STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By KRIS MAYES ATTORNEY GENERAL April 16, 2024	No. I24-008 (R21-013) Re: Scope of the "Use His Office" Prohibition in A.R.S. § 17-213 on the political expression of the Director and employees of the Arizona Game and Fish Department

To: Ty E. Gray
Director
Arizona Game and Fish Department

Questions Presented

1. Does the term "use his office" in A.R.S. § 17-213 permit the Director of the Game and Fish Department or a Department employee to express an opinion or take action to support or defeat a proposed ballot measure when such actions do not involve the use of public resources or the exercise of governmental power?
2. Do the limitations on Game and Fish Department personnel in A.R.S. § 17-213 conflict with the activities permitted for state personnel more generally under A.R.S. § 41-752(C)?

Summary Answers

1. A.R.S. § 17-213 prohibits the Director and any employee of the Arizona Game and Fish Department from "us[ing] his office to influence in any way an election or the results thereof." This phrase prohibits more than just direct uses of public resources and explicit exercises of governmental power or authority; it also prohibits actions taken under the color of public

office, such as conduct invoking the authority or imprimatur of the Department. Thus, the Director and Department employees can express opinions and participate in efforts to support or defeat a candidate or ballot measure if such actions do not involve the use of public resources, governmental power, or otherwise invoke the actual or implied authority of the Department.

2. No. A.R.S. § 17-213 specifically applies to the Director and employees of the Game and Fish Department, while A.R.S. § 41-752(C) applies more generally to state personnel. Because the more specific statute controls over the general, § 17-213 governs the conduct of Department personnel to the extent of any conflict with § 41-752(C), and any activities authorized under § 41-752(C) should be conducted in a manner consistent with § 17-213. Further, § 41-752(E) exempts the Director and certain personnel who report to the Director from the provisions of § 41-752(C), so these permissions do not apply to this subset of Department personnel in any event. As for those remaining Department employees who are subject to § 41-752(C), the activities permitted under that subsection can be harmonized with the prohibitions contained in § 17-213. For example, a Department employee may "[e]ngage in activities to advocate the election or defeat of any candidate," as § 41-752(C)(6) permits, so long as he does not "use his office" in doing so, as § 17-213 prohibits.

Background

Like many states and the federal government, Arizona law restricts state personnel from using their positions or public resources to influence elections. *See generally* Rafael Gely & Timothy D. Chandler, *Restricting Public Employees' Political Activities: Good Government or Partisan Politics?*, 37 Hous. L. Rev. 775, 779–91 (2000). The legislature also has adopted a statute specifically regulating the election-related conduct of certain representatives of the Arizona Game

and Fish Department. 1929 Ariz. Sess. Laws 243 § 8. Currently codified at A.R.S. § 17-213, the statute provides:

> Neither the director nor any employee of the department shall take active part in a political campaign nor use his office to influence in any way an election or the results thereof. Failure to abide by the provisions of this section shall constitute grounds for dismissal of the director or any employee.

The statute contains two separate prohibitions. First, it prohibits the Director and Department employees from taking an "active part in a political campaign" ("Active Part Prohibition"). Second, it prohibits the Director and Department employees from using their offices "to influence in any way an election or the results thereof" ("Use of Office Prohibition").

The Arizona legislature first adopted A.R.S. § 17-213 in 1929, during a national civil service reform era that saw the enactment of legislation and administrative regulations aimed at prohibiting partisan political favoritism and excluding active party operators from serving in the unelected civil service. *See generally U.S. Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, AFL-CIO*, 413 U.S. 548, 558–59 (1973) (discussing historical context of analogous civil service reforms). In fact, the original text of A.R.S. § 17-213 mirrored President Theodore Roosevelt's 1907 Executive Order 642, which amended the federal Civil Service Commission Rules to provide that classified service personnel, "while retaining the right to vote as they please and to *express privately their opinions* on all political subjects, *shall take no active part* in political management or in *political campaigns*." Exec. Order No. 642 (1907) (emphases added); *cf.* S.B. 85, ch. 84, 1929 Ariz. Sess. Laws 243 § 8 ("The state game and fish warden or a paid deputy warden *shall not take any active part*, other than to *privately express his opinions*, in any *political campaign*, nor use his office or influence in interfering with an election or affecting the results thereof." (emphases added)).

