STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL November 12, 2004	No. I04-010 (R04-036) Re: State and Local Public Benefits Subject to Proposition 200

To: Anthony D. Rodgers, Director
Arizona Health Care Cost Containment System

Question Presented

What are "state and local public benefits" for the purposes of Proposition 200?

Summary Answer

State and local public benefits for the purposes of Proposition 200 are those programs within Title 46 that qualify as state and local public benefits pursuant to federal law (8 U.S.C. § 1621).

Background

A. Proposition 200.

At the 2004 general election, Arizona voters approved Proposition 200, which addressed (1) verifying the identity of applicants for state and local public benefits, and (2) identification requirements for voter registration and voting. This measure will take effect when the Governor issues a proclamation after the state canvass of the election is

complete. Ariz. Const. art. IV, pt. 1, § 1(5). Although the Proposition takes effect when the Governor issues her proclamation, the provisions relating to voting cannot be implemented until the U.S. Department of Justice preclears them as the federal Voting Rights Act requires. 42 U.S.C. § 1973c.

Your question concerns only the provision in the Proposition that addresses state and local public benefits. The Proposition amended Title 46 of Arizona Revised Statutes to add a new section, A.R.S. § 46-140.01, that provides in part:

> An agency of this state and all of its political subdivisions, including local governments, that are responsible for the administration of state and local public benefits that are not federally mandated shall do all of the following:
>
> 1. Verify the identity of each applicant for those benefits and verify that the applicant is eligible for benefits as prescribed by this section.
>
> 2. Provide any other employee of this state or any of its political subdivisions with information to verify the immigration status of any applicant for those benefits and assist the employee in obtaining that information from federal immigration authorities.
>
> 3. Refuse to accept any identification card issued by the state or any political subdivision of this state, including a driver license, to establish identity or determine eligibility for those benefits unless the issuing authority has verified the immigration status of the applicant.
>
> 4. Require all employees of the state and its political subdivisions to make a written report to federal immigration authorities for any violation of federal immigration law by any applicant for benefits and that is discovered by the employee.

Failure to report "discovered violations of federal immigration law by an employee is a class 2 misdemeanor." A.R.S. § 46-140.01(B). An employee's supervisor

who knows of an employee's failure to report and fails to direct the employee to report is guilty of a class 2 misdemeanor. *Id*. In addition to the criminal penalties, the Proposition permits any person to bring a civil action against a state agency or political subdivision to remedy violations. A.R.S. § 46-140.01(C). The Proposition must be enforced "without regard to race, religion, gender, ethnicity or national origin." *Id.*

B. Related Federal Requirements.

The Proposition's "findings and declarations" focus on the problem of illegal immigration. Prop. 200, § 2. The Supreme Court has recognized that the "[p]ower to regulate immigration is unquestionably exclusively a federal power." *DeCanas v. Baca*, 424 U.S. 351, 354 (1976). Although states may enact some legislation that is related to the problem of illegal immigration, there are limits to what they can do. *Id.* For example, it is well established that states cannot exclude children who are undocumented immigrants from public schools, *Plyler v. Doe*, 457 U.S. 202 (1982), and Proposition 200 does not attempt to do so.[1]

Because of the dominant role of federal law in the immigration area, it is important to consider related federal legislation when implementing Proposition 200. The legislation most directly relevant to Proposition 200 is the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a major piece of welfare reform legislation enacted in 1996. PRWORA, Pub. L. No. 104-193, 110 Stat. 2105 (codified in part in U.S.C., Titles 5, 7, 8, 21, 25, 42) (hereinafter referred to as "Federal Welfare Reform Act"). This federal legislation restricted eligibility for federal, state, and local benefits based on immigration status.

[1] Although *DeCanas* was a preemption case and *Plyler* was an equal protection case, both discuss limitations on state authority to enact legislation relating to undocumented immigrants.

In general, a "qualified alien" as defined by the federal law is eligible for federal public benefits, but undocumented immigrants are not. 8 U.S.C. § 1611. Similarly, under the Federal Welfare Reform Act, undocumented immigrants are generally not eligible for "state or local public benefits," as that term is specifically defined in that Act. 8 U.S.C. § 1621.

The Federal Welfare Reform Act also authorized "a State or political subdivision of a State . . . to require an applicant for State and local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility." 8 U.S.C. § 1625. Prior to Proposition 200, Arizona had not legislatively determined what proof of eligibility is required for state and local public benefits. Further, under the Federal Welfare Reform Act, a state could provide state and local public benefits to undocumented immigrants by enacting a statute after August 22, 1996, "which affirmatively provides for such eligibility." 8 U.S.C. § 1621. Arizona has not enacted such legislation.

