

**To: Charles W. Herf  
Quarles & Brady, Streich, Lang, L.L.P.**

**March 8, 2001**

**Re: Board Member Conflict of Interest  
I01-009 (R01-001)**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253, you submitted for this Office's review an opinion for the Mingus Union High School District ("Mingus Union") Governing Board concerning whether certain board members have conflicts of interest on district unification issues. This opinion revises the conclusions regarding those potential conflicts.

### **Questions Presented**

1. Do board members who would no longer reside in Mingus Union if a proposed unification occurs have a conflict of interest that precludes them from voting on the unification issue?
2. If the spouse of a Mingus Union board member is a teacher for a school district that would, under the proposal, unify with Mingus Union, does the Mingus Union board member have a conflict of interest that precludes him or her from voting on the unification issue?

### **Summary Answer**

1. Because a governing board member does not have a pecuniary or proprietary interest in retaining an elected governing board position, board members who would no longer reside in the district after unification do not have a conflict of interest and may therefore vote on the unification issue.
2. A school board member whose spouse works for a school district that may unify with the school board member's district does not have a conflict of interest that precludes the board member from voting on the unification issue.

### **Background**

Mingus Union is considering unifying with the Cottonwood-Oak Creek School District. According to your opinion, the governing board of the Clarkdale-Jerome School District, which is within Mingus Union's current boundaries, voted not to unify with Mingus Union. Consequently, the proposed unification of Mingus Union with Cottonwood-Oak Creek has the potential to change district boundaries so that the Clarkdale-Jerome District is no longer within the Mingus Union boundaries. The decision to unify is made by the district governing boards. A.R.S. §15-448(B).<sup>(1)</sup>

The spouse of one Mingus Union board member is a teacher in the Cottonwood-Oak Creek School District. Two other Mingus Union board members reside in the Clarkdale-Jerome area and, according to your opinion, risk losing their seats on the board if unification proceeds because neither would live within the unified district's new boundaries.<sup>(2)</sup> This Opinion addresses whether State conflict of interest laws

prohibit these board members from voting on the unification issue.

## **Analysis**

### **A. School Board Members Who May Reside Outside the District If Unification Occurs Do Not Have a Conflict of Interest.**

Conflict of interest laws establish "an objective standard of conduct." *United States v. Miss. Valley Generating Corp.*, 364 U.S. 520, 549 (1961). These laws recognize that "an impairment of impartial judgment can occur in even the most well-meaning . . . [people] when their personal economic interests are affected by the business they transact on behalf of the Government." *Id.* Conflict of interest laws are based on the principle "that no person can, at one and the same time, faithfully serve two masters representing diverse or inconsistent interests." *State ex rel. Smith v. Bohannon*, 101 Ariz. 520, 522, 421 P.2d 877, 879 (1966) (internal quotations and citation omitted).

Under Arizona conflict of interest statutes, a public officer or employee has a conflict of interest if he or she has a "substantial interest" in any decision. A.R.S. § 38-503(A), (B). If a board member has a substantial interest in a decision, the board member must disclose that interest and refrain from voting on the issue. A.R.S. § 38-503(A). A substantial interest is "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(11). The interest for purposes of disqualification does not include "a mere abstract interest in the general subject or a mere possible contingent interest." *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972). It must involve a "pecuniary or proprietary interest, by which a person will gain or lose something as contrasted to general sympathy, feeling or bias." *Id.* Within the conflict of interest laws, "[p]ecuniary means money and proprietary means ownership." *Shephard v. Platt*, 177 Ariz. 63, 65, 865 P.2d 107, 109 (App. 1993).

Governing board members are not paid for their service, so they have no pecuniary interest in holding the position. The issue, then, is whether board members have a proprietary interest in their positions for the purposes of the conflict of interest statutes. Unlike traditional conflict of interest situations, the board members who may reside outside the district if unification proceeds have no *outside* financial or ownership interest that may influence their vote; rather, it is the board position itself that is at stake. *Cf.* Ariz. Att'y Gen. Op. I83-111 (finding a conflict when a school district administrator is also an employee for a corporation that contracts with the district). Board members may vote on issues that affect their duties as board members. *See, e.g.*, A.R.S. § 15-321(D) (board members can prescribe rules for their own governance). Conflict of interest laws also have not precluded elected officials from voting on issues such as redistricting that may affect their political futures. *See George v. City of Cocoa*, 78 F.3d 494, 496-98 (11th Cir. 1996) (concluding Florida conflict of interest laws did not ban participation on city redistricting issue).