Ten years after the enactment of A.R.S. § 17-213, the federal Hatch Act codified President Roosevelt's 1907 Executive Order. *See* An Act to Prevent Pernicious Political Activities (Hatch Act), ch. 410, 53 Stat. 1147 (1939). Thereafter, Arizona, like other states, enacted a "Little Hatch Act," now codified in A.R.S. § 41-752. *See* 29 C.J.S. *Elections* § 584 (2023); *Fernandez v. State Pers. Bd.*, 175 Ariz. 39, 40 (App. 1992) (noting that earlier version of § 41-752 was "patterned after the federal Hatch Act").

In relevant part, A.R.S. § 41-752 states:

> A. Except for expressing an opinion or pursuant to § 16-402, an employee shall not engage in any activities permitted by this section while on duty, while in uniform or at public expense.
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> B. An employee shall not:
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> 1. Use any political endorsement in connection with any appointment to a position in the state personnel system.
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> 2. Use or promise to use any official authority or influence for the purpose of influencing the vote or political action of any person or for any consideration.
>
> C. An employee . . . shall not be a member of any national, state or local committee of a political party, an officer or chairperson 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 an opinion.
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> 2. Attend meetings for the purpose of becoming informed concerning the candidates for public office and the political issues.
>
> 3. Cast a 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.

For purposes of A.R.S. § 41-752, "'[e]mployee' means all officers and employees of this state, whether in covered service or uncovered service, unless otherwise prescribed." A.R.S. § 41-741(8). Under § 41-752(E), however, certain employees are excluded from the provisions of subsections (B) and (C), including:

3. The state agency head and each deputy director, or equivalent, of each state agency and employees of the state agency who report directly to either the state agency head or deputy director.

4. Each assistant director, or equivalent, of each state agency and employees in the state agency who report directly to an assistant director.

A.R.S. § 41-742(F)(3)-(4).

The opinion request observes that members of the public sometimes ask Game and Fish Department personnel to opine in favor of, or against, certain ballot initiatives, and asks what limits A.R.S. § 17-213 places on "actions the Director and agency employees may take, and the opinions that they may express, during personal time and without the use of public resources." The opinion request also asks whether § 17-213's prohibitions conflict with the activities permitted under A.R.S. § 41-752.

Analysis

A.R.S. § 17-213 restricts the Director and Department employees from certain exercises of free speech and association involving political activities. How far those restrictions extend is a matter of statutory interpretation.

When interpreting a statute, courts "begin with the text." *In re Riggins*, 544 P.3d 64, --- ¶ 12 (Ariz. 2024) (citation omitted). The statutory language is understood "in view of the entire

text, considering the context and related statutes on the same subject." *Id.* (citation omitted). If the text is "plain and unambiguous, it controls unless it results in an absurdity or a constitutional violation." *Id.* If the text is ambiguous, courts "consider secondary principles of statutory interpretation, such as the context of the statute, the language used, the subject matter, its historical background, its effects and consequences, and its spirit and purpose." *Id.* (citation omitted). "A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Id.* (citation omitted).

When possible, statutes are construed "to avoid constitutional difficulties." *Garcia v. Butler in & for Cnty. of Pima*, 251 Ariz. 191, 194 ¶ 10 (2021). This approach is consistent with the principle that "[b]ecause the Attorney General has the duty to uphold and defend state laws, we will not opine that a statute is unconstitutional unless it is patently so." Ariz. Att'y Gen. Op. I83-069 (1983).

I. Department personnel may not use their affiliation with the Department to influence elections.

The Use of Office Prohibition in A.R.S. § 17-213 proscribes not only the direct use of public resources or governmental power to influence elections, but also the indirect use of the Department's prestige, authority, or imprimatur as conveyed, for example, by the Department uniform or insignia. Department personnel are not prohibited, however, from engaging in election-related advocacy in a personal capacity.

