

## 2010 AG Opinions

Date	Description
December 28, 2010	<b>No. I10-008 (R09-041)</b> Re: Public Benefits and A.R.S. §§ 1-501 and -502
October 29, 2010	<b>No. I10-007 (R10-018)</b> Re: Length of Written Guarantee of Qualified Provider Under A.R.S. § 15-213.01
October 5, 2010	<b>No. I10-006 (R10-010)</b> Re: Applicability of Soft Capital Budget Reductions in Fiscal Years 2008-2009 and 2009-2010 to Joint Technology Education Districts
June 2, 2010	<b>No. I10-005 (R10-008)</b> Re: Resignation by State Employees Seeking Elected Public Office Pursuant to A.R.S. § 41-772
March 24, 2010	<b>No. I10-004 (R09-041)</b> Re: Reporting Requirements in A.R.S. §§ 1-501 and -502
March 11, 2010	<b>No. I10-003 (R09-040)</b> Re: School Districts' Provision of Food, Beverages, or Refreshments to Staff and Parents
January 15, 2010	<b>No. I10-002 (R08-044)</b> Re: Length of Term of Office for a Judge Elected After Governor Appoints Judge to Newly Created Division of the Superior Court
January 14, 2010	<b>No. I10-001 (R09-027)</b> Re: Whether Private Investigator Licensing Requirements Apply to Photo-Enforcement System Vendors



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 28, 2010</p>	<p>No. I10-008 (R09-041)</p> <p>Re: Public Benefits and A.R.S. §§ 1-501 and -502</p>
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To: David Raber  
Director, Arizona Department of Administration

**Questions Presented and Summary Answers**

1. Does the language “state or local benefit” as used in Arizona Revised Statutes (“A.R.S.”) § 1-502 include grants, contracts or loans with the state or local government?

**Answer:** “State or local public benefit” as used in A.R.S. § 1-502(A) includes grants, contracts and loans.

2. Does the term “person” in A.R.S. §§ 1-501 and -502 apply to individuals only or to fictitious persons such as business entities as well?

**Answer:** The term “person” in A.R.S. §§ 1-501(A) and -502(A) is limited to individuals.

3. Do A.R.S. §§ 1-501 and -502 apply to all employees, volunteers, contractors, sub-contractors and vendors alike?

**Answer:** The verification requirements apply to employees of government agencies and to private entities contracting with those agencies to determine eligibility. The reporting requirements and associated criminal penalties in subsections E of A.R.S. §§ 1-501 and -502 apply to government employees of agencies who are administering public benefits.

4. If the State administers a benefit program funded by a private funding source, do the requirements in A.R.S. § 1-502 still apply?

**Answer:** The requirements of A.R.S. § 1-502 apply to state or local public benefits that are provided by state or local government even if they are funded through private sources.

5. How do A.R.S. §§ 1-501 and -502 affect doing business with companies that are headquartered outside of the United States?

**Answer:** Because A.R.S. §§ 1-501 and -502 apply only to natural persons, they do not affect companies headquartered outside the United States.

6. Does a permanent resident card qualify as an “employment authorization document” pursuant to sections A.R.S. §§ 1-501(A)(7) and -502(A)(7)?

**Answer:** Because lawful permanent residents are authorized to work in the United States, presentation of proof of lawful permanent residence would suffice as evidence of work authorization for the purposes of A.R.S. §§ 1-501 and -502.

7. Would including a section regarding compliance with E-verify in grant agreements demonstrate compliance with A.R.S. §§ 1-501 and -502?

**Answer:** Including a section in a grant requiring E-verify does not satisfy A.R.S. §§ 1-501 and -502 because E-verify is for use by employers in hiring employees; it is not for use when verifying the immigration status of an applicant for a public benefit.

8. The documents listed in A.R.S. §§ 1-501 and -502 do not appear to meet the requirements for providing federal and state public benefits, as defined in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”). Please provide guidance regarding compliance with current state statutes and PRWORA.

**Answer:** The documents listed in A.R.S. §§ 1-501 and -502 do not all satisfy the citizenship or immigration status requirements that the federal government has established for public benefits other than Medicaid. The lists also fail to include other documents that would suffice for proof of U.S. citizenship or the required immigration status. For federal public benefits, agencies should comply with federal guidance to verify eligibility. For state and local public benefits, agencies should comply with A.R.S. § 1-502 and take additional steps as necessary to ensure that recipients of the benefits satisfy the eligibility requirements in 8 U.S.C § 1621.

9. Must the sworn affidavits required in A.R.S. §§ 1-501 and -502 be notarized statements? If so, some agencies do not have notaries on staff and will be required to use notaries who may charge fees. Is it permissible to charge applicants or contractors the notarization fees?

