



**STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>January 24, 2025</p>	<p>No. I25-001 (R24-020)</p> <p>Re: Seating fire district board members under A.R.S. § 48-803(G)</p>
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To: The Honorable Mitzi Epstein
State Senator
1700 W. Washington Street
Phoenix, Arizona 85007

The Honorable Lauren Kuby
State Senator
1700 W. Washington Street
Phoenix, Arizona 85007

Question Presented

Should all newly elected members of Arizona fire district boards be seated on the first day of the month following their election under A.R.S. § 48-803(G)?

Summary Answer

Yes, although § 48-803(G)'s seating-date provision can now be read as applying to only a subset of fire districts following a 2014 amendment, there is substantial textual evidence that this gap arises from a drafting error. And in any event, absent other statutory guidance, seating all newly elected members on the first day of the month following their election (i.e., December 1

following a November election) remains faithful to the overall statutory scheme and is otherwise sensible.

Background

I. Arizona law provides for the election of fire district board members.

Arizona fire districts “provide fire, emergency medical and associated emergency services” to Arizonans. *See* Arizona Fire District Association History, <https://azfiredistricts.org/history/>. Title 48, Chapter 5 of the Arizona Revised Statutes prescribes laws regulating the fire districts, including laws that establish the composition of fire district boards and the terms for which board members serve. *See* A.R.S. §§ 48-802 to -854.

Within these statutes, Article 1 is titled “General Provisions” and establishes laws generally applicable to all fire districts. A.R.S. §§ 48-802 to -824. Article 3 is titled “Noncontiguous County Island Fire Districts” and establishes additional laws specifically applicable to districts formed out of noncontiguous property parcels. A.R.S. §§ 48-851 to -854.

Section 48-803(A) provides that fire district boards will generally consist of either three or five members, depending on a district’s population. It also establishes that “a noncontiguous county island fire district” under article 3 shall have a “board ... consist[ing] of five members.” *Id.*; *see also id.* § 48-852(A) (same).

Before 2014, § 48-803(F)—which is now § 48-803(G)—provided for the first-elected board members in a district to serve either two or four-year terms, depending on their respective vote totals, and thereafter for members to serve four-year terms “from the first day of the month next following such member’s election.” Thus, following a November election, a board member’s term would begin on December 1.

II. The 2014 amendments introduced an ambiguity regarding when many board members should be seated.

In 2014, the Legislature approved various amendments to the fire district statutes, including an amendment that added the following introductory clause (shown in bold) to what is now § 48-803(G):

G. For districts formed under article 3 of this chapter, of the members first elected to district boards consisting of three members, the two people receiving the first and second highest number of votes shall be elected to four-year terms, and the person receiving the third highest number of votes shall be elected to a two-year term. Of the members first elected to district boards consisting of five members, the three people receiving the first, second and third highest number of votes shall be elected to four-year terms, and the two people receiving the fourth and fifth highest number of votes shall be elected to two-year terms. *Thereafter, the term of office of each district board member shall be four years from the first day of the month next following such member's election.* Of the members elected as additional members to a five-member district board, the person with the highest number of votes is elected to a four-year term and the person with the second highest number of votes is elected to a two-year term. If a district resolves to increase the governing board to seven members pursuant to subsection A of this section, the governing board may appoint two additional members to serve until the next general election. After the general election at which the two additional members are elected, the newly elected member with the highest number of votes serves a four-year term and the other member serves a two-year term. Thereafter, the term of office for these two new members is four years.

Thus, prior to the 2014 amendment, this provision was a generally applicable statute that established the terms for all board members, and further established (in the italicized language) that those terms would begin on the first day of the month following a member's election. However, with the 2014 amendment, § 48-803(G) now appears to apply only to "districts formed

under article 3”—i.e., to noncontiguous county island fire districts—and therefore to be silent on when board members in other fire districts should be seated.

On December 5, 2024, Senator Mitzi Epstein and Senator (then-Senator-Elect) Lauren Kuby jointly submitted to this Office a request under A.R.S. § 41-193(A)(7) for an Attorney General Opinion regarding when fire district board members should be seated in light of this statutory gap.

