

**To: Brian C. McNeil
Executive Secretary, Arizona Corporation Commission**

January 2, 2001

**Re: Corporation
Commission
Membership**

101-001 (R00-071)

Questions Presented

You have asked the following questions concerning the effect of Proposition 103, which the voters approved at the 2000 general election:

1. Whether, by expanding the Corporation Commission ("Commission") from three members to five members, Proposition 103 created two vacancies to be filled by gubernatorial appointment.
2. Whether Commissioners elected to serve six-year terms before the approval of Proposition 103 are now required to remain out of office for a period of time before running for Commissioner again.

Summary Answer

1. Proposition 103 did not create vacancies on the Commission. Instead, at the general election in 2002, the voters of Arizona will elect the two additional Commissioners to increase the number of Commissioners from three to five.
2. Commissioners who were elected before approval of Proposition 103 are now eligible to serve two consecutive terms. A Commissioner who served a single term and then left office is eligible to run in any future election. A Commissioner currently serving may seek reelection for one more term without leaving office.

Background

In the 2000 general election, Arizona voters approved Proposition 103, a constitutional amendment that expands the Commission from three members to five and changes the terms of Commissioners and the applicable term limits. Under the law before Proposition 103, Commissioners were elected for six-year terms and had to leave office for a full term after serving a term on the Commission.⁽¹⁾ Under Proposition 103, Commissioners are elected to four-year terms and may serve two consecutive terms. After serving two consecutive terms, a Commissioner must leave office for a full term before running again.⁽²⁾

Analysis

A. The Voters Will Elect the Two Additional Commission Members in 2002.

By increasing the number of Commissioners from three to five, Proposition 103 did not create two vacancies on the Commission. Proposition 103 stated: "The two additional Commission members shall be elected at the 2002 general election for initial two-year terms beginning on the first Monday in January 2003." Ariz. Const. art. XV, § 1(B) (as amended by Proposition 103). This language directs that "the two additional . . . members" are to be elected in 2002. Until that time, the Commission continues to operate with three members.

The legislative history also confirms that the Commission will not have five members until after the voters elect two new members in the 2002 general election. As explained in the Legislative Council ballot analysis, "[t]his proposition . . . provides for a phase in process for the additional Corporation Commission members. Beginning with the election in 2002, the two new members would both serve a two-year term . . ." Arizona Secretary of State, ballot propositions for the general election of nov. 7, 2000, 44-45 (Proposition 103). In addition, the fiscal analysis prepared by the Joint Legislative Budget Committee stated "[i]f . . . [Proposition 103] is enacted, the [two] . . . additional commissioners would not be sworn in until the first Monday in January 2003. As a result there will be no fiscal impact until [fiscal year] 2003." Joint legislative comm. staff, 44th leg. Fiscal Note on s. con. res. 1005 (Jan. 31, 2000); see also hearing on s. con. res. 1005 before the senate appropriations committee 44th Legis., 2d Reg. Sess. (Feb. 9, 2000) (noting that the fiscal impact of the increase from three to five members begins in fiscal year 2003).

The Arizona Supreme Court previously rejected arguments that a constitutional amendment restructuring the Arizona Legislature created vacancies in the State Senate to be filled by appointment. See *State ex rel. Jones v. Lockhart*, 76 Ariz. 390, 397, 265 P.2d 447, 452 (1953). In that case, the Court noted that construing the amendment as creating vacancies

would in our opinion be in direct conflict with the plain language of the amendment, and the result would be to deprive the people in the nine counties granted an additional senator . . . of the privilege of exercising their electoral franchise to select the person to fill the office. We believe this was never the intent of the electorate, for they have ever jealously guarded their right to elect their public officials and vested the appointing power in other hands only in exceptional cases. . . . A departure from this policy would have to be declared in clearer words than are here found.

Id. at 399, 265 P.2d at 453.

Similarly, Proposition 103 requires Arizona voters to fill the two additional seats on the Corporation Commission in 2002. The proposition creates no vacancies on the Commission that require action by the Governor.

B. Commissioners Elected to Six-Year Terms Are Subject to a Limit of Two Consecutive Terms.

Before Proposition 103 was approved, the Constitution limited Commissioners to serving a single six-year term after which each Commissioner was required to be out of office for one full term. The constitutional language limiting the terms of Commissioners now provides:

No member of the corporation commission shall hold that office for more than two consecutive terms. No corporation commissioner may serve again in that office until out of office for one full term. Any person who serves one half or more of a term shall be considered to have served one term for purposes of this section.

Ariz. Const. art. XV, § 1. This language imposes a two consecutive term limit on all Commissioners. It does not expressly limit the number of consecutive years a person may serve, nor does it establish different requirements for a Commissioner who previously served a six-year term. It establishes a limit based on the number of terms served, not the number of years.

This means that Commissioners who served six-year terms are no longer subject to a one-term limit. Therefore, a Commissioner who was elected to a six-year term and left office in 1998 or

2000 may run for the Commission in 2002. If elected to the Commission in 2002, that person may, after completing that term, run for one more consecutive term. If a Commissioner remains in office until 2002 or beyond while serving a six-year term, that person may, under Proposition 103, seek re-election to another term. If reelected, that person may serve the second term and must then remain out of office for one full term (four years) before running again.

The transition to Proposition 103 may result, for a limited time, in Commissioners reaching their two-term limit after serving anywhere from six to ten consecutive years. For example, a person could serve for ten consecutive years (a six-year term followed by a four-year term) and would then be required to remain out of office for four years. A person might also serve a two-year term, the length of the initial term of the new Commission seats to be filled in 2002, followed by a four-year term for a total of six years, and would then be required to remain out of office four years because that person has served two consecutive terms. These differences naturally result from a limit based on the number of terms served, when the terms are for different lengths of time.

Conclusion

The two additional members of the Corporation Commission authorized by Proposition 103 will be elected in 2002. Proposition 103 did not create any vacancies to be filled by the Governor.

Commissioners are now eligible to serve two consecutive terms rather than one. Therefore, Commissioners who had been elected to a single six-year term may run for re-election. If a person who was elected to a six-year term is out of office for a period of time before seeking a second term, that person may then run for two consecutive terms.

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1. Arizona voters approved the one-term limit in 1992 in a measure that imposed term limits on legislative and executive office-holders, as well as the Corporation Commission. Arizona Secretary of State, Publicity Pamphlet for the general election of nov. 3, 1992, 46-52, (Proposition 107).

2. Proposition 103 amended article XV, § 1, in part, as follows:

A. No member of the corporation commission shall hold that office for more than ~~one~~ TWO consecutive ~~term~~ TERMS. No corporation commissioner, ~~after serving that term,~~ may serve AGAIN in that office until out of office for one full term. Any person who serves one half or more of a term shall be considered to have served one term for purposes of this section. ~~This limitation shall apply to terms of office beginning on or after January 1, 1993.~~

B. A corporation commission is hereby created to be composed of ~~three~~ FIVE persons who shall be elected at the general election . . . and whose term of office shall be ~~coterminous with that of the Governor of the State elected at the same time~~ FOUR YEARS. . . . THE TWO ADDITIONAL COMMISSION MEMBERS SHALL BE ELECTED AT THE 2002 GENERAL ELECTION FOR INITIAL TWO-YEAR TERMS BEGINNING ON THE FIRST MONDAY IN JANUARY, 2003. THEREAFTER, ALL TERMS SHALL BE FOUR-YEAR TERMS.

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