



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>June 1, 2009</p>	<p>No. I09-003 (R09-004)</p> <p>Re: Calculation of number of signatures of qualified electors for petition for incorporation of city or town</p>
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To: The Honorable Robert Meza
Arizona House of Representatives

Questions Presented

Sections 9-101 to -104, Arizona Revised Statutes ("A.R.S."), govern the incorporation of cities and towns. You have asked whether, in calculating the number of signatures needed to meet the statutory requirements of A.R.S. § 9-101(A) or (B), the number of qualified electors residing in the community is determined as of the date that a copy of the incorporation petition is filed with the county recorder or elections department pursuant to A.R.S. § 9-101(C) or as of the date that the completed petition is filed with the clerk of the board of supervisors.

Summary Answer

The number of qualified electors residing in a community is determined as of the date that the completed incorporation petition is filed with the clerk of the board of supervisors.

Background

The Arizona Constitution states that “the Legislature, by general laws, shall provide for the incorporation and organization of cities and towns.” Ariz. Const. art. XIII, § 1. These general laws are codified in A.R.S. §§ 9-101 to -104.

Section 9-101 contains the procedures by which a community may seek incorporation.

Subsection A sets forth the requirements for incorporation by petition:

When two-thirds of the qualified electors residing in a community . . . petition the board of supervisors, setting forth the metes and bounds of the community, and the name under which the petitioners desire to be incorporated, and praying for the incorporation of the community into a city or town, and the board is satisfied that two-thirds of the qualified electors residing in the community have signed the petition, it shall, by an order entered of record, declare the community incorporated as a city or town.

Subsection B provides an alternate method of incorporation through an election. The requirements for incorporation by election are as follows:

When ten per cent of the qualified electors residing in a community . . . petition the board of supervisors in the manner prescribed in subsection A of this section, praying for the calling of an election . . ., the board shall within sixty days after filing the petition call the election, and the election shall take place on a date prescribed by § 16-204 but not more than one hundred eighty days after the petition is filed, except that no such election shall be called within twelve months from the date of a previous election for incorporation of substantially the same territory. Only qualified electors of the community shall vote on this question. If a majority of qualified electors voting thereon votes for incorporation, then the board of supervisors shall, by an order entered of record, declare the community incorporated as a city or town.

Subsection C of A.R.S. § 9-101 sets the procedural requirements for the proponents of incorporation to gather the necessary signatures

Prior to obtaining any signatures on a petition required by subsection A or B of this section, a copy of such petition shall be filed with the county recorder or, in a county having an elections department, with the county elections department. The petition shall state its purpose clearly and

concisely and shall be in the form and signed and verified as generally provided for initiative petitions. Petitioners shall have one hundred eighty days from the date of such filing to obtain the required number of signatures.

Before collecting any petition signatures, petitioners first must file a copy of the incorporation petition with the county recorder or the county elections department. A.R.S. § 9-101(C). The petition must state its purpose “clearly and concisely.” *Id.* Furthermore, its form must be similar to that of an initiative petition, and it must be signed and verified “as generally provided for initiative petitions.” *Id.* Once this copy is filed, petitioners have 180 days to obtain the required number of signatures. *Id.* As set out in A.R.S. § 9-101(A), to incorporate without an election, the required number of signatures for petitions of incorporation is “two-thirds of the qualified electors¹ residing in a community.” Under A.R.S. § 9-101(B), an incorporation through an election requires “ten percent of the qualified electors residing in a community.” The petition is filed with the board of supervisors. A.R.S. § 9-101(A) & (B).

Analysis

You have asked whether the number of signatures necessary to satisfy A.R.S. § 9-101(A) or (B) is based on the number of qualified electors as of the date that a copy of the petition is filed with the county recorder or county elections department or as of the date the completed petition is filed with the clerk of the board of supervisors. This determination requires an examination of the statute’s language. If that language is plain and unambiguous, then the text of

¹ In Arizona, a “qualified elector” is defined as follows:

A person who is qualified to register to vote pursuant to § 16-101 and who is properly registered to vote shall, if he is at least eighteen years of age on or before the date of the election, be deemed a qualified elector for any purpose for which such qualification is required by law, except as provided in § 16-126. A person continues to be a qualified elector until that person’s registration is canceled pursuant to § 16-165 or until that person does not qualify as a resident as prescribed by § 16-101, subsection B.