A. The plain meaning of A.R.S. § 17-213 suggests that the Use of Office Prohibition encompasses more than direct uses of public resources or exercises of governmental power.

The relevant statutory phrase in the Use of Office Prohibition is "use his office to influence in any way an election or the results thereof." Neither § 17-213 nor any other provision in Title

17 further defines the terms in that provision. We therefore look to the terms' plain meaning. *See Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017).

Black's Law Dictionary defines "office" to mean "[a] position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose." Office, Black's Law Dictionary (11th ed. 2019). And, as it did at the time the statute was enacted, the Merriam-Webster dictionary similarly defines "office" to mean "a special duty, charge, or position conferred by an exercise of governmental authority and for a public purpose." *Merriam–Webster Online Dictionary*, http://www.merriam-webster.com/dictionary/office (last visited Apr. 2, 2024); *Webster's 1913 Dictionary*, https://www.webster-dictionary.org/definition/office (last visited Apr. 2, 2024) (same definition of "office"). "Use his office" therefore refers to the use of one's duty, trust, or authority as a holder of a governmental position.

"Influence," when used as a verb, means "to affect or alter by indirect or intangible means." *Merriam–Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/influence (last visited Apr. 2, 2024); *see also* Influence, Black's Law Dictionary (11th ed. 2019) (defining "influence" as "[u]se of pressure, authority, or power, usu. indirectly, to induce action or change the decisions or acts of another; one or more inducements intended to alter, sway, or affect the will of another, but falling short of coercion").

Arizona courts have taken a commonsense approach to what it means for an official to "use his office" to influence a certain outcome. In *State v. Dodd*, for example, the court of appeals approvingly cited a Colorado Supreme Court decision finding that a judge "use[d] his office" when he attempted to influence a defendant to waive his rights. 118 Ariz. 423, 424 (App. 1978). Likewise, when a Tribal Chairman "frequently met with the Tribal officials whose approval was needed" and "expressed his support for [a] deal," the court of appeals found he was using "his

position, authority, and influence to induce" a certain outcome. *Navajo Nation v. MacDonald*, 180 Ariz. 539, 542 (App. 1994). Notably, both these cases determined that actions with a more indirect or intangible connection to the office, such as exerting pressure or expressing support, could still be a "use" of one's office. The courts did not cabin what it means to use a public office merely to concrete actions and more direct connections to the office, such as expending public resources.

This understanding is bolstered by § 17-213's language prohibiting the use of office to influence an election "in any way." This broad language indicates the legislature intended to prohibit *any* type of influence involving the use of office, including indirect means. *See S.S. v. Stephanie H.*, 241 Ariz. 419, 423 ¶ 12 (App. 2017) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" (citation omitted)).

Arizona case law provides helpful examples on both sides of the "use of office" spectrum. On the one hand, a candidate violated an anti-electioneering statute when she appeared at a polling place and introduced herself to voters as they walked in and told them to "[r]emember" her name, because she thereby attempted "to persuade or influence eligible voters to vote for a particular candidate." *Fish v. Redeker*, 2 Ariz. App. 602, 604 (App. 1966). On the other hand, merely "educating the public on the issues," while not advocating for voters to vote a certain way, did not amount to influencing the outcome of an election. *Kromko v. City of Tucson*, 202 Ariz. 499, 502–503 ¶¶ 10–11 (App. 2002).

Arizona courts also have not strictly limited government liability to actions involving the use of government resources or the exercise of government power. Consider the government's liability for off-duty police officer conduct. Off-duty officers may be acting under color of their office, making the government liable for their actions, when, for example, they wear "official police uniforms," "prominently" display their badge, give authoritative commands, or handcuff

and frisk suspected wrongdoers. *Mitchell v. Dillard Dep't Stores, Inc.*, 197 Ariz. 209, 212 ¶ 15 (App. 2000); *see also In re Jessi W.*, 214 Ariz. 334, 337–39 ¶¶ 17–24 (App. 2007) (concluding that uniformed off-duty officer making an arrest was acting under official authority and discussing case law). Likewise, an officer can be liable for soliciting a bribe even if the act intended to be influenced by the bribe was outside the officer's actual authority, "since the essence of the crime [of bribery] is the fact that he agreed to do it under color of office." *State v. Hendricks*, 66 Ariz. 235, 242 (1947) (citation omitted).

