



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL September 2, 2009	No. I09-007 (R09-005) Re: A.R.S. § 15-341.01, Proposition 301, and the Voter Protection Act
--	--

To: The Honorable Tom Horne
Superintendent of Public Instruction

Questions Presented

You have asked whether Arizona Revised Statutes (“A.R.S.”) § 15-341.01(B), as amended in 2007, conflicts with Proposition 301 by defining “one hundred eighty days” as “one hundred eighty days of instruction *or an equivalent number of minutes of instruction per school year based on a different number of days of instruction* approved by the school district governing board or charter school governing body.” 2007 Ariz. Sess. Laws, ch. 264, § 4 (emphasis added). If the 2007 amendment to A.R.S. § 15-341.01(B) conflicts with Proposition 301, you have asked whether the amendment violates the voter protection provisions delineated in the Arizona Constitution, article IV, part 1, section 1(6) and (14) because it does not further Proposition 301’s purpose.

Summary Answer

Section 15-341.01(B) as amended does not conflict with Proposition 301 by defining “one hundred eighty days” to include “an equivalent number of minutes of instruction per school year based on a different number of days of instruction.” The amendment to A.R.S. § 15-341.01(B) did not repeal, amend, or supersede provisions of or appropriate or divert funding created or allocated by Proposition 301. Therefore, the Voter Protection Act’s provisions delineated in the Arizona Constitution, article IV, part 1, section 1(6) and (14) do not apply to the amendment to A.R.S. § 15-341.01(B), which merely defined the meaning of the phrase “one hundred eighty days.”

Background

In June 2000, the Legislature approved Senate Bill (“S.B.”) 1007, which proposed a .6% increase in the state transaction privilege tax and a .6% increase in the state use tax to provide increased funding for public schools. 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, §§ 37, 40. S.B. 1007 contained a number of provisions, including the addition of a 180-day school year requirement phased in over a period of five years. *Id.* §§ 5, 54. The Legislature referred only certain portions of S.B. 1007 to the 2000 general election ballot. *Id.* § 64; Ariz. Secretary of State, Ballot Propositions & Judicial Performance Review for the November 7, 2000, General Election at 169. The provisions of S.B. 1007 referred to the ballot became Proposition 301 and included the following:

- an incremental increase in the rate of the state transaction privilege tax and state use tax and directions regarding the use of those monies;
- inflation adjustments in the state aid to the education base level and other components of the revenue control limit;
- a termination of the exemption from the revenue control limit for excess utility costs;

- a limitation on the school district qualifying tax rates and the county equalization assistance for education rate; and
- a state income tax credit to mitigate the increased transaction privilege and use taxes.

2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 64; Ariz. Att’y Gen. Op. I01-020. All of the provisions in S.B. 1007 were contingent upon the voters’ approval of Proposition 301 at the 2000 general election. 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 67 (conditional enactment); Ariz. Att’y Gen. Ops. I01-020, I01-014, I01-007, n.2. The proposition passed and was implemented after May 31, 2001. *See* 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 66 (indicating a delayed implementation).

The Legislature referred section 38 of S.B. 1007 to the ballot as part of Proposition 301. 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 38; Ariz. Secretary of State, Ballot Propositions & Judicial Performance Review for the November 7, 2000, General Election at 169. Section 38 stated in part as follows:

5. After transferring monies pursuant to paragraphs 1, 2, and 3 of this subsection, one-twelfth of the following amounts shall be transferred each month to the department of education for the increased cost of basic state aid under section 15-971 due to added school days and associated teacher salary increases enacted in 2000:
 - (a) In fiscal year 2001-2002, \$15,305,900.
 - (b) In fiscal year 2002-2003, \$31,530,100.
 - (c) In fiscal year 2003-2004, \$48,727,700.
 - (d) In fiscal year 2004-2005, \$66,957,200.
 - (e) In fiscal year 2005-2006 and each fiscal year thereafter, \$86,280,500.

A.R.S. § 42-5029 (E)(5) (added by Proposition 301, § 38); Ariz. Secretary of State, Ballot Propositions & Judicial Performance Review for the November 7, 2000, General Election at 171.