**Answer:** Agencies must comply with federal requirements and limitations as to establishing eligibility for federal public benefits. For state or local public benefits, agencies may, but are not required to, obtain notarized statements as to the authenticity of documents presented. If the entity determining eligibility for the state or local public

benefit decides to require a notarized affidavit, it may charge an applicant or contractor a notary fee not to exceed \$2.00.

10. With regard to privacy matters, is it permissible to include the documentation and affidavits in the employee or applicant's file? In other words, please provide guidance regarding storage and retention of the required documentation and affidavits.

**Answer:** Documentation may be placed in case or other files relating to the application.

### **Background**

In the third special session of the forty-ninth Legislature, the Arizona Legislature enacted two statutory changes regarding public benefits as part of the General Government Budget Reconciliation Bill, House Bill ("H.B.") 2008. *See* 2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 7, §§ 1, 2. Section 1 of the bill amended A.R.S. § 1-501, which addresses federal public benefits; section 2 created a new statute, A.R.S. § 1-502, which addresses state and local public benefits. *Id.* Both rely on definitions drawn from Title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), which restricted access to welfare and public benefits for certain non-citizens. In the second regular session of the forty-ninth Legislature, the Arizona Legislature enacted H.B. 2162, which included amendments to A.R.S. §§ 1-501 and -502. *See* 2010 Ariz. Sess. Laws, 2d Reg. Sess., ch. 211, §§ 1, 2.

### **Federal Public Benefits and A.R.S. § 1-501**

Section 1-501, as amended by H.B. 2008 and H.B. 2162, states that "to the extent permitted by federal law, any person who applies for a federal public benefit that is administered by this state or a political subdivision . . . and that requires participants to be citizens of the United States, legal residents of the United States or otherwise lawfully present in the United

States” must submit one of eleven specified documents “demonstrating lawful presence in the United States[.]” Section 1-501 lists the documents as follows:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
3. A United States certificate of birth abroad.
4. A United States passport.
5. A foreign passport with a United States visa.
6. An I-94 form with a photograph.
7. A United States citizenship and immigration services employment authorization document or refugee travel document.
8. A United States certificate of naturalization.
9. A United States certificate of citizenship.
10. A tribal certificate of Indian blood.
11. A tribal or bureau of Indian affairs affidavit of birth.

Additionally, if federal law permits, state and local governments may accept alternate “documentation as specified in section 6036 of the federal deficit reduction act of 2005”<sup>1</sup> and related guidance as to “the elderly and persons with disabilities or incapacity of the mind or body.” A.R.S. § 1-501(C). Persons applying for federal public benefits are to “sign a sworn affidavit stating that the documents presented pursuant to subsection A are true under penalty of perjury.” A.R.S. § 1-501(D).

“Federal public benefit” is defined in subsection I of A.R.S. § 1-501 to have the same meaning as in 8 U.S.C. § 1611. In 8 U.S.C. § 1611, Congress specified that, with certain exceptions, “an alien who is not a qualified alien . . . is not eligible for any Federal public benefit.” “Federal public benefit” is defined in 8 U.S.C. § 1611(c) to include, with some exceptions:

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<sup>1</sup> Pub. L. No. 109-171; 120 Stat. 81. This law amended a Medicaid statute, 42 U.S.C. § 1396b(x), to require “satisfactory documentary evidence of citizenship or nationality.” The law states that certain enumerated documents suffice as evidence of U.S. citizenship or nationality and gives the U.S. Secretary of Health and Human Services authority to specify, by regulation, other documentation permissible to prove identity and citizenship.

- (1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by any agency of the United States or by appropriated funds of the United States.

Congress exempted certain federal public benefits from this eligibility requirement. *See* 8 U.S.C. § 1611(b)(1). These exceptions are described in Ariz. Att’y Gen. Op. I05-009.

### **State or Local Public Benefits and A.R.S. § 1-502**

Section 1-502 establishes parallel requirements for state and local public benefits. Section 1-502(A) states that “[n]otwithstanding any other state law and to the extent permitted by federal law,” any agency or political subdivision of this state that administers any state or local public benefit shall require each person who applies for such a public benefit to submit at least one of eleven specified “documents to the entity administering the state or local public benefit demonstrating lawful presence in the United States.” Section 1-502 lists the same documents set forth in A.R.S. § 1-501. “State or local public benefit” is defined in subsection I of A.R.S. § 1-502 to have the same meaning as in 8 U.S.C. § 1621, with some exceptions.<sup>2</sup>

“State or local public benefit” is defined in 8 U.S.C. § 1621(c) as:

- (1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by any agency of

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<sup>2</sup> Subsection I exempts “commercial or professional licenses, benefits provided by the public retirement systems and plans of this state or services widely available to the general population as a whole” from the requirements of that section.

the a State or local government or by appropriated funds of a State or local government.<sup>3</sup>

Persons applying for state or local public benefits are to “sign a sworn affidavit stating that the documents presented pursuant to subsection A are true under penalty of perjury.” A.R.S. § 1-502(D).