School district governing board members are elected officials, who serve only at the will of the public and are subject to recall by the voters. A.R.S. §§ 15-427(B),

-428(A); Ariz. Const. art. VIII, pt. 1, § 1. As has been recognized in other contexts, elected officials have no personal property interest in their positions:

[P]ublic offices are public . . . trusts, and the nature of the relation of a public officer to the public is inconsistent with either a property or a contract right. Every public office is created in the interest and for the benefit of the people, and belongs to them. The right, it has been said, is not the right of the incumbent to the place, but of the people to the officer. . . . *The incumbent has no vested right in the office which he holds.*

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*Mecham v. Gordon*, 156 Ariz. 297, 302, 751 P.2d 957, 962 (1988) (Governor has no due process property right in retaining his position) (internal quotations omitted; emphasis added).

Although Arizona courts have not addressed this issue in the conflict of interest context, the same logic should apply. Board members face the loss of their seats at any time by the will of the voters. Because a board member has no right to retain that elected position, the potential loss of that position is not a proprietary interest within the conflict of interest laws. *Cf.* Ariz. Att'y Gen. Op. I89-067 (public officer may have proprietary interest in voting on freeway alignments when he owns property in the vicinity of the proposed routes). Therefore, Mingus Union board members who may reside outside the district boundaries if unification proceeds do not have a conflict of interest on the unification issue.

**B. A Board Member Is Not Disqualified from Voting on Unification Issues Because His or Her Spouse Is a Teacher for One of the Other Districts in the Proposed Unification.**

Under A.R.S. § 15-421(D), "[n]o employee of a school district or the spouse of such employee may hold membership on a governing board of a school district by which such employee is employed." This Office has previously recommended that if a board member is married to a district employee, "the Board member's resignation [should] be solicited, but if it is not immediately forthcoming, appropriate action should be taken to remove the Board member from office." Ariz. Att'y Gen. Op. I78-240.

The statutory prohibition in A.R.S. § 15-421 thus affects the ability of a person to serve on the governing board. It does not affect an employee's ability to continue working for a district.<sup>(3)</sup> Therefore, in this situation, if the Mingus Union and Cottonwood Oak Creek districts unify, a Mingus Union board member whose

spouse works for the new unified district may not continue to serve as a board member. The statute does not cause the spouse to lose her job.

It might be argued that, although the statutes affect the board member rather than the employee, the employee may give up the district job to enable the board member-spouse to continue serving on the governing board and, therefore, unification could affect the board member's pecuniary interest. But such an interest would appear to be speculative and contingent, because A.R.S. § 15-421 does not require the loss of the spouse's job. The statute instead affects the ability of the board member to serve on the board, and that is the interest relevant to the conflict of interest analysis. As described previously, a board member has no pecuniary or proprietary interest in continuing to serve on the board. Therefore, a board member is not precluded from participating in voting on a unification issue that may disqualify the board member from continuing to serve as a governing board member.<sup>(4)</sup>

### **Conclusion**

Because these board members have no pecuniary or proprietary interest in retaining their positions as board members, they do not have a conflict of interest that precludes them from voting on the unification issue.

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Attorney General

1. The materials submitted for review suggest that the Mingus Union and Cottonwood-Oak Creek governing boards previously voted to unify, and the issue now whether that unification will proceed.
2. Under A.R.S. § 15-448(D), all governing board members continue to serve until January 1 following the first general election after unification. This provision appears to apply to all board members of the unifying districts, regardless of where they reside. Your opinion notes that Article VII, section 15 of the Arizona Constitution requires that any person elected to an office "be a qualified elector of the political division . . . in which such person shall be elected" and concludes that this constitutional residency requirement prohibits governing board members who reside outside the unified district from remaining on the board as described in A.R.S. § 15-448(D). *See also* A.R.S. § 38-291(5) (office vacant if person ceases to be resident of district for which person elected). This Opinion does not address this issue and instead addresses only the conflict of interest questions.
3. Sections 15-253 and -421, A.R.S., prohibit a governing board from hiring a spouse of a governing board member, but that is not the situation here.
4. Even if the conflict of interest statutes do not mandate recusal in a particular situation, board members may still choose to refrain from participating in a decision to avoid any appearance of impropriety. In situations outside the conflict of interest statutes or related common law or constitutional principles, such decisions are left to the discretion of individual board members.

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