Provisions of S.B. 1007 that the Legislature did not refer to the ballot as part of Proposition 301 included section five of the bill, which added A.R.S. § 15-341.01 and stated the following regarding the number of days of school:

- A. Notwithstanding any other law, school instruction shall be conducted in each public school in this state for school sessions that total at least one hundred eighty days each school year. The superintendent of public instruction shall cause all relevant school funding formulas to be adjusted to reflect instruction on the one hundred eighty days equivalency. The department of education shall adjust the amount of state aid distributed to school districts pursuant to section 15-971 to correspond to the increased number of school days prescribed by this section.
- B. The legislative council shall prepare draft legislation that conforms the statutes and furthers the purposes of this section pursuant to Article IV, Part 1, Section 1, Constitution of Arizona.

2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 5 (codified at A.R.S. § 15-341.01). The Legislature also did not refer to the ballot section 54 of S.B. 1007, which phased in the increased number of days over a five-year period between fiscal years 2001-2002 and 2005-2006 by adding one day each fiscal year. *Id.* § 54; *see also* Ariz. Secretary of State, Ballot Propositions & Judicial Performance Review for the November 7, 2000, General Election at 169 (not including sections five and 54 in the ballot measure). Previously, school sessions generally consisted of 175 days each school year. 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 54.

In 2007, the Legislature amended A.R.S. § 15-341.01(B) to state the following:

For the purposes of this section, “one hundred eighty days” means one hundred eighty days of instruction *or an equivalent number of minutes of instruction per school year based on a different number of days of instruction approved by the school district governing board or charter school governing body.*

2007 Ariz. Sess. Laws, ch. 264, § 4 (emphasis added). Although the Legislature did not codify this language as a statutory amendment until 2007, it promulgated session laws every year between 2003 and 2006 that were virtually identical to the 2007 amendment to A.R.S. § 15-

341.01(B). *See* 2006 Ariz. Sess. Laws, ch. 353, § 14 (H.B. 2874); 2005 Ariz. Sess. Laws, ch. 329, § 9 (S.B. 1516); 2004 Ariz. Sess. Laws, ch. 278, § 9 (S.B. 1405); 2003 Ariz. Sess. Laws, ch. 264, § 41 (H.B. 2534) (all stating that the phrase “‘one hundred eighty days’ in section 15-341.01 . . . means one hundred eighty days of instruction or an equivalent number of minutes of instruction per school year based on a different number of days of instruction approved by the school district governing board”). These session laws were entitled “Calculation of Instructional Days,” and they authorized schools “to complete the minimum number of instructional hours in less than 180 days” under an alternative calculation of time. *Id.*; Arizona H.R., House Summary as Transmitted to the Governor for H.B. 2534, 46th Leg., 1st Reg. Sess. (06/12/03); Ariz. H.R., House Summary as Transmitted to the Governor for S.B. 1405, 46th Leg., 2d Reg. Sess. (06/09/04); Ariz. H.R., House Summary as Transmitted to the Governor for H.B. 2874, 47th Leg., 2d Reg. Sess. (06/17/06); *see also* Ariz. State S., Final Amended Fact Sheet for S.B. 1516/H.B. 2767, 47th Leg., 1st Reg. Sess. (06-15-05).¹

You have asked whether the 2007 amendment to A.R.S. § 15-341.01(B) that defined one hundred eighty days of instruction per school year as including “an equivalent number of minutes of instruction based on a different number of days” conflicts with Proposition 301, thus failing to further the purpose of the proposition in violation of the Arizona Constitution, article IV, part 1, section 1(6)(C) and (14).

¹ The Joint Legislative Budget Committee (“JLBC”) recommended passage of these session laws, and the Legislature adopted the session laws at the same time that additional school days were being phased in pursuant to S.B. 1007. *See* Fiscal Year 2005 JLBC Budget at 153; Fiscal Year 2006 JLBC Budget at 191; Fiscal Year 2007 JLBC Budget at 147; Fiscal Year 2008 JLBC Budget at 208 (recommending the promulgation of the session laws); 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 54 (establishing the phasing in of five additional school days between fiscal year 2001-2002 and fiscal year 2005-2006).

