



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By MARK BRNOVICH ATTORNEY GENERAL June 17, 2022	No. I22-002 (R21-007) Re: A.R.S. § 48-2010(F) and County Boards of Supervisors
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To: Brian M. McIntyre
Cochise County Attorney

Question Presented

What is required of a county board of supervisors under A.R.S. § 48-2010(F) when a sanitary district board of directors lacks a quorum and no qualified electors of the sanitary district are willing to be appointed?

Summary Answer

If a sanitary district board of directors lawfully lacks a quorum, A.R.S. § 48-2010(F) requires the county board of supervisors to make an appointment to fill the vacancy on the sanitary district board. If the county board of supervisors is initially unable to identify a qualified elector who is willing to accept the appointment, the county board of supervisors must make good-faith efforts to identify a qualified and willing elector until the vacancy is filled.

Background

A sanitary district is a special taxing district organized under Title 48, Chapter 14 of the Arizona Revised Statutes (§ 48-2001, et seq.). When a sanitary district has “an area of one hundred

sixty acres or more,” the district “shall be governed by a board of directors with not less than three members.”¹ A.R.S. § 48-2010(A). “Members of the board of directors shall be qualified electors of the district.” *Id.* If a vacancy occurs on a sanitary district’s board of directors,

the board of directors of the sanitary district shall appoint a qualified elector of the district to fill the office for the remaining portion of that term, except that if the remaining directors do not constitute a quorum, the county board of supervisors *shall* make the appointment to fill the vacancy.

A.R.S. § 48-2010(F) (emphasis added).

In this case, the Cochise County Attorney has asked what is required to satisfy A.R.S. § 48-2010(F) when a sanitary district’s board of directors lacks a quorum and the county board of supervisors is unable to identify any qualified elector who is willing to be appointed to the sanitary district’s board of directors.

Analysis

Under A.R.S. § 48-2010(F), when a sanitary district board of directors lacks a quorum, “the county board of supervisors *shall* make the appointment to fill the vacancy.” (emphasis added). “The term ‘shall’ is usually mandatory.” *State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127, 132 ¶ 19 (2020); *see also Ins. Co. of N. Am. v. Superior Ct. In & For Cnty. of Santa Cruz*, 166 Ariz. 82, 85 (1990) (“The use of the word ‘shall’ indicates a mandatory intent by the legislature.”). However, “the word ‘shall’ . . . has also been construed to indicate desirability, preference, or permission.” *Ariz. Downs v. Ariz. Horsemen’s Found.*, 130 Ariz. 550, 554 (1981); *see also HCZ Constr., Inc. v. First Franklin Fin. Corp.*, 199 Ariz. 361, 364 (App. 2001) (the term “shall” “may be deemed directory when the legislative purpose can best be carried out by such construction.”). “Mandatory terms may be interpreted as directory depending on context and

¹ Sanitary districts encompassing a smaller area may be governed by the board of supervisors of the county where the district is located. *See* A.R.S. § 48-2010(C) (discussing sanitary districts with “an area of less than one hundred sixty acres”).

usage, and depending on whether the legislative intent is best served by that construction.” *Verma v. Stuhr*, 223 Ariz. 144, 153 ¶ 35 (App. 2009).

The context and legislative purpose of A.R.S. § 48-2010(F) suggest that the term “shall” here should be read as mandatory. *See Bd. of Trustees of Salt Lick Graded Common Sch. Dist. v. Kercheval*, 45 S.W. 2d 846, 847 (Ky. Ct. App. 1931) (“The law abhors vacancies in offices, and the presumption is against a legislative intent to create or to allow a condition which may result in an executive or administrative office remaining unoccupied.”). Without a quorum, governmental entities are often powerless to conduct business and make decisions. *See, e.g., Croaff v. Evans*, 130 Ariz. 353, 356 (App. 1981) (holding that a quorum of a board of supervisors was necessary under a zoning statute’s public hearing provision). Thus, because of the importance of obtaining a quorum, the legislature provided not only a method for the existing board of directors to fill vacancies, but also a secondary method when an existing board lacks a quorum. *Cf. A.R.S. § 48-1404(D)* (“If the members of the board of trustees [for a special road district] do not constitute a quorum, the county board of supervisors shall make the appointment to fill the vacancy.”). Therefore, if a sanitary district board lacks a quorum, A.R.S. § 48-2010(F) *mandates* that the county board of supervisors make an appointment to fill the vacancy.

The statute, however, does not expressly address what happens when a county board of supervisors is unable to fill a vacancy because no qualified elector is willing to accept the appointment. But reading the statute to require the board of supervisors to fill a vacancy when doing so is impossible because, despite good-faith efforts to recruit a replacement, no qualified elector is willing to accept the appointment would create an absurd result—a statutory violation by the board of supervisors through no fault of its own. *See France v. Indus. Comm’n of Ariz.*, 250 Ariz. 487, 490 ¶ 13 (2021) (courts “avoid construing a statute in a manner that leads to an

absurd result.”). On the other hand, reading the statute to require the county *to continue* good-faith efforts to fill a vacancy until an appointment is made avoids any absurd result, is otherwise a reasonable interpretation of the statutes’ mandate, and furthers the Legislature’s interest in filling vacancies. The county board of supervisors should, therefore, continue good-faith efforts to identify and appoint a qualified and willing elector, even if previous attempts to do so were unsuccessful.²

Conclusion

If a sanitary district board of directors lawfully lacks a quorum, A.R.S. § 48-2010(F) requires the county board of supervisors to make an appointment to fill the vacancy on the sanitary district board. If the county board of supervisors is initially unable to identify a qualified elector who is willing to accept the appointment, the county board of supervisors must make good-faith efforts to identify a qualified and willing elector until the vacancy is filled.

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² What constitutes “good-faith efforts” in any individual circumstance is a factual question beyond the scope of this opinion. This opinion, therefore, should not be read as taking a position on whether, as a factual matter, the Cochise County Board of Supervisors has or has not acted in good faith in attempting to fill any particular vacancy on a sanitary district board. Further, this opinion should not be read to take a position on anything beyond the narrow question asked.