Applying these principles to § 17-213, the fact that no government resources were used and no actual governmental power was exercised would not be dispositive. Arizona courts would likely also look to whether the Director or employee wore an official uniform, displayed a badge or insignia, or otherwise acted in a manner that suggested the use of official authority to encourage a certain election outcome.

Likewise, other jurisdictions have generally concluded that an official creating the understanding that one "could influence matters in connection with an official duty, whether or not he was capable of actually effecting such an act" constituted the use of an office. *State v. Schenkolewski*, 693 A.2d 1173, 1185 (N.J. App. Div. 1997); *see also Dean v. State*, 71 S.E. 597, 598 (Ga. Ct. App. 1911) (constable could be prosecuted for extortion if "by color of his office (which means using his office as a means to effect his object) obtains money . . . whether he was executing a legal paper, or even if he was not pretending to execute any paper at all"). In other words, it is enough that an official used the implied authority of his position, even if in doing so he was not actually engaging in any official activity. *Cf. Hendricks*, 66 Ariz. at 242.

In *McCrory v. City of Philadelphia*, the Pennsylvania Supreme Court analyzed the meaning of a statute that, similarly to § 17-213, prohibited a city employee from "us[ing] his office to

influence political movements." 27 A.2d 55, 56 (Pa. 1942). McCrory, a firefighter, went to a voting district in uniform, wearing a "political badge," and "urged" voters to "vote Democratic" while telling voters he had been "detailed" to the voting district for election day. *Id.* Because McCrory wore his firefighter's uniform and stated that he had been "detailed" to the voting district, the court found he gave off the impression that he was seeking a certain election result in his official capacity as a public officer, and thus violated the Pennsylvania statute. *Id.* at 56–57. An Arizona court would likely reach the same conclusion were it asked to apply § 17-213 to Department personnel.

Finally, whether activity influences an election is an objective question, and does not depend on the government employee's subjective intent. As this Office reasoned in a 2015 Opinion, deciding whether a government action is undertaken "for the purpose of influencing the outcomes of elections," requires "an objective test to determine" the action's "purpose" and "manner." Ariz. Att'y Gen. Op. I15-002 at 7 (2015); *see* A.R.S. § 11-410; *see also* Ariz. Att'y Gen. Op. I00-020 at 2 (2000) (observing that under federal campaign finance law "the test of whether something has the purpose of influencing an election is an objective test, rather than a test 'based on the subjective state of mind of the actor'" (citation omitted)).

To make this determination, the objective test asks "(1) whether the [use of office] has the purpose of supporting or opposing the ballot measure [or candidate], and (2) whether the [use of office] involves dissemination of information in a manner that is not impartial or neutral." Ariz. Att'y Gen. Op. I15-002 at 7. Although the statute addressed in the 2015 Opinion differs from § 17-213 and prohibits the use of government resources rather than the use of office, we believe the same objective approach applies to Department personnel under § 17-213.

Taken together, the prohibition on "use of [the] office to . . . influence an election" suggests that Department personnel may not use their positions, including the duty, trust, and authority that come with those positions, to either support or oppose a candidate or ballot measure in any manner that is not impartial or neutral, including by indirect or intangible means. Case law suggests that this includes efforts to influence others to vote a certain way, but would likely not extend to purely educational materials. Determining whether conduct amounts to a use of office to influence an election would turn on objective factors including whether the action has the purpose of supporting or opposing an election outcome, and whether the manner of the action is not impartial or neutral.

B. The Use of Office Prohibition does not extend to purely personal political activity.

At the same time, § 17-213 does not prohibit Department personnel's purely personal political activity, for two reasons.

First, the plain text of the Use of Office Prohibition extends only to the use of office, not to any political activity that personnel might undertake in their personal lives. *See* A.R.S. § 17-213.

