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September 3, 1982

INTERAGENCY

The Honorable Jones Osborn
Arizona State Senator
State Capitol, Senate Wing
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Re: I82-089 (R82-128)

Dear Senator Osborn:

In your letter of August 19, 1982, you have requested our opinion on several questions concerning the effect of the creation of Arizona's new fifteenth county upon the Arizona Western College District. You have first asked whether the boundaries of the college district will remain the same despite the change in county boundaries resulting from the split in the present Yuma County. Related to this question, you have asked whether the newly created county must express an intent to remain in the college district, and if the new county were to withdraw from the district, on what basis would the college district's assets and liabilities be divided?^{1/}

The Arizona Western College District is a community college district whose territory is coextensive with the present boundaries of Yuma County. As of January 1, 1983, part of this area will become a new county and Yuma County will include the remainder. A community college district is a

1. We note that A.R.S. §§11-148 and 149 deal with the division of county property and the settlement of respective rights and obligations of the new and old counties. However, the community college district is a separate entity from its two constituent counties and its property is not county property. These sections are, therefore, not applicable to the issue of the withdrawal of the new county from the community college district.

separate entity from a county and may, in fact, include more than one county.^{2/} Since the Arizona Western College District was properly formed to include all of the present area of Yuma County, we conclude, in the absence of specific statutory provisions to the contrary, that the community college district's boundaries will remain unchanged by the creation of a new county and that the new county need take no affirmative steps to remain within the district.

We also think that, in the absence of any legislative provision for the dissolution of the college district or the withdrawal of a constituent county from the district, the new county cannot withdraw from the college district. There is no Arizona case dealing with this issue, but this was the conclusion reached by the Missouri Court of Appeals in Junior College District v. Mayse, 446 S.W. 412 (Mo.Ct.App. 1969):

. . . we cannot believe that the legislature made any provision for dissolution of an organized junior college. To have done so would have been relatively simple.

If the legislature had intended to so provide it would have done so in positive language. . . Since it did not do so, we believe it did not intend to do so. 446 S.W. at 414-15 (Emphasis original).

You have also asked whether the provisions of A.R.S. § 15-1441.B, limiting the number of community college district precincts per county, apply to the Arizona Western College District as a result of the split, and whether the application of A.R.S. § 15-1441.B would violate the "one man, one vote" principle of the United States Constitution. Pursuant to A.R.S. § 15-1441.A, each district has a governing board composed of five members from five precincts established by the board of supervisors. A.R.S. § 15-1441.B provides:

Where two or more counties constitute a district, as many precincts shall be set up

2. A.R.S. § 15-1402 states that "[c]ommunity college districts may be organized under the provisions of this chapter for a single county or two or more contiguous counties . . ."

by the board of supervisors in each county as the county is entitled to membership. In no case shall a county which is part of a district have more than three precincts, and where a district consists of three or more counties at least one member shall reside in each county.

Thus, where a district is composed of two counties, one county will have three governing board precincts and the other will have two precincts. A.R.S. § 15-1441.B manifests a clear legislative intent to give weight to the separate interests of counties as unit members of a community college district, and that section should be given full effect whether the district's multi-county membership arises at the time of formation or, as in this situation, after the district has been organized.

The application of A.R.S. § 15-1441.B to the Arizona Western College District will result in the new county, whose population will be substantially less than that of Yuma County, having two governing board precincts and Yuma County having three precincts. We decline to opine on the constitutionality of this provision inasmuch as our statutory duty requires us to defend the constitutionality of state laws.

Your final question asks what process should be used in the November, 1982, election. We believe that the legislature intended that this election should reflect the alignment of college district precincts which will be required after January 1, 1983.

After the creation of a new county has been properly approved by an election, a three member election commission is to be appointed to organize the new county. A.R.S. § 11-141. "The Commissioners shall divide the proposed new county into precincts and voting districts, and prepare for the election of county, precinct and other officers at the next general election." A.R.S. § 11-143. "All county and other officers in the new county, except municipal and school district officers, shall be elected at the next general election and shall hold office as if originally elected within the county." A.R.S. § 11-144.

The provisions of A.R.S. §§ 11-143 and 144, extend to the election of community college district governing board

members.^{3/} Those sections refer to the ordinary election responsibilities of a county board of supervisors. Among the responsibilities are those included in A.R.S. § 16-411.A which provides:

The board of supervisors of each county shall . . . establish a convenient number of election precincts in the county and define the boundaries thereof. Such election precinct boundaries shall be so established as included within election districts prescribed by law for elected officers of the State and its political subdivisions including community college district precincts . . .

A.R.S. §§ 15-1441.A and 1442.A make it clear that community college district elections are part of the ordinary county election scheme. A.R.S. § 15-1441.A provides:

The board of supervisors shall establish in the same manner as provided in § 16-411 five precincts in a community college district for the election of a district governing board member from each precinct. A precinct in a community college district shall be composed of the number of election precincts as determined by the board of supervisors and shall have the same boundaries as are defined for the election precincts under § 16-411.

A.R.S. § 15-1442.A provides that "[m]embers of the district board shall be elected at the time and place, and in the manner, of general elections as provided in title 16."

Therefore, the November, 1982 election for two district board members should be based on the establishment of two district governing board precincts in the new county and

3. The exclusion of "school district officers" in A.R.S. § 11-144 does not cover the board of governors of a community college district. The legislature has distinguished between school districts, see A.R.S. § 15-441 et seq., and community college districts, see A.R.S. § 15-1401 et seq.

The Honorable Jones Osborn
September 3, 1982
Page 5

three precincts in Yuma County. The election commission for the new county should establish its two precincts, and, by implication, the board of supervisors of Yuma County should also establish its three district governing board precincts in preparation for the November, 1982, general election.

Sincerely,



BOB CORBIN
Attorney General

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