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December 23, 1980

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ARIZONA ATTORNEY GENERAL

Ms. Ann L. Kirkpatrick
Deputy County Attorney
Office of Coconino County Attorney
Coconino County Court House
Flagstaff, Arizona 86001

Re: I80-22(R80-263)

Dear Ms. Kirkpatrick:

We have reviewed your opinion to the Flagstaff School District in which you adopt the opinion of the District's private counsel that the affidavit procedure called for in A.R.S. § 15-473 is applicable to the District's Special Bond Election scheduled for February, 1981.

As pointed out in your opinion, A.R.S. § 15-472.01 is a general statute relating to school district elections, while A.R.S. § 15-473 specifically addresses the procedures to be used in special elections where school board members are not to be elected. Since the February election will be a bond election at which no school board members will be elected, the provisions of A.R.S. § 15-473 will control where there is an inconsistency with the provisions of A.R.S. § 15-472.01. See Arden-Mayfair, Inc. v. State Dept. of Liquor License & Control, 123 Ariz. 340, 599 P.2d 793 (1979); State v. Davis, 119 Ariz. 529, 582 P.2d 175 (1978); Peabody Coal Co. v. Navajo County, 117 Ariz. 335, 572 P.2d 797 (1977). A.R.S. § 15-473 provides in part:

B. . . . Registers shall be used only in an election at which a school trustee or board member is to be elected. All other school elections shall be conducted by use of affidavits pursuant to this subsection. A person offering to vote may be challenged, and the election officers shall thereupon have the powers and duties of general election officers.

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We further concur with the advice given to the District that since A.R.S. § 15-472.01.D requires the preparation of a school district register, the school board should request that this register be obtained from the County Recorder by the fifth day preceding the special election.^{1/} Although it may seem superfluous to obtain such registers if they are not to be used at the polls, it could still be argued that such registers must be on hand in the event of a challenge to the election results, in order to cross-check registrations.

Sincerely,



BOB CORBIN
Attorney General

BC:cp

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1. A.R.S. § 15-472.01(D) provides in pertinent part:

D. By the fifth day preceding a special election or an election held at a time and place other than a general election in a common, high or unified school district, the county recorder shall prepare from the original affidavits of registration at least four printed or typed lists of all uncanceled registrations of the school district, and the lists are the official school district registers. The official school district registers shall contain all information required to be included on precinct registers. The governing board of the school district shall request of the county recorder and the county recorder shall provide to the school district copies of school district registers in the manner and for the fees prescribed in § 16-172 for copies of precinct registers.

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November 25, 1980

12-9-80 pc
POLLARD
R80-263

EDUCATION OPINION

ISSUE NO LATER THAN

2-6-80

Dr. David A. Williams
Superintendent
Flagstaff School District
701 N. Kendrick - -
Flagstaff, Arizona 86001

Re: Procedure for conduct of Special
Bond Election

Dear Dr. Williams:

You have inquired as to the proper statutory procedure for conduct of the upcoming Special Bond Election, in light of recent amendments to the provisions of the Arizona Revised Statutes which set forth such procedures. Specifically, the question at hand is whether recent amendments to A.R.S. §15-472.01.D. now require the use of "official school district registers", listing all registered voters within the school district, or whether the older provisions of A.R.S. §15-473.B. preclude the use of such registers, and require that the election be held by submission of affidavits from each voter. Based upon our review of the statutory amendments, and the statutes which were not amended, it is our opinion that the affidavit procedure called for in §15-473 will apply to the upcoming Special Bond Election. This is based upon the understanding that there will be no election of School Board members conducted simultaneously with the Bond Election.

As a starting point, A.R.S. §15-1302.C. provides as follows:

When the election is called to determine whether or not bonds of the district shall be issued and sold for the purposes enumerated in the call for the election, the question shall be submitted to the vote of the qualified electors of the district, as defined in §15-473 and subject to the provisions of §15-473.01.

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§15-473.01 simply provides for voting by absentee ballot, and is not pertinent to this inquiry.

§15-473 provides in pertinent part as follows:

A. A person who is a qualified elector of the state, and who has been a resident of the school district fifty days [amended by Chapter 210, Laws of the Second Regular Session, 1980, from the previous thirty day requirement] immediately preceding the election, is qualified to vote at an election of the school district in which he resides except as provided in subsection D of this section. For the purposes of this title, the terms "qualified school elector", "qualified elector", "school elector", or "elector" shall have the qualifications prescribed in this subsection.

B. A person offering to vote at a school election for which no school district register has been supplied or at a school election at which no trustee or school board member is to be elected shall sign an affidavit stating his address and the common and high school districts in which he resides, and swearing he is qualified to vote and has not voted at the school election being held. A person offering to vote at a school election at which a trustee or school board member is to be elected and for which a school district register has been supplied shall proceed as required for voting at any election at which precinct registers are used. Registers shall be used only in an election at which a school trustee or board member is to be elected. All other school elections shall be conducted by use of affidavits pursuant to this subsection. A

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person offering to vote may be challenged, and the election officers shall thereupon have the power and duties of general election officers. [emphasis added]

C. . . .

D. At school elections at which a trustee or school board member is to be elected and for which a school district register is supplied, no school district elector shall vote in such election unless he has been registered to vote prior to five o'clock p.m. of the fiftieth day preceding the date of such election.