Second, Department personnel have free speech rights. *See, e.g.*, *Letter Carriers*, 413 U.S. at 564 (describing "the interests of the [government employee], as a citizen, in commenting upon matters of public concern"). This includes "speech by public employees on subject matter related to their employment." *Lane v. Franks*, 573 U.S. 228, 240 (2014). Because interpreting § 17-213 to extend to personal activity of Department personnel could implicate Department personnel's constitutional free speech rights, such a reading should be avoided. *See Patterson v. Maricopa Cnty. Sheriff's Off.*, 177 Ariz. 153, 159 (App. 1993); Ariz. Att'y Gen. Op. I83-069 (1983); *see also Pickering v. Bd. of Educ.*, 391 U.S. 563, 564 (1968) (holding that disciplining government employee for submitting a letter to a local newspaper violated his free speech rights).

This understanding of the Use of Office Prohibition is also informed by similar language used in § 41-752(B)(2). *Stambaugh*, 242 Ariz. at 509 ¶ 7. The "Use of Office" provision prohibits use of one's office "to influence in any way the election or the results thereof," while § 41-752(B) proscribes state employees from using or promising to use "any official authority or influence for the purpose of influencing the vote or political action of any person or for any consideration." As this office has previously observed, § 41-752(B) prohibits only "*improper* solicitation, such as soliciting a political contribution while using or promising to use 'any official authority or influence for the purpose of influencing the vote or political action of any person or for any consideration.'" Ariz. Att'y. Gen. Op. I21-008 at 4 n.2 (2021) (quoting A.R.S. § 41-752(B)(2)). In other words, § 41-752(B)(2) prohibits using the authority of a state office to influence another person's vote, while permitting engaging in political activity in general.

The similarity between § 41-752(B)(2)'s "narrowly tailored" limit on political activity and the Use of Office Prohibition helps to confirm that § 17-213 is likewise directed toward *improper* influence using the authority of the Department rather than personal political activity. *Id.* Thus, § 17-213 limits improper use of office, but does not require Department personnel to conceal their job titles or avoid speaking on matters related to their work at the Department. *Cf. Lindke v. Freed*, No. 22-611, 601 U.S. --- slip op. at 7–15 (Mar. 15, 2024) (concluding that local official's use of title on website did not necessarily mean that he was speaking in an official capacity).

C. This interpretation is consistent with prior Attorney General opinions.

This Office has previously analyzed certain Arizona statutes prohibiting "the use of public resources" and concluded that elected officials may use their titles when communicating their views on pending ballot measures. *See* Ariz. Att'y. Gen. Op. I07-008 at 2 (2007) ("[E]lected officials may communicate their views on pending ballot measures and may use their official titles

when doing so."); Ariz. Att'y Gen. Op. I15-002 at 5 (2015) ("The use of either an elected official's title or other incidental uses of the attributes of office also is not a use of public resources for purposes of the statutory prohibition.").

However, these prior opinions considered whether an official's title was a "public resource," not whether it was a use of his "office" more generally. Public resources include only "thing[s] of value" like money, credit, facilities, postage, or the like. Ariz. Att'y Gen. Op. I15-002 at 7. As outlined above, "office" encompasses more than such tangible items.

Further, these opinions addressed the conduct of elected officials rather than that of appointed officials or employees like those at the Game and Fish Department. Elected officials' use of office raises distinct questions because elected officials engage in their own reelection campaigns and their official roles as elected officials cannot readily be separated from their persons. *See* Ariz. Att'y. Gen. Op. I07-008 at 3; Ariz. Att'y Gen. Op. I15-002 at 7–8; *see also State v. Worley*, 102 So. 3d 435, 446 & n.6 (Ala. Crim. App. 2011) (incumbent elected official's invocation of title in reelection campaign materials did not violate use of office prohibition because "[t]elling a politician that they can't influence someone's vote is like telling most people they can't go out and breathe" (citation omitted)).

The question presented here is thus different than those addressed in prior opinions: § 17-213 prohibits not only the use of public resources but also the use of the *office* of the Department, and it applies to both unelected officials and employees.

