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1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin

April 18, 1984

Mr. Keith R. Ricker
Deputy Yavapai County Attorney
Yavapai County Courthouse
Prescott, AZ 86301

Re: I84-055 (R84-048)

Dear Mr. Ricker:

We have reviewed your opinion to the principal of the Clarkdale-Jerome School District regarding the notice requirement for an election held to authorize the purchase of a school site. Your opinion is revised as follows.

The governing board of a school district may purchase school sites "when authorized by a vote of the district at an election conducted as nearly as practical in the same manner as the election provided in § 15-481." A.R.S. § 15-341.A.11. Section 15-481, in turn, provides that notices "shall be posted not less than twenty-five days before the election." A.R.S. § 15-481.D. Thus, we conclude that notices must be posted at least twenty-five days before an election is held to authorize the purchase of a school site.[1]

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC/VBW/bl

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1. In your opinion, you rely in part upon A.R.S. §§ 15-403 and 15-491. While A.R.S. § 15-491 refers to the types of elections at issue, it does not contain a provision relating to notice. In addition, A.R.S. § 15-491.C specifically provides that an election to purchase school property shall be conducted as a regular election. For this reason, A.R.S. § 15-403 does not directly apply to this issue since it pertains only to special elections.

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March 16, 1984

R84- 048

EDUCATION OPINION
ISSUE NO LATER THAN:
5/21/84

Dr. John Tavasci, Principal
Clarkdale-Jerome School District
P.O. Box 248
Clarkdale, AZ 86324

Re: Notice of Special Election

Dear Dr. Tavasci:

In reviewing the requirements for the special election needed to gain authorization for your school district to purchase property for a new school site, I have encountered what appears to be an inconsistency in the statutes.

Paragraph E of A.R.S. §15-491 provides that the school board will hold an election to purchase real property no sooner than sixty (60) days and no later than ninety (90) days after the election was ordered. It is clear that A.R.S. §15-491 designates this as a special election since this statute is entitled "Special elections on bond issues and school property".

No provision under A.R.S. §15-491 was made with respect to when notice of an election to purchase property must be posted. (The notice requirements for bond elections held pursuant to A.R.S. §15-491 are specifically set forth in A.R.S. §15-492) While it does not specifically mention notice requirements, A.R.S. §15-491C states that elections to purchase school sites "shall be called and conducted as regular school elections except as to the time of holding the election."

A regular school district election must be held "at the time and place, and in the manner, of general elections as provided in title 16". (A.R.S. §15-424A) The only notice requirements for general elections in title 16 are contained in A.R.S. §16-214 which requires the governor

to issue a proclamation stating the time of the election and which offices are to be filled thirty (30) days prior to the election. A copy of this proclamation must then be published by the county board of supervisors in a county newspaper no less than ten (10) days before the election. It does not appear that the legislature intended to have the governor issue a proclamation as described in A.R.S. §16-214 every time a school district wished to purchase or sell property, construct a building, or lease school buildings or grounds for five (5) years or more. Therefore, it does not seem that title 16 is instructive with respect to notice requirements for special elections under A.R.S. §15-491C.

Notice requirements for special elections are contained in A.R.S. §15-403A. That statute, without specifying what type of special election is contemplated, requires the county school superintendent to post the notices "at least ninety days previous to the date of the election". Paragraph C of that statute states that notices can be posted by two (2) qualified electors seventy-five (75) days prior to the election if the county school superintendent failed to comply with the notice requirements of A.R.S. §15-403A and B.

Confusion arises when a school district is authorized to hold a special election to purchase school property sixty (60) days after the election is ordered (A.R.S. §15-491E), but notice for special elections must be posted no later than seventy-five (75) days prior to the election (A.R.S. §15-403C). The notice requirements of A.R.S. §15-403A and C undermine the authorization given pursuant to A.R.S. §15-491E to hold the election sixty (60) days after it is called.

When construing two statutes, courts attempt to harmonize any seeming inconsistencies and give effect to both, if possible. Dupnik v. MacDougall, 136 Ariz. 39, 664 P.2d 189 (Ariz. 1983). When this is not possible, the terms of the more recent statute control. Pima County v. Heinfeld, 134 Ariz. 133, 654 P.2d 281 (Ariz. 1982). Both A.R.S. §15-403 and A.R.S. §15-491 were added in 1981, thus this latter doctrine of statutory construction is not helpful.

In State v. Davis, 119 Ariz. 529, 582 P.2d 175 (1978) the Arizona Supreme Court held that a special statute will prevail when its terms are in conflict with a general statute. The requirements for elections to purchase property are specifically set forth in A.R.S. §15-491, while A.R.S. §15-403 generally describes the notice requirements for

special elections. It is clear that these notice requirements do not pertain to all special elections because the notice requirements for special elections for the sale of bonds differ from those contained in A.R.S. §15-403. See A.R.S. §15-492.

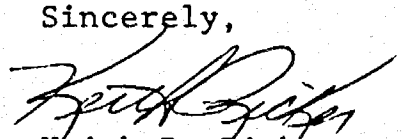
Courts have also held that statutes should not be construed in a manner which renders any portion of them mere surplusage, or void, inert, redundant or trivial. See U.S. v. Mehrmanesh, 689 F.2d 822 (9th Dist. 1982), and Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617, 33 A.L.R. 2d 1102 (Ariz. 1952). There is a presumption that the Legislature does not intend to do a futile act by including language in a statute which is inoperative, inert, or trivial. Campbell v. Superior Court In and For Maricopa County, 105 Ariz. 252, 462 P.2d 801 (Ariz. 1969).

The above-cited cases clearly suggest that the language in A.R.S. §15-491E authorizing special elections for the purchase of property by a school district sixty (60) days after the governing board calls for such an election cannot be viewed as surplusage, or as void, inert or trivial. Yet, the ninety (90) or seventy-five (75) day notice requirements in A.R.S. §15-403A and C would render that authority useless. This cannot be what the Legislature intended.

In view of the fact that special statutes govern when they conflict with general statutes, and language contained in a statute should not be viewed as surplusage, trivial or void, it would appear that the notice provisions of A.R.S. §15-403A and B do not apply to a special election held pursuant to A.R.S. §15-491C. Without determining the minimum amount of notice required for special elections to purchase property, it is the opinion of this office that sixty (60) days is sufficient.

A copy of this opinion is being sent to the State Attorney General for review.

Sincerely,



Keith R. Ricker
Deputy County Attorney

KRR:ces

cc: Dr. Eugene Hunt