Under PRWORA, only citizens, qualified aliens, nonimmigrants and aliens paroled into the United States under 8 U.S.C. § 1182(d)(5)(A) for less than one year are eligible for many state or local public benefits. 8 U.S.C. § 1621(a). Similar to 8 U.S.C. § 1611, Congress expressly determined that certain public benefits are available to all non-citizens without regard to immigration status, including emergency medical assistance as defined in Title XIX of the Social Security Act; “short-term, non-cash, in-kind emergency disaster relief;” certain public health assistance “for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;” and

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<sup>3</sup> Subsection (c)(2) of 8 U.S.C § 1621 exempts the following from the definition:

(A) . . . any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 *et seq.*] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

[p]rograms, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

8 U.S.C. §1621(b). Thus, pursuant to federal law, verification of citizenship or immigration status is not required for these benefits. Congress specifically permitted states to provide state or local public benefits to aliens not lawfully present but "only through enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d). Arizona has not enacted any such law.

### Analysis

#### **I. "State or Local Public Benefit" in A.R.S. § 1-502(A) Includes Grants or Loans from and Contracts with State or Local Government.**

You have asked whether the term "state or local benefit" in A.R.S. § 1-502(A) includes grants or loans from or contracts with state or local government. Section 1-502(A) requires:

[A]ny agency of this state or a political subdivision of this state that administers any state or local public benefit shall require each person who applies for the state or local public benefit to submit [certain documentation proving legal presence].

Subsection I provides that "[f]or the purposes of this section, 'state or local public benefit' has the same meaning prescribed in [8 U.S.C. § 1621]." Subsection (C)(1)(A) of

8 U.S.C. § 1621 defines "state or local public benefit" in part as follows:

[A]ny *grant, contract, loan*, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government. . .

(Emphasis added.)

The primary goal of statutory interpretation is to determine legislative intent. *See City of Phoenix v. Superior Court in and for Maricopa County*, 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1984). To do so, a court looks first to the statute's language, and will give plain meaning to its terms. *Rineer v. Leonardo*, 194 Ariz. 45, 46, ¶ 7, 977 P.2d 767, 768 (1999). Where the language of a statute is plain and unambiguous, there is no need for additional interpretation. *Calik v. Kongable*, 195 Ariz. 496, 498, ¶ 10, 990 P.2d 1055, 1057 (1999).

Subsection I of A.R.S. § 1-502 provides that the definition of "state or local benefit" is found in 8 U.S.C. § 1621. That federal statute's definition includes grants, contracts, and loans from a state or local government. Therefore, the term "state or local benefit" includes grants or loans from and contracts with state or local governments.

**II. The Meaning of "Person" in A.R.S. §§ 1-501(A) and -502(A) is Limited to Individuals.**

You asked whether the term "person" in A.R.S. §§ 1-501(A) and -502(A) applies to individuals only or to fictitious persons such as business entities as well. In 2010, the Legislature inserted the word "natural" before the word "person" in A.R.S. §§ 1-501(A) and -502(A). *See* 2010 Ariz. Sess. Laws, 2d Reg. Sess., §§ 1, 2. The purpose of this change was, of course, to clarify that these subsections apply to "natural persons" rather than fictitious persons such as business entities. *See* Ariz. H.R., House Summary as Transmitted to the Governor for H.B. 2162, 49<sup>th</sup> Legis., 2d Reg. Sess. (5/4/10). Therefore, the term "person" is limited to individuals.

**III. Verification Requirements Apply to Employees of State and Local Government Agencies Administering Public Benefits and Private Entities Contracting to Determine Eligibility; Reporting Requirements Apply to Government Employees of Agencies Administering Benefits.**

Your next question addresses whether the requirements of A.R.S. §§ 1-501 and -502 apply to employees, volunteers, contractors, sub-contractors, and vendors of the state government.

Subsection A of A.R.S. § 1-501 states that those applying for federal public benefits from the state shall submit documents proving legal presence “to the entity that administers the federal public benefit.”<sup>4</sup> Similarly, A.R.S. § 1-502(A) states that those applying for state or local public benefits from the state shall submit documents proving legal presence “to the entity that administers the state or local public benefit.” Some agencies currently contract with private entities to administer benefits, and the terms of such contracts vary from agency to agency. Such contracts sometimes include terms addressing the private entity’s performance of eligibility verification. The verification requirements of A.R.S. §§ 1-501 and -502 would apply to such private entities where they have agreed to perform eligibility verification.<sup>5</sup>

Sections 1-501 and -502 include penalties for those persons employed by state or local government and engaged in public benefit eligibility work who violate the law. Specifically, A.R.S. § 1-501(E) states:

Failure to report discovered violations of federal immigration law *by an employee of an agency of this state or a political subdivision of this state* that administers any federal public benefit is a class 2 misdemeanor. If that

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<sup>4</sup> As stated elsewhere in this opinion, the entity administering the federal public benefit must meet limitations and requirements set forth in relevant law.