Analysis

The scope of A.R.S. § 46-140.01, as added by Proposition 200, is largely determined by the meaning of the phrase "state and local public benefits." Because the Proposition does not define that phrase, the question of when to apply identification and reporting requirements under Proposition 200 must be determined by applying general principles of statutory construction.

In construing the meaning of a ballot initiative, the objective is to give effect to the intent of those who framed the provision and the electorate that adopted it. *State v. Givens*, 206 Ariz. 186, 188, 76 P.3d 457, 459 (App. 2003). The best indication of the intent of a statute is its language. *Id.* When there is uncertainty about the meaning of a

statute's terms, the statute's context, language, subject matter, historical background, effects and consequences, spirit and purpose are considered. *Blake v. Schwartz,* 202 Ariz. 120, 126, 42 P.3d 6, 12 (App. 2002). The fact that this statute imposes criminal penalties is also important to the analysis because a criminal statute must give fair notice of the conduct that it prohibits. *State ex rel. Purcell v. Superior Court,* 111 Ariz. 582, 584, 535 P.2d 1299, 1302 (1975). In light of these considerations, this Office examined the language of the Proposition, the information in the publicity pamphlet, the ordinary meaning of the words, the context and placement of the relevant terms within the existing and amended statutory scheme, and related federal laws.

A. Publicity Pamphlet.

Courts may rely on the information in the publicity pamphlet to help determine the meaning of an initiative. *Calik v. Kongable,* 195 Ariz. 496, 500, 990 P.2d 1055, 1059 (1999). The publicity pamphlet includes an analysis by Legislative Council, a fiscal analysis prepared by the Joint Legislative Budget Committee, arguments submitted to the Secretary of State supporting the Proposition, and arguments submitted to the Secretary of State opposing the Proposition. A.R.S. § 19-124.

The Legislative Council analysis is meant to "assist voters in rationally assessing an initiative proposal by providing a fair, neutral explanation of the proposal's contents and the changes it would make if adopted." *Fairness & Accountability v. Greene,* 180 Ariz. 582, 590, 886 P.2d 1338, 1346 (1994). In its analysis, Legislative Council advised voters that "Proposition 200 does not define the term 'state and local public benefits that are not federally mandated.'" *Arizona Secretary of State, Ballot Propositions and Judicial Performance Review* 44 (Nov. 2, 2004) ("Publicity Pamphlet").

Similarly, the Fiscal Impact Statement prepared by the Joint Legislative Budget Committee and included in the publicity pamphlet provided voters no information regarding the potential scope of the state and local public benefits subject to the Proposition. Instead, it noted only that:

> Proposition 200 does not define the term "state and local public benefits that are not federally mandated." Proposition 200's provision requiring verification of an applicant's eligibility for receipt of state and local benefits may affect the number of persons receiving benefits. The proposition's verification requirements may affect the workload of state and local government agencies. The JLBC Staff is unable to quantify the fiscal impact of these provisions.

Id.

Some supporters advised voters that the measure applied only to "welfare," emphasizing that Title 46 applies only to welfare. *Id.* at 44-45. One supporter referred to the fact that the phrase "state or local benefits" is defined in federal law.[2] *Id.* at 46-47. Thus, the publicity pamphlet provided the voters with no definitive guidance regarding the scope of public benefits subject to the Proposition.

B. Ordinary Meaning of Terms.

Often when terms are not defined in a statute, courts will rely on the ordinary meaning of the terms and may refer to dictionary definitions. *State v. Wise*, 137 Ariz. 468, 470 n.3, 671 P.2d 909, 911 n.3 (1983). Some of the dictionary definitions of "benefit" are consistent with the notion that supporters of Proposition 200 advocated, which limited Proposition 200 to welfare. *Black's Law Dictionary* (8th ed. 2004) defines "benefit" as a "[f]inancial benefit that is received from an employer, insurance, or a

[2] Opponents asserted that the Proposition might apply to all government benefits, including firefighting assistance, public libraries, police protection, parks, and public swimming pools. *Id.* at 47-48, 52. However, courts tend to give less weight to the statements of opponents when analyzing the meaning of an initiative. *See Legislature of California v. Eu*, 286 Cal. Rptr. 283, 289, 816 P.2d 1309, 1315 (1991).

public program (such as social security) in time of sickness, disability, or unemployment (a benefit from the welfare office)." Similarly, Webster's defines "benefit" as "financial help in time of sickness, old age, or unemployment." *Webster's Third New Int'l Dictionary* 204 (1993). Other definitions, however, would support a much more expansive interpretation: "something that guards, aids or promotes well-being." *Id.* Although these definitions provide some guidance, alone they lack sufficient specificity to advise state and local government agencies and their employees concerning which programs are subject to the requirements of A.R.S. § 46-140.01.[3]

