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Opinion No. 55-211

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: Honorable William H. Money, Jr.
Maricopa County Attorney

OPINION BY: Robert Morrison, The Attorney General
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QUESTION 1: What steps must the Clerk of the Superior Court take upon the filing of petitions for recall, with whom are the petitions filed and in whose custody should they remain?

CONCLUSION: The usual procedure in recall elections is set out in Abbey v. Green, 28 Ariz. 53, at page 56. However, when the person responsible for the call of election is being recalled, then the Clerk of the Superior Court makes the call.

QUESTION 2: Who gives notice of recall election, sets the date therefore, and appoints the election board to serve in the election?

CONCLUSION: The recall petitions are filed with the Clerk of the Board of Supervisors, and they should remain in his custody. The Clerk of the Board of Supervisors must notify the Clerk of the Superior Court of the filing of said petitions, and if the officer subject to recall shall not offer his resignation within five days after the recall petition is filed, the Clerk of the Superior Court must issue a call for a special election, to be held not less than twenty, nor more than thirty days after such call.

QUESTION 3: With whom are the nomination papers for other candidates filed?

CONCLUSION: The nomination papers are filed with the Clerk of the Board of Supervisors.

The ordinary steps in recall elections are adequately outlined in Abbey v. Green, 28 Ariz. 53, at page 56. We set this procedure out as follows:

"(1) The filing on May 26, 1924, with the clerk of the board of supervisors of Pinal County, of a recall petition, signed by more than 25 per

centum of the qualified electors of the county voting for judge at the preceding election, demanding the recall of plaintiff and giving the reasons therefor.

(2) The giving of immediate notice in writing to plaintiff by such clerk of the filing of the recall petition and the grounds thereof, and his right to make and have printed on ballot a defense of his official conduct in not to exceed 200 words.

(3) The failure of plaintiff to make or deliver any defense to the clerk to go on ballot or to resign.

(4) The ordering on June 4th by the board of supervisors of the recall election to be held on June 28, 1924.

(5) The publishing in a newspaper of general circulation throughout Pinal county, not less than 10 days preceding the date of election, a notice thereof.

(6) The candidacy for such office of defendant, Green, and one H. G. Richardson by the filing of nomination papers signed by 5 per centum of the qualified electors of Pinal county.

(7) The adoption and use at such election of the form of ballot set out in paragraph 3348 of the recall law, with the names of plaintiff, Stephen H. Abbey, defendant, E. L. Green, and said H. G. Richardson printed thereon alphabetically without party designation, and also the grounds for recall.

(8) That at election 1,588 votes were cast, of which defendant received 779, plaintiff 484, Richardson 321, and scattering 4.

(9) That the board of supervisors on July 7, 1924, canvassed the returns and declared therefrom that defendant had received the highest number of votes, and was duly elected, and accordingly issued to defendant a certificate of election."

However, the Legislature has provided an exception to this procedure when the person charged with the duty of issuing the call, is himself being recalled. In this instance, the Legislature has prescribed that the call shall be made by the Clerk of the Superior Court; but for this variance, the steps outlined in Abbey v. Green, supra, should be followed. Section 60-202, ACA, 1939.

The questions of with whom the petition for recall shall be filed and in whose custody they should remain are answered by the provisions of Section 17-307, ACA, 1939:

"The clerk of the board shall:

* * * * *

6. Preserve and file * * * all petitions and record the action of the board thereon;"

Article 8, pt 1, Sec. 2, prescribes that every recall petition must be filed in the office in which the petitions for nomination to the office held by the incumbent must be filed. Petitions for the nomination for the office of supervisor are filed with the Clerk of the Board of Supervisors. See: 55-1003, ACA, 1939, as amended. Therefore, in view of the statutory and constitutional provisions cited herein, it appears clear that the petitions for recall elections are to be filed with the Clerk of the Board of Supervisors, and they are to remain in the custody of the Clerk.

Problem Two deals with who shall publish the notice of election. It is the duty of the Board of Supervisors to give notice of election; this obligation is imposed upon the Board of Supervisors by Section 60-203, ACA, 1939. The pertinent provision of this section reads as follows:

"60-203. Publication of notice of recall election.--Notice of said election shall be published * * * by the board of supervisors, in a newspaper of general circulation throughout the county; * * *"

Under Section 60-202, supra, it is provided that a recall election shall be called "by the Board of Supervisors of that county". However, if said recall petition is against an officer who is directed by this section to call such election, it shall be called by the Clerk of the Superior Court. The date on which the election is to be held is determined by the Clerk of the Superior Court. Reading from Article 8, Part 1, Section 3, Arizona Constitution, it is provided that the recall election must be held not less than twenty (20) nor more than thirty (30) days after such order of election. It appears to us that since the Clerk of the Superior Court issues the call, he apparently sets the date between the times provided by the Constitution.

The question of appointment of an election board is clearly established by Sections 60-207, and 55-302, ACA, 1939, which provide as follows: under 60-207, supra, it is provided:

"60-207. Recall election board.--The recall election board shall consist of one (1) inspector and two (2) judges, who, together with two (2) clerks, shall be appointed for each precinct if

for a state or county election and shall be paid in like manner as provided for boards of election; if for a city or town election, the recall election board shall be appointed by the clerk of such city or town and shall be paid in like manner as provided for city or town elections; if for a trustee of a school district, the recall election board shall be appointed by the county school superintendent, and shall be paid at the rate provided by law for boards of election for state or county elections from the moneys of such school district."

Section 55-302 provides:

"55-302. Election board--Appointment.--* * *
At lease ten (10) days before any special election, the board of supervisors shall in like manner designate the voting place and appoint an election board in each precinct."

In view of the fact that this is a special election, the language used here clearly empowers the Board of Supervisors to select voting places and appoint election officers in each precinct.

Problem Three deals with the question: With whom should the nomination papers for the candidates be filed? For the purpose of this type of election, nomination papers are treated in the same manner as nomination papers and petitions in primary elections. Abbey v. Green, supra. The Constitution of Arizona, Article 8, Part 1, Section 4, provides that unless the incumbent otherwise requests in writing, his name shall be placed upon the ballot. With respect to other candidates, they must file their petitions with the Clerk of the Board of Supervisors. The provisions of Section 55-1003, ACA, 1939, as amended, provide as follows:

"55-1003. Nominating petitions of candidates.--
* * * the nomination petition of a candidate for
* * * a county * * * office for which the electors
of a county * * *, are entitled to vote, shall be
filed with the clerk of the board of supervisors.
* * *."

This section applies in this instance because of the provisions of the Constitution which provide that the general election laws shall apply in recall elections, insofar as they are applicable. We are of the opinion that Section 55-1003, supra, is applicable in this instance.

We have searched this office for relative opinions on this question and have found that Opinion No. 51-315 has been issued, but it lends no information to the questions posed here.

It is our conclusion that in the particular case involving the recall of Mr. O'Neill, it is necessary, that the Clerk of the Superior Court issue the call of election and that, thereafter, the regular procedure in recall elections be followed.

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