

To: The Honorable Jack A. Brown

June 22, 2000

**Re: Senate Confirmation of Public
Officers Nominated by the Governor**

Minority Leader, Arizona State Senate

**I00-014
(R97-036)**

Questions Presented

Arizona Revised Statutes ("A.R.S.") § 38-211 governs the nomination of State officers who require Senate confirmation. The statute provides that "in no event" shall a nominee serve longer than one year without Senate confirmation. You have asked whether this one-year limitation applies to an officer whose term has ended and who has been renominated by the Governor for an additional term, but who has not yet received Senate confirmation.

Summary Answers

The one-year limitation in A.R.S. § 38-211(E) applies to a public officer who is renominated by the Governor to serve an additional term. Thus, an officer who is renominated must leave office if the Senate does not confirm that nomination within one year from the date of renomination.

Background

Section 38-211, A.R.S., describes the requirements relating to Senate confirmation of public officers who are appointed by the Governor. This process typically applies to the heads of State agencies and members of State boards and commissions. See, e.g., A.R.S. § 41-2803(A) (director of the Department of Juvenile Corrections); A.R.S. § 37-285(C) (grazing land valuation commission members).⁽¹⁾

An appointment subject to A.R.S. § 38-211 is not complete until the Senate has consented. See *McCall v. Cull*, 51 Ariz. 237, 244-45, 75 P.2d 696, 699 (1938) (when a position requires the Governor's nomination and the Senate's consent, the nominee is not legally entitled to the office until the Senate confirms the appointment). The Legislature has, however, specified certain situations in which a nominee may begin to perform the duties of an office while awaiting Senate confirmation. For example, if the outgoing incumbent is unable to continue in office, the nominee must assume and discharge the duties of the office pending Senate confirmation. A.R.S. § 38-211(B). In addition, if an office is vacant and the Senate does not act on a nomination made during a regular session of the Legislature, the nominee is entitled to serve in an interim or acting capacity subject to confirmation during the next legislative session. *Id.* Although nominees may, under some circumstances, begin serving while awaiting confirmation, the Legislature has provided that "in no event shall a nominee serve longer than one year after nomination without [S]enate consent." A.R.S. § 38-211(E).

A separate but related statute, A.R.S. § 38-295, requires an incumbent officeholder whose term has expired to continue to discharge his or her duties until a successor has been properly confirmed and appointed. This statute seeks to prevent vacancies by having someone always in the office to discharge its duties. *Graham v. Lockhart*, 53 Ariz. 531, 536, 91 P.2d 265, 267-68 (1939).

When the Governor renominates an incumbent for another term in the same office, the incumbent is both a holdover under A.R.S. § 38-295 and a nominee under A.R.S. § 38-211

("holdover nominee"). Your question concerns the application of the one-year time limit in A.R.S. § 38-211(E) to a holdover nominee.

Analysis

A. All Unconfirmed Nominees for Public Office, Including Holdover Nominees, Are Limited to One Year in Office from the Date of the Nomination or Renomination.

Under A.R.S. § 38-211(E), "*in no event* shall a nominee serve longer than one year after nomination without [S]enate consent." (Emphasis added.) Although § 38-211 does not define "nominee" or "nomination," terms that a statute does not specifically define are to be given their ordinary meaning. A.R.S. § 1-213; *Sierra Tucson, Inc. v. Pima County*, 178 Ariz. 215, 219, 871 P.2d 762, 766 (App. 1994). The ordinary meaning of "nominee" is "a person named or proposed for an office, duty, or position." Webster's Third New International Dictionary 1535 (1993).⁽²⁾ "To nominate" means "to propose by name for office as a preliminary to appointment upon approval or confirmation by some person or body." *Id.* at 1534-35. "To renominate" an individual for a term of office means "to nominate again or anew, especially for a term of office in immediate succession." *Id.* at 1922. Under these definitions, when the Governor nominates a person for a particular office, that person is a "nominee" within the meaning of A.R.S. § 38-211(E) even if the person has already completed a term in the same office.

In addition, the Legislature expressly made the holdover statute, A.R.S. § 38-295, subject to the requirements of § 38-211. Section 38-295(B), A.R.S., provides:

Every officer shall continue to discharge the duties of the office, although the term has expired, until a successor has qualified. The discharge of the duties of office for appointments requiring Senate confirmation shall be governed by § 38-211.