<sup>5</sup> Federal law makes clear that nonprofit charitable organizations that contract with governmental entities are not required to determine, verify, or otherwise require proof of an applicant’s eligibility for public benefits based on the applicant’s status as a U.S. citizen, U.S. non-citizen national, or qualified alien. 8 U.S.C. § 1642(d); *see also* Dep’t of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA, 62 Fed. Reg. 61,344, 61,345-61,346 (Nov. 17, 1997) [hereinafter “Interim Guidance”].

employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

(Emphasis added.) While A.R.S. § 1-502(E) states:

Failure to report discovered violations of federal immigration law *by an employee of an agency of this state or a political subdivision of this state* that administers any state or local public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

(Emphasis added.) This language creates a duty for state and local government employees to report violations. *See* Ariz. Att'y Gen. Op. I10-004. The statutes do not mention volunteers, contractors, sub-contractors, and vendors administering benefits on behalf of the government. In general, courts will not look beyond clear and unambiguous statutory language to derive another meaning for terms. *Calik*, 195 Ariz. at 498, ¶ 10, 990 P.2d at 1057. Here, the statutes clearly state that "an employee" of the government agency that administers public benefits has a duty to report violations of immigration laws. A.R.S. §§ 1-501(E), -502(E). The statute does not extend this duty beyond employees.

#### **IV. The Requirements of A.R.S. § 1-502 Apply to State or Local Public Benefits That Are Funded by Appropriated State or Local Monies.**

You have asked if requirements of A.R.S. § 1-502 apply to state or locally administered public benefits that are funded by a private source. In 8 U.S.C. § 1621(c)(1)(A), state or local public benefits involve benefits "provided by an agency of a State or local government or by appropriated funds of a State or local government." Because A.R.S. § 1-502 incorporates the federal definition of state or local public benefits, it includes privately funded benefits that are "provided by" a "State or local government."

**V. Sections 1-501 and 1-502 Have No Effect on Companies Headquartered Outside the United States.**

You have asked whether A.R.S. §§ 1-501 and 1-502 affect companies headquartered outside of the United States. They do not. Subsections A of A.R.S. §§ 1-501 and 1-502 require those persons applying for public benefits from the State to provide proof of legal presence in the United States. As described previously, the documentation requirements in A.R.S. §§ 1-501 and -502 apply to “natural persons,” not corporations and other business entities.

**VI. Presentation of a Permanent Resident Card Complies with the Requirements of A.R.S. §§ 1-501 and -502.**

You have asked whether a permanent resident card qualifies as an “employment authorization document” pursuant to sections A.R.S. §§ 1-501(A)(7) and 1-502(A)(7). A permanent resident card means that the holder has “been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” 8 U.S.C. § 1101(a)(20). A permanent resident is a qualified alien for purposes of PRWORA and related laws addressing eligibility for public benefits. 8 U.S.C. § 1641(b)(1). The Interim Guidance issued by the Department of Justice in November of 1997 indicates that acceptable evidence of an alien lawfully admitted for permanent residence includes an “INS Form I-551 (Alien Registration Receipt Card, commonly known as a ‘green card’<sup>6</sup>), or Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.”<sup>7</sup> Interim Guidance, 62 Fed. Reg. at 61,364.

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<sup>6</sup> The original alien registration receipt card, Form I-151, was introduced in 1946. Many revisions were green in color, causing it to have this name. However, the cards have not been green since 1959. Form I-551 was introduced in 1977, and revised in 1989, 1992, 1997 and 2004. The 2004 version is denominated “Permanent Resident Card” and bears a photograph of the lawful permanent resident, name, signature, an alien registration (“A” number), birth date, country of birth, sex, “resident since” date and an expiration date; the reverse side contains encoded cardholder information. U.S. Immigration and Customs Enforcement, *Guide to*

An explanation of work authorization categories for aliens is beyond the scope of your question. However, all legal permanent residents are immigrants permitted to work in the United States and are often classified for tax purposes as resident aliens. See Ruth Ellen Wasem, *Congressional Research Service, Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation (Report R40889)*, 12-13 (Nov. 2, 2009). Because permanent residents are authorized to work in the country, a permanent resident card satisfies documentation requirements of A.R.S. §§ 1-501 and -502.<sup>8</sup>

**VII. E-Verify May Not Be Used to Verify Immigration Status of Applicants for Public Benefits.**

You have asked if including a “section regarding compliance with E-verify in grant agreements” would meet the requirements of A.R.S. §§ 1-501 and-502 regarding verification of citizenship or immigrant status.

