

**The Honorable Carol Springer**  
**Arizona State Treasurer**

**June 4, 1999**  
**No. I99-013 (R99-023)**

### **Question Presented**

You have requested an Opinion regarding your selection of the fifth member of the Clean Elections Commission pursuant to Arizona Revised Statutes Annotated ("A.R.S.") § 16-955(C). Specifically, you have asked whether the latest slate of candidates for selection (the "sixth slate"), prepared by the Commission on Appellate Court Appointments (the "Appellate Commission"), is legally constituted and whether you may obtain more than one additional slate of candidates from the Appellate Commission.<sup>(1)</sup>

### **Summary Answer**

The sixth slate is legally constituted and you may not obtain additional slates unless it would be impossible to select an eligible candidate from the sixth slate.

### **Background**

Arizona voters passed Proposition 200, the Citizens Clean Elections Act ("Act"), as an initiative in the November 1998 general election. The initiative authorizes public funding for the election campaigns of political candidates who voluntarily limit campaign spending and fund-raising in statewide and state legislative elections. *See generally* A.R.S. §§ 16-940 through -961. The initiative established a Clean Elections Commission ("Commission") to administer and enforce the Act.

The Act charges the Appellate Commission with responsibility to nominate five slates of three candidates each. The Governor selects a candidate from one of the slates, and then the highest-ranking official holding a statewide office, who is not a member of the same political party as the Governor, selects a candidate from another one of the slates (*i.e.*, the second State official to make a selection has only four slates of candidates from which to choose). The selection process continues in a similar manner -- the second highest-ranking official holding statewide office who belongs to the same political party as the Governor selects from the three remaining slates, the second highest-ranking official holding a statewide office who does not belong to the same political party as the Governor makes a selection from the two remaining slates, and the final selection from the last slate is made by the third highest-ranking official holding a statewide office who belongs to the same political party as the Governor. A.R.S. § 16-955(C). Of the five Commissioners selected, no more than two may be members of the same political party or residents of the same county. A.R.S. § 16-955(A). The five initial Commissioners serve terms of differing lengths, with one term expiring each year beginning on January 31, 2000. A.R.S. § 16-955(C).

As State Treasurer and a member of the same political party as the Governor, you are responsible for making the fifth and final Commission selection. Of the

four Commission members already chosen, two are members of the Democratic party, one is a member of the Republican party, and one is a member of the Green party. Two are from Maricopa County. On the slate you were initially provided, there was only one non-Maricopa County candidate, and that candidate was a Democrat. Therefore, none of the candidates on that slate was eligible to serve on the Commission. The Appellate Commission subsequently developed a sixth slate of eligible nominees for your consideration.

### Analysis

#### **A. The Sixth Slate is Legally Constituted.**

Section 16-955(C), A.R.S., provides that "Initially, the Commission on Appellate Court Appointments shall nominate five slates, each having three candidates, before January 1, 1999." The statute assumes that all five Commissioners will be chosen from the initial five slates and does not contemplate a situation in which a slate contains no eligible candidates (due to the characteristics of the previously chosen candidates). The issue is whether A.R.S. § 16-955(C) authorizes the creation of, and the selection from, a sixth slate.

The fundamental rule of statutory construction is to ascertain and give effect to the legislative intent. *See Mardian Constr. Co. v. Superior Court*, 113 Ariz. 489, 492, 557 P.2d 526, 529 (1976). The language of a statute is the most reliable evidence of its intent. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594, 667 P.2d 1304, 1309 (1983) (citations omitted). To arrive at the legislative intent, statutory provisions are considered in the context of the entire statute and effect is given to all of the statute's provisions. *Pinto Valley Copper Corp. v. Arizona Dep't of Economic Security*, 146 Ariz. 484, 486, 706 P.2d 1251, 1253 (App. 1985) (citations omitted). When interpreting a statute, a court will look to the statute as a whole and attempt to harmonize all of its sections to avoid an absurd result. *Epstein v. Industrial Comm'n.*, 154 Ariz. 189, 194, 741 P.2d 322, 327 (App. 1987) (citations omitted).<sup>(2)</sup>

An examination of A.R.S. § 16-955 reveals that the voters intended that five members be appointed to the Commission and that vacancies be filled timely. A.R.S. § 16-955(A), (D), and (F). Section 16-955(C), A.R.S. contains deadlines to compile the initial slates and for the initial selection by the Governor.<sup>(3)</sup> The statutory scheme demonstrates the voters' intention that five members sit on the Commission and that replacements, due to term expiration or other reason, be promptly named.

