



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>August 18, 2008</p>	<p>No. I08-006 (R08-023)</p> <p>Re: Election Procedures for School District Unification Elections</p>
--	---

To: Representative David Lujan
Arizona House of Representatives

Questions Presented

You have asked about procedures to be followed in connection with upcoming school district unification elections (“Unification Elections”), which are to be held pursuant to 2005 Ariz. Sess. Laws, ch. 191 (“Chapter 191”). Your questions are summarized as follows:

1. Section 4(C) of Chapter 191 requires that the ballot question provide the “name of proposed unified school district.” Should County School Superintendents insert names that conform with A.R.S. § 15-441(B)? If not, how should names of the proposed new unified school district be chosen for purposes of the ballot question?

2. If the proposed unification plan submitted to the voters for approval (“Plan”) involves the subdivision of an existing high school district, how should the subdivided portion of the existing high school district be described in the ballot question?
3. When a Plan calls for the subdivision of an existing school district and unification of the subdivided portion with other districts if the Plan is approved, should there be two separate questions on the ballot?
4. When a Plan calls for the subdivision of an existing school district if the Plan is approved, are qualified electors who reside in the portions of the existing high school district that would not be included in the proposed new district permitted to vote on the proposed unification?

Summary Answer

In designating proposed new districts on ballot questions in Unification Elections, County School Superintendents should insert names that conform with Arizona Revised Statutes (“A.R.S.”) § 15-441(B). If the Plan involves the subdivision of an existing high school district, the ballot question should make clear which portion of the existing school district will be subdivided and included in the proposed new district.

If the Plan calls for the subdivision of an existing school district and unification of the subdivided portion with other existing school districts, the ballot may contain a single question asking the voters to approve or not to approve the Plan. In this situation, qualified electors who reside in the portions of the existing high school district that would not be included in the proposed new district are permitted to vote on the proposed unification.

Analysis

Chapter 191 prescribes procedures for allowing Arizona electors to determine whether certain Arizona school districts should be unified into a newly created school district (“Proposed District”) by including specific language of ballot questions to be used in the Unification Election. 2005 Ariz. Sess. Laws, ch. 191, § 4, subsection C.¹ While Chapter 191 provides some guidance about how ballot questions should be worded, it also leaves questions about (1) the particular language that should be used in describing the Proposed District on the ballot, (2) whether more than one ballot question is required in the case of the proposed subdivision of an existing school district, and (3) who may vote on the Plan.

The analysis of the language of Chapter 191 is guided by the principle that the primary goal of statutory construction is to ascertain and give effect to the Legislature's intent in enacting the statute or law. *Mejak v. Granville*, 212 Ariz. 555, 557, 136 P.3d 874, 876 (2006). When a statute's plain language is clear and unambiguous, courts give effect to that language without resorting to any other rules of statutory construction. *Ariz. Dep't of Revenue v. Salt River Project Agric. Improvement & Power Dist.*, 212 Ariz. 35, 38, 126 P.3d 1063, 1066 (App. 2006). However, when language of a law is “susceptible to more than one construction,” any ambiguity is resolved by examining the statute “in the context of related statutes.” *State v. Wolter*, 197 Ariz. 190, 192, 3 P.3d 1110, 1112 (App. 2000); see also *Robson Ranch Quail Creek, LLC. v. Pima County*, 215 Ariz. 545,

¹ The first time that voters will vote on any Plan will be in the November 2008 General Election. Moreover, this will be the only time voters will vote on any Plan because sections 3 and 4 of Chapter 191, pertaining to the School District Redistricting Commission and school unification elections, have a delayed repeal date of December 31, 2008. 2005 Ariz. Sess. Laws, ch. 191, § 5. For more background on Chapter 191, see Ariz. Att'y Gen. Op. I08-005.

549-50, 161 P.3d 588, 592-93 (2007) (using a related statute found in a separate title of the Arizona Revised Statutes to determine the meaning of A.R.S. § 11-821).

1. Designation of the Proposed District on the ballot.

With respect to designating the Proposed District on the ballot, Chapter 191, § 4, subsection C states:

If the election pursuant to subsection A of this section is to create a unified district that does not follow current boundaries of a common or high school district or if the unification is for more than one district affected, the election ballot shall contain the following language:

Do you support the unification of the (insert names of school districts affected), as political subdivisions of the state of Arizona, to become a unified school district to provide instruction in preschool programs for pupils with disabilities and in kindergarten and grades one through twelve? Yes () No ()

A yes vote shall have the effect of approving the unification of the (insert names of school districts affected) into the (name of proposed unified school district).

A no vote shall have the effect of denying the unification of the (insert names of school districts affected) into the (name of proposed unified school district).

While Chapter 191 does not specify how the Proposed District is to be designated on the ballot, A.R.S. § 15-441 provides:

A. The bases of the educational organization of the county and state are the school districts as defined in § 15-101. Existing districts shall be continued, and new districts may be formed as provided in this title.

B. Each school district shall be designated as school district no. _____ (insert the number of the district), of _____ county (insert the name of the county).

In the ballot questions used in the Unification Elections, county school superintendents should designate the Proposed Districts in the manner that A.R.S. § 15-441(B) requires.