E-Verify is an Internet-based system overseen by the United States Department of Homeland Security’s (“USDHS”) U.S. Citizenship and Immigration Services (“USCIS”). It allows an employer who has entered into a Memorandum of Understanding with USDHS and the Social Security Administration to use information reported on an employee’s Form I-9 to determine the eligibility of that employee to work in the United States. E-Verify verifies a newly hired employee is authorized to work in the United States. The employee may be a U.S. citizen

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*Selected U.S. Travel and Identity Documents* 8-12 (2008 ed.) [hereinafter *Guide to Selected U.S. Travel and Identity Documents*].

<sup>7</sup> An I-94 form is a two-part form; one part is completed by an individual arriving in the United States; another portion is to be turned in to federal authorities prior to departing. An I-94 form or an I-94A form containing a photograph and a temporary I-551 stamp is considered a receipt for the permanent resident card (the I-551 form). U.S. Citizenship and Immigration Services, *Handbook for Employers: Instructions for Completing Form I-9 (Employment Eligibility Verification Form)* 33 (2009 ed.).

<sup>8</sup> Certain federal public benefits require the verification through the SAVE system of information contained on the permanent resident card. See *infra* § VII.

or an alien with a status permitting him or her to work in this country. *See* <http://www.uscis.gov> (follow "E-Verify Homepage" hyperlink) (2010).

Government entities administering certain federal public benefits were first required by the Immigration Reform and Control Act of 1986 ("IRCA") to verify citizenship and immigration status. Pub. L. No. 99-603 (codified at 42 U.S.C. §1320b-7 and scattered sections); *see also* Interim Guidance, 62 Fed. Reg. at 61,345. As to federal public benefits such as Medicaid, unemployment compensation, educational assistance under Title IV of the Higher Education Act of 1965, and assisted housing programs administered by the Department of Housing and Urban Development, government entities administering them are required to verify alien status through the USCIS' Systematic Alien Verification for Entitlements System ("SAVE"). *See* Interim Guidance, 62 Fed. Reg. at 61,345. "SAVE is an intergovernmental information-sharing program that is available to benefit-granting agencies that need to determine an alien's immigration status." *Id.* Following the enactment of PRWORA, the U.S. Department of Justice required other federal public benefit programs to ask for a declaration of status under penalty of perjury and verify citizenship or qualified alien immigration status via documentation in a non-discriminatory manner. *See* Interim Guidance, 62 Fed. Reg. at 61,347. Government entities administering public benefits not mandated to use SAVE are to use it when staff are considering concluding that the applicant or beneficiary is not a qualified alien. *See* Interim Guidance, 62 Fed. Reg. at 61,349. "Use of SAVE for the purpose of verifying the information recorded on the Form I-9, Employment Eligibility Verification, by an employer . . . is prohibited." Proposed Rules, 63 Fed. Reg. 41,662-01, 41,672 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104). Thus, E-verify is not used to verify immigration status of applicants for public benefits, and SAVE is not to be used for employment purposes.

**VIII. The Documents Listed in A.R.S. §§ 1-501 and -502 Do Not Necessarily Satisfy the Proof of Citizenship or Immigration Status Requirements Established by the Federal Government for Public Benefits other than Medicaid.**

You have asked for guidance regarding compliance with documentation requirements under A.R.S. §§ 1-501 and -502 and PRWORA. In general, to receive federal public benefits subject to 8 U.S.C. § 1611, a person must be a citizen or a qualified alien as defined in 8 U.S.C. § 1641. Although the federal government did not issue regulations pursuant to 8 U.S.C. § 1642 for verifying qualified alien status for a federal public benefit, as noted above, the Department of Justice issued Interim Guidance on the subject in 1997. The Interim Guidance addresses verification of U.S. citizenship and U.S. non-citizen national status (Attachment 4 to Interim Guidance) and qualified alien status (Attachment 5 to Interim Guidance). For many federal public benefits there are also program-specific federal statutes and rules governing verification of both citizenship and immigration status. The Interim Guidance continues to supplement program-specific laws and establish requirements for federal public benefit programs that do not have their own verification laws. The Interim Guidance specifically cautions that “[t]hese lists [of acceptable documents] are not exhaustive; you should refer to guidance issued by the agency or department overseeing your program to determine if it accepts documents or other evidence of citizenship not listed below.” 62 Fed. Reg. at 61,363.

