §16-305 (A) (9) and A.R.S. §15-474(A). There are two factors which lead me to conclude that A.R.S. 474(A) should be the governing provision. First, in statutory construction there are the recognized principles that the specific statute governs over the general statute if the two conflict. However, the courts will attempt to harmonize the conflicting statutes when possible. *State v. Rice*, 110 Ariz. 210, 213, 516 P.2d 1222 (1973), *Shirley v. Superior Court in and for Apache County*, 109 Ariz. 510, 513, 513 P.2d 939 (1973). Therefore, in applying these rules of construction, A.R.S. §15-474 (A) is the specific statute and should govern. Second, A.R.S. §15-474 (A) was enacted after A.R.S. §16-305 (A) (9). (See historical footnotes of each). The last expression of intent manifest by the Legislature is therefore found in A.R.S. §15-474 (A).

For the above reasons, I therefore advise you the school elections are to be governed by A.R.S. §15-474. It also follows that the percentage basis for nominating petitions is the number of votes cast in the last school election.

A copy of this opinion is being sent to the Attorney General for concurrence, dissent, or revision.

Very truly yours

13/ Robert M. Hall

ROBERT M. HALL
County Attorney
Navajo County