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September 1, 1977

Mr. Robert M. Jarrett, Jr.
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Bisbee, Arizona 85603

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ARIZONA ATTORNEY GENERAL

Re: 77-171 (R76-272)

Dear Mr. Jarrett:

We have reviewed your May 27, 1976 opinion directed to Mr. Ronald Jenkins, superintendent of School District No. 27, concerning the procedures an incumbent school board member must follow in running for election to fill an unexpired school board term to which that person has been appointed pursuant to A.R.S. § 11-512.7. The following is a revision of your opinion.

We concur in the conclusion reached by your opinion that any person running for the office of school board trustee must comply with all of the statutes that anyone else running for such office must comply with. The narrow question we would answer differently is whether the unexpired two year term must be designated as such on the ballot or whether the top vote getter would automatically fill the four-year term with the runnerup being elected to the two-year unexpired portion of a term. We conclude that the two-year term must be so designated on the ballot and on the nominating papers filed by any candidate for that two-year office.

School board trustees are initially elected by the procedures set forth in A.R.S. § 15-471. If a vacancy occurs between elections, the county school superintendent, under A.R.S. § 11-512.A.7, is required to:

Appoint trustees and board of education members of school districts to fill all vacancies, but the terms of such appointment shall be until the next regular election for school trustee board members, at which time a successor shall be elected to serve the unexpired portion of the term. The superintendent may,

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when he deems it in the best interests of the community, call a special election to fill the vacancies. If such an election is called, the newly elected member shall serve the remainder of the unexpired portion of the term.

In the fact situation presented to you, the county school superintendent had appointed a person to fill a vacancy on the board of trustees until the next general election. The question then became whether the two-year unexpired term became a separate office to be designated on the ballot. A.R.S. § 11-512.A.7 requires that at the next general election, "a successor shall be elected to serve the unexpired portion of the term." We infer from this statutory provision that the two-year term constitutes a separate office. This inference is supported by other statutory sections. For example, A.R.S. § 15-474.B requires that a candidate's name be listed on the ballot "without partisan or other designation except title of office." The "other designation" prohibited necessarily must relate to a label referring to the candidate, in the nature of a partisan or incumbency designation. Designations referring to the office, or "title of office," such as two year term, may be listed on the ballot.

Atty.Gen.Op. No. 72-22 concluded that any office which is the subject of a special election must be specifically designated on the ballot and included within those elections constituting special elections:

Elections to fill a vacancy on the Board of trustees or board of education by other than expiration of the term of office, A.R.S. § 11-512(7) [cite prior to amendment.]

Since the unexpired term of a school board trustee must be filled by special election, though occurring at a general election, the term must be designated on the ballot.

A.R.S. §§ 15-571, et seq. only define the procedure to be followed in filling four-year terms. We find no inferences in those sections which would lend weight to any opinion contrary to that reached here.

An analogous fact situation is presented in elections for unexpired terms on the corporation commission. By long-standing administrative interpretation and practice, the term

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of office is designated on the corporation commission section of the general election ballot. Cf. Bolin v. Superior Court, 85 Ariz. 131, 333 P.2d 295 (1959). Since Article 15, § 1 of the Arizona Constitution, describing the Corporation Commission candidate's ballot designation is substantially similar to the statutory section setting up the procedures to elect school board trustees, A.R.S. §§ 15-~~751~~, et seq., such custom would support like procedures to elect school board trustees to unexpired terms.

Sincerely,

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Attorney General



DAVID RICH
Assistant Attorney General

DR:jrs