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March 17, 1983

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ARIZONA ATTORNEY GENERAL

The Honorable Rose Mofford
Secretary of State
State Capitol, West Wing
Phoenix, AZ 85007

The Honorable Jane Dee Hull
Arizona State Representative
State Capitol, House Wing
Phoenix, AZ 85007

Re: I83-026 (R82-186)

Dear Secretary of State Mofford and Representative Hull:

We are writing in response to your letters of December 13, 1982, in which you asked several questions concerning Proposition 202, the initiative for voter registration by driver's license which was approved in the November 2, 1982, general election.

Your first question, concerning the cancellation of the registration of electors who failed to vote in the November 2, 1982, general election, has been resolved judicially. We, therefore, need not respond.

Secondly, you asked whether, in order to implement the provisions of the initiative and prescribe a separate uniform affidavit of registration to be used by driver's license examiners to register qualified Arizona citizens to vote, you may assume that the initiative wording "Voter Registration Application" in § 16-112.B.1 means "Affidavit of Registration?"

The intent of the statute is to permit persons to register to vote at the same time and place as they apply for driver's licenses. To become a qualified elector, a person must satisfy the qualifications for registration in A.R.S. § 16-101 and complete an affidavit of registration as provided in A.R.S. § 16-152.

Your third question was divided into four subparts, which we will answer in the order in which they appeared in your letter. The first part asked whether driver's license examiners appointed as deputy registrars under the provisions

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of the initiative may register or take changes of registration from qualified citizens who present themselves for that purpose, even though they may not be applying for a driver's license?

Pursuant to A.R.S. § 16-112.C, county recorders are authorized to appoint driver's license examiners as Deputy Voter Registrars to implement the new system. The intent of the statute appears to be to create a "special" class of deputy registrars who will perform registration functions only in conjunction with the performance of their duties as driver's license examiners. The "special" deputy registrars may perform any of the duties described in A.R.S. § 16-132.C only during the administration of driver's license examinations.

The second part asked whether driver's license examiners appointed as deputy registrars under the provisions of the initiative are permitted to register qualified applicants from any county within the State, if such applicant was in the county and, as a matter of convenience, applied for a driver's license, renewal or change of address?

We think that a deputy registrar, under the circumstances outlined in your question may not register persons who do not reside in the county within the deputy registrar's jurisdiction. The special class of deputy registrars appointed pursuant to A.R.S. § 16-112.D are bound by the provisions of A.R.S. § 16-132.C, which state that a deputy registrar must reside in the precinct for which he is appointed and "may take registration in and for any precinct in the county." As we stated in our earlier opinion, Ariz. Atty. Gen. Op. 180-64, it is clear that the county boundaries are the outer limits of a deputy registrar's jurisdiction. In their argument for passage of Proposition 202, proponents of the initiative stated that the passage of the law would allow an additional method for people to register to vote without eliminating the present method of registering or eliminating any deputy registrar positions. While A.R.S. § 16-112 provides the convenience of an additional time and place to register to vote, there is no suggestion that the laws pertaining to the current methods of registering are affected.

In the third part, you asked whether driver's license examiners appointed as deputy registrars under the provisions of the initiative are exempt from the limitation of A.R.S. § 41-771.

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Assuming that driver's license examiners are in a special category and function as deputy registrars only during and in conjunction with the performance of their duties as Department of Transportation employees, the prohibition against simultaneous state employment and appointment as a deputy registrar found in A.R.S. § 41-772.B does not apply.

In the fourth part, you asked whether driver's license examiners appointed as deputy registrars under the provisions of the initiative may circulate and carry nomination petitions as provided in A.R.S. § 16-133.

Assuming that driver's license examiners are appointed as deputy registrars to perform specific functions relating to voter registration and such functions may only be performed during and in conjunction with their duties as Department of Transportation employees, they are prohibited from exceeding the limited scope of voter registration functions pursuant to A.R.S. § 16-112. They, therefore, may not circulate and carry nominating petitions.

Your question numbered "4" asked whether, by rule or regulation, the Secretary of State or the Department of Transportation may prescribe, as well as limit, the deputy registrar's related duties of driver's license examiners during working hours?

Inasmuch as A.R.S. § 16-112 creates a special class of deputy registrars, their voter registration duties may be restricted to the hours they are performing their duties as driver's license examiners. Only during working hours may driver's license examiners also function as deputy registrars.

You asked also whether to implement the provisions of § 16-166.D, you may proceed on the assumption that all persons who maintain an unexpired, uncanceled driver's license would not be cancelled as required by § 16-166.A, B and C?

Subsection D of § 16-166 specifically prohibits the cancellation from the general county registers of any registered voter who maintains a valid driver's license.

In question 6 you noted that all of the information on a driver's license record is confidential, and that many of the information components of the voter registration affidavit are

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the same, and asked what conflicts in confidentiality are involved with regard to the Department of Transportation releasing that information?

A.R.S. § 28-210.F prescribes the release of driver's license information with limited exceptions. As provided in subsection G, the prohibition against release of this confidential information does not apply to certain entities, among them the State or any of its departments, agencies or political subdivisions. A.R.S. § 16-112.B.3 directs the transfer of driver's license information to the voter registration rolls which are maintained in the county recorders' offices. The county recorders, who are elected officials pursuant to Ariz. Const., Art. 12, § 3, represent subdivisions of the State and fall within the enumerated exceptions in subsection G. Therefore the release of this information pursuant to § 16-112.B.3 presents no confidentiality conflict with § 28-210.F.

Next you asked whether deficiencies in the initiative may be corrected through legislation prior to implementation of the initiative?

Under the constitutional provision relating to initiatives and referendums, Ariz. Const., Art. 4, pt.1, § 1.6, only those initiated measures which receive a majority vote of the qualified electors are immune from legislative amendment or repeal. Although Proposition 202 received a majority of the votes cast thereon, and became a law upon proclamation of the Governor, it did not receive the approval of a majority vote of the qualified electors.^{1/} It, therefore, may be repealed or amended by the Legislature.

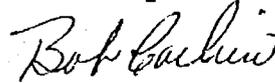
1. Proposition 202 was initiated by petition and was adopted at the 1982 general election: 1,140,849 electors had qualified for this election by registering; at the election 742,923 ballots were cast; 679,544 electors voted on Proposition 202. 347,559 voted for the proposition and 331,985 voted against it. A majority of the qualified electors was 570,425.

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Finally, you asked whether prisoners with a current driver's license have a right to vote?

Any individual who is qualified to register to vote pursuant to A.R.S. § 16-101 and is qualified to vote as set forth in A.R.S. § 16-121 may exercise his right to vote in any general or special election. Pursuant to A.R.S. § 16-101.5, any person who has been convicted of treason or a felony, unless restored to civil rights, cannot register to vote. Prisoners, with or without valid driver's licenses, may vote only if they meet the requirements of §§ 16-101 and 16-121.

Sincerely,



BOB CORBIN
Attorney General

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