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STATE OF ARIZONA

June 7, 2016

Kelly Townsend
Arizona House of Representatives
1700 West Washington, Suite H
Phoenix, AZ 85007-2844

Re: I16-006 / R16-014

Dear Representative Townsend,

You requested an opinion from this Office, asking whether the “period commencing sixty days before a primary election” in Arizona Revised Statutes (“A.R.S.”) § 16-1019(H) means sixty days before a qualified elector may cast a vote under A.R.S. § 16-541, or sixty days before the tenth Tuesday prior to a general election under A.R.S. § 16-201. As you may be aware, our formal opinion process necessarily involves several layers of review and is not, therefore, conducive to a speedy turnaround. We understand time is of the essence regarding your request because the period for placement of political signs began on June 4, 2016, assuming “the period commencing sixty days before a primary election” means sixty days before a qualified elector may cast a vote under A.R.S. § 16-541. For this reason, we offer the following informal opinion regarding the question presented: The “period commencing sixty days before a primary election” in A.R.S. § 16-1019(H) means sixty days before the tenth Tuesday prior to a general election under A.R.S. § 16-201.

Under A.R.S. § 16-1019(C), “a city, town or county of this state shall not remove, alter, deface or cover any political sign” if certain conditions are met. This provision only applies, however, “during the period commencing sixty days before a primary election and ending fifteen days after the general election, except that for a sign for a candidate in a primary election who does not advance to the general election, the period ends fifteen days after the primary election.” A.R.S. § 16-1019(H). In other words, this statute does not prohibit cities, towns, and counties from taking down political signs if the sign is put up too far in advance of, or left up too long after, an election.

Arizona law allows qualified electors to vote by early ballot. A.R.S. § 16-541(A) (“Any election called pursuant to the laws of this state shall provide for early voting. Any qualified

elector may vote by early ballot.”). The county recorder mails early ballots “within five days after receipt of the official early ballots from the officer charged by law with the duty of preparing ballots pursuant to § 16-545, except that early ballot distribution shall not begin more than twenty-seven days before the election.” A.R.S. § 16-542(C). The officer charged with the duty of preparing ballots, in turn, is required to deliver early ballots to the county recorder “not later than the thirty-third day before the election.” A.R.S. § 16-545(B). Thus, the date for mailing early ballots is calculated from the date of “the election.” This year, the Maricopa County Recorder has posted that early ballots will “begin mailing at 27 days prior to each of the noted election dates.”¹

Arizona law specifies when the “primary election” occurs. Arizona Revised Statute § 16-201 provides: “On the tenth Tuesday prior to a general or special election at which candidates for public office are to be elected, a primary election shall be held.”

Distilled to its essence then, your question asks what “primary election” means in A.R.S. § 16-1019(H)—does it mean the date early ballots are mailed, or does it mean the date of the primary election set forth by statute? If “primary election” means the date that primary election early ballots are mailed, candidates and ballot supporters/opponents would have approximately 27 additional days to post political signs.

The answer to your question is straightforward. The date of the primary election is the date specifically provided by statute—not the date that ballots are mailed out for the primary election. Again, A.R.S. § 16-201 provides that the date of the “primary election” is “the tenth Tuesday prior to a general or special election at which candidates for public office are to be elected.” *See also* A.R.S. § 1-213 (“Words and phrases shall be construed according to the common and approved use of the language.”). Nothing in the early balloting statute in A.R.S. § 16-541 purports to alter the date of the “primary election.” It simply allows qualified electors to vote by early ballot. To read “primary election” to mean the date a qualified elector can vote by mail would be to manufacture ambiguity.

Arizona courts also “construe statutory provisions in light of the entire statutory scheme so they may be harmonious and consistent.” *Cypress on Sunland Homeowners Ass’n v. Orlandini*, 227 Ariz. 288, 297, ¶ 30 (App. 2011) (internal quotes omitted). But, absurd results would be produced if the term “election” was consistently interpreted throughout Arizona’s statutes to mean the date that qualified electors can vote by mail. For example, if this interpretation were adopted, early ballots would never be mailed. Again, early ballots are mailed approximately 27 days “*before* the election.” *See* A.R.S. § 16-542(C) (emphasis added). But, if “election” means the date ballots are mailed, the trigger for mailing ballots would always be 27 days out.

Further, A.R.S. § 16-1019(H) does not only prevent cities, towns, and counties from taking down political signs “sixty days before a primary election.” It also prevents cities, towns,

¹ Maricopa County Recorder, *Early Voting Ballot Request* (Jun. 6, 2016, 2:00 PM), <https://recorder.maricopa.gov/earlyvotingballot/earlyvotingballotrequest.aspx>.

and counties from taking down political signs “ending fifteen days after the general election.” But, if the “general election” date is interpreted consistently to mean the date that ballots for the general election are mailed (instead of the date of the actual general election), cities, towns and counties would be able to take down political signs for the general election 15 days after the mailing—potentially resulting in political signs being taken down before the actual general election date.

These absurdities can be avoided by adhering to the plain meaning of “primary election” as defined by the legislature in A.R.S. § 16-201. Thus, the “period commencing sixty days before a primary election” in A.R.S. § 16-1019(H) means sixty days before the tenth Tuesday prior to a general election under A.R.S. § 16-201.

Sincerely,

John R. Lopez IV
Solicitor General