Analysis

I. The seating-date ambiguity appears to arise from a drafting error.

The Office, like a court, begins with the presumption that “the legislature means what it says.” *See Gulf Homes, Inc. v. Bear*, 123 Ariz. 378, 380 (App. 1979); *Canon Sch. Dist. No. 50 v. W.E.S. Const. Co.*, 177 Ariz. 526, 529 (1994) (“[T]he best and most reliable index of a statute’s meaning is its language.”). But “[t]he primary principle of statutory interpretation is to determine and give effect to legislative intent.” *Wyatt v. Wehmuller*, 167 Ariz. 281, 284 (1991). And in ascertaining intent, the Office is mindful that legislative drafting or scrivener’s errors—i.e., “mistake[s] of expression, as opposed to . . . lapse[s] of legislative wisdom”—do happen. *See Diorio v. Hines Rd., LLC*, 226 A.3d 138, 147–48 n.10 (R.I. 2020) (cleaned up). And in this instance, there is compelling textual evidence of a drafting mistake.

A. As written, § 48-803(G) makes little sense.

With the 2014 introductory clause, § 48-803(G) now appears to apply only to article 3 districts. But that is problematic for reasons that extend beyond the seating-date ambiguity. For one thing, § 48-803(G) is part of the “General Provisions” article, rendering it structurally odd for the provision to apply only to noncontiguous fire districts that have their own article in the statutory scheme. *See* A.R.S. §§ 48-851 to -854.

Section 48-803(G) is, moreover, the only provision within the General Provisions that provides for elected members to initially serve a mix of two and four-year terms and thereafter to serve four-year terms, thereby staggering board service. It is also the only subsection in the General Provisions that establishes the mechanics of increasing a board to seven members pursuant to subsection A. *See* § 48-803(A), (G). Thus, if § 48-803(G) applies exclusively to noncontiguous fire districts, the statutory scheme is now also inexplicably silent on these additional critical matters in relation to other districts.¹

There is additional evidence of an error. Section 48-803(G)'s first line now states that “[f]or districts formed under article 3 of this chapter, of the members first elected to district boards *consisting of three members*, the two people receiving the first and second highest number of votes shall be elected to four-year terms, and the person receiving the third highest number of votes shall be elected to a two-year term.” (Emphasis added.) But as described previously, article 3 districts never consist of three elected members—they consist of five elected members. A.R.S. § 48-803(A); *id.* § 48-852(A) (same). Thus, the subsection's first line is a non sequitur on its face.²

Section 48-803(G) then goes on to address five-member boards and to establish the seating date for board members—provisions that could logically apply to article 3 fire districts. But article 3 itself includes provisions that are nearly identical to those parts of § 48-803(G), providing that:

Of the members first elected to the district board, the three people receiving the first, second and third highest number of votes shall be elected to four year terms, and the two people receiving the fourth and fifth highest number of votes shall be elected to two year terms. Thereafter, the term of office of each district board member shall be four years from the first day of the month next following such member's election.

¹ While the Office was asked to address only when non-article 3 board members should be seated under § 48-803(G), the Office notes that its analysis logically implies that these other § 48-803(G) provisions should also apply to non-article 3 boards.

² This first-line problem also negates any potential construction in which the introductory clause might be understood to apply to the first part of § 48-803(G) but not to the entire subsection.

A.R.S. § 48-852(E). Thus, while § 48-803(G) purports to apply *only* to article 3 districts, its unique portion (concerning three-member boards) has no bearing on article 3 districts—and the portion that could apply to article 3 districts (concerning five-member boards and the seating date) is redundant.

B. The Office’s supposition about the apparent error.

All of the textual oddities described above stem from § 48-803(G)’s introductory clause (“For districts formed under article 3 of this chapter . . .”)—a clause that appears to stand alone within the General Provisions in providing that a subsection applies exclusively to article 3. In contrast, numerous subsections within the General Provisions provide for article 3’s *exclusion* from their terms. *See, e.g.*, A.R.S. § 48-802(D)(2) (“except for a district formed pursuant to article 3 . . .”); *id.* § 48-803(B) (same); *id.* § 48-803(F) (same); *id.* § 48-803(H) (“This subsection does not apply to districts formed under article 3 of this chapter.”).

