



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION

by

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June 2, 2010

No. I10-005  
(R10-008)

Re: Resignation by State Employees  
Seeking Elected Public Office Pursuant to  
A.R.S. § 41-772

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To: Charles L. Ryan, Director  
Arizona Department of Corrections

**Questions Presented**

1. Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-772(B), at what point must a covered state employee seeking elected public office resign from his state position?
2. Does the phrase "candidate for nomination" mean that the employee must resign upon the circulation of his own nomination petition, or may the employee wait to resign until he actually files his nominating petition with the County Recorder's Office?
3. Would the formation of an exploratory committee or a campaign committee—contemporaneous to circulating a nomination petition but before its actual filing—affect when the employee must resign under A.R.S. § 41-772?

### Summary Answer

Under A.R.S. § 16-311(H), one becomes a candidate for nomination or election upon the filing of nomination papers. Until that has occurred, a state employee has not become “a candidate for nomination or election to any paid public office” under A.R.S. § 41-772(B). The phrase “candidate for nomination” does not apply to an employee who is circulating his own petition because although doing so is a step toward becoming a candidate, that step is not sufficient under A.R.S. § 16-311(H) to cause one to actually become a candidate. Likewise, forming a campaign committee—which under A.R.S. § 16-903(A) and (B) is a prerequisite to circulating petitions—or forming an exploratory committee does not cause one to become a “candidate for nomination” for A.R.S. § 41-772(B) purposes.

### Analysis

#### **I. A State Service Employee Seeking Elected Public Office Must Resign Upon Submitting Nomination Papers.**

Arizona limits the political activities of its employees through A.R.S. § 41-772(B)<sup>1</sup>, which provides as follows:

*An employee<sup>[2]</sup> or member of the personnel board shall not be a member of any national, state or local committee of a political party, an officer or chairman of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, shall not hold any paid, elective public office or shall not take any part in the management or affairs of any political party or in the management of any partisan or nonpartisan campaign or recall effort, except that any employee may:*

1. Express his opinion.

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<sup>1</sup> A.R.S. § 41-772(B) applies only to covered employees. See A.R.S. § 41-771; Ariz. Att’y Gen. Op. I01-010 (stating that positions covered by the state personnel system or merit system are referred to as “covered positions”).

<sup>2</sup> Section 41-762(1) defines “employee” as “a person holding a position in state service.”

2. Attend meetings for the purpose of becoming informed concerning the candidates for public office and the political issues.
3. Cast his vote and sign nomination or recall petitions.
4. Make contributions to candidates, political parties or campaign committees contributing to candidates or advocating the election or defeat of candidates.
5. Circulate candidate nomination petitions or recall petitions.
6. Engage in activities to advocate the election or defeat of any candidate.
7. Solicit or encourage contributions to be made directly to candidates or campaign committees contributing to candidates or advocating the election or defeat of candidates.

(Emphasis added.) If the language of a statute is plain and unambiguous, courts will interpret the language as written without resorting to other methods of statutory interpretation. *Mid Kansas Sav. & Loan Ass'n v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991).

Arizona statutes set forth the requirement for becoming a candidate for nomination: “Any person desiring to become a candidate at a primary election for a political party . . . shall sign and cause to be filed a nomination paper . . .” A.R.S. § 16-311(A). The same requirement applies to nonpartisan candidates seeking to become candidates at the general election: “Any person desiring to become a candidate at any nonpartisan election and to have the person's name printed on the official ballot . . . shall sign and cause to be filed a nomination paper . . .” A.R.S. § 16-311(B). Until this filing is complete, the person desiring to become a candidate is not a candidate.

## **II. State Service Employees Need Not Resign from State Employment Before Taking Preliminary Steps to Becoming a Candidate.**

Becoming a candidate for public office involves multiple steps. The filing officer will not accept the potential candidate's nomination paper unless the candidate provides all of the

following: (1) the nomination petition; (2) a political committee statement of organization or the five hundred dollar threshold exemption statement; and (3) a financial disclosure statement. A.R.S. § 16-311(H). Because circulating a nomination petition is only one step toward becoming a candidate, employees may circulate nomination petitions provided they do not do so while on duty or at public expense. A.R.S. § 41-772(C).<sup>3</sup> Doing so does not make them candidates and therefore does not require their resignation.

Arizona requires individuals who are considering running for elective office to form an exploratory committee if they receive contributions or have expenditures of more than \$500 for that purpose. A.R.S. § 16-903(B). An exploratory committee is “a political committee that is formed for the purpose of determining whether an individual will become a candidate and that receives contributions or makes expenditures of more than five hundred dollars in connection with that purpose.” A.R.S. § 16-901(9). The exploratory committee must be created “before making any expenditures, accepting any contributions or distributing any campaign literature.” *Id.* A state employee who forms an exploratory committee is not “a candidate for nomination or election,” but rather is merely considering becoming one, and need not resign from state employment.

Similarly, Arizona law requires individuals running for office to form political campaign committees if they intend to receive contributions or make expenditures of more than \$500. A.R.S. § 16-903(A). The political campaign committees must be formed “before making any expenditures, accepting any contributions, distributing any campaign literature or circulating any petitions.” *Id.* Consequently, individuals seeking elective office must form their campaign

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<sup>3</sup> Section 41-772(C) states that, “[e]xcept for expressing his opinion or pursuant to § 16-402, an employee shall not engage in any activity permitted by this section while on duty, while in uniform or at public expense.”

committees before circulating their nomination petitions. And, as defined by A.R.S. § 16-311, an individual cannot become a candidate for nomination or election without filing the nomination petition. Therefore, formation of a campaign committee by a state employee does not make him a formal candidate and does not require his resignation.

### **Conclusion**

A state employee becomes a “candidate for nomination or election” upon the filing of nomination papers. None of the preliminary steps toward becoming a candidate—including circulating petitions and forming campaign committees—make that employee a “candidate for nomination or election” within the meaning of A.R.S. § 41-772(B). Therefore, a covered state employee seeking elected public office need not resign from his state position until he files his nominating papers.

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