

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

September 1, 1988

The Honorable E. D. McBryde  
Presiding Judge  
Superior Court, Division 1  
Florence, Arizona 85232

Re: I88-090 (R88-099)

Dear Judge McBryde:

You have asked whether a deputy adult probation officer may continue to be employed in that capacity while he is a candidate for election to a paid public office. We conclude that this is prohibited by the State's "Hatch Act," A.R.S. § 41-772(B), which provides:

No employee or member of the personnel board may be a member of any national, state or local committee of a political party, or an officer or chairman of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take any part in the management or affairs of any political party or in any political campaign, except that any employee may express his opinion, attend meetings for the purpose of becoming informed concerning the candidates for public office and the political issues, and cast his vote.

(Emphasis added.)

A.R.S. § 41-762(1) defines "employee" as a "person holding a position in state service." "State service" is defined as "all offices and positions of employment in state government except offices and positions exempted by the provisions of this article." A.R.S. § 41-762(2) (emphasis added).

In State v. Pima County Adult Probation Department, 147 Ariz. 146, 149, 708 P.2d 1337, 1340 (App. 1985), the Arizona

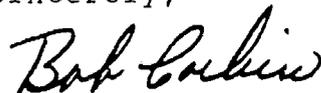
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Court of Appeals held that "probation officers are officers, agents, and employees of the judicial department of the state."<sup>1</sup> They are therefore employees in state service because they hold "positions of employment in state government." A.R.S. § 41-762.

The prohibitions of A.R.S. § 41-772(B) would apply to probation officers unless they are covered by an exemption contained in A.R.S. § 41-771. We find no such exemption. In fact, A.R.S. § 41-771(A)(2) exempts "employees of the supreme court and court of appeals." Expression of one or more items of a class evidences the intent of the legislature to exclude items of the same class that are not expressed. Pima County v. Heinfeld, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982). Deputy adult probation officers are employees of the superior court under the supervision of the presiding judge of the superior court of the county where employed. A.R.S. §§ 12-251, 12-252. They are not employees of the Supreme Court or Court of Appeals and, therefore, are not covered by any exemption set out in A.R.S. § 41-771.

We conclude that a deputy adult probation officer is subject to the provisions of A.R.S. § 41-772(B) which prohibits a state employee from being "a candidate for nomination or election to any paid public office. . . ."

Sincerely,



BOB CORBIN  
Attorney General

BC:JGF:bl

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<sup>1</sup>Ariz. Const.art. VI § 1 provides:

The judicial power shall be vested in an integrated judicial department consisting of a Supreme Court, such intermediate appellate courts as may be provided by law, a superior court, such courts inferior to the superior court as may be provided by law, and justice courts.