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May 4, 2017

Matthew J. Smith
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Post Office Box 7000
315 North 4th Street
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Re: R17-008 / I17-003
Application of Arizona Revised Statutes § 38-296 to an elected salaried official applying to the Governor for appointment to the Bench (Superior Court)

Dear Mr. Smith:

You requested an opinion on the following questions: (1) "Would an elected salaried official, such as a county supervisor, who is not in his or her final year of office, have to resign from office, pursuant to Arizona's resign-to-run law found at A.R.S. § 38-296, if the official submits an application to the Governor to fill an open vacancy in the Superior court?;" and (2) "does the elected official 'offer himself for nomination or election to any salaried local, state or federal office', as contemplated by A.R.S. § 38-296 and A.R.S. § 16-311(A), if he submits an application to the Governor to fill an open vacancy in the Superior Court?" As you may be aware, our formal opinion process necessarily involves several layers of review and is not, therefore, conducive to a speedy turnaround. We understand time is of the essence regarding your request. For this reason, we offer the following informal opinion regarding the questions presented.

Arizona's resign-to-run law prohibits an incumbent not in the final year of his term from "offer[ing] himself for nomination or election to any salaried local, state or federal office" without first resigning. A.R.S. § 38-296(A). The mere submission of an application for a gubernatorial appointment to the State bench is not a prohibited "offer . . . for nomination or election," as defined in A.R.S. § 38-296(B). Accordingly, the elected salaried official may legally submit an application to the Governor without resigning from office.

This conclusion flows from two statutory details in A.R.S. § 38-296. First, seeking an *appointment* to a salaried state office is not the same thing as seeking *nomination or election* to a salaried state office. This distinction is consistent with this Office's previous

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observation that Arizona's resign-to-run law is designed to assure that an incumbent's attention is not diverted by campaigning. *See* Ariz. Att'y Gen. Op. I82-001 at 2.

Second, the resign-to-run law explicitly states that an incumbent "shall be deemed to have offered himself for nomination or election" only upon "the filing of a nomination paper pursuant to § 16-311, subsection A." A.R.S. § 38-296(B). This subsection further clarifies that an "incumbent of a salaried elected office is not deemed to have offered himself for nomination or election to an office by making a formal declaration of candidacy for the office." *Id.* Thus the restrictions of the resign-to-run law adhere only upon the formal filing of papers, without regard to earlier indicia of a potential candidate's subjective intentions.

Applying this construction to the question presented is straightforward. Vacancies on the Superior Court are filled by the governor "appointing a person to serve until the election and qualification of a successor." Ariz. Const. art. VI, § 12(B). An elected salaried official submitting an application to be considered for such a gubernatorial appointment has not filed a nomination paper pursuant to A.R.S. § 16-311(A). Therefore, the restrictions of A.R.S. § 38-296(A) do not apply.

Sincerely,

Dominic E. Draye
Solicitor General