C. The Special Meaning of State and Local Benefits in Light of Context and Placement of the Term.

Courts will also consider whether the context indicates that a term has a special meaning. *See In re Richard G.*, 196 Ariz. 309, 310, 995 P.2d 745, 746 (App. 2000). Placement of a statute is a relevant consideration in this analysis. *See, e.g., McMann v. City of Tucson*, 202 Ariz. 468, 473, 47 P.3d 672, 677 (App. 2002); *State v. Wilson*, 200 Ariz. 390, 397, 26 P.3d 1161, 1168 (App. 2001); *Allstate Ins. Co. v. Schmidt*, 88 P.3d 196, 199-201 (Haw. 2004); *Maryland v. Raines*, 857 A.2d 19, 37 (Md. App. 2004).

Arizona's statutes are divided into titles, each of which is dedicated to a specific subject. Here, the drafters placed the portions of Proposition 200 that concerned voting and registering to vote in Title 16, which is entitled "Elections and Electors," and the

[3] Arizona criminal code, in section 13-3418, permits a court to "render [a] person who is convicted ineligible to receive any *public benefits*." (Emphasis added.) There, the Legislature specifically stated:

> [f]or the purposes of this section, "public benefits" includes any money or services provided by this state for scholarships or tuition waivers granted for state funded universities or community colleges, welfare benefits, public housing or other subsidies but does not include benefits available for drug abuse treatment, rehabilitation or counseling programs.

portion of the Proposition that concerned state and local benefits in Title 46, which is entitled "Welfare" and addresses specific government programs. Proposition 200 created a new "46-140.01." This new statute follows A.R.S. § 46-140, which establishes reporting requirements and criminal penalties for welfare fraud in programs administered under Title 46. The numbering and the closely related subjects support the conclusion that A.R.S. § 46-140.01, like A.R.S. § 46-140, applies only to Title 46.

The language of the Proposition and the statutory scheme in Title 46 also support the conclusion that the term "state and local benefits" applies only to programs in Title 46. Title 46 includes programs of different State agencies that are administered at the state and local level.[4] In addition, Proposition 200 establishes that the government agency must "verify the identity of each applicant." "Applicant" is defined in A.R.S. § 46-101(2) as "a person who has applied for assistance or services *under this title*, or a person who has applied for assistance or services *under this title* and who has custody of dependent child."[5] (Emphasis added.)

The Proposition did not amend Title 36, which governs public health programs, or Title 1, which establishes principles applicable throughout all of state law, or Title 38, which establishes requirements generally applicable to public officers in state and local government. Placement of the statute governing "state and local public benefits" in Title 46 indicates that the statute applies to the programs in that title, but not to programs governed by other titles that comprise the Arizona Revised Statutes.

By its terms, this definition applies only to A.R.S. § 13-3418. Proposition 200 does not incorporate this definition and uses the additional language "state and local public benefits not mandated by federal law."

[4] *See, e.g.*, A.R.S. §§ 46-136 (work projects for the unemployed, general assistance, food stamps) (state); -139 (housing assistance in child protective services cases) (state); -193 (respite care for the elderly) (state); -292 to -300.06 (Temporary Assistance for Needy Families and related programs) (state), -241 to -241.05 (short-term crisis assistance) (local).

Limiting A.R.S. § 46-140.01 to Title 46 excludes the Arizona Health Care Cost Containment System (AHCCCS) from the reach of Proposition 200 because it is in Title 36. The statements in the publicity pamphlet of some supporters of Proposition 200 specifically mentioned AHCCCS when explaining the reasons for the Proposition. Publicity Pamphlet at 44-45. These statements, however, cannot override the fact that the language and placement of A.R.S. § 46-140.01 indicate that it applies only to applicants for programs in Title 46. Therefore, AHCCCS and other programs outside Title 46 are not subject to the new A.R.S. § 46-140.01. In addition, AHCCCS is a federal public benefit under 8 U.S.C. § 1611, rather than a "state or local public benefit." *See* 8 U.S.C. 1621(c)(3) (excluding any federal public benefit under § 1611(c) from the scope of the term "state or local public benefit").

Although non-Title 46 programs are not subject to Proposition 200, they are, of course, subject to the restrictions based on immigration status that are established in federal law. 8 U.S.C. §§ 1611 (federal public benefits); -1621 (state and local public benefits).

