



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

August 28, 1984

The Honorable Frank McElhanev
Arizona State Representative
State Capitol, House Wing
Phoenix, Arizona 85007

Re: I84-117 (R84-106)

Dear Representative McElhanev:

This letter is in response to your inquiry concerning the permissibility of county elected officials serving as precinct committeemen. For the reasons set forth below, it is our opinion that a county elected official may serve as a precinct committeeman.

Precinct committeemen are chosen by the members of a political party residing in each precinct pursuant to the provisions of A.R.S. § 16-821. Any member of a recognized political party who is a registered voter in the precinct is eligible to seek the office of precinct committeeman. A.R.S. § 16-822. The minimum duties of a precinct committeeman are to assist the voters of his or her political party in voter registration and to assist the voters of his or her party to vote on election day. A.R.S. § 16-822.C.

On several previous occasions we have opined that precinct committeemen are not public officers by reason of the fact that they are elected at a statutory primary election. (Ariz.Atty.Gen.Op. 52-252; Ariz.Atty.Gen.Op. 61-83-L; Ariz.Atty.Gen.Op. 65-16; Ariz.Atty.Gen.Op. 72-20-L; Ariz.Atty.Gen.Op. 78-121.) Our reasons for this conclusion were succinctly stated in the Opinion of the Attorney General No. 52-252:

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It is generally agreed that the party committeemen do not become public officers by reason of the fact that they are elected at a statutory primary election, because the duties of a public office are in their nature public; that is, they involve in their performance the exercise of some portion of the sovereign power, whether great or small, in the performance of which all citizens, irrespective of party, are interested, either as members of the body politic or of some duly established division of it. Membership in a political party does not come within the above description of what constitutes public office and the fact that the Legislature undertakes by statute to regulate the election and conduct of political committees does not make the office a public one. Committeemen are officers of the party which elects them and their duties are confined to matters pertaining to the party to which they belong and which alone is interested in their proper performance. (Emphasis added)

Even if precinct committeemen were deemed "public officers," they are not barred by the Arizona Constitution or pertinent statutes from holding another elective office. On August 3, 1984, A.R.S. § 38-296 as amended became effective. Ch. 275, § 2, 1984 Ariz. Sess. Laws (2nd Reg. Sess.). It provides:

Except during the final year of the term being served, no incumbent of a salaried elective office, whether holding by election or appointment, may offer himself for nomination or election to any salaried local, state or federal office.

The amended language of A.R.S. § 38-296 is identical to the language of Ariz. Const., Art. 22, § 18. Prior to the effective date of this amendment A.R.S. § 38-296 prohibited incumbents of non-salaried as well as salaried elective officers from seeking another office except during the final year of their term.

The office of precinct committeeman is not salaried. Therefore, under the 1984 amendment, it is clear that the

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general proscription against holding that office and another elective office would not apply. Thus, under state law there is no prohibition against county elected officials serving as precinct committeemen.

We must point out that our conclusion could be affected if the county in question has a "Hatch Act" provision prohibiting such officers from participating in political activities. In Arizona, this prohibition as it pertains to state service non-exempt officers is codified at A.R.S. § 41-772. Generally, however, elected officials are not subject to "Hatch Act" provisions. See Ariz.Atty.Gen.Op. I79-174 addressing the applicability of the State "Hatch Act" to deputy registrars. Likewise, our conclusion is based upon the assumption that the duties of a precinct committeeman would not be inherently inconsistent with his duties as a particular county elected official. See Ariz.Atty.Gen.Op. I80-019. Therefore, the prohibition against dual office holding based upon the common law doctrine of incompatibility of public office is inapplicable. Id.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

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