



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>January 15, 2010</p>	<p>No. I10-002 (R08-044)</p> <p>Re: Length of Term of Office for a Judge Elected After Governor Appoints Judge to Newly Created Division of the Superior Court</p>
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To: The Honorable Michala M. Ruechel  
Navajo County Superior Court

**Question Presented**

Pursuant to article VI, section 12 of the Arizona Constitution, if the Governor appoints a judge to a newly created division of the superior court in a county having fewer than two hundred fifty thousand persons, the office is then placed on the ballot for the next general election. You asked if the judge elected serves a four-year term of office, or if the judge is elected for only the remainder of an unexpired term that began following the new division's creation?

**Summary Answer**

In counties that have fewer than two hundred fifty thousand persons, the judge elected at the next general election serves a regular four-year term following the appointment of a judge to a newly created division of the superior court.

### Analysis

On December 1, 2006, the Governor appointed a judge to a newly created division of the Navajo Superior Court. In fall 2008, the judicial office was placed on the ballot and the previously appointed judge was elected. You have asked whether the elected judge serves a term of four years, or if she serves the remainder of an unexpired term that began following the new division's creation.

The Governor creates a new superior court division by approving the new judgeship upon the petition of a county board of supervisors for an additional judge based on recent estimates of county population growth. *See* Arizona Revised Statutes ("A.R.S.") § 12-121(B). After the Governor creates a new division of the superior court, he or she may appoint a judge to fill the newly created position. *See* A.R.S. § 12-121(D) ("Additional judges authorized by the terms of this section shall be appointed or elected as provided by law."). Article VI, section 12 of the Arizona Constitution states:

A. 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. They shall hold office for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election, and until their successors are elected and qualify. 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.

B. The governor shall fill any vacancy in such counties by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term.

When interpreting the constitution, the "primary purpose is to effectuate the intent of those who framed the provision." *Cain v. Horne*, 220 Ariz. 77, 80, ¶ 10, 202 P.3d 1178, 1181

(2009) (quoting *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994)). When a provision is clearly written, courts should rely only on the text. *Id.* When a provision is unclear on its face, courts can look to other sources in an attempt to give meaning to all of its language. *Id.* Further, general principles of construction provide that when a statute, or in this case a provision of the constitution, is silent on an issue “we must look beyond the [constitutional] language and consider the [constitution’s] effects and consequences, as well as its spirit and purpose.” *Calmat of Ariz. v. State*, 176 Ariz. 190, 193, 859 P.2d 1323, 1326 (1993).

Subsection A of article VI, section 12 establishes that, in counties with a population of less than two hundred fifty thousand persons, voters elect judges of the superior court to four-year terms of office. Subsection B authorizes the Governor to appoint a judge to fill a vacancy and that appointee serves until “the election and qualification of a successor,” which occurs “[a]t the next succeeding general election following the appointment of a person to fill a vacancy.” If a vacancy occurs before the general election that is mid-way through a four-year term, the candidate elected at that next general election does not serve a full four-year term, but rather, serves the remainder of the unexpired term.

In a previous opinion, this Office concluded that subsection B of article VI, section 12 of the Arizona Constitution requires that the judicial office of a new superior court division created and filled by appointment a few months before the general election be placed on the ballot of that general election. *See Ariz. Att’y Gen. Op. I88-097*. In so concluding, it noted that “[w]hen a new division is created, a vacancy exists in the office of superior court judge for that division.” *Id.* The opinion focused on the language in subsection B stating that following the appointment of a person to fill a vacancy, a judge shall be elected “[a]t the next succeeding general election.”

*Id.* That opinion did not address the length of the term of the judge that is elected at that next general election.

Theoretically, the four-year term for a new division could begin when the Governor creates the new division or appoints a person to fill it. This interpretation, however, presents certain logistical problems and conflicts with language in subsection A of article VI, section 12. According to subsection A, voters elect judges “for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election.” Ariz. Const. art. VI, § 12(A). Subsection A also fixes the start of that four-year term at “the first Monday in January next succeeding their election.” The Constitution does not authorize the Governor to bestow a four-year term upon an appointee; rather, the Governor only has the power to appoint a person to serve an interim term. *See* Ariz. Const., art. VI, § 12. Nor does the Constitution allow a four-year term to begin at any time other than at the time fixed in subsection A.

If the four-year term begins at the time of the creation of or appointment to the newly created division, the four-year term could expire in the middle of the election cycle, which is contrary to the system established in Article VI, section 12. In addition, nothing in Article VI, § 12 indicates that a four-year term may begin in the middle of an election cycle. Such a result would be unworkable. *See State v. Estrada*, 201 Ariz. 247, 251, ¶ 16, 34 P.3d 356, 360 (2001) (courts interpret statutory language in a way that will avoid an irrational or untenable result).

The more logical interpretation based on the language and structure of Article VI, section 12 is that the four-year term for a new superior court division begins only after an election. As prescribed in subsection B of section 12, the Governor’s appointee serves only “until the election

and qualification of a successor.” The person elected at the next general election then begins a full four-year term, as prescribed in subsection A.

**Conclusion**

In a county with fewer than two hundred thousand fifty persons, a candidate for a superior court judgeship is elected to a four-year term of office at the next general election following the appointment of a judge to a newly created division of the superior court.

Terry Goddard  
Attorney General