D. Whether the Director or a Department employee improperly uses his office to influence an election requires case-by-case analysis, but guideposts exist.

Taking all of the above authority together, the Director and Department employees may express opinions or take actions in support of or opposition to a ballot measure or candidate if they do not use public resources or governmental power and do not use the authority or imprimatur of

the Department in support of their advocacy. Thus, if Department personnel wish to engage in election-related activities, they should clarify that any such activity is undertaken in a personal, rather than official capacity, and should not by act or implication suggest that the Department's authority is meant to sway any election's result. Wearing a uniform, bearing the insignia of the office, or invoking the official authority of the Department in an effort to sway opinion could amount to a use of the authority of the office, and thus should be avoided.

For example, suppose a Department employee attends a rally to oppose a pending ballot measure. She wears plain clothes and does not display any Department badge or insignia. She then goes to the podium, introduces herself, and delivers a speech explaining why she thinks the ballot measure is misguided. But, in giving her speech, she never mentions anything about the Department or her affiliation with it. Assuming the employee was off-duty and did not expend any government resources, such behavior would comply with § 17-213, because the employee in no way invokes the authority or imprimatur of the Department in advocating for a political outcome.

On the other end of the spectrum, suppose the employee attends the rally, but this time she wears her Department uniform and badge. In her speech at the podium, she makes statements like, "All of us at the Department are furious about this ballot measure," and "If this measure gets passed, the Department will go to extremes to avoid enforcing it," and "My boss told me to come here so I could tell all of you what the Department really thinks about this measure." Under those circumstances, even if the employee was off-duty and did not use any government resources, she would likely violate § 17-213. Her uniform and badge suggest that she is there in her official capacity as a representative of the Department. Her speech seems designed to convey an official Department position on the measure. She characterizes her views not as personal to her, but as

connected with and approved by others at the Department or even the Department itself. All of this could lead a reasonable person to suspect that she was using the authority, imprimatur, and prestige of the Department in an attempt to defeat the ballot measure at the polls.

Whether conduct lying somewhere between these two poles could violate the Use of Office Prohibition would "necessarily involve a fact-specific, case-by-case evaluation." Ariz. Att'y Gen. Op. I15-002 at 6. But Department personnel can help ensure any political opinion is not construed as using their office to influence an election by stating a disclaimer such as "my views are my own and do not reflect the official position of the Arizona Game and Fish Department." *Cf. Lindke*, slip op. at 13 ("Had Freed's account carried a label . . . or a disclaimer . . . he would be entitled to a heavy (though not irrebuttable) presumption that all of the posts on his page were personal.").

The opinion request refers to members of the public asking Department personnel "to express an opinion either in favor or against [a] ballot initiative" regarding wildlife statutes. The above analysis applies to those circumstances. But the Use of Office Prohibition does not preclude communicating with the public to provide information that does not support or oppose a ballot measure and is impartial and neutral. *See* Ariz. Att'y Gen. Op. I15-002 at 6–7. A communication is impartial and neutral when it is "(1) free of advocacy; (2) free of misleading tendencies, including amplification, omission, or fallacy; and (3) free of partisan coloring." *Id.* at 7. Thus, the Department could issue a neutral analysis of the anticipated effects of a ballot measure on wildlife if it met this test. *Id.* at 8. That presumption could be rebutted, however, if there were "evidence that, considering the totality of the circumstances, the report disseminated information in a manner that was not impartial or neutral." *Id.*

II. A.R.S. § 17-213 and § 41-752 do not conflict.

The opinion request also asks whether the restrictions on Department employees and the Director contained in A.R.S. § 17-213 conflict with A.R.S. § 41-752(C), which permits state personnel to engage in certain political activities. The short answer is no, but for different reasons for two different categories of personnel.