2. Description of the Proposed District when only portion(s) of an existing school district will be included in the Proposed District.

Chapter 191, § 4, subsection C requires that the ballot question describe the school districts that will be affected if unification is approved. If only a portion of an existing school district is to be included in the Proposed District, the ballot question should make it clear to voters which portion of the existing school district will be subdivided and included in the Proposed District.

3. The language of the ballot question when the Plan calls for the creation of a new school district by subdividing an existing high school district.

Chapter 191 does not specifically address whether there should be separate ballot questions addressing subdivision and unification, nor does it address what the ballot question should say. Rather, Chapter 191 only specifies one ballot question to use when the election is “to create a unified district that does not follow the boundaries of a common or high school district or if the unification is for more than one district affected,” which is the following:

Do you support the unification of the (insert names of school districts affected), as political subdivisions of the state of Arizona, to become a unified school district to provide instruction in preschool programs for pupils with disabilities and in kindergarten and grades one through twelve? Yes () No ()

A yes vote shall have the effect of approving the unification of the (insert names of school districts affected) into the (name of proposed unified school district).

A no vote shall have the effect of denying the unification of the (insert names of school districts affected) into the (name of proposed unified school district).

Id. § 4, subsection C.

Although this ballot language provided by Chapter 191 does not refer to the subdivision of an existing school district, a separate question on subdivision is not

required. Related statutes in Title 15, which also address formation a new school district or districts by subdivision of existing districts, provide guidance about what language should be used on the ballot in the case of a Plan that calls for subdivision of an existing district. For example, A.R.S. § 15-458, enacted in 1981, sets forth the procedures for elections involving subdivision and unification of school districts, which are initiated by petition or by action of school district governing boards.² A.R.S. § 15-458(G)(3) provides as follows:

The election shall be held as provided in section 15-459, except that the ballot shall contain the words “subdivision and unification, yes” and “subdivision and unification, no”, and there shall be one of the following two ballot questions, whichever is applicable, stated as follows:

- (a) Should (insert the name of the district) union high school district be subdivided with boundaries identical to the boundaries of (insert the name of the districts) common school districts and simultaneously creating (insert the number of the districts) unified school districts with the respective common school districts as specified in the subdivision and unification plan?
- (b) Should (insert the name of the district) union high school district be subdivided simultaneously with the subdivision of (insert the name of the districts) common school districts and simultaneously creating (insert the number of the districts) unified school districts with the subdivided common school districts as specified in the subdivision and unification plan?

Using A.R.S. § 15-458 (G)(3) as a guide, it follows that in the case of a Plan that calls for the subdivision of an existing high school district and unification of the subdivided portion with other school districts, one ballot question may be used.

² A.R.S. § 15-459 addresses election procedures to be used in the case of the proposed consolidation of existing school districts.

4. The electors who may vote in the Unification Election in the case of a Plan that calls for an existing school district to be subdivided.

Chapter 191 contains conflicting language with respect to which electors are allowed to vote in a Unification Election when only portions of an existing school district will be included in the Proposed District if the measure passes. Chapter 191, § 4 subsection A states, “Each county school superintendent in a county with a school district that is affected by the proposed school district unification plan submitted . . . shall call an election of **all qualified voters within the boundaries of the proposed unified school district** to be held at the next general election to adopt the boundaries as proposed by the commission.” (Emphasis added.) On the other hand, Chapter 191, § 4(D) says:

A majority of the qualified electors in each affected school district is required to approve the proposed unification plan. If the unification plan is approved, the unified school district will become operational at the beginning of the next fiscal year. If any of the affected districts fail to approve the proposed unification plan, the plan is void.

(Emphasis added.)

The logical conclusion is that the Legislature intended for all qualified electors in all affected school districts to vote on the question of subdivision and unification for several reasons. First, there is only one ballot question specified in Chapter 191 in the case of subdivision and unification. In addition, allowing all electors to vote on subdivision and unification is consistent with the related statutory scheme that applies to elections involving subdivision and unification of school districts, initiated by petition or by action of school district governing boards. A.R.S. § 15-458(C) requires that “a majority of the votes cast by the qualified electors in each of the areas proposed as a school district must approve the division of the existing school district and the formation of the new school district.” This language indicates that the Legislature intended all voters in the affected school districts would have a say regarding how the school district

will be subdivided and what the boundaries of the new school district will be, as does the language of § 4(D). It therefore follows that qualified electors who reside in the portions of the existing high school district that would not be included in the Proposed District are permitted to vote on the proposed unification, as well as the subdivision.

Conclusion

In designating Proposed Districts on ballot questions, County School Superintendents should insert names in the manner that A.R.S. § 15-441(B) requires. If the Plan involves the subdivision of an existing high school district, the ballot question should make clear which portion of the existing school district will be subdivided and included in the proposed new district.

If the Plan calls for the subdivision of an existing school district and unification of the subdivided portion with other existing school districts, two separate questions regarding subdivision and unification are not required; the ballot may contain just one question asking the voters to approve or not to approve the Plan. In this situation, qualified electors who reside in the portions of the existing high school district that would not be included in the Proposed District are permitted to vote on the proposed unification.

Terry Goddard
Attorney General