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September 15, 1953
Letter Opinion No. 53-105-L

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ARIZONA ATTORNEY GENERAL

The Honorable L. S. (Dick) Adams
State Representative
418 North Oakland Avenue
Phoenix, Arizona

Dear Mr. Adams:

A few days ago we discussed the question presented in your letter of August 31, 1953, relative to the effect of Proposition No. 102 (on the September 29 special election ballot) on the office of county school superintendents. At that time you advised us that you were in complete agreement with the opinion of the Department of Law that Proposition No. 102 would have no effect upon the said county officers in the event it were adopted.

To reiterate the points of our discussion, the office of County School Superintendent, along with other county officers, is created by Section 3, Article 12, of the Constitution of Arizona. Section 4 of Article 12 reads in part as follows:

> "The duties, powers, and qualifications of such officers shall be as prescribed by law. * * *"

Sections 2 and 3 of Article 11, as they now appear, prescribe a portion of the duties of the county school superintendent but only a portion of the duties. Following the mandate of Section 4, Article 12, the Legislature has prescribed in various sections of the code, too numerous to set forth in detail herein, other duties of the county school superintendent. Proposition 102 would only remove from the office of the county school superintendent that portion of his duties set forth in Sections 2 and 3 of Article 11. Proposition 102 in nowise affects the existence or non-existence of the office of county school superintendent. In other words, there is no conflict, express or implied, between the existence of the office of county school superintendent and the proposed amendment to the Constitution set forth in Proposition 102. Therefore, since no issue in connection with this query remains, we will treat it no further.

You did, however, ask us whether or not the provision of No. 102 abolishing the office of Superintendent of Public Instruction would be effective in view of the wording of Article 5, Section 1, Arizona Constitution, which follows:

> "§1. (Executive officers.)--The executive department of the state shall consist of governor, secretary of state, state auditor, state treasurer, attorney-general, and superintendent of public instruction, each of whom shall hold his office for two years beginning on the first Monday of January next after his election, except that the terms of office of those elected at the election provided for in the Enabling Act approved June 20, 1910, shall begin when the state shall be admitted into the Union, and shall end on the first Monday in January, A.D. 1913, or when their successors are elected and qualified.
>
> The persons, respectively, having the highest number of votes cast for the office voted for shall be elected; but if two or more persons shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislature at its next regular session shall elect forthwith, by joint ballot, one of such persons for said office.
>
> The officers of the executive department during their terms of office shall reside at the seat of government, where they shall keep their offices and the public records, books, and papers. They shall perform such duties as are prescribed by this constitution and as may be provided by law." (Emphasis supplied)

It is your apparent feeling that a conflict exists between the provision of No. 102 and Art. 5, Sec. 1, supra. In the event such a conflict should be legally determined to exist, the law controlling the point is well and firmly established.

In ALLISON v. CITY OF PHOENIX (1934), 44 Ariz. 66, 33 P. 2 927, the Supreme Court of this state said, l.c. 932:

> "* * * It is the universal rule of constitutional and statutory construction, so well known as to need no citations in support thereof, that a later enactment prevails over any earlier one of equal rank, in so far as the two are in conflict." (Emphasis supplied)

The Allison case, supra, is cited as one of the authorities

for the following statement at 11 Am. Jur., Constitutional Law, Sec. 54 at page 664:

> "* * * If there is a real inconsistency, the amendment must prevail because it is the latest expression of the will of the people. In such a case there is no room for the application of the rule as to harmonizing inconsistent provisions."

Proposition 102, which, if adopted, amends Section 2, Article 11, reads in part:

> "* * * The office of State Superintendent of Public Instruction is abolished."

Is there a conflict between the provisions of Proposition 102 and Section 1, Article 5 of the Constitution which enumerates the executive officers of the state, including the office of State Superintendent of Public Instruction? Certainly, it is obvious that a conflict exists, because Proposition 102 expressly abolishes the office of State Superintendent of Public Instruction. If the office is abolished there is a conflict existing between the provisions of Section 2, Article 11, as amended by Proposition 102, and Section 1, Article 5. Following the rule laid down by the Arizona Supreme Court in ALLISON v. CITY OF PHOENIX, supra, the later enactment, Section 2, Article 11, as amended by Proposition 102, would prevail, and the State Superintendent of Public Instruction would be eliminated as an executive officer of the state, as provided in Section 1, Article 5, for the office would no longer exist.

The second question contained in your letter, concerns the sufficiency of the summary appearing in the publicity pamphlet relative to Proposition No. 103.

As you have undoubtedly noted the only change made by this amendment in Article XI, Section 8 of the Constitution, involves a few words in the last sentence thereof. This provision follows:

> "§ 8. (Permanent school fund.)--A permanent state school fund for the use of the common schools shall be derived from the sale of public school lands or other public lands specified in the Enabling Act approved June 20, 1910; from all estates or distributive shares of estates that may escheat to the state; from all unclaimed shares and dividends of any corporation incorporated under the laws of Arizona; and from all gifts, devises, or bequests made to the state for general educational purposes.

> The income derived from the investment of the permanent state school fund, and from the rental derived from school lands, with such other funds as may be provided by law shall be apportioned annually to the various counties of the state in proportion to the number of pupils of school age residing therein." (Emphasis supplied)

The proposed amendment follows:

> "Section 8. A permanent state school fund for the use of the common schools shall be derived from the sale of public school lands or other public lands specified in the Enabling Act approved June 20, 1910; from all estates or distributive shares of estates that may escheat to the state; from all unclaimed shares and dividends of any corporation incorporated under the laws of Arizona; and from all gifts, devises, or bequests made to the state for general educational purposes.
>
> The income derived from the investment of the permanent state school fund, and from the rental derived from school lands, with such other funds as may be provided by law shall be apportioned annually to the various counties of the state in such manner as may be prescribed by law." (Emphasis supplied)

In other words the old provision states "in proportion to the number of pupils of school age residing therein" while the proposed amendment says "in such manner as may be prescribed by law". This not only is the lone change, but the principal provision" of the proposed amendment. The fact it is also stated in the summary that this would have the effect of changing the "school attendance" methods of apportionment certainly does not detract from the sufficiency of the summary in question. The use of the words "school attendance" cannot be considered misleading because of their close relationship to and dependence on the number of "school age" pupils residing in the county. The phrases are, in effect, practically synonymous.

It is our opinion, therefore, that the summary of Proposition No. 103, as stated in the publicity pamphlet and appearing on the

ballot, conforms to the statutory requirements.

Yours very truly,

JOHN M. McGOWAN
Assistant to the
Attorney General

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