

OPINIONS CITED IN 93-003

I82-001

STATUTES CITED IN 93-003

ARS 38-296

ARS 38-296(B)



STATE OF ARIZONA

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July 28, 1993

The Honorable Richard Mahoney
Secretary of State
State Capitol, West Wing
1700 West Washington, 7th Floor
Phoenix, Arizona 85007-2808

Re: I93-003 (R93-008)

Dear Secretary Mahoney:

You have asked whether an incumbent who is not in the final year of his term and who creates a local, state, or federal exploratory committee to consider the possibility of candidacy has violated Arizona's resign-to-run laws, Article XXII, § 18 of the Arizona Constitution and Arizona Revised Statutes Annotated (A.R.S.) § 38-296. These laws provide that an incumbent who is not in the final year of the term being served may not "offer himself for nomination or election to any salaried local, state or federal office."

We considered a related issue in Arizona Attorney General Opinion I82-001. There, we concluded that "an incumbent may 'offer himself for nomination or election' within the meaning of Art. XXII, § 18, before he files nominating papers or petitions." Since that opinion was issued, however, A.R.S. § 38-296 was amended to define what constitutes offering oneself for nomination or election: An individual is "deemed to have offered himself for nomination or election" upon the earlier of the filing of a nomination paper or a "formal public declaration of candidacy." A.R.S. § 38-296(B). Therefore, as long as an incumbent's conduct and statements do not constitute a formal declaration of candidacy and he does not file a nomination paper, he has not violated A.R.S. § 38-296. The question you have asked is whether the incumbent's act of forming an exploratory committee to consider the possibility of candidacy would constitute a formal declaration of candidacy that might put the incumbent in violation of the statute or constitutional provision. We believe that it does not.

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Arizona has no statutory provisions specifying what constitutes a "formal public declaration of candidacy" or defining exploratory activities. Nor have Arizona courts analyzed either term. The federal campaign laws governing contributions and expenditures, however, provide some guidance in interpreting these terms. See, e.g., 2 U.S.C. 431; 11 C.F.R. §§ 100.7(b)(1)(ii), 100.8(b)(1)(ii).

Unlike Arizona campaign law, the federal campaign laws differentiate between candidacy-related activities and exploratory activities such as you describe. For example, raising funds to be used solely for the purpose of determining whether an individual should become a candidate is considered an exploratory activity. See 11 C.F.R. § 100.7(b)(1)(i) (interpreting 2 U.S.C. 431(e)). However, "rais[ing] funds in excess of what could reasonably be expected to be used for exploratory activities" is deemed campaign-related activity. See id. § (b)(1)(ii)(B). By definition, any conduct amounting to a declaration of candidacy falls outside the scope of "exploratory activities."

Extending the logic underlying the federal laws, the formation of an exploratory committee, without more, would not constitute a formal declaration of candidacy under A.R.S. § 38-296.

The conclusion we reach today, that forming an exploratory committee to consider the possibility of a candidacy does not violate Arizona's resign-to-run laws, is consistent with the public policies underlying those provisions:

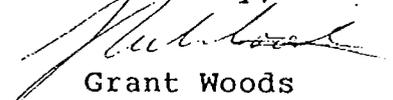
First, [the resign-to-run law] encourages an elected public official to devote himself exclusively to the duties of his office. Second, Article XXII, § 18 reduces the possibility of public subsidies for officials who are merely using public office as a "stepping stone." Third, the provision prevents abuse of office before and after an election. Finally, it protects the expectations of the electorate in voting a candidate into state office.

Joyner v. Mofford, 706 F.2d 1523, 1532 (9th Cir.) (footnotes omitted) cert. denied, 464 U.S. 1002 (1983) (citing with approval the Arizona Legislative Council's Analysis of Article XXII, § 18 in the Publicity Pamphlet for the November, 1980 General Election).

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In sum, we believe that allowing state officials to form exploratory committees strikes a proper balance of interest by permitting the officials to test the waters of the campaign pool for another position while enabling them to dedicate themselves to the offices for which they were elected. We caution, however, that the mere creation of an exploratory committee does not automatically shield an incumbent from the resign-to-run laws if other statements or conduct constitute a formal public declaration of candidacy.

Sincerely,



Grant Woods
Attorney General

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