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February 13, 1991

The Honorable Robert R. Bean  
Presiding Judge - Division 1  
Superior Court  
Pinal County  
Florence, Arizona 85232

Re: I91-010 (R90-120)

Dear Judge Bean:

You have asked when a new judge of a division of the Superior Court begins to serve under the following facts: the new judge is elected at the general election that immediately precedes the commencement in January of a new four-year term for that division, and that judge's election follows the Governor's filling of a vacancy by appointment to that division of the Superior Court.

We conclude that a judge who is elected under these circumstances immediately, upon being declared elected, begins to serve the remainder of the unexpired term until the following first Monday in January and then begins to serve the regular four-year term commencing on the first Monday in January.

A judge in one of the divisions of the Superior Court in a county having a population of less than 150,000 persons resigned on August 31, 1989 from a regular term of office that will end on the first Monday in January, 1991. The Governor duly appointed a judge to fill the vacancy. The judge whom the Governor appointed to fill the vacancy is not a candidate for election in the November, 1990 general election when a new judge will be elected for the division of the Superior Court.

This circumstance is governed by Ariz. Const. art. VI, § 12. The first paragraph of art. VI, § 12 provides in part:

Section 12. Judges of the superior court in counties having a population of less than one hundred fifty thousand persons according to the

United States census shall be elected by the qualified electors of their counties at the general election. They shall hold office for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election, and until their successors are elected and qualify. . . .

Under this paragraph the regular term of office for judges of the superior court in counties having a population of less than 150,000 people is four years commencing on the first Monday in January following the preceding November general election. Every four years at the general election, therefore, a judge for every division of the superior court, the term of which will expire on the first Monday in January next following the general election, must be elected to serve the four-year term that will commence on the first Monday in January next following the general election. Therefore, the superior court judge who is elected at the November 6, 1990 general election to serve the regular term that will begin on January 7, 1991 will begin to serve the regular term on January 7, 1991.

The second paragraph of article VI, section 12 of the Arizona Constitution covers the filling of vacancies in the office of superior court judge:

The Governor shall fill any vacancy in such counties by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term.

This paragraph provides for the appointment of a superior court judge to fill a vacancy until the election and qualification of a successor superior court judge. That election must occur at the general election next following the appointment of a judge to fill a vacancy. The judge elected at that general election shall serve for the remainder of the unexpired term. Article VI, section 12, expresses the people's preference that, in counties having a population of less than 150,000, vacancies shall be filled ultimately by elected, rather than appointed judges. Therefore, the superior court judge who is elected at the November 6, 1990 general election, to serve in the division in which an appointee is filling a vacancy, shall begin to serve immediately upon being declared elected and qualified to the office.<sup>1/</sup>

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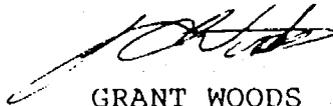
1. Declaration of election to office is governed by the provisions of article 11, title 16, Arizona Revised Statutes, relating to the official canvass of elections.

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In this instance the candidates for judge of the division of the superior court about which you have inquired, in effect, are running to serve two different terms: the first term consists of the remainder of the term that will expire on January 7, 1991, and the second term consists of that regular four year term that commences on January 7, 1991.

We disapprove Ariz. Att'y Gen. Op. 178-261 (R78-285), November 14, 1978, to the extent that it is inconsistent with this opinion.

Very truly yours,



GRANT WOODS  
Attorney General

GW/FWS/lfc