

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>June 3, 2004</p>	<p>No. I04-004 (R03-043)</p> <p>Re: Partisan Primary Elections for Superior Court Judges</p>
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TO: The Honorable William J. O'Neil, Presiding Judge
Superior Court, Pinal County

Question Presented

You have asked whether it is permissible to conduct partisan primary elections for judges of the superior court in counties with populations of less than 250,000 persons. Specifically, you have asked whether Article VI, Section 12 of the Arizona Constitution, which requires that the names of candidates for superior court judge in those counties appear on the general election ballot without any partisan designation, is incompatible with Arizona Revised Statutes ("A.R.S.") § 16-331, which presupposes both a primary and general election for candidates for superior court judges.

Summary Answer

Section 16-331, which requires primary elections to determine which candidates will be on the general election ballot, does not violate the requirement in Article VI, Section 12 of the Arizona Constitution. As has been the long-standing practice in counties with populations of less than 250,000, candidates for superior court judge who are members of recognized political parties must

participate in a partisan primary election. Consistent with Article VI, Section 12 of the Arizona Constitution, the winners in the primary election then participate in the general election, but no partisan designation appears on the general election ballot.

Analysis

A. Article VI, Section 12 of the Arizona Constitution.

Article VI, Section 12 of the Arizona Constitution provides, in relevant part:

Judges of the superior court in counties having a population of less than two hundred fifty thousand persons according to the most recent United States census shall be elected by the qualified electors of their counties at the general election The names of all candidates for judge of the superior court in such counties shall be placed on the regular ballot without partisan or other designation except the division and title of the office.

"The governing principle of constitutional construction is to give effect to the intent and purpose of the framers of the constitutional provision and of the people who adopted it. Unless the context suggests otherwise, words are to be given their natural, obvious and ordinary meaning." *Apache County v. Southwest Lumber Mills*, 92 Ariz. 323, 327, 376 P.2d 854, 856 (1962). Unambiguous constitutional language is to be given its plain meaning and effect. *U.S. West Communications, Inc. v. Arizona Corp. Comm'n*, 201 Ariz. 242, 245, 34 P.3d 351, 354 (2001).

The plain language of article VI, Section 12 provides that in counties with populations of less than 250,000 persons (1) judges of the superior court are elected at a general election by the qualified electors of their counties; and (2) the names of the candidates for judge of the superior court are placed on the regular ballot for the election without partisan designation. Because article VI, Section 12 only refers to a general election, the mandate that the names be placed on the regular ballot without partisan designation applies only to the general election ballot.

Since its adoption at the Constitutional Convention of 1910, the Arizona Constitution has always contemplated the election of superior court judges at a general election and mandated that the names of the candidates be placed on the general election ballot without any partisan designation. As adopted at the Constitutional Convention, article VI, Section 5¹ provided:

There shall be in each of the organized counties of the State a superior court, for which at least one judge shall be elected by the qualified electors of the county at the general election.

The names of all candidates for the office of judge of the superior court shall be placed on the regular ballot in alphabetical order without any partisan or other designation except the title of the office.

In 1974, an amendment to Section 12 of Article VI limited the election of superior court judges to counties with populations of less than 150,000 and established merit selection for judges in larger counties. This amendment effectively established merit selection of superior court judges in Maricopa and Pima Counties, leaving the system for electing superior court judges in all other counties intact. In 1992, Section 12 was amended again to increase the population threshold from 150,000 to 250,000, leaving the system for electing superior court judges in all counties except Maricopa and Pima Counties intact.

B. **Arizona Revised Statutes § 16-331.**

Arizona Revised Statutes § 16-331 addresses the election of superior court judges:

A. In any election at which two or more judges of the superior court are to be voted for or elected for the same term, it shall be deemed that there are as many separate offices to be filled as there are judges of the superior court to be elected. Each separate office shall be designated by the distinguishing number of the division of the court occupied in January 1 preceding the primary election by the respective judges whose terms expire after the general election and

¹*The Records of the Arizona Constitutional Convention of 1910* at 1412-13 (John S. Goff ed., 1991).

on or before the first Monday in January next succeeding such election.

B. The designation shall remain the same for all purposes of both the primary and general election and shall be used on all nominating petitions, nomination papers, ballots, certificates of election and election papers referring to the office. After election and the issuance of the certificate of election, the designating number shall have no further significance.

The language of subsection B of A.R.S. § 16-331 presupposes that candidates for superior court judge will participate in both a primary and general election. This is consistent with A.R.S. § 16-301 and A.R.S. § 16-501, which mandate that a person who is a member of a recognized political party who wants to have his or her name on the general election ballot for certain offices, including judicial offices, must be nominated by participating in the primary election.² Arizona Revised Statutes § 16-301 provides as follows:

At a primary election, each political party entitled and intending to make nominations for the ensuing general or special election shall, if it desires to have the names of its candidates printed on the official ballot at such general or special election, nominate its candidates for all elective, senatorial, congressional, state, judicial, county and precinct offices to be filled at such election except as provided in § 16-344.

Arizona Revised Statutes § 16-501 provides as follows:

Except as provided in title 16, chapter 3, article 5, no person shall have his name printed on the official ballot as a candidate in a general election unless he has complied fully with the provisions of law applicable to primary elections.

² A different statute, A.R.S. § 16-341 provides for nomination other than by primary election. Section 16-341 applies to people who cannot be nominated in a primary election because they are not members of recognized political parties that hold primary elections: “[a]ny qualified elector *who is not a registered member of a political party that is recognized pursuant to this title* may be nominated . . . otherwise than by primary election . . .” A.R.S. § 16-341(A) (Emphasis added.)

(Footnote omitted.)

The primary goal of statutory construction is to give effect to the Legislature's intent. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). Statutory provisions should be construed in the context of related provisions and in light of their place in the statutory scheme. *City of Phoenix v. Superior Court*, 144 Ariz. 172, 175-76, 696 P.2d 724, 727-28 (App. 1985). It is presumed that the Legislature did not intend to write a statute that contains void, meaningless, or futile provisions, and thus when possible, statutes must be interpreted to give meaning to every word. *State v. Pitts*, 178 Ariz. 405, 407, 874 P.2d 962, 964 (1994). By referring to both a primary and a general election and some of the requirements of the primary election, A.R.S. § 16-331 recognizes that candidates for the superior court will participate in a primary election.

Article VI, Section 12 of the Arizona Constitution and A.R.S. § 16-331 do not contradict one another. When the winners of the primary election have been determined, the nominees of the recognized political parties for the office of superior court judge then participate in the general election, at which their names appear on the ballot without partisan designation.

Conclusion

Pursuant to Article VI, Section 12 of the Arizona Constitution and A.R.S. § 16-331, candidates for superior court judge who are members of recognized political parties must first participate in a partisan primary election to determine whether they will be their parties'

nominees. The nominees of the recognized political parties then participate in the general election, at which their names appear on the ballot without partisan designation.

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