A.R.S. §15-475.D. was added by Chapter 210 of the Laws of the Second Regular Session of 1980:

D. A person is not entitled to vote at a special election or an election held at a time and place other than a general election in a common, high or unified school district who has not resided in the school district for fifty days preceding the election, who is not a qualified elector as provided in §16-101 and who has not been registered to vote prior to midnight of the fiftieth day preceding the date of the election.

Finally, A.R.S. §15-472.01 (which notably is not mentioned in §15-1302.C., as containing requirements for a Special Bond Election), was also amended by adding the following subsection:

D. By the fifth day preceding a special election or an election held at a time and place other than a general election in a common, high or unified school district,

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the county recorder shall prepare from the original affidavits of registration at least four printed or typed lists of all uncanceled registrations of the school district, and the lists are the official school district registers. The official school district registers shall contain all information required to be included on precinct registers. The governing board of the school district shall request of the county recorder and the county recorder shall provide to the school district copies of school district registers in the manner and for the fees prescribed in §16-172 for copies of precinct registers.

To understand the interrelationship of A.R.S. 15-472.01.D. with §15-473.D., it is necessary to trace the history of the latter provision. §15-473 first appeared in approximately the same form in 1955. It did not contain the two sentences which are underlined above, clarifying the procedure for special elections at which no trustees or board members are to be elected. The statute at that time, in subsection A, contained the term "registered elector". The laws of 1972, Chapter 138, Section 12, substituted "qualified elector" for "registered elector", inserting at least an implication that one did not have to be a registered voter in order to vote in a school district election. The most important amendment occurred in Laws of 1973, Chapter 183, Section 3, when the two sentences, underlined above, were added to subsection B, and subsection D was added in its entirety.

The implication to be gained from the 1973 amendments to §15-473 is that in a special school election at which no board members are to be elected, school district registers are not to be used, and that anyone offering himself to vote at a polling place need only sign an affidavit swearing that he resides in the district, that he is

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qualified to vote, and has not voted previously in that election. The addition of §15-475.D. makes it clear that the person must be a "qualified elector as provided in §16-101", and must be a registered voter prior to midnight of the fiftieth day preceding the election. This apparently re-affirms the prior requirement that a voter must be registered for any election regardless of whether board members are being elected.

The addition of §15-472.01.D., because it appears to be a general provision, does not amend the specific provisions of §15-473.B., relating to elections at which board members are not on the ballot. In our opinion, the law pertaining to such elections has not been changed by the recent amendments, and such an election is to be conducted solely by the use of affidavits in accordance with §15-473.B., and not with a school district register. While a reading of §15-473.B. with §15-472.01.D. would at first appear to disclose an ambiguity, this is resolved by resorting to a general rule of statutory construction, that when provisions of a general statute are inconsistent with those of a special nature on the same subject, the special statute will control. Arden-Mayfair, Inc. v. State Dept. of Liquor License and Control, 123 Ariz. 340, 599 P.2d 793 (1979); State v. Davis, 119 Ariz. 529, 582 P.2d 175 (1978); Peabody Coal Co. v. Navajo County, 117 Ariz. 335, 572 P.2d 797 (1977). Here §15-473.B. specifically addresses the procedure in a special election where board members are not elected, and, in our opinion, prevails over the general provisions introduced by §15-472.01.D. *

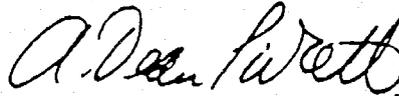
This opinion does not mean that the District need not obtain a school district register under §15-472.01.D.; although it may seem superfluous to obtain such registers if they are not to be used at the polls, there is still a requirement that they be acquired. It could be argued that such registers must be on hand in the event of a challenge to the election results, in order to cross-check registrations. In light of the new language in §15-472.01.D., which is in itself mandatory, we advise that strict compliance with the statutes requires that the request from the School Board be made to the County Recorder, and the registers be obtained by the fifth day preceding the special election.

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Please contact us if you have any further questions on these matters.

Yours very truly,

MANGUM, WALL, STOOPS & WARDEN



A. Dean Pickett

ADP:djg

* Another ambiguity in §15-472.01 deserves at least a passing mention. Subsection A thereunder requires the county recorder "of any county with a population of seven hundred thousand or more" to prepare a school district register of registered voters for elections for board members. Subsection D would appear to require every county recorder to prepare such a register for every election, not confining it to board elections or to Maricopa County. While this ambiguity does not affect the opinion in this letter, it is worth noting.