



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>April 19, 2018</p>	<p>No. I18-003 (R17-021)</p> <p>Re: Joint Operating Entities Under A.R.S. § 48-805.01</p>
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To: David Stringer
State Representative, District 1
Arizona House of Representatives

Noel Campbell
State Representative, District 1
Arizona House of Representatives

Questions Presented

1. Whether the Central Arizona Fire and Medical Authority Joint Powers Agreement implemented between Central Yavapai Fire District and Chino Valley Fire District (the “Agreement”) is proper under state law.
2. Whether the Agreement disenfranchises Central Yavapai Fire District voters or otherwise violates Arizona’s Constitution.
3. If there was any disenfranchisement or illegality, what recourse may be available.

Summary Answer

Arizona law expressly allows fire districts to enter into agreements to form separate legal entities such as the Central Arizona Fire and Medical Authority (“CAFMA”). The Agreement does not disenfranchise Central Yavapai Fire District voters or otherwise violate the Arizona

Constitution under the theories proffered in the opinion request. As a result, no legal recourse is available.

Background

In October 2015, the Central Yavapai and Chino Valley fire districts entered into an intergovernmental agency agreement, effective July 1, 2016, to form CAFMA. Central Yavapai Fire District and Chino Valley Fire District continue to exist, and each has a five-member board. CAFMA also has a five-member board, whose members are drawn from the Central Yavapai and Chino Valley fire district boards.

Analysis

I. Arizona law expressly permitted the Central Yavapai and Chino Valley fire districts to enter into the Agreement.

Arizona Revised Statute (“A.R.S.”) § 48-805.01 permits “[c]ities, towns, counties and fire districts” to “form a separate legal entity pursuant to section 11-952, for the purposes of jointly exercising powers held in common by the contracting parties.” A.R.S. § 48-805.01(B).¹ When they do so, “[t]he governing body of [such] a separate legal entity . . . shall be composed of officials elected to one or more of the governing bodies of the political subdivisions that are parties to the agreement, or their designees.” *Id.* The newly formed legal entity itself “[i]s a political subdivision of this state,” with “[t]he governmental and proprietary powers that are common to the contracting parties specified in the agreement” and those provided by statute, as well as “[t]he rights and immunities of the parties that are granted by the constitution and statutes of this state, including immunity of its property from taxation.” *Id.* § 48-805.01(B)(1)(a)–(b). The creation of such a joint operating entity does not require voter approval. The Chino Valley

¹ Among other things, A.R.S. § 11-952 authorizes public agencies to “enter into agreements with one another for joint or cooperative action” or “form a separate legal entity” to “exercise those powers jointly held by the contracting parties.” A.R.S. § 11-952(A).

and Central Yavapai fire districts formed such a separate legal entity when they created CAFMA through the Agreement pursuant to § 48-805.01.

You have asked whether this agreement “effectively merged” the districts and “circumvent[ed] the statutory requirements of A.R.S. §§ 48-820 and 48-822,” which govern the merger and consolidation of fire districts. Title 48 makes it clear, however, that entities’ creation of such a joint operating entity is an available “*alternative*” to merger or consolidation. A.R.S. § 48-805.02(D)(3) (emphasis added). The language of this provision confirms that a “joint operating alternative” is distinct from merger or consolidation. *Id.* Following the merger or consolidation of fire districts, for example, the fire districts that were merged or consolidated into another district “are dissolved by operation of law and no longer exist.” *Id.* §§ 48-821(C), 48-823(C). In contrast, when two fire districts create a joint operating entity pursuant to A.R.S. § 48-805.01, as the Chino Valley and Central Yavapai fire districts did here, those fire districts continue to exist as separate legal entities with separate elected governing bodies. *See id.* § 48-805.01(B).

II. The Agreement does not disenfranchise Central Yavapai Fire District voters or otherwise violate Arizona’s Constitution.

You have also asked whether the Agreement disenfranchises Central Yavapai Fire District voters or otherwise violates Arizona’s Constitution, and suggest two reasons why it might: first, because voters were not asked to approve the Agreement or CAFMA’s creation; and second, because Central Yavapai Fire District taxpayers allegedly “are subsidizing the operations of the Chino Valley Fire District through [the] Agreement.”

Arizona courts have considered whether voters are disenfranchised in cases where Arizona citizens were or might be disqualified from participating in an election. *See, e.g., Moore v. City of Page*, 148 Ariz. 151, 157–58 (Ct. App. 1986) (“city did not impermissibly

disenfranchise voters” where it held an election 45 days after it was called, “thereby preventing unregistered voters from registering before the fifty-day cutoff”); *see also Parker v. City of Tucson*, 233 Ariz. 422, 431, ¶ 23 (Ct. App. 2013) (holding that, “in order to circulate initiative petitions in Arizona, the circulator’s civil rights must have been restored by the state in which he or she was convicted” of a felony). Arizona courts have also opined whether voters are disenfranchised where redistricting allegedly denied citizens the right to vote. *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm’n*, 211 Ariz. 337, 347, ¶ 27 (Ct. App. 2005) (no disenfranchisement, because no “citizen would be denied the right to vote under the redistricting plans”); *Mayor & Council of City of Tucson v. Royal*, 20 Ariz. App. 83, 88 (1973) (city redistricting disenfranchised voters who would no longer be able to vote in upcoming election). Finally, Arizona courts have considered voter disenfranchisement in cases where referendum signatures or election results might be invalidated in whole or part. *See, e.g., Hunt v. Campbell*, 19 Ariz. 254, 266 (1917) (election results); *Grounds v. Lawe*, 67 Ariz. 176, 184 (1948) (election results); *Johnson v. Maehling*, 123 Ariz. 15, 19 (1979) (recall petition signatures).

None of these cases suggests that the Agreement disenfranchises Central Yavapai Fire District voters under either of the theories described above. First, we are aware of no case holding that voters are disenfranchised when they are not asked to vote on something that they are not statutorily required to approve. Here, as discussed above, Arizona law does not require voters to approve fire districts’ agreement to form a joint operating entity pursuant to A.R.S. § 48-805.01, as the Central Yavapai and Chino Valley fire districts did when they formed CAFMA. Even if the Central Yavapai and Chino Valley fire districts had merged, however, that would not necessarily implicate voters’ right to vote, because the applicable statutes provide that

neither merger nor consolidation of fire districts always requires voter approval. *See* A.R.S. § 48-820(H) & (L) (allowing a merger without an election if, among other things, each affected district “obtain[s] written consent to the merger from any single taxpayer residing within each of the affected districts who owns thirty percent or more of the net assessed valuation of the total net assessed valuation of the district as of the date of the district’s resolution [of merger] is submitted to the board of supervisors”); *id.* § 48-822(C)(9) & (F) (similar rule for consolidations).

You have also suggested a second possible reason why CAFMA or the Agreement might disenfranchise voters: because Central Yavapai Fire District taxpayers are allegedly “subsidizing the operations of the Chino Valley Fire District through [the] Agreement.” We express no opinion about whether such a subsidy is, in fact, occurring. Even if it is, however, we are not aware of any case holding or even suggesting that such a subsidy amounts to disenfranchisement.

Conclusion

Based on the available information, the Agreement discussed herein is valid under Arizona law. It does not disenfranchise Central Yavapai Fire District voters or violate the Arizona Constitution under any of the proffered theories.

Mark Brnovich
Attorney General