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May 4, 1978

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ARIZONA ATTORNEY GENERAL

Mr. P. Michael Donawick
Deputy County Attorney
Yuma County
P. O. Box 1048
Yuma, AZ 85364

RE: 78-85 (R78-86)

Dear Mr. Donawick:

In response to your questions regarding qualifications for electors for school board trustee special recall elections, I believe that the following should satisfy the concerns which you have raised.

The case of Webb v. Dixon, 104 Ariz. 473, 455 P.2d 447 (1969), held that for the purposes of school district annexation petitions, a qualified elector was specifically defined under A.R.S. § 15-473 as:

A person who is a registered elector of the state, and who has been a resident of the school district thirty days immediately preceding the election, is qualified to vote at an election of the school district in which he resides (Emphasis added)

and, thus not subject to additional requirements set forth in Title 16 of A.R.S.

In 1972, the legislature amended both A.R.S. §§ 15-471 and 15-473, providing in A.R.S. § 15-471, "A regular election shall be held for each school district at the time and place, and in the manner, of general elections as provided in title 16" (emphasis added) and amending A.R.S. § 15-473 to provide that a "qualified elector", "school elector", or "elector" shall mean, "A person who is a qualified elector of the state, and who has been a resident of the school district thirty days immediately preceding the election. . . ."

The 1972 amendments are an explicit step in bringing Title 15 school district elections into conformance with the general election procedures of Title 16. Having now defined a school elector or qualified elector under Title 15 to be simply a qualified elector of the state, it is now possible to utilize Title 16 provision, A.R.S. § 16-104, which defines the term qualified elector of the state.

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A.R.S. § 16-104 states:

A person whose name appears on the register for the last preceding general election and whose registration has not been subsequently canceled, or a person who has registered under a subsequent registration, shall, if he is eighteen years of age and has been a resident of the state fifty days, be deemed a qualified elector for any purpose for which such qualification is required by law, except as provided in §§ 16-171 and 16-172. (Emphasis added)

Consistent with these amendments, Op. Atty Gen. No. 73-44-L, simply notes that such factors as being at least eighteen years of age and having been a resident for at least fifty days are inherent in the statement that one is a qualified elector of the state.

Of more importance to your specific situation is the fact that recall elections are special elections governed under Title 19 of A.R.S. and by reference to Title 16. see A.R.S. § 19-215.¹ Under qualifications of elector for special elections, A.R.S. § 16-103 states:

A person whose name appears on the general register of voters for the last preceding general state and county election and who has not been canceled out for failure to vote, or a person who voted in the last preceding general election for presidential electors only and has subsequently met the residency requirements for voting in all elections, or a person who has registered on or before the fiftieth day preceding a special primary, special general, special recall or other special election, shall, if otherwise qualified, be entitled to vote at any such special election authorized by law. (Emphasis added)

A.R.S. § 16-107(C), further provides:

No elector shall vote in a special primary, special general, special recall or other special election unless he has been registered to vote prior to five o'clock p.m. of the fiftieth day preceding the date of such special election.

¹The reference in A.R.S. § 19-215 to "general elections" is a term reserved to Title 16 elections. This distinction is also noted in Title 15, Art. 3, Election of Trustees; under A.R.S. § 15-471(A).

Thus, unlike a regular election for a school board trustee where registration may occur anytime prior to the election; for the purposes of a special recall election a fifty day registration cut-off is required whether or not affidavits are used.

In the light of the preceding, the answers to your questions are as follows:

QUESTION 1: If a person's name is on the registration list in another county in Arizona and he recently moved into the school district, may he vote in the school election even though he has not reregistered under A.R.S. § 16-110 or transferred his registration under A.R.S. § 16-147?

ANSWER: No. A.R.S. § 19-201 requires electors be qualified electors of the electoral district from which candidates are elected. An elector must re-register prior to the fiftieth day cut-off provided for in A.R.S. § 16-107.

QUESTION 2: If a person meets the requirements of A.R.S. § 16-101 (with the exception of subsection 3), but he has never registered to vote in any county within the State of Arizona, may he vote in the school election?

ANSWER: No. See opinion. A.R.S. § 16-104 applies.

QUESTION 3: If a person's registration was cancelled because he failed to vote, A.R.S. § 16-151, may he vote in the school election?

ANSWER: No. See opinion. A.R.S. § 16-104 applies. "Subsequent cancellation" in A.R.S. § 16-104 includes purging under A.R.S. § 16-151.

QUESTION 4: If a person's registration was cancelled at his request, or because of insanity or conviction of a felony, A.R.S. § 16-150, may he vote in the school election?

ANSWER: No. See opinion. A.R.S. § 16-104 applies. "Subsequent cancellation" in A.R.S. § 16-104 includes purging under A.R.S. § 16-150.

QUESTION 5: Does A.R.S. § 16-103 have any applicability to a recall election for members of the school board?

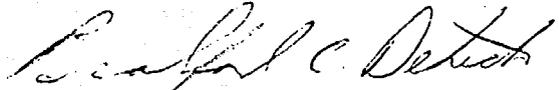
ANSWER: Yes. See opinion.

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QUESTION 6: If a person is not qualified to vote under any of the above hypothetical situations, may this disability be cured by allowing him to register to vote (as in general elections) and then immediately sign the affidavit to vote in the school election?

ANSWER: No. A.R.S. § 16-107(C) provides for fifty day registration cut-off.

Sincerely,



Bradford C. Detrick
Special Assistant Attorney General
for Elections

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