Thus, one of two possibilities seems exceedingly likely. First, the Legislature might have intended for § 48-803(G)’s introductory clause to state, “*Except* for districts formed under article 3 of this chapter . . .,” consistent with the carveouts in various other provisions. Or, alternatively, the introductory clause might simply have been appended inadvertently. Under either of these alternative scenarios, § 48-803(G) would have remained a generally applicable provision establishing that board members should be seated on “the first day of the month next following such member’s election.” A.R.S. § 48-803(G). And because article 3 includes an identical seating

provision, A.R.S. § 48-852(E), the seating date for article 3 board members would also have remained clear either way.³

Notwithstanding the strong textual indications of a drafting error, one might fairly question whether the pertinent legislative history—i.e., the Legislature’s decision to add the problematic introductory clause to an existing provision—cuts against the notion of a mistake. While the legislative history is worthy of consideration, it does not appear to provide conclusive evidence either way. *First*, although the Legislature added the introductory clause to an existing statute, it concurrently made numerous other amendments to the fire district statutes. *See* 2014 Ariz. Sess. Laws, ch. 252 § 7 (S.B. 1387) (2d Reg. Sess.). Indeed, *all* of the article 3 carveouts within §§ 48-802 to -803 appear to have been added as part of the 2014 amendments, supporting the view that the § 48-803(G) introductory clause is an outlier. *Id.* *Second*, at one point in the legislative process, § 48-803(G) (then § 48-803(F)) appears to have been stricken entirely—potentially laying the groundwork for the error to be overlooked. *See* S.B. 1387, House Adopted Amendment (March 18, 2014). And *third*, the available legislative history does not provide any insight into any affirmative rationale for including the introductory clause as written.

II. The Office’s disposition.

Because the sole issue before the Office is when fire district board members should be seated—and because rewriting statutes is outside of the Office’s bailiwick—the Office makes no conclusive finding about what § 48-803(G) was intended to provide or should provide. Rather,

³ There is, however, at least one point in favor of the view that the statutory scheme would be most coherent if § 48-803(G)’s introductory clause is simply omitted. Section 48-803(A) provides that a five-member board may be expanded to seven members if a district reaches a certain population. This provision appears to apply to all fire districts, including article 3 districts. *See id.* Section 48-803(G) then sets forth the mechanics of adding the two additional members. If article 3 boards can indeed be expanded to seven members, then it seems sensible for § 48-803(G)’s related provision to apply to all boards, including article 3 boards.

for our purposes, it is sufficient to say that there appears to have been a drafting error that introduced the seating-date ambiguity—and that it is therefore reasonable to construe § 48-803(G)’s seating provision as encompassing non-article 3 board members.

Beyond that, the members must obviously be seated sometime—and absent a statutory date certain, that time will presumably be ad hoc, which creates uncertainty with no apparent countervailing benefit.⁴ The fire district statutes also provide for a non-article 3 district to “elect from its members a chairperson and a clerk . . . at the district board meeting that first occurs in the month immediately following each general election.” A.R.S. § 48-803(F). As Senator Epstein and Senator Kuby noted in their letter requesting this Opinion, it is more sensible for incoming members to participate in this process than for outgoing members to participate in it. Thus, irrespective of any actual drafting error, traditional statutory construction principles lead the Office to the same interpretive conclusion about the appropriate seating date. *See, e.g., In re Marriage of Downing*, 228 Ariz. 298, 300 ¶ 5 (App. 2011) (a statute should be construed “in the context of the entire statutory scheme of which it is a part, striving to achieve consistency among related statutes”) (cleaned up); *Wyatt*, 167 Ariz. at 284 (statutory “subject matter . . . historical background . . . effects and consequences, and . . . spirit and purpose” all bear on statutory construction).

Conclusion

Section 48-803(G)’s introductory clause creates an ambiguity regarding when non-article 3 fire district board members should be seated. Irrespective of whether the clause reflects a drafting error or whether it was added for some nonapparent reason, the statutory scheme’s purpose, context, and history compel the conclusion that all fire district board members should be

⁴ Given the timing of this Opinion’s release in January 2025, the Office simply suggests that non-article 3 board members who were elected in November 2024 be seated as soon as practicable in this cycle, to the extent that they have not already been seated.

seated on the first day of the month following their election, as was clear before the 2014 amendment. The Office invites the Legislature to eliminate doubt in this regard through an appropriate amendment.

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