Thus, holdover nominees are subject to the one-year limitation in A.R.S. § 38-211(E). The statutory language does not support a contrary conclusion that would permit a holdover nominee to discharge the duties of an office indefinitely pending Senate confirmation, while a first-time nominee would be limited to one year.⁽³⁾ Although the Legislature could have differentiated between first-time nominees and people who are renominated, it did not. Instead, by the specific terms of A.R.S. §§ 38-295 and -211(E), the Legislature limited all nominees to one year of interim service in office pending Senate confirmation. Therefore, where the Senate fails to act on a gubernatorial nomination (or renomination) within one year, the nominee's authority and duty to serve in office ceases and the position becomes vacant. See A.R.S. § 38-291(11) ("An office shall be deemed vacant from and after the . . . [f]ailure of a person to be elected or appointed to the office").

B. The Historical Development of the Statutes Governing the Nomination and Appointment Process Supports the Conclusion That A.R.S. § 38-211(E) Applies to Holdover Nominees.

In your opinion request, you asked if the Legislature's 1989 amendments affect the application of the one-year time limit to holdover nominees. The legislative history, including the 1989 amendments, further indicates that the one-year limit applies to holdover nominees. *Cf. Brodsky v. Phoenix Police Department Retirement Sys. Bd.*, 183 Ariz. 92, 95, 900 P.2d 1228, 1231 (App. 1995) (statute's history and development may help determine statute's current meaning).

In 1978, the Legislature added a one-year limitation to both §§ 38-211(B) and -295(B). See 1978 Ariz. Sess. Laws ch. 81, §1 and 2. Section 38-295(B) then read as follows:

Every officer shall continue to discharge the duties of the office, although the term has expired, until a successor has qualified. *If the officer is presently serving in the position to which nominated and the Senate rejects such nomination or fails to take formal action within one year of submission of such nomination, such officer will no longer be allowed to serve and the position shall immediately be declared vacant.*

Id. (emphasis added). The language added to § 38-211(B) in 1978 provided that a nominee shall not "serve longer than one year after nomination without Senate confirmation." *Id.* This Office construed the one-year time limit in A.R.S. § 38-211 as applying to those nominees who had not held the office in question immediately before being nominated and the one-year time limit then in A.R.S. § 38-295 as applying to holdover nominees. See Ariz. Att'y Gen. Op. I84-042.

In 1989, the Legislature again amended both A.R.S. § 38-211 and A.R.S. § 38-295. 1989 Ariz. Sess. Laws ch.250, §§ 4, 5. Those amendments maintained the one-year time limit in A.R.S. § 38-211. *Id.* §4. The Legislature also deleted the one-year limitation in A.R.S. § 38-295, but added language to that statute making it clear that appointees subject to Senate confirmation are governed by A.R.S. § 38-211. *Id.* §5. Thus, the 1989 amendments consolidated the one-year time limits that had been in separate but related statutes into the one-year time limit in A.R.S. § 38-211(E). See ARIZONA HOUSE OF REPRESENTATIVES COMMITTEE ON GOVERNMENT OPERATIONS, BILL SUMMARY FOR SB 1311, 39th Legis., 1st Reg. Sess. (1989) (noting bill conformed the procedures in A.R.S. § 38-295 to those in A.R.S. § 38-211 for appointments requiring Senate confirmation). In sum, the history of A.R.S. §§ 38-211 and -395 demonstrates that the Legislature intended these two statutes to be read together, and that holdover nominees, which before 1989 had been governed by a one-year limit found in A.R.S. § 38-295, are now subject to the one-year limitation in A.R.S. § 38-211.

Conclusion

By its terms, A.R.S. § 38-211(E) limits the length of service of any unconfirmed nominee to one year after nomination. A holdover nominee whom the Governor has renominated for an additional term in office is a nominee within the meaning of § 38-211(E) and is therefore prohibited from continuing to serve for more than one year from the date of his or her renomination, absent Senate confirmation.

Janet Napolitano
Attorney General

1. Because you have asked about incumbents holding over past the expiration of their terms, this Opinion focuses upon those officials with terms of office specified by law.
2. For statutory construction purposes, "[a] dictionary may define a word's natural and obvious meaning." *State v. Jones*, 188 Ariz. 388, 392, 937 P.2d 310, 314 (1997).
3. Note, however, that because § 38-211(E)'s one-year limitation only begins when a person is renominated, a holdover who automatically continues in office pursuant to § 38-295(B) for a time before being renominated may legally continue in office for more than a year after his or her term expires.

• [Back to 2000 Opinions](#)

