



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS C. HORNE ATTORNEY GENERAL</p> <p>July 15, 2014</p>	<p>No. I14-003 (R14-011)</p> <p>Re: Regulation of Fire District Boards</p>
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To: Honorable Andy Tobin
Speaker of the Arizona House of Representatives

Questions Presented

You have asked for an opinion on the following questions:

1. If a fire district board member is related to an employee by affinity (marriage) or by blood relation (consanguinity within the third degree), may that board member serve out the term of his or her office or does Arizona Revised Statutes (A.R.S.) § 48-805.03 require the board member to resign? In the alternative, may the relative or spouse resign instead of the board member?
2. Does the requirement that board members and fire chiefs be trained in "other matters that are reasonably necessary for the effective administration of a fire district," A.R.S. § 48-803(H), mandate a specific type of training, and does an association of Arizona fire districts have the discretion to determine what types of training satisfy this requirement?

3. Will board members or chiefs be entitled to “credit” for attending past training sessions sponsored by the Arizona Fire District Association toward their training requirement under A.R.S § 48-803(H)?

Summary Answers

1. If a board member and an employee are spouses, either the board member or the employee must resign immediately. If a board member and an employee are related, but are not spouses, then the board member need not resign.

2. The requirement to complete training on “other matters that are reasonably necessary for the effective administration of a fire district” does not mandate any particular type of training. Any training will satisfy this requirement so long as it is reasonably connected to the district’s administration. Associations of Arizona fire districts therefore have discretion, but not unlimited discretion, to create training programs to satisfy this section.

3. No. A board member or newly hired fire chief may not use past training sessions to satisfy the training requirement in A.R.S. § 48-803(H).

Background

Fire districts are political subdivisions of the State charged with providing fire services within specified areas. *See generally* A.R.S. § 48-805. Three-, five-, or seven member boards manage the districts. A.R.S. § 48-803(A). The board members are elected under the procedures outlined in A.R.S. § 48-802.

In 2013, the Legislature created a committee to study the performance of Arizona’s fire districts and to recommend ways in which the districts might be improved. *See* 2013 Ariz. Sess. Laws ch. 104, § 1. Based in part on these recommendations, the Legislature made a number of changes to the management of fire districts. *See* 2014 Ariz. Sess. Laws ch. 252 (S.B. 1387); *see*

also Ariz. H.R., House Summary as Transmitted to the Governor for S.B. 1387, 51st Legis., 2d Reg. Sess. (4/23/14), at 1. These changes were deemed “emergency measure[s] . . . necessary to preserve the public peace, health or safety” and went into effect immediately, on April 30, 2014, upon signature by the Governor. See 2014 Ariz. Sess. Laws ch. 252, § 15 (S.B. 1387)

Your questions involve several of these statutory changes. In interpreting these changes, the chief goal is to fulfill the intent of the legislature that wrote them. *Bilke v. State*, 206 Ariz. 462, 464, ¶ 11, 80 P.3d 269, 271 (2003). Determining the legislature’s intent begins with examining the language of the statute itself. *Id.* “If the language is clear,” then it should be applied “without resorting to other methods of statutory interpretation, unless application of the plain meaning would lead to impossible or absurd results.” *Id.* (internal citation and quotation marks omitted).

Analysis

A. Family relationships between board members and fire district employees.

There are two sets of provisions bearing on family relationships between board members and district employees. The first set of provisions governs spouses; the second set of provisions governs all other relatives.

- 1. If a board member is married to a district employee, either the board member or the employee must immediately resign.**

The first provision bearing on family relationships is A.R.S. § 48-805.03(B), which provides in relevant part that “the spouse of an employee of a fire district may not hold membership on the governing board of the fire district that employs that employee.” Violation of this provision is a class two misdemeanor. A.R.S. § 48-805.03(D). The terms of this provision are absolute: a person may not serve on a district board if he or she is married to a district employee. Accordingly, a board member who is married to an employee faces *immediate*

criminal liability if he or she continues to serve on the board. The board member therefore may not serve out the remainder of his or her term and should resign immediately.

Alternatively, the employee-spouse may immediately resign instead of the board member. However, the statute makes the *board member* criminally liable, not the employee-spouse. Accordingly, the primary duty to resolve the conflict lies with the board member. If the employee-spouse immediately resigns, that will also resolve the conflict. But if the employee-spouse does not immediately resign, then the board member must immediately resign or face criminal liability.

2. A board member need not resign if the board member is related to a non-spouse employee.

The second set of relevant restrictions governs non-spouse employees. Under A.R.S. § 48-805.03(A),

[i]t is unlawful for an elected or appointed officer or employee of a fire district to do any of the following:

1. Appoint or vote for appointment of any person who is related to that officer or employee by affinity or consanguinity within the third degree to any clerkship, office, position, employment or duty in any department of that fire district when the salary, wages or compensation of that appointee is to be paid from public monies or fees.
2. Appoint, vote for or agree to appoint or to work for, suggest, arrange or be a party to the appointment of any person in consideration of the appointment of a person who is related to that officer or employee within the degree prescribed by this section.

Violating these provisions is also a class two misdemeanor. A.R.S. § 48-805.03(D).

These provisions are narrower than the employee-spouse provisions in subsection (B). Unlike subsection (B), subsection (A) does not criminalize mere service on the board when a family member is also an employee. Instead, it criminalizes only (1) directly appointing or voting for the appointment of family members at taxpayer expense; or (2) assisting in the

appointment of someone else *in exchange for* the appointment of a family member. Because these provisions apply only to the initial “appoint[ment]” of non-spouse family members, they do not apply where the family-member employee has already been appointed. Accordingly, § 48-805.03(A) does not require board members who are related to non-spouse employees to resign their positions.