In addition, since the issuance of the Interim Guidance in November 1997, Congress has added categories of immigrants to the qualified alien group<sup>9</sup> and determined that additional documentation is acceptable evidence of U.S. citizenship. Medicaid regulations reflect some of these modifications. See 42 C.F.R. §§ 435.406-.407. Therefore, states must follow federal

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<sup>9</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, and the Balanced Budget Act of 1997, Pub. L. No. 105-33, both amended the definition of qualified alien. See 8 U.S.C. § 1641, Historical and Statutory Notes.

verification requirements when determining eligibility for federal public benefits, unless Congress has given the states discretion to adopt different procedures.

For state and local public benefits, the U.S. citizenship and alien status eligibility requirements are established in federal law, which requires a recipient of state or local public benefits to be a citizen, a qualified alien, a nonimmigrant, or an alien who is paroled into the United States under § 212(d)(5) of the Immigration and Naturalization Act. 8 U.S.C. § 1182(d)(5). The documentation in A.R.S. § 1-502(A) does not necessarily establish that a person satisfies these eligibility requirements.

For example, A.R.S. §§ 1-501(A) and -502(A) specifically authorize agencies to accept an Arizona driver license or nonoperating identification license as acceptable proof of lawful presence. This identification may establish lawful presence, but it does not establish whether a person is a qualified alien, nonimmigrant, or an alien who is paroled into the United States for less than one year, which are the eligibility requirements in 8 U.S.C. § 1621. The I-94 form listed in A.R.S. § 1-502(A) also does not necessarily establish eligibility for state and local public benefits. The I-94 is a paper “arrival/departure record,” the bottom portion of which is stapled to a page in a non-citizen’s passport. This document shows how long the bearer may remain in the United States and the terms of admission. “The I-94, not the non-immigrant visa, serves as evidence of legal status.” *Guide to Selected U.S. Travel and Identity Documents*, at 19. Since USCIS may extend a period of admission or change a nonimmigrant status after an I-94 has been issued (by issuing an I-797A Approval Notice), the I-94 document is not always evidence of lawful presence.<sup>10</sup> *Id.* at 20. Therefore, with regard to state and local benefits, agencies should accept documents in federal guidance documents regarding who is a national of the United States

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<sup>10</sup> Additionally, nationals of some countries can enter the United States without a visa under the Visa Waiver Program. These entrants receive an I-94W and may stay up to 90 days. *Guide to Selected U.S. Travel and Identity Documents*, at 19.

or meets appropriate legal status requirements to be in the United States, in addition to those documents specified in A.R.S. § 1-502. Agencies may need additional documentation or information from the applicant to determine whether the person satisfies the eligibility requirements in 8 U.S.C § 1621.

**IX. Notarization of Sworn Affidavits Required by A.R.S. §§ 1-501 and -502 Is Permitted But Is Not Required.**

You have asked if the sworn affidavits required by A.R.S. §§ 1-501(D) and -502(D) must be notarized statements. These statutes require that applicants “sign a sworn affidavit stating that the documents presented . . . are true under penalty of perjury.” A.R.S. §§ 1-501(D), -502(D). You point out that some agencies do not have notaries on staff and will be required to utilize notaries who may charge fees. You also ask if it is permissible to charge applicants or contractors the notarization fees.

A.R.S. §§ 1-501 and -502 do not define the term “sworn affidavit,” and neither that term nor the word “affidavit” is defined elsewhere in Arizona statute. To determine the intent of the Legislature, the language of the statute must be analyzed. *Tripati v. State*, 199 Ariz. 222, 224, ¶ 3, 16 P.3d 783, 785 (App. 2000). “Affidavit” is used numerous times in Arizona statutes; some of these statutes indicate that notarization is required,<sup>11</sup> but other statutes do not. Some forms prescribed by the Legislature use the term “affidavit” and notary information is in the form.<sup>12</sup> In

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<sup>11</sup> See, e.g., A.R.S. §§ 8-106(F) (“notarized affidavit” signed by the mother listing all potential fathers); 8-203.01(D) (notarized forms to be completed by juvenile probation officers), 19-112(C); 48-265(H) (signature collector of petition is to “swear before a notary public”); 42-18120 (to obtain a duplicate certificate of purchase ); 49-1031(D) (owner or operator of an underground storage tank is to “file a notarized affidavit with the director” as to tax liability).

<sup>12</sup> See A.R.S. §§ 19-112(D) (affidavit of circulator of petition seeking signatures), 27-208(A) (affidavit of performance of annual work as to a mining claim), 33-422(F) (affidavit of disclosure as to land division), and 48-265 (signature collector for petition).

others the word “affidavit” is used, but there is no notary information in the mandated form.<sup>13</sup> In two other statutes—one dealing with police reports of theft of means of transportation and the other with claiming a tax exemption—an individual may attest to the theft or the tax exemption in an affidavit made before a law enforcement officer or a county assessor, respectively, but must sign and get the statement notarized if done before someone other than a law enforcement officer or county assessor. A.R.S. §§ 13-1814(C), 42-11152. Several statutes call for an “affidavit, stating under penalty of perjury” that the affiant will do something. *See, e.g.*, A.R.S. §§ 3-2009, -2086.