Although there may be ambiguity about the procedure for selecting a Commissioner where all candidates on the remaining slate are ineligible, a pragmatic construction is required where a technical construction would lead to an absurdity. *See State v. Weible*, 142 Ariz. 113, 118, 688 P.2d 1005, 1010 (1984). If we were to conclude that the statute did not allow the creation of the sixth slate, the result would be a Commission of only four members and the deprivation of a State official's selection power. Given the comprehensive selection procedure implemented by the voters, there is no indication in A.R.S. § 16-955(C) that the voters intended to tie the hands of the Appellate

Commission or State officials by precluding a reconstituted slate in a situation such as the present one. That result would directly conflict with the voters' express direction that there be five Commissioners appointed by five State officials. To avoid an absurd interpretation that could not have been contemplated by the voters, a conclusion that A.R.S. § 16-955 impliedly authorizes the Appellate Commission to create, and a State official to select from, a new slate (or slates) when the slate (or slates) initially presented contains only ineligible candidates is appropriate and necessary. *See City of Phoenix v. Superior Court*, 144 Ariz. 172, 177, 696 P.2d 724, 729 (App. 1985) (citations omitted).

**B. The Appellate Commission Correctly Presented Just One Slate of Candidates.**

Your second question is whether you could request more than one new slate of candidates from the Appellate Commission. Under the existing set of facts, the Appellate Commission was correct in presenting just one slate. You may not obtain additional slates.

As previously noted, the procedure in A.R.S. § 16-955(C) authorizes the Governor to select from one of the slates and the second selecting State official to choose "from another one of the slates." The statute explicitly provides that the third selecting State official shall choose "from one of the three remaining slates," that the fourth selecting State official shall choose "from one of the two remaining slates," and that the fifth selecting State official shall choose "from the last slate." A.R.S. § 16-955(C). Here, the State Treasurer is the fifth and final State official to select. Asking the Appellate Commission to provide more than one additional slate because of candidate ineligibility in the fifth slate would give you more slates from which to select than the statute contemplates and would be inconsistent with the intent of the voters.<sup>(4)</sup> Thus, only one slate of eligible candidates is required and authorized to cure your inability to select candidates from the original fifth slate.

**Conclusion**

The Clean Elections Act impliedly and necessarily authorizes the Commission on Appellate Court Appointments to create, and a State official to select from, a new sixth slate of candidates for the Clean Elections Commission when the slate initially presented to the State official contains only ineligible candidates. Under the circumstances, the sixth slate created by the Appellate Commission is legally constituted, and a State official may not obtain yet another slate from which to choose.

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1. Your letter mentions your concern about the effect that Proposition 105 may have on this situation. Proposition 105 was a constitutional amendment that limits the Legislature's power to repeal or amend initiative or referendum measures. Ariz. Const. art. IV, pt. 1, § 1(6)(b), (c), and (d). Proposition 105 is not implicated here because there has been no legislative modification of the law.

2. The same rules of construction that apply to legislative enactments apply to initiatives. 2A Norman J. Singer, Sutherland Statutory Construction § 48.19 (5th ed. 1992).

3. Likewise, A.R.S. § 16-955(D) requires that the Appellate Commission prepare a slate of candidates each subsequent year by January 1. Section 16-955(F), A.R.S., provides that in the event a Commissioner does not complete the specified term, the Appellate Commission must prepare a slate of candidates "as soon as possible in the first thirty days after the Commissioner vacates his or her office," and a replacement must be selected within thirty days of nomination of the slate.

4. The procedure established for appointments in subsequent years also supports this conclusion. When a Commissioner is replaced in the future, due to term expiration or another reason, the statutes require that the Appellate Commission prepare one slate of three candidates for the vacancy. A.R.S. § 16-955 (D) and (F).

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