

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

by

JANET NAPOLITANO
ATTORNEY GENERAL

September 24, 2001

No. I01-019
(R01-034)

Re: Legislative Term Limits

TO: The Honorable Betsey Bayless
Arizona Secretary of State

Questions Presented

You have asked the following questions regarding the impact of redistricting on legislative term limits:

- (i) if the Independent Redistricting Commission assigns a different number to a term-limited state legislator's district, may that legislator run for election in the district because it has a new number;
- (ii) if the Independent Redistricting Commission changes the boundaries of a term-limited state legislator's district, may that legislator run for election in the district because it has different boundaries;
- (iii) if the Independent Redistricting Commission excludes a term-limited legislator's residence from the district he or she had represented may the legislator move into the newly-created district and run in that district;
- (iv) may a term-limited legislator move to another part of the county to a district

which contains no portion of the legislator's former district and run in that district.

You have also asked whether the Secretary of State has the responsibility or authority to reject a candidate's nomination papers if the candidate has served the maximum number of consecutive terms permitted by the State constitution.

Summary Answer

The Arizona Constitution prohibits a legislator who has served four consecutive terms in either the State House of Representatives or the State Senate from serving an additional consecutive term in the same chamber of the Legislature. Ariz. Const. art. IV, pt. 2, § 21. Accordingly, a legislator who has served four consecutive terms in the House or the Senate may not run for a fifth consecutive term. This four consecutive term limit applies regardless of whether the legislator's residence is in a district with a different number or with different geographic boundaries as a result of redistricting or whether the legislator has moved to a different district.

The Secretary of State performs a ministerial function when accepting candidate nomination papers, and the Legislature has not given the Secretary of State the statutory responsibility or authority to reject a candidate's nomination papers if the candidate will exceed the constitutional term limit requirement. Absent a legislative change authorizing the Secretary of State to reject nomination papers on these grounds, a court challenge is necessary to bar a candidate's name from appearing on the ballot if his or her candidacy violates the term limit requirement.

Background

In 1992, the Arizona voters approved Proposition 107, which amended the Arizona Constitution to impose 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). With regard to legislators, Proposition 107 prohibited members of the Arizona State Senate and Arizona House of Representatives from serving more than four consecutive terms. Ariz. Const. art. IV, pt. 2, § 21. The relevant language provides:

No state Senator shall serve more than four consecutive terms in that office, nor shall any state Representative serve more than four consecutive terms in that office. This limitation on the number of terms of consecutive service shall apply to terms of office beginning on or after January 1, 1993. No Legislator, after serving the maximum number of terms, which shall include any part of a term served, may serve in the same office until he has been out of office for no less than one full term.

Id.

At the time the voters established the term limit law in 1992, the Legislature was responsible for establishing legislative districts, and for redrawing the district boundaries every ten years. See Ariz. Const. art. IV, pt. 2, § 1 (before passage of Proposition 106 in 2000); see also *Goddard v. Babbitt*, 536 F. Supp 538 (D. Ariz. 1982) (court challenge to redistricting plan approved by Legislature.) In 2000, Arizona voters removed redistricting authority from the Legislature and created the Independent Redistricting Commission ("Commission") to take on that responsibility. Ariz. Const. art. IV, pt. 2, § 1 (14). The Commission may not consider the places of residence of incumbents or candidates when drawing the new legislative boundaries. Ariz. Const. art. IV, pt. 2, §1(15).

Analysis

A. Changes Resulting From Redistricting Do Not Enable a Legislator Who Has Served Four Consecutive Terms To Serve An Additional Consecutive Term.

Arizona's Constitution provides: "No state Senator shall serve more than four consecutive terms in that office, nor shall any state Representative serve more than four consecutive terms in that office." Art. IV, pt. 2, § 21. Constitutions must be construed to give effect to the intent and purpose of the framers and the people who adopted them. *State ex rel. Jones v. Lockhart*, 76 Ariz. 390, 398, 265 P.2d 447, 452 (1953). In addition, the meaning ascribed to words in a constitutional provision is that which is generally understood and used by the people. *McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 290, 645 P.2d 801, 805 (1982).

Applying these principles to legislative term limits, Arizona's Constitution establishes a limit of four consecutive terms that applies to the office of State Senator and a separate four consecutive term limit that applies to the office of State Representative. The language is clear on its face and makes no exception for terms served in a particular district or within particular geographic boundaries.