Analysis

I. Although the Voter Protection Act Applies to Proposition 301, It Does Not Apply to the 2007 Amendment to A.R.S. § 15-341.01(B).

The Voter Protection Act limits the Legislature's ability to alter voter-approved initiatives and referenda. Ariz. Const. art. IV, pt. 1, § 1(6), (14); Ariz. Secretary of State, 1998 Ballot Propositions for the General Election of Nov. 3, 1998 at 43; *see also Arizona Early Childhood Dev. & Health Bd. v. Brewer*, No. CV-09-0078-SA, 2009 WL 2195013, at *2 (Ariz. Sup. Ct. July 24, 2009). Specifically, the Voter Protection Act prohibits the Legislature from repealing an initiative measure approved or a referendum measure decided by a majority of the votes cast on the measure. Ariz. Const. art. IV, pt. 1, § 1(6)(B); *Brewer*, at 2009 WL 2195013, at *2. It also prohibits the Legislature from amending an initiative or referendum, appropriating or diverting funds created or allocated to a specific purpose by an initiative or referendum, or adopting any measure that supersedes in whole or in part an initiative or referendum approved or decided by a majority of votes cast thereon unless these acts further the purposes of the initiative or referendum and at least three-fourths of the members of each house of the Legislature vote to approve the measure. Ariz. Const. art. IV, pt. 1, § 1(6)(C)-(D), (14); *Brewer*, 2009 WL 2195013, at *2.

These restrictions apply to all initiative and referendum measures that the voters decided at and after the 1998 general election. Ariz. Secretary of State, 1998 Ballot Propositions for the General Election on Nov. 3, 1998, at 43 (Proposition 105, § 2). Because Proposition 301 is a referendum that passed after the Voter Protection Act's implementation, the Act applies to the proposition and the Act limits the Legislature's ability to modify those provisions of S.B. 1007 that the Legislature referred to the ballot as part of Proposition 301. *See* Ariz. Att'y Gen. Op. I01-020.

Although the Voter Protection Act applies to Proposition 301, it does not apply to the provisions in S.B. 1007 that the Legislature did not refer to the ballot and, therefore, were not part of Proposition 301. *See* Ariz. Const. art. IV, pt. 1, § 1(6)(C), (D) (prohibiting Legislature from repealing or amending initiative or referendum approved by voters). The Legislature did not refer to the ballot either section five of S.B. 1007, which added A.R.S. § 15-341.01, or section 54, which phased in the additional days of school over a five-year period. *See* 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 64. In the 2007 amendment to A.R.S. § 15-341.01, the Legislature simply defined “one hundred eighty days” to include “one hundred eighty days of instruction or an equivalent number of minutes of instruction per school year based on a different number of days of instruction.” A.R.S. § 15-341.01(B). Because A.R.S. § 15-341.01 was not a voter-approved measure, the Voter Protection Act does not apply to the 2007 amendment to that section.

It should be noted that the Legislature referred to the voters section 38 of S.B. 1007, which prescribed the expenditure of the increased revenues that Proposition 301 generated. *See* 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 38. That section required some of the funding to be used for the increased cost of basic state aid “due to added school days and associated teacher salary increases enacted in 2000.” The Legislative Council analysis and descriptive title refer to the funding for more school days, which was referred to the ballot in section 38. These references to the funding for school days in Proposition 301 do not limit the Legislature’s authority to define days of instruction as it has in A.R.S. § 15-341.01.

The session laws and the 2007 amendment allowed for an alternative calculation of the 180 days of instruction, but they did not reduce the overall instructional time or appropriate or divert the funding that Proposition 301, section 38, established for the added school days.

Moreover, because Proposition 301 did not define "180 days," the session laws and the 2007 amendment did not amend Proposition 301. Nor did the amendment have the effect of repealing or superseding provisions of Proposition 301. Therefore, the Voter Protection Act's provisions do not apply to the session laws and the 2007 amendment to A.R.S. § 15-341.01(B) that included an alternative calculation of time in its definition of "180 days."