To start, the permissible activities listed in § 41-752(C) expressly do not apply to the Director and a particular subset of Department employees. Section 41-752(E) makes clear that "[s]ubsections B and C of this section do not apply to those employees listed in § 41-742, subsection F." One of the categories of employees listed in § 41-742(F) is "[t]he state agency head and each deputy director, or equivalent, of each state agency and employees of the state agency who report directly to either the state agency head or deputy director." A.R.S. § 41-742(F)(3). Another category is "[e]ach assistant director, or equivalent, of each state agency and employees in the state agency who report directly to an assistant director." *Id.* § 41-742(F)(4). Thus, because the Director and any other Department employee listed in § 41-742(F) are exempted from the list of permissible activities in § 41-752(C), as to that category of personnel, there is no possible conflict with the prohibited activities in § 17-213 based on the plain text of the statutory scheme. As to this category of personnel, § 17-213 governs, not § 41-752(C).

Next, as to the category of Department personnel not excluded by § 41-742(E) and (F), the question is how to read A.R.S. § 17-213 and § 41-752(C) together when § 41-752(C) allows "[a]n employee, a member of the state personnel board or a member of the law enforcement merit system council" to engage in a list of permissible activities, and at the same time, § 17-213 prohibits Game and Fish Department personnel from engaging in certain activities listed in that statute. Two principles are relevant to answering that question.

First, as a general matter, a more specific statute "will usually control over those that are general." *City of Phoenix v. Super. Ct. in & for Maricopa Cnty.*, 139 Ariz. 175, 178 (1984). Here, A.R.S. § 17-213 is the more specific statute because it specifically applies to the Director and employees of the Game and Fish Department, while A.R.S. § 41-752(C) is the more general statute because it applies broadly to state personnel. And second, "[w]hen construing two statutes, [courts] will read them in such a way as to harmonize and give effect to all of the provisions involved." *See State v. Bowsher*, 225 Ariz. 586, 589 ¶ 14 (2010).

With these principles in mind, the more specific prohibitions in A.R.S. § 17-213 can easily be read in harmony with the more generally applicable permissible activities in § 41-752(C).

For example, a Department employee may "[e]ngage in activities to advocate the election or defeat of any candidate," as § 41-752(C)(6) permits, so long as he does not "use his office" in doing so, as § 17-213 prohibits. Similarly, a Department employee may "[s]olicit or encourage contributions to be made directly to candidates or campaign committees," as § 41-752(C)(7) permits, so long as he does not "use his office" in doing so, as § 17-213 prohibits. This construction is consistent with the principle that statutes should be harmonized when possible, and it gives effect to as much of the law as possible because "the special statute will control" only to the extent that "the provisions of [that] special statute are inconsistent with those of a general statute on the same subject." *Desert Waters, Inc. v. Super. Ct. in & for Pima Cnty.*, 91 Ariz. 163, 171 (1962).

As noted in the Background section, § 17-213 also contains an "Active Part Prohibition" forbidding Department personnel from taking "an active part in a political campaign." For similar reasons, this part of § 17-213 likewise does not conflict with § 41-752(C) because a Department employee may engage in each of the activities permitted in § 41-752(C) without necessarily taking an "active part" in a political campaign. The activities permitted under § 41-752(C) are those

normally practiced by interested citizens who lack any true authority within a political campaign; as such, they are clear exceptions to that statute's general prohibition on taking "any part in the management or affairs" of a political campaign. The Active Part Prohibition can be read similarly to § 41-752(C)'s prohibition of managerial activities: Department employees may freely engage in the political activities exempted under § 41-752(C)(1)-(7), so long as they do not use their office or public resources in so doing. However, any activities involving the "management or affairs" of a political campaign—activities implicating decision-making authority—would also run afoul of the Active Part Prohibition. Thus, the list of permitted activities in § 41-752(C) and the Active Part Prohibition do not conflict.

Conclusion

The phrase "use his office" in A.R.S. § 17-213 refers to more than direct uses of public resources and governmental power. The Director and Department employees can express opinions and take certain actions to support or defeat a ballot measure in their personal capacity only; i.e., if such actions do not directly or indirectly use public resources or governmental power, including their titles, insignia, uniform, or express or implied authority. The Director or employees can express personal views on pending ballot measures, but should be careful to speak only in their individual capacities and avoid conveying the impression that the Department or other Department personnel take a position. And finally, there is no conflict between A.R.S. § 17-213 and § 41-752.

Kris Mayes
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