The information about the term limits proposal provided to voters in the publicity pamphlet supports this conclusion.¹ *Ruiz v. Hull*, 191 Ariz. 441, 450, 957 P.2d 984, 993 (1998) (when construing constitutional language created by an initiative, the courts will consider ballot materials and publicity pamphlets circulated in support of the measure). The

¹The Secretary of State is required to prepare a publicity pamphlet for distribution to Arizona voters prior to elections in which an initiative or referendum is on the ballot. A.R.S. § 19-123(A). The publicity pamphlet contains an analysis by Legislative Council of each ballot proposal. A.R.S. § 19-124(B)(the Council "shall prepare and file ... an impartial analysis of the provisions of each ballot proposal of a measure or proposed amendment"). The purpose of the analysis is to "assist voters in rationally assessing an initiative proposal by providing a fair, neutral explanation of the proposal's contents and the changes it would make if adopted." *Fairness & Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 590, 886 P.2d 1338, 1346 (1994).

Legislative Council informed the voters that Proposition 107 would "amend the Arizona Constitution to limit the number of terms that a person may serve in . . . state elective offices." ARIZONA SECRETARY OF STATE, PUBLICITY PAMPHLET FOR THE GENERAL ELECTION OF Nov. 3, 1992, 48 (Proposition 107). It described the legislative term limit as follows: "a maximum of four consecutive terms in the Arizona State Senate, which is eight years, and a maximum of four consecutive terms in the Arizona House of Representatives, which is eight years." *Id.* at 48-49. The Legislative Council's analysis reflects the intent to limit the consecutive terms served by a particular legislator, in either the House or the Senate, regardless of the geographic boundary or number of the districts represented by that legislator.

Reading Article IV, Part 2, § 1(3) (establishing the Independent Redistricting Commission) and Article IV, Part 2, § 21 (establishing term limits for legislators) together further bolsters the conclusion that the voters did not intend to allow a legislator to serve a fifth consecutive term in office. See *State v. Osborne*, 14 Ariz. 185, 204, 125 P. 884, 892 (1912) (Constitution must be construed as a whole in order that its intent and general purpose may be ascertained). Both citizen initiatives reflect, in part, efforts to curtail the advantages gained by incumbency. See ARIZONA SECRETARY OF STATE, PUBLICITY PAMPHLET FOR THE GENERAL ELECTION OF Nov. 7, 2000, 54, 56 (Proposition 106 - Arguments "For" Proposition 106); ARIZONA SECRETARY OF STATE, PUBLICITY PAMPHLET FOR THE GENERAL ELECTION OF Nov. 3, 1992, 50-51 (Arguments for Proposition 107). This purpose is hindered if a legislator serving four consecutive terms is able to run for a fifth consecutive term by virtue of the redistricting process.

Moreover, any other interpretation leads to absurd results that undermine the four consecutive term limit. If redistricting could affect term limits, incumbent legislators could serve five to eight consecutive terms depending on how many terms they served before redistricting. With that interpretation, the four-consecutive-term limit would have little meaning because term limits for incumbent legislators would begin anew based on the renumbering and boundary changes that necessarily result from the redistricting process. This clearly was not the intent of the Arizona voters when they adopted a four-consecutive-term limit for members of the House and Senate.

In an analogous case, the California Court of Appeals held that a member of the California Assembly who had served two terms and part of a third term in two different districts was prohibited from running for an additional term under California's term limit law. *Schweisinger v. Jones*, 68 Cal. App. 4th 1320, 1323, 81 Cal. Rptr. 2d 183, 184 (1998). California's term limit law provides that "[n]o member of the Assembly may serve more than three terms." Cal. Const. art. IV, § 2(a). There, the candidate had served one term as the representative of the 71st Assembly District and then was elected twice to represent the 67th District. *Jones*, 68 Cal. App. 4th at 1323, 81 Cal. Rptr. 2d at 184. The court held that the time served by the Assembly person during the term in which she was recalled qualified as her third "term" in office and therefore she could not run for an additional term. *Id.* at 1325, 81 Cal. Rptr. 2d at 185. In its analysis, the court counted each term toward the three-term limit even though she had represented districts with different numbers, a change that was "apparently as a result of redistricting." *Id.* at 1323, 81 Cal. Rptr. 2d at 184.