D. Welfare Reform Legislation.

Proposition 200 did not adopt or refer to the definition of "state or local public benefits" in the Federal Welfare Reform Act. 8 U.S.C. § 1621. Nevertheless, that federal law must be considered when implementing this Proposition. *See* 2B Norman J. Singer, *Statutes and Statutory Construction*, § 51.06 (6th ed. 2000) (state and federal statutes may be in *pari materia* and, if so, should be construed together). Although the drafters of Proposition 200 did not reference the federal law, they are presumed to know the law.

[5] Similarly, the definitions of "recipient," "assistance," and "services" apply only to programs within *this title* – Title 46. A.R.S. § 46-101.

See State v. Box, 205 492, 496, 73 P.3d 623, 627 (App. 2003); *McLaughlin v. State Bd. of Educ*., 89 Cal. Rptr. 2d 295, 305 (Cal. App. 1999) (applying this principle to initiatives); *Common Sense Alliance v. Davidson*, 995 P.2d 748, 754 (Colo. 2000) (same).

The federal law is particularly important here because of preemption concerns. In 1997, a federal district court concluded that the Federal Welfare Reform Act preempted portions of California's Proposition 187 that had denied social service benefits to undocumented immigrants. *See League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244, 1255 (C.D. Cal. 1997). The district court observed that "because [the Federal Welfare Reform Act] is a comprehensive regulatory scheme that restricts alien eligibility for all public benefits, however funded, the states have no power to legislate in the area. . . . The only regulations that California can promulgate now are regulations implementing [the Federal Welfare Reform Act]." *Id.*

The Federal Welfare Reform Act specifically authorized states to "require an applicant for State and local public benefits (as defined in section 1621c of this title) to provide proof of eligibility." 8 U.S.C. § 1625. Proposition 200 does this. Essentially, Proposition 200 implements the Federal Welfare Reform Act's eligibility requirements for "state and local public benefits" with regard to programs in Title 46.[6]

The language of Proposition 200 supports this interpretation. Although Proposition 200 refers to verifying the identity and eligibility of applicants, A.R.S. § 46-140.01(A), it establishes *no* eligibility requirements for any programs. This void is filled by the Federal Welfare Reform Act which establishes eligibility requirements based on

[6] For additional guidance regarding 8 U.S.C. § 1621 refer to *Dep't of Justice, Notice of Final Order*, 66 Fed. Reg. 3613 (Jan. 16, 2001); *Dep't of Health and Human Servc., Notice With Comment Period Re: PRWORA: Interpretation of "Federal Public Benefit,"* 63 Fed. Reg. 41658 (Aug. 4, 1998)*; Dep't of Justice, Notice of Interim Guidance*, 62 Fed. Reg. 61344 (Nov. 17, 1997).

immigration status. See 8 U.S.C. §§ 1611, 1621. In addition, A.R.S. § 46-140.01(A) applies to "state and local public benefits not mandated by federal law." The federal law mandates some exceptions to the general prohibition against providing state and local public benefits to undocumented immigrants. For example, emergency health care, short-term, non-cash, in-kind emergency disaster relief, and public health assistance for immunizations are among the exceptions to the general federal prohibition against providing state and local benefits to undocumented immigrants. *See* 8 U.S.C. §1621(b). These programs that are exempt under federal law from the prohibition against providing state and local public benefits to undocumented immigrants, 8 U.S.C. § 1621, would also not be subject to the mandates of Proposition 200.

Although the federal definition of "state and local public benefits" includes matters well beyond the scope of Title 46, for the reasons described in this Opinion, Arizona's new statutory requirement in A.R.S. § 46-140.01 is limited to Title 46 welfare programs. For example, 8 U.S.C. § 1621 applies to professional licenses. But Proposition 200 does not alter the screening procedures for applicants for a contractor's license. To do so, Proposition 200 should have amended Title 32 (which governs most professional licenses, including those for contractors) or some statute that applies generally to all state agencies instead of amending only the statutes that govern certain welfare programs.

In sum, the programs subject to Proposition 200 are those within Title 46 that are subject to the eligibility restrictions in 8 U.S.C. § 1621. This interpretation is both consistent with the statutory language and avoids potential challenges based on vagueness or preemption that alternative interpretations might raise.

Although this Opinion is intended to provide general guidance regarding the scope of A.R.S. § 46-140.01, it does not attempt to answer all of the questions that will arise in implementing the statute. For example, it does not address the requirements regarding verifying identification, nor does it address specifically which programs within Title 46 are subject to Proposition 200. This Office will provide agencies responsible for programs within Title 46 with guidance to comply with the requirements of Proposition 200.

Conclusion

"State and local public benefits" subject to Proposition 200 are those benefits received through programs in Title 46 that are subject to federal eligibility restrictions in 8 U.S.C. § 1621. Proposition 200 requires agencies to verify the identity of applicants for those state or local public benefits.

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