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June 3, 2021

Lee D. Lambert, Chancellor
c/o Jeff Silvyn, General Counsel
Pima Community College
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Re: Opinion Request No. R21-008; Opinion No. I21-005

Pursuant to A.R.S. § 15-1448(H), and after receipt and review of the enclosed opinion to Demion Clinco, Chair of the Pima County Community College District Governing Board, the Attorney General hereby concurs in the "Brief Answer" on page 1: "The Governing Board is not required to hold elections for officers at every annual meeting; multi-year terms are permissible under A.R.S. §15-1443."

Sincerely,

A handwritten signature in blue ink that reads "Mark B" followed by a long horizontal flourish.

Mark Brnovich
Attorney General

Enclosure

CC: Hon. Kathy Hoffman, Superintendent of Public Instruction



**Memorandum
PimaCommunityCollege**

To: Demion Clinco
Board Chair

From: Jeff Silvyn
General Counsel

Date: April 2, 2021

Re: Interpretation of A.R.S. §15-1443

Issue: At the request of the Governing Board, I am providing an opinion regarding the interpretation of A.R.S. §15-1443; in particular, whether the bylaw provision allowing for two-year terms for officers complies with the applicable law, or whether the Governing Board is required to hold an election for chair and secretary at every annual organizational meeting.

Brief answer: The Governing Board is not required to hold elections for officers at every annual meeting; multi-year terms are permissible under A.R.S. §15-1443.

Analysis:

Pursuant to Arizona statute, the Board is required to hold meetings to organize. Specifically:

A. Within twenty days after appointment of the first district board, the county school superintendent, or county school superintendents by joint action where the district consists of more than one county, shall call a meeting of the district board by giving at least ten days' notice by registered or certified mail to each board member. At the meeting the district board shall organize by electing a president and a secretary from among its members and may transact any other business relating to the affairs of the district.

B. Following the first election of members, the district board shall meet and organize in January each year and shall hold regular meetings at such time and place as the policies of the board provide. Special meetings may be held at the call of the

president or upon a call issued in writing signed by a majority of the members of the district board.

A.R.S. §15-1443. Meetings; officers; immunity

Currently, the Pima College Governing Board bylaws provide that at the annual meeting, the Board shall elect a Chair and Vice Chair/Secretary for a term of two years. The relevant section provides:

Section 2. The Board shall nominate and elect officers for a term of two years at the annual meeting (Article VI, Section 3). Board members shall rotate through these offices based on their original swearing-in date. Exceptions can be made to this section by majority vote. Bylaws, Article IV (copy attached).

There does not appear to be an Arizona court opinion specifically addressing the provisions of A.R.S. §15-1443 related to election of board officers. Nor has the Arizona Attorney General issued an opinion on the subject. Accordingly, the analysis of the statute depends on the proper application of the rules of statutory construction, as defined by case law.

A cardinal rule of statutory construction is to follow the plain meaning of unambiguous language. Where the legislature uses a particular term in one place in a statute and excludes it from another place in the same statute, a court will not read that term into the provision from which the legislature chose to omit it. *Arizona Dept. of Revenue v. General Motors Acceptance Corp.* ("GMAC"), 188 Ariz. 441, 444-45, 937 P.2d 363, 366-67 (App. 1996); *see also Egan v. Fridlund-Horne*, 221 Ariz. 229, 239, 211 P.3d 1213, 1223, ("we presume that when the legislature uses different wording within a statutory scheme, it intends to give a different meaning and consequence to that language.") (App. 2009).

In *GMAC*, the Court was asked to examine the proper interpretation of a statute setting time limits for the State to pursue additional tax collection from an Arizona business. The statute in question, A.R.S. §42-113, established a general four year time limit from the due date or actual filing date of the return in question. The statute also contained an exception extending the date when the taxpayer entered an agreement with the IRS for an extension to address possible deficiencies in the federal tax return for the same year. GMAC argued this exception did not apply to situations in which the State claimed a deficiency based solely on a state tax issue rather than an adjustment based on a decision of the IRS. The Court rejected this interpretation, because there was no such language in the exception provision, noting a qualifier in one part of a statute will not be read into another part of the same statute. *Id.*

The Court applied the same principles to reach a similar result in *Awsienko v. Cohen*, 227 Ariz. 256, 258-60, 257 P.3d 175, 178-79 (App. 2011). That decision involved a dispute over the qualifications required for an expert witness in a medical malpractice case. The pertinent statute provided:

If the party against whom ... the testimony is offered is or claims to be a specialist, [the witness must] **specialize [] at the time of the occurrence that is the basis for the action in the same specialty or claimed specialty as the party against whom ... the testimony is offered**. If the party against whom ...the testimony is offered is or claims to be a specialist who is board-certified, **the expert witness shall be a specialist who is board-certified in that specialty or claimed specialty**. ARS 12-2604(A); *Id.* at 177, 258 (emphasis added in the opinion).

The claimant had offered as an expert witness a physician who was board-certified in an applicable specialty but who had not been board-certified at the time of the incident giving rise to the malpractice claim. For that reason, the trial court had precluded use of the witness, interpreting the statute to mean the timing requirement applied both to specialists and board-certification. The Court of Appeals reversed, noting that the provision about timing was absent from the sentence about board-certified specialists and holding that adding the timing requirement in one provision into the other was error. *Id.* at 178-79, 259-60.

With respect to the statute in question for the College, A.R.S. §15-1443, Section A specifies the actions a district governing board shall take at the first meeting following formation of the district. That section provides for the board to organize by electing a president and secretary. Section B addresses all subsequent meetings and specifies only that the board shall meet in January of each year to organize.

Based on the statutory construction principles and examples noted above, the requirements of Section A apply only to the first meeting. It is not appropriate to infer that the one requirement related to organizing at the first meeting must also apply to every subsequent annual organization meeting. If the legislature had intended so, it could have specified such a requirement. For example, with respect to school district governing boards, the legislature did provide explicit direction for electing a president every year at the organization meeting. See A.R.S. §15-321. Because the legislature used different language to specify requirements for the election of officers for a community college district governing board compared to the officers of a school district governing board, the legislature must have intended different results. *In re Hyrum H*, 212 Ariz. 328, 332, 131 P.3d 1058, 1062 (App. 2006)

The language of A.R.S. §15-1443 indicates a clear legislative intent that a community college governing board have a president and secretary by directing that they be elected at the very first meeting. However, the statutory language contains no indication of legislative intent concerning the matters to be addressed at any subsequent meeting. This means the governing board has discretion regarding when and how to hold elections for officers following the first meeting. See A.R.S. §15-1445 (the Governing Board has the authority and responsibility to adopt policies for the government of the district).