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May 5, 1958
Opinion No. 58-61
ARIZONA ATTORNEY GENERAL

REQUESTED BY: Honorable David H. Palmer, State Senator

OPINION BY: ROBERT MORRISON, The Attorney General

QUESTION: Do the provisions of A.R.S. § 11-156 pertaining to percentage in reference to A.R.S. § 11-132 and § 11-138 mean percentage in the part of the county wishing to join the other county, or does the word "percentage" in A.R.S. § 11-156 apply to the petitions and vote of the whole county?

CONCLUSION: The percentage requirement contained in A.R.S. § 11-156 is applicable to the petition and vote percentages of the whole county as well as the percentages applicable to the part wishing to annex itself to another contiguous county.

A.R.S. § 11-156 reads as follows:

"§ 11-156. Transfer of territory from one county to another

When persons residing in any part of a county desire to separate the area in which they reside from the county and annex it to another contiguous county, they may do so in the same manner and method as nearly as practicable and by the same percentage of the vote cast as provided in this article for the forming of a new county, but the board of supervisors of the county to which the area desires to be annexed shall first agree and consent to the annexation."

The method of forming new counties is set forth in A.R.S. §§ 11-131 to 11-156, inclusive.

It is noted that A.R.S. § 11-132 states that a petition to create a new county shall be signed by 20 per cent or more of the qualified electors of the county from which the territory is proposed to be taken, and not merely 20 per cent of the qualified electors residing in the part of the county desiring to separate. It is further noted in A.R.S. § 11-138 that the manner of determining an election result is based on 75 per cent or more of the votes cast at the election by persons residing within the proposed new county (that area which it is proposed to divide) and 20 per cent or more of the votes cast by persons residing in the county but outside the area which it is proposed to divide. Several percentage

Honorable David H. Palmer
State Senator

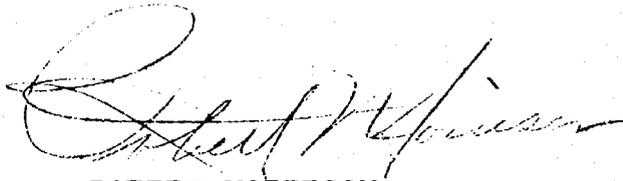
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figures are specified in the procedure of creating a new county; some are applicable to the entire county and some applicable only to the part of the county proposing the division.

It appears from an examination of Chapter 1, Title 11, Article 3, of the Arizona Revised Statutes, that it was the intent of the legislature that the same method would be used for transfer of territory from one county to another as provided for the forming of a new county.

It is, therefore, the opinion of this office that the words "same percentage" contained in A.R.S. § 11-156 apply to the petition and vote percentages of the whole county as well as the percentages applicable to the part wishing to annex itself to another contiguous county.

The opinion of this office that it was the legislative intent that the percentages apply to the petitions and votes of the whole county, and not in just that part that desires to annex itself to another county, is further supported by the other provisions and the statutes demonstrating the fact that the entire county has a substantial interest in any proposed change, as such change involves an adjustment and settlement of county debts, revenues from taxation, interest in public property, money on hand and debts contracted prior to annexation, as well as certain other interests vested in the county as a whole.



ROBERT MORRISON
The Attorney General

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