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Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

November 13, 1984

Mr. Lawrence J. Wilde
Deputy Coconino County Attorney
Coconino County Courthouse
Flagstaff, Arizona 86001

Re: I84-155 (R84-163)

Dear Mr. Wilde:

The Attorney General declines to review your opinion of October 5, 1984, addressed to Ms. Betty Jo Anderson, Coconino County Superintendent of schools, concerning the eligibility of a member of a school district governing board to be a candidate for the office of county supervisor. See Ariz. Atty. Gen. Op. I84-108.

Sincerely,

BOB CORBIN
Attorney General

BC:FWS:mch



OFFICE OF

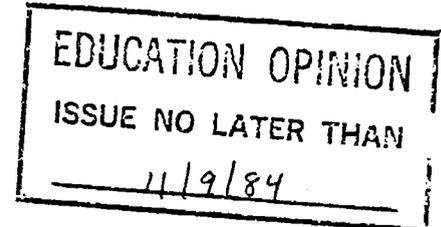
County Attorney

COCONINO COUNTY
COCONINO COUNTY COURTHOUSE
FLAGSTAFF, ARIZONA 86001
779-6518

JOHN VERKAMP
COUNTY ATTORNEY

R84- 163

September 5, 1984



Ms. Betty Jo Anderson
Coconino County Superintendent of Schools
Flagstaff, Arizona 86001

Dear Ms. Anderson:

You have requested an opinion from this office on the following questions:

1. Does current membership on the governing board of a school district render a candidate ineligible to seek the office of county supervisor?
2. If the answer to question number 1 is "no," may a person be a candidate for both offices simultaneously?

DISCUSSION

As we understand the facts, the candidate, Jimmy Holgate, is currently in the last year of his term as a member of the Tuba City School District Governing Board. It is his intention to run for election to the County Board of Supervisors this year, and he also intends to run for another term on the Tuba City School District Governing Board at the same time. Aside from any problems which may be presented by his current membership on the governing board, it is assumed that all other factual requirements for the respective offices, i.e., residency, etc., have been met.

It is well settled under Arizona case law that there is a presumption in favor of the eligibility of candidates to hold office. McCarthy vs. State, 55 Ariz. 328, 101 P.2d 449 (1940). Against this presumption, however, several statutes are set up, particularly A.R.S. §§ 38-291 and 38-296, in order to preclude eligibility in specific situations.

Perhaps the most potent statutory provision which can be raised as a potential bar to Mr. Holgate's candidacy for County Supervisor while serving on a school district governing board is found in A.R.S. § 11-211(A). The final sentence of this subsection states:

"No person holding any other county or precinct office is eligible to the office of supervisor."

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In a similar case to the present situation, the Arizona Supreme Court in Shirley vs. Superior Court In and For County of Apache, 109 Ariz. 510, 513 P.2d 939 (1973), dealt with this provision as well as with A.R.S. § 38-296(A) where a school board member sought election to the Apache County Board of Supervisors. In that case, the petitioner had been a member of the school board prior to and at the time of his election as county supervisor, but resigned prior to the date of assuming office. The Court held that neither A.R.S. § 11-211(A) nor A.R.S. § 38-296(A) precluded his eligibility for election to the board of supervisors.

The Court found that by resigning prior to taking office, Mr. Shirley had "removed" any ineligibility raised by these statutes. Further, however, the Court interpreted the language and intent of A.R.S. § 11-211(A) to only prohibit a person from holding the office of county supervisor as well as another county or precinct office at the same time. It did not stand as a barrier against a candidate being nominated or elected to the office of supervisor while holding another elective office. Moreover, the Court reasoned that the office of school board member was not a "county" or "precinct" office at all, "[I]t is at most a 'district' office." Id., at page 516. The Shirley case clearly established that a school board member was eligible to hold the office of county supervisor under A.R.S. § 11-211(A).

A.R.S. § 38-296(A) raised more of a problem for the Shirley Court than is presented by that provision today. The language of Subsection A at that time stated:

"No incumbent of an elective office, whether holding by election or appointment, shall be eligible for nomination or election to any office other than the office so held, nor shall the nomination paper of such incumbent be accepted for filing."

The Court pointed out that the prohibition contained in A.R.S. § 38-296(A) applied only to incumbents of elective office as defined by A.R.S. § 38-101(1) and probably did not include school board members. The key factor was compensation.

A.R.S. § 38-101(1) provides:

"1. 'Office,' 'board' or 'commission' means any office, board or commission of the state, or any political subdivision thereof, the salary or compensation of the incumbent or members of which

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is paid from a fund raised by taxation or by public revenue. (Emphasis added.)

The Arizona Supreme Court stated:

"A school trustee does not receive compensation from the public treasury. Such an office is one of public service or trust, and is not the type of office contemplated under the above statutes." Shirley, supra, at page 515.

This interpretation was reinforced by several Arizona Attorney General Opinions, and has been vindicated by the revision of A.R.S. § 38-296(A) enacted during the most recent Legislative Session. The new language reads as follows:

"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." (Emphasis added.)

This change has decisively removed A.R.S. § 38-296(A) as the other statutory barrier to the eligibility of a school board member to run for county supervisor. In addition, Mr. Holgate is in the final year of his current term as school board member.

Another question is raised by the issue of whether a candidate may run for both the offices of supervisor and school board member simultaneously. As set forth in the above discussion, a school board member is eligible under A.R.S. § 11-211(A) to run for county supervisor. Further, there is no limitation upon filing for either office separately under A.R.S. § 38-296(A). In addition, A.R.S. § 15-421, which sets forth the qualifications for membership on a school board, does not in itself render a candidate ineligible to run for school board by reason of his seeking the office of county supervisor or any other office. As there is no bar to Mr. Holgate seeking the offices of board of supervisor or school board member separately under the law, we can find no legal authority which prevents the candidate from running simultaneously for both of these positions.

It is the opinion of this office, therefore, that under Arizona law a candidate's current membership on a school board may not prevent him from running for the board of supervisors, nor is he prevented from running for both positions simultaneously. We decline, however, to speculate

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at this time as to whether or not such a candidate could in fact hold both offices concurrently. Although there is no statutory prohibition against this, the issue of whether the duties of the two offices are so inherently in conflict that holding both would violate the doctrine of Incompatibility of Public Office would need to be separately addressed. Op. Atty. Gen. 80-019. We note, however, that an opinion of the Arizona Attorney General's Office has held that concurrent service on a school board and city or town council would satisfy this common-law doctrine. Op. Atty. Gen. 72-20-L. That opinion found the possibility of conflict to be extremely unlikely, and that the proper remedy in order to avoid any potential conflict was to refrain from taking action on that particular issue. Similarly, the duties of the board of supervisors have been held not to be inherently in conflict with those of the Arizona Board of Regents. Op. Atty. Gen. 80-019. Whether the possibility of conflict in performing the duties of supervisor and school board member is equally as remote, presents a factual issue which may appropriately be addressed only when the specific situation arises. For the present, as Arizona law does not prevent a candidate from seeking either office, and does not specify which office would necessarily be vacated in the event of an irreconcilable conflict, we can see no reason to preclude Mr. Holgate from seeking both offices concurrently.

If I can be of any additional assistance, please let me know. A copy of this opinion is being forwarded to the Attorney General for his review.

Sincerely,

JOHN VERKAMP
Coconino County Attorney

By Lawrence J. Wilde
Lawrence J. Wilde
Deputy County Attorney

1 Op. Atty. Gen. Nos. 59-30, 80-061.

LJW:wf

cc: Arizona Attorney General
C. Benson Hufford, Esq.