B. A Legislator Cannot Avoid the Limit of Four Consecutive Terms by Moving.

The same analysis applies to your questions about legislators who move from one legislative district to another. You specifically asked about two scenarios: (1) a term-limited

legislator who, after redistricting, moves to a district that includes a portion of the legislator's former district but does not include the legislator's former residence; and (2) a term-limited legislator who, following redistricting, moves to another part of the county to a district which contains no part of the legislator's former district. In both situations, the legislator does not avoid the impact of term limits by moving. As described above, the term limit applies to consecutive terms in the House or Senate, regardless of the number or the geographic boundaries of the legislative district.²

C. The Secretary of State May Not Reject the Nomination Papers Of an Incumbent Legislative Candidate Who Is Ineligible To Run For An Additional Term Because of the Term Limit Provision in the Arizona Constitution.

The Secretary of State's duties are generally prescribed by statute. See Ariz. Const. art. V, § 9 ("powers and duties of Secretary of State . . . shall be as prescribed by law"). Ariz. Atty' Gen. Op. I89-026 (Secretary of State's authority to collect certain fees is governed by statute). The Secretary of State's role when accepting nomination papers by candidates is largely ministerial. See *Sims Printing Co. v. Frohmiller*, 47 Ariz. 561, 572, 58 P.2d 518, 522 (1936). When a candidate's papers on their face substantially comply with the terms of the statute, their validity is not for the ministerial officer to decide, but for the court. *Id.*

The nomination paper must include information such as the candidate's name and actual address or description of place of residence and post office address. A.R.S. §§ 16-311 (nomination papers for persons desiring to become a candidate at a primary election for a political party); -312 (write-in candidates); -341 (nomination other than by primary). The

²Moreover, if that legislator moves out of the district he or she was elected to represent before the expiration of that legislator's fourth consecutive term, the legislator will be deemed to have vacated his or her office. A.R.S. § 38-291(5) (a legislator who ceases to be a resident of the district for which he or she was elected is deemed to have vacated office); *State v. Oakley*, 180 Ariz. 34, 35, 881 P.2d 366, 367 (App. 1994) (community college board member vacated his office by moving out of the district from which he was elected). That office would then be filled in accordance with the statutory procedure for filling legislative vacancies. See A.R.S. §§ 41-1201, -1202.

Secretary of State must accept nomination papers unless they fail to substantially comply with these statutory requirements. See *Hunt v. Superior Court*, 64 Ariz. 325, 328, 170 P.2d 293, 295 (1946) (responsibility of board of supervisors regarding candidate filing); Ariz. Att'y Gen. Op. I84-096 (Secretary of State not authorized to refuse to accept a filing for candidacy on the grounds that the candidate did not meet the residency requirements). The Secretary of State may also refuse to accept nomination papers or petitions if they are not filed within the time frame established by statute. *Adams v. Bolin*, 77 Ariz. 316, 322, 271 P.2d 472, 476 (1954) (Secretary of State not required to accept petitions filed too early).

There is no statutory requirement that the candidate state on the nomination paper that he or she is eligible to run under the term limit provision of the Arizona Constitution. Based on the principle that the Secretary of State performs a ministerial function when accepting nomination papers, the Secretary of State has no authority to reject a candidate's filing based on term limits. In specific circumstances, the Legislature has directed the Secretary of State to reject candidate filings. For example, when a person is barred from seeking public office for five years because of campaign finance violations, the statute provides that this "is grounds for . . . [the] filing officer to refuse the candidates nomination paper." A.R.S. § 16-918(F); see also A.R.S. § 16-312(D) (circumstances in which candidates may not file as a write in candidate). There is no similar directive with regard to term limits. Consequently, as long as the nomination papers are in substantial compliance with the statutes, the Secretary of State must accept the nomination paper, even if the person may be ineligible to serve because of term limits. If the candidate is precluded from running because of term limits, any qualified elector could then challenge the candidacy in accordance with A.R.S. § 16-351.

Conclusion

The term limit provision in the State Constitution prohibits a legislator who has served four consecutive terms in the House or Senate from running for a fifth consecutive term regardless of the impact of the redistricting process on the district that legislator had been elected to represent. Similarly, a legislator who has served four consecutive terms in the House or Senate and who moves following redistricting may not seek a fifth consecutive term. Finally, the statutes governing the duties of the Secretary of State do not authorize that office to reject a candidate's nomination papers on the grounds that the candidate is ineligible because of term limits; however, the candidate's eligibility is subject to challenge in court.

Janet Napolitano
Attorney General