B. A Fire District’s Discretion to Determine What Training Programs Are “Reasonably Necessary for the Effective Administration of a Fire District.”

Under A.R.S. § 48-803(H), fire chiefs and board members must attend professional training provided by an association of Arizona fire districts. “The professional development training must include training on open meetings laws, finance and budget matters and laws relating to fire district governance and other matters that are reasonably necessary for the effective administration of a fire district.” *Id.* At the end of the year, the association that provided the training must submit a report “that describes the compliance with the training requirements to the county board of supervisors for every county in which the fire district operates.” A.R.S. § 48-803(I). Among other things, the report must include “[a] compilation of the professional development training delivered by the association.” *Id.*

Board members and fire chiefs who fail to meet their training requirements are “guilty of nonfeasance in office.” A.R.S. § 48-803(J). “Any person may make a formal complaint to the county board of supervisors regarding this failure to comply, and the county board of supervisors may submit the complaint to the county attorney for possible action.” *Id.* After receiving a complaint, “[t]he county attorney may take appropriate action to achieve compliance, including filing an action in superior court against a fire district governing board member or a fire chief for failure to comply with the professional development training requirements prescribed in this section.” *Id.* “If the court determines that a fire district governing board member or fire chief

failed to comply with the professional development training requirements prescribed in this section, the court shall issue an order removing the fire district governing board member from office or the fire chief from employment or appointment with the district.” *Id.*

The training provided must include training on “open meetings laws, finance and budget matters and laws relating to fire district governance and other matters that are reasonably necessary for the effective administration of a fire district.” A.R.S. § 48-803(H). You have asked whether any particular type of training falls within the category of “other matters that are reasonably necessary for the effective administration of a fire district.” The answer is no. Neither the statute nor its legislative history defines “matters that are reasonably necessary for the effective administration of a fire district.” Accordingly, the guiding principle is reasonableness. If the subject of the training may reasonably be thought necessary for the administration of a fire district, then it satisfies the statute.

Given the breadth of the term “reasonably,” it follows that fire district associations have discretion to determine what training to provide. However, the oversight provisions in subsection (J) demonstrate that this discretion is not unlimited. Fire district associations must submit their training records to the board of supervisors in every county in which they operate. A.R.S. § 48-803(I). That accountability demonstrates a legislative intent to vest county boards with sufficient oversight powers to ensure that training covers “matters that are reasonably necessary for the effective administration of a fire district.”

Similarly, subsection (J) allows any person to report a failure to comply with the training requirements. A county attorney may seek to remove a noncompliant fire chief or board member by filing an action in superior court. In determining whether to remove a board member or fire chief for failure to complete the training, the superior court will consider the scope of the word

“reasonably.” It will also likely consider the fire district association’s expertise in the management of fire districts. Ultimately though, the superior court must apply its own judgment to determine what is “reasonably necessary for the effective administration of a fire district.” *Cf. Chaney Bldg. Co., Inc. v. Sunnyside Sch. Dist. No. 12*, 147 Ariz. 270, 273, 709 P.2d 904, 907 (App. 1985) (“[C]ourts need not defer to administrative expertise unless they are convinced that the administrator is reasonably exercising this expertise.”) (quoting *New Pueblo Constr., Inc. v. State*, 144 Ariz. 95, 103, 696 P.2d 185, 193 (1985)). In sum, the statute gives fire district associations discretion to develop sufficient training programs, subject to oversight by county boards, and, ultimately, to a superior court’s determination that the training covered matters reasonably necessary to efficiently administer fire districts, based on the facts and circumstances.

C. Use of Past Training Sessions to Satisfy the Training Requirement in A.R.S. § 48-803(H).

With exceptions not relevant here, A.R.S. § 48-803(H) provides as follows:

Beginning with the 2014 general election . . . all persons who are elected or appointed to a fire district board and the fire chief who is appointed or hired by the district board shall attend professional development training that is provided by an association of Arizona fire districts. District board members and the fire chief shall complete at least six hours of professional development training, with board members completing their training within one year after the date of the certification of their election and for the fire chief, within one year after the date of hiring.

You asked whether board members and fire chiefs may use past training sessions to satisfy this requirement.

1. Board Members May Not Use Past Training Sessions to Satisfy the Training Requirement.

The statute provides that board members must complete their training “within one year *after* the date of the certification of their election.” *Id.* (emphasis added). Because this provision

specifically requires board members to complete their training “after” their election, board members cannot count prior training hours toward their training requirement.

2. Newly Hired Fire Chiefs May Not Use Past Training Sessions to Satisfy the Training Requirement.

The statute similarly provides that newly hired fire chiefs must complete “their training within one year *after* the date of hiring[.]” *Id.* (emphasis added). As with board members, this provision specifically requires newly appointed fire chiefs to complete their training “after” their appointment. Accordingly, newly appointed fire chiefs cannot count prior training hours toward their training requirement. Note, however, that this requirement applies only to appointed fire chiefs “[b]eginning with the 2014 general election.” Accordingly, the training requirement applies only to *newly hired* fire chiefs. Fire chiefs hired before the 2014 general election need not comply with the training requirement.

Conclusion

Board members may not continue to serve on a fire district board if the district employs their spouses. However, board members who have *non-spouse* relatives that are employed by their district may continue to serve. Fire district associations have discretion, but not unlimited discretion, to develop training programs “that are reasonably necessary for the effective administration of a fire district.” Board members and newly appointed fire chiefs may not use prior training sessions to satisfy the training requirement in A.R.S. § 48-803(H).

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