The Arizona Supreme Court has defined “affidavit” as “a signed, written statement, made under oath before an officer authorized to administer an oath or affirmation in which the affiant vouches that what is stated is true.” *In the Matter of Manfred Rolland Wetzel*, 143 Ariz. 35, 43, 691 P. 2d 1063, 1071 (1984). The statutes governing notaries define “oath” or “affirmation” as a “notarial act or part of a notarial act in which a person made a vow in the presence of the notary under penalty of perjury, with reference made to a supreme being in the case of an oath.” A.R.S. § 41-311(10).

Although the term “sworn affidavit” in subsections D of A.R.S. §§ 1-501 and -502 suggests that notarization is required, because the Legislature has specifically used the term “notarized affidavit” or words clearly requiring a notary in other statutes and did not do so in these sections, the legislative intent is unclear. Absent a clearer legislative directive regarding notarization, the statutes do not preclude agencies from obtaining either a written statement stating that it is sworn to under penalty of perjury, or a document sworn before a notary public.

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<sup>13</sup> *See, e.g.*, A.R.S. § 16-547 (an affidavit accompanying an early ballot stating that the individual signing it solemnly swears that the name and signature are true); A.R.S. § 36-3224 (physician affidavit within health care power of attorney statute specifically states that the form may be witnessed or notarized).

For federal public benefit eligibility, however, agencies should ensure the eligibility process is consistent with any given federal public benefit's statutes and rules.

You have also asked if state entities administering public benefits may charge applicants or potential contractors a fee for notarizing an affidavit.<sup>14</sup> Section 41-316(A) mandates the promulgation of rules establishing fees that notaries may charge for notarial acts. Pursuant to administrative rule, notaries may charge up to \$2.00 per notarial act.<sup>15</sup> See Arizona Administrative Code ("A.A.C.") R2-12-1102. Notaries may also assess expenses, including mileage and a per diem subsistence established for state employees. See A.R.S. § 41-316(B). Employers of a notary may not limit the notary's services to customers or other persons designated by the employer. See A.R.S. § 41-312(C)(3). Employers may retain any fees collected by an employee notary during hours the notary works for the employer. See A.R.S. § 41-312(C)(2).

A state or local government entity administering state or local public benefits that chooses to require notarized documents may therefore assess up to a \$2.00 fee per notarial act performed by its employees who are notaries if it wishes.

**X. Government Entities Have Discretion as to Where to File Documentation Required by A.R.S. §§ 1-501 and -502.**


Sections 1-501 and -502 both require submission of documents to prove lawful presence as well as a sworn affidavit stating that the documents presented are true. A requirement to

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<sup>14</sup> Under Arizona law, state agencies may not "[c]harge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact." A.R.S. § 41-1008(A)(1). However, the word "fee" is defined in A.R.S. § 41-1001(8) to mean for purposes of that chapter "a charge prescribed by an agency for an inspection or for obtaining a license." Therefore, A.R.S. § 41-1008's limitation is inapplicable here.

<sup>15</sup> In the July 2010 Notary Public Reference Manual ("Notary Manual") issued by the Arizona Secretary of State, notaries are advised that they need not charge any fee, but that if they do it should be done consistently.

obtain documentation of citizenship or requisite alien status is not new to many Arizona state government agencies. In addition to the statutes analyzed in this opinion, A.R.S. §§ 41-1080 and 46-140.01 require presentation and review of documentation. Entities that determine eligibility generally maintain either a paper or electronic case file relating to the application and any later re-determinations of eligibility. Sections 1-501 and -502 do not specify where the affidavit or copies of citizenship or requisite alien status documents are to be retained. Agencies have discretion as to where to retain them and may include them in application files. It should be noted, however, that personally identifiable information in many such case files is confidential. *See, e.g.*, A.R.S. §§ 23-722, -722.01, 36-2903, 41-1959(A); 7 C.F.R. § 272.1. And, some records are exempted from the state's public records law. *See, e.g.*, A.R.S. § 23-722.01(G) (prohibiting disclosure under Arizona public records law of information gathered by department of economic security reflecting hiring and rehiring of employees who reside or work in this state). Existing record retention schedules relevant to case files for the public benefit at issue apply equally to these lawful-presence documents.

