



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

March 27, 1987

The Honorable Stephen D. Neely  
Pima County Attorney  
Civil Division  
177 N. Church Avenue, Suite 300  
Tucson, Arizona 85701-1117

Re: I87-045 (R87-029)

Dear Mr. Neely:

Pursuant to A.R.S. § 15-253(B) this office declines to review the opinions expressed in your January 23, 1987 letter to Anita Lohr, Pima County School Superintendent, regarding statutory requirements for a defensive statement prepared pursuant to A.R.S. § 15-207 for a recall election.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

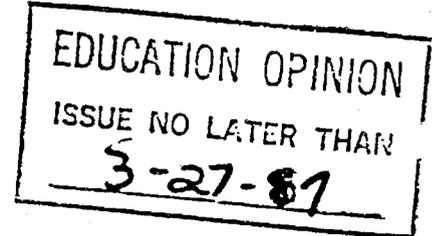
BOB CORBIN  
Attorney General

BC:TLM:pnw



OFFICE OF THE  
**Pima County Attorney**  
**Civil Division**  
177 NORTH CHURCH AVENUE  
SUITE 300  
Tucson, Arizona 85701-1117  
(602) 792-8321

STEPHEN D. NEELY  
PIMA COUNTY ATTORNEY  
JAMES M. HOWARD  
CHIEF DEPUTY



OPINION NO. 87-05

January 23, 1987

R87- 029

1/30/87  
Martin

TO: Anita Lohr  
County School Superintendent

FROM: JoAnn Sheperd  
Deputy County Attorney

RE: Recall Election

You have requested legal advice on the following situation:

A recall petition has been filed against a member of the Catalina Foothills School District governing board. Notice of the filing of the petition was given to the school board member by your office within 24 hours of filing, pursuant to A.R.S. §19-207. That section states as follows:

"Upon filing the petition as prescribed by section 19-208.03, subsection A, paragraph 1, the officer with whom it is filed shall within 24 hours give written notice to the person against whom it is filed. The notice shall state that a recall petition has been filed, shall set forth the grounds thereof, and shall notify the person to whom it is addressed that he has the right to prepare and have printed on the ballot a statement containing not more than 200 words defending his official conduct. If the person fails to deliver the defensive statement to the officer giving notice within ten days thereafter, his statement shall not be printed on the ballot, and shall be considered waived."

Upon receipt of this notice, the school board member submitted the "defensive statement" within the requisite time period. The statement is in outline form, with underlined headings and subheadings, each preceded by a capital letter or a number. The statement contains exactly 200 words not counting these letters and numbers.

You informed me that the statement has been challenged by certain recall petitioners, who allege that the letters and numbers used to set off the different sections and subsections of the statement constitute "words", and therefore the statement is over the 200 word limit set forth in §19-207. They also object to the underlining of certain portions of the statement.

WEBSTER'S NEW COLLEGIATE DICTIONARY (G.C. Merriam Company 1981) defines "word" as:

"... a speech sound or series of speech sounds that symbolizes and communicates a meaning without being divisible into smaller units capable of independent use... a written or printed character or combination of characters representing a spoken word... ."

BLACK'S LAW DICTIONARY (West Publishing Company rev. 4th ed. 1968), defines "words" as:

"Symbols indicating ideas and subject to contraction and expansion to meet the idea sought to be expressed."

It is apparent from the above definitions that neither letters or numbers in themselves can be defined as words within the meaning of A.R.S. §19-207. Therefore, the defensive statement at issue is in compliance with this statute.

We find no caselaw or specific provisions in the relevant statutes which prohibit the emphasizing of certain portions of the defensive statement by underlining. However, A.R.S. §19-213, which sets forth the required form and contents of a recall election ballot, may require some modification of the defensive statement. That statute provides as follows:

"On the ballots for the election shall be printed the reasons as set forth in the petition for demanding the officer's recall, and, in not more than two hundred words, the officer's justification of his conduct in office. There shall be no party designation upon the recall ballot. The form of the ballot shall conform as nearly as practicable to the ballot prescribed for general elections." (Emphasis added).

Pursuant to the last sentence of the statute, the defensive statement should be printed on the recall ballot in such a way as to allow the form of that ballot to conform "as nearly

as practicable" to that of a general election ballot. This may require some modification of the statement to preserve the form of the ballot, as your office deems necessary.

In addition, Arizona courts have held that recall election results are valid when there has been "substantial compliance" with recall election procedures. See Abbey vs. Green, 28 Ariz. 53, 235 P. 150 (1925); Miller v. Wilson, 59 Ariz. 403, 129 P.2d 668 (1942).

CONCLUSION

It is the opinion of this office that the defensive statement at issue is not more than 200 words in length for the purpose of A.R.S. §19-207. The fact that it contains letters and numbers in addition to the 200 words does not remove it from the realm of "substantial compliance" with Arizona recall election statutes.

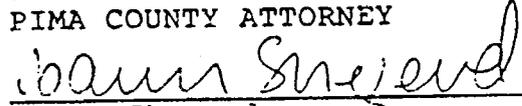
In addition, there is no statutory prohibition against emphasizing certain portions of the statement. Therefore, the statement should be printed on the ballot as submitted, or with any modifications deemed necessary to make it conform "as nearly as practicable" to the form of the ballot prescribed for general elections, as set forth in A.R.S. §16-844.

A copy of this opinion has been submitted to the Attorney General for review, pursuant to A.R.S. 15-253(B).

Respectfully submitted

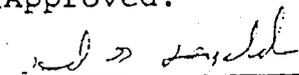
STEPHEN D. NEELY  
PIMA COUNTY ATTORNEY

By:

  
JoAnn Sheperd  
Deputy County Attorney

JS/las

Approved:

  
David G. Dingeldine  
Chief Civil Deputy County Attorney



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 PIMA COUNTY ATTORNEY  
 JAMES M. HOWARD  
 CHIEF DEPUTY

EDUCATION OPINION  
 ISSUE NO LATER THAN  
3-27-87

OPINION NO. 87-05

January 23, 1987

87-029

1/30/87  
 Martin

TO: Anita Lohr  
 County School Superintendent

FROM: JoAnn Sheperd  
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RE: Recall Election

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BOB CORBIN  
Attorney General

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