A.R.S. § 16-121(A).

the provision is followed as written, and no extrinsic matter is considered. *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 43, ¶16, 178 P.3d 511, 515 (App. 2008); *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994). If the provision's language is ambiguous, other principles of construction are used to determine legislative intent. *Bentley v. Building Our Future*, 217 Ariz. 265, 270, ¶13, 172 P.3d 860, 865 (App. 2007). Language is ambiguous if there is more than one rational or reasonable interpretation. *Id.*

The language of A.R.S. § 9-101 strongly suggests that the crucial date is the date on which the completed petition is filed with the board of supervisors. "When [the specified number] of the qualified electors residing in a community . . . petition the board of supervisors," the board takes certain action, depending on whether the petition is filed under A.R.S. § 9-101(A) or (B).² Subsections A and B require that the board of supervisors take action—by declaring the incorporation or setting an election—when they have determined that the required number of qualified electors have filed the petition. The language of subsections A and B refers to that present event, not the past event described in subsection C when the proponents filed a form of the petition with the county recorder. Thus, the signature requirement is based on the number of qualified electors in the community on the date the completed petition is submitted to the clerk of the board of supervisors.

The legislative history confirms this analysis. The Legislature added subsection C to A.R.S. § 9-101 in 1979. 1979 Ariz. Sess. Laws ch. 22, § 1. Until 1979, the only possible date to calculate the number of qualified electors in the community was the date on which the completed incorporation petition was filed with the board of supervisors pursuant to subsections A or B.

² The phrase "petition the board" as used in A.R.S. § 9-101(A) and (B) means to file the completed petition with the clerk of the board of supervisors. See *Colquhoun v. City of Tucson*, 55 Ariz. 451, 456-57, 103 P.2d 269, 272 (1940) (holding that predecessor incorporation statute's language "shall petition the board" means filing petition with clerk of board of supervisors).

Nothing in subsection C shows any legislative intent to change that. Subsection C's evident purpose is to set a time limit on obtaining signatures. *Minutes of Meeting: Hearing on H.B. 2369 Before the Committee on Counties & Municipalities, 34th Leg., 1st Reg. Sess. 3 (Feb. 22, 1979)*; see also *Minutes of Meeting: Hearing on H.B. 2369 Before the Committee on Government, 34th Leg., 1st Reg. Sess. 2 (March 21, 1979)*. It was enacted to solve the problems "that arise when a petition is circulated for a long period of time." *Minutes of Meeting: Hearing on H.B. 2369 Before the Committee on Government at 2*. Before the 1979 amendment, there was no limit on the time within which petitions could be circulated, and thus an individual could "forget and sign the petition twice or an individual who [might] have been a registered voter at the time of signing the petition [might] have allowed [that] status to lapse." *Id.* A petition might have been in circulation for years before being filed. These are the types of problems that A.R.S. § 9-101(C) was intended to eliminate.

The court of appeals confirmed this analysis in *Snyder v. Lena*, 145 Ariz. 583, 586, 703 P.2d 527, 530 (App. 1985). In *Snyder*, the court of appeals discussed A.R.S. § 9-101(C)'s enactment and stated that the filing of the unsigned petition as A.R.S. § 9-101(C) requires was intended to be a procedural first step "required solely to begin the 180-day period for the obtaining of signatures." *Id.* "It is obvious that the action that confers jurisdiction upon the board of supervisors is the filing of the signed petition that meets all the statutory requirements of either § 9-101(B) or of both §§ 9-101 and 9-101.01." *Id.* Therefore, the date on which a copy of the petition is filed with the county recorder or department of elections as set out in A.R.S. § 9-101(C) merely establishes a starting point for the 180-day time limit within which the petitioners have to gather the requisite number of signatures. The number of qualified electors is calculated when the completed petitions are submitted to the board under subsection A or B.

A previous Arizona Attorney General opinion addressing A.R.S. § 9-102, the disincorporation statute, also supports this conclusion. Ariz. Att’y Gen. Op. No. I84-104. That opinion addressed the method of calculating “the total number of signatures needed to comprise two-thirds of the qualified electors” and concluded that A.R.S. § 9-102’s language implied that “the two-thirds figure will be determined when the petitions are submitted to the supervisors of the county.” *Id.*

Thus, the signature requirements for an incorporation petition under A.R.S. § 9-101(A) or (B) is based upon the number of qualified electors residing in the community on the date that the petition is filed with the board of supervisors.

Conclusion

The procedures set out in A.R.S. § 9-101 require those seeking to incorporate a community to first file a copy of the petition with the county recorder or county elections department and then to submit the completed petition to the clerk of the board of supervisors within 180 days from that initial filing date. Under A.R.S. § 9-101(A), the subsection providing for incorporation by petition, a successful petition must have the signatures of two-thirds of the qualified electors residing in the community. Alternatively, under A.R.S. § 9-101(B), the subsection providing for incorporation by election, a successful petition must have the signatures of ten percent of the qualified electors. The necessary percentage of the qualified electors is calculated based on the total number of qualified electors residing in the community on the date on which the completed incorporation petition is filed with the clerk of the board of supervisors.

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