  
Terry Goddard  
Attorney General



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

by

TERRY GODDARD  
ATTORNEY GENERAL

October 29, 2010

No. I10-007  
R10-018

Re: Length of Written Guarantee of  
Qualified Provider Under A.R.S. § 15-213.01

To: James T. Giel  
Gust Rosenfeld, P.L.C.

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), you submitted for review an opinion that you prepared for the Queen Creek Unified School District Governing Board ("District") regarding a proposed guaranteed energy cost-savings contract. This opinion revises your conclusion regarding qualified providers' written guarantees. This Office declines to review the remainder of your opinion; thus, the District may act in reliance on those portions of your opinion.

**Question Presented**

Under A.R.S. § 15-213.01(J), must the "written guarantee of the qualified provider" be in effect for the entire life of the energy cost-savings measures or only for the first three years?

### Summary Answer

An energy cost-savings contract between a school district and a qualified provider must include the qualified provider's written guarantee that either the energy or the operational costs savings—or both—will meet or exceed the expenses of the energy cost-savings measures implemented over the expected life of those measures or within twenty-five years, whichever time period is shorter.

### Background

Section 15-213.01 allows a school district to enter into a contract with a qualified provider for the purpose of implementing energy cost-savings measures. A qualified provider is a "person or a business experienced in designing, implementing or installing energy cost savings measures." A.R.S. § 15-213.01(R)(7). Implementing energy cost-savings measures is intended to reduce energy consumption or operating costs for the school district. A.R.S. § 15-213.01(R)(3). As a part of the cost-savings contract, the qualified provider must provide a written guarantee that the cost of implementing the energy savings measures will result in the school district spending less money than it otherwise would have spent on energy consumption or operating costs over the expected life of the measures. A.R.S. § 15-213.01(J). If the guaranteed energy cost savings are not achieved, the qualified provider must reimburse the district on an annual basis for any shortfall. A.R.S. § 15-213.01(J)(2). Specifically, A.R.S. § 15-213.01(J) provides as follows:

The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings, or both, will meet or exceed the costs of the energy cost savings measures over the expected life of the energy cost savings measures implemented or within twenty-five years, whichever is shorter. The qualified provider shall:

1. For the first three years of savings, prepare a measurement and verification report on an annual basis in addition to an annual reconciliation of savings.

2. Reimburse the school district for any shortfall of guaranteed energy cost savings on an annual basis.

The school district may use the money that it saves as a result of the energy cost-savings measures to pay for implementing the contract and the project. A.R.S. § 15-213.01(B).

Before the cost-savings contract is implemented, the qualified provider must perform a study to determine “the exact scope of the cost savings contract, the fixed cost savings guaranteed amount, and the methodology for determining actual savings” that are to be guaranteed. A.R.S. § 15-213.01(E). The statute specifies that to determine whether the guaranteed energy savings have been achieved, the energy baseline before installing or implementing the energy savings-cost measures must be compared to the energy that will be consumed and the operational costs that will be avoided after installing or implementing those measures. A.R.S. § 15-213.01(F).

Section 15-213.01 was enacted in 1996. 1996 Ariz. Sess. Laws, ch 212, § 1. The Legislature revised it in 2009 to facilitate the spending of federal funds for energy-efficiency projects in schools. *See generally* 2009 Ariz. Sess. Laws, 1st Reg. Sess., ch. 101, § 1. The revised statute will remain in effect until June 30, 2013. On July 1, 2013, it will revert to its prior version unless the Legislature takes other action.<sup>1</sup>

The current statute differs in several ways from the previous version. The only difference pertinent to this analysis is the requirement that the qualified provider prepare a measurement and verification report as well as an annual reconciliation of savings on an annual basis for the first three years of the contract. A.R.S. § 15-213.01(J)(1). The measurement and verification report provides a method of determining the actual energy savings A.R.S. § 15-213.01(F)

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<sup>1</sup> Unless otherwise specified, all citations in this opinion are to the current version of the statute.

requires. This provision did not exist in the statute's previous version,<sup>2</sup> but that version did require the qualified provider to perform an energy audit one year after the energy cost-savings measures were implemented or installed and every three years after that for the length of the contract. A.R.S. § 15-213.01(F) (effective July 1, 2013). These audits provided a different mechanism for determining whether the guaranteed cost savings had been achieved, and they will be required again in 2013 unless the Legislature takes other action.

The District proposes to enter into a cost-savings contract with a qualified provider. The District contends that the qualified provider may provide the written guarantee that A.R.S. § 15-213.01(J) requires for as few as three years, provided that it makes a sufficient lump-sum payment at the end of the guarantee's term.<sup>3</sup> The District bases its conclusion that only a three-year time frame is required on A.R.S. § 15-213.01(J)(1), which mandates that the qualified provider prepare a measurement and verification report annually for the first three years of savings.

#### Analysis

The primary goal of statutory interpretation is