II. The Amendment to A.R.S. § 15-341.01(B) Complies with the Voter Protection Act's Provisions Even Though It Is Not Required to Do So.

Although the Voter Protection Act's provisions do not apply to A.R.S. § 15-341.01 and the amendments to it, the 2007 amendment met the Act's requirements. The 2007 amendment passed the House of Representatives with forty-nine out of sixty members and the Senate with twenty-four out of thirty members voting in favor of it, thus meeting the three-fourths vote threshold for each House of the Legislature. Bill Status Overview for 2007 Ariz. Sess. Laws, ch. 264 (H.B. 2790).

In addition, the amendment does not conflict with Proposition 301. Proposition 301 does not define what constitutes "180 days." The 2007 amendment that defines 180 days to include the equivalency in minutes for a different number of days is consistent with other statutory schemes that establish school day requirements. These statutory schemes allow for equivalent time. For example, A.R.S. § 15-341 states that a school district governing board shall

[m]aintain the schools established by it for the attendance of each pupil for a period of not less than one hundred seventy-five school days or two hundred school days, as applicable, *or its equivalent* as approved by the superintendent of public instruction for a school district operating on a year-round operation basis, to offer an education program on the basis of a four day school week or to offer an alternative kindergarten program on the basis of a three day school week, in each school year, and if the funds of the district are sufficient, for a longer period, and as far as practicable with equal rights and privileges.

A.R.S. § 15-341(A)(2) (emphasis added). The history of this statute indicates that the statute consistently allowed for 175 school days or the equivalent of 175 school days. *See* A.R.S. § 15-341 (1988) (stating that governing boards shall maintain schools “for a period of not less than one hundred seventy-five school days, or its equivalent as approved by the superintendent of public instruction for a school district approved by the state board of education to operate on an extended school year operation basis”); *Ariz. Att’y Gen. Op.* I91-006 (citing A.R.S. § 15-341(A)(2) as it existed in 1991 and stating that school districts “must maintain schools for a period of not less than 175 school days or its equivalent”).

Moreover, the purpose of Proposition 301 was “to increase funding to public education.” *Ariz. Att’y Gen. Op.* I01-020. Section 38 of Proposition 301 applied additional funds to the “increased cost of basic state aid . . . due to added school days and associated teacher salary increases enacted in 2000” and specified the funding for each fiscal year beginning with the 2001-02 fiscal year. In defining 180 days, the amendment to A.R.S. § 15-341.01(B) did not reduce funding established by Proposition 301 and did not reduce the overall instructional time. It still provides for 180 days of instruction or the equivalent number of minutes of instruction per school year and still provides additional instructional time contemplated by the added days of instruction referred to in section 38 of Proposition 301.

Legislative enactments are presumed to be constitutional. *State v. Cook*, 139 Ariz. 406, 408, 678 P.2d 987, 989 (App. 1984). Any doubts in interpreting an enactment are resolved in favor of constitutionality. *State v. Arnett*, 119 Ariz. 38, 48, 579 P.2d 542, 552 (1978). Here, the 2007 amendment to A.R.S. § 15-341.01(B), which defined 180 days as “one hundred eighty days of instruction or an equivalent number of minutes of instruction per school year based upon a

different number of days of instruction” is consistent with the purpose of Proposition 301 and complies with the voter protection provisions, although not required to do so.

Conclusion

Arizona Revised Statutes § 15-341.01(B) as amended does not conflict with Proposition 301 by defining “one hundred eighty days” to include “an equivalent number of minutes of instruction per school year based on a different number of days of instruction,” and it does not violate the Voter Protection Act provisions delineated in the Arizona Constitution, article IV, part 1, section 1(6) and (14). Because the 2007 amendment to A.R.S. § 15-341.01(B) did not repeal, amend, or supersede provisions of or appropriate or divert funding created or allocated by Proposition 301, the Voter Protection Act’s provisions delineated in the Arizona Constitution, article IV, part 1, section 1(6) and (14) do not apply to that amendment.

Terry Goddard
Attorney General