



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>July 10, 2008</p>	<p>No. I08-005 (R08-022)</p> <p>Re: Publicity Pamphlet Argument For or Against a School District Unification Plan</p>
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To: The Honorable David Lujan
Arizona House of Representatives

Questions Presented

You have asked the following questions about the content of publicity pamphlets for the upcoming school redistricting elections, which are to be held pursuant to 2005 Ariz. Sess. Laws, ch. 191 ("Chapter 191"):

1. May a governing board discuss its position on the redistricting plan in a public meeting in order to formulate and vote on argument for the publicity pamphlet, as is done in connection with override elections?
2. If not, can a majority of board members discuss and/or circulate such arguments outside of a public meeting, given that, if the answer to the first question is "no," the issue is not a matter that may foreseeably come before the board for action?

Summary Answer

In connection with the publicity pamphlet for school redistricting elections, the governing boards of affected districts may submit an argument in favor of or in opposition to the unification plan that is on the ballot. Any discussion of the proposed argument by a quorum of the Board must take place in a properly noticed open meeting.

Analysis

In 2005, the Arizona Legislature enacted Chapter 191, which established a procedure for allowing Arizona electors to determine whether certain Arizona school districts should be unified into a newly created school district. 2005 Ariz. Sess. Laws, ch. 191. Under Chapter 191, the Legislature created the School District Redistricting Commission (“Commission”) and, among other things, charged the Commission with the task of formulating a proposal to unify school districts in Arizona (the “Plan”) and preparing a final report on the Plan to be submitted to the Governor. *Id.* § 3. Chapter 191 also states that, once the Governor signs the final report, county school superintendents of counties where affected school districts are located must call an election (the “Unification Election”) for electors residing in the boundaries of affected school districts to vote on the question of whether to approve or disapprove the Plan. *Id.* § 4, subsection A. In connection with the Unification Election, Chapter 191 requires the county superintendents to prepare publicity pamphlets that “shall include any arguments in favor of the plan and any arguments in opposition to the plan submitted by members of the governing boards of the affected school districts or from any elector who wishes to submit such an argument.” *Id.*

The term “members of the governing board” as used in Chapter 191 raises an issue because it could be interpreted as allowing only arguments in favor of or in opposition to the plan by individual members of the governing board, rather than allowing the governing board as a body to consider, formulate, and submit arguments. For example, in connection with school district budget override elections, the Legislature has directed that the informational report sent to qualified electors must include the following:

Arguments for the proposed increase in the budget shall be provided in writing and signed by the governing board The names of those persons other than the governing board or superintendent submitting written arguments shall not be included in the report without their specific permission.

A.R.S. § 15-481(B)(9).

The primary goal of statutory construction is to ascertain and give effect to the Legislature’s intent in enacting the statute. *Mejak v. Granville*, 212 Ariz. 555, 557, 136 P.3d 874, 876 (2006). The statute’s language is the best indicator of that intent. *Id.* When a statute’s plain language is clear and unambiguous, courts give effect to that language without resorting to any other rules of statutory construction. *Ariz. Dep’t of Revenue v. Salt River Project Agric. Improvement & Power Dist.*, 212 Ariz. 35, 39, 126 P.3d 1063, 1067 (App. 2006). “A cardinal rule of statutory interpretation is to avoid, if possible, an interpretation which renders superfluous any portion of a statute.” *In re Maricopa County Superior Court No. MN 2001-001139*, 203 Ariz. 351, 354, ¶ 17, 54 P.3d 380 (App. 2002).

Given the foregoing principles of statutory construction, the logical conclusion is that, in connection with school redistricting elections, the Legislature intended to allow

the governing boards of affected districts as a whole to submit an argument in favor of or in opposition to the Plan that is on the ballot. A contrary conclusion would render the reference to “members of the governing board” superfluous. The statute already allows “any elector” to submit arguments. Individual governing board members are, by definition, “electors.” A.R.S. § 15-421(C). Individual governing board members have no powers or rights beyond those enjoyed by other citizens. Ariz. Att’y Gen. Op. I81-054. Therefore, the term “members of the governing board” would add nothing to the statute if it did not permit action by the board members in their official capacities.

Governing board members in their individual capacities have the same rights and powers as all other citizens. Thus, Chapter 191 should be read as referring to board members in their official capacities. Board members can act “in an official capacity only when lawfully convened as a body.” Ariz. Att’y Gen. Op. I81-054 (quoting *School District of Philadelphia v. Framlau Corp.*, 15 Pa.Com. 621, 328 A.2d 866, 870 (1974)). Of course, nothing in Chapter 191 prohibits individual board members from also submitting their arguments in their capacities as “electors.”

Moreover, the fact that A.R.S. § 15-481(B) (9) uses different terminology in the context of an override election does not compel a different conclusion. That statute inherently recognizes that the governing board acts through its members when it provides that the “names of [p]ersons other than the governing board . . . submitting written arguments shall not be included in the report without their specific permission.” A.R.S. § 15-481(B)(9).

Any statement by a school district governing board would have to be agreed upon in public pursuant to the Arizona Open Meeting Law, A.R.S. § 38-431 *et seq.* (“OML”).

See Del Papa v. Board of Regents, 114 Nev. 388, 401, 956 P. 2d 770, 779 (1998) (decision by board members on whether to issue media advisory constitutes action under the Nevada open meeting law). This office has defined “taking legal action” in the context of the OML as a “collective decision, commitment or promise” made by a majority of the members of a governing body. A.R.S. § 38-431(3); Ariz. Att’y Gen. Op. 192-007. The decision by a majority of a quorum of the members of the governing board to issue a statement in support of or in opposition to a Plan constitutes legal action under the OML. Likewise, discussion and approval of the content of the governing board’s statement must take place in accordance with the OML.¹

Conclusion

The governing boards of school districts affected by school district unification elections may submit an argument in favor of or in opposition to the unification plan that is on the ballot to be included in the publicity pamphlet for such elections. However, any discussion by a quorum of the board of the proposed argument for or against a unification plan must take place in a properly noticed open meeting.

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¹ Because Chapter 191 specifically authorizes a school district governing board to adopt a statement in support of or in opposition to a unification plan, the governing board’s action does not violate A.R.S. § 15-511, which prohibits the use of school resources to influence the outcome of elections. Chapter 191’s specific language allowing governing boards to submit arguments for publicity pamphlets controls over the more general prohibition in A.R.S. § 15-511. *See Lemons v. Superior Court of Gila County*, 141 Ariz. 502, 505, 687 P.2d 1257, 1260 (1984) (generally, more recent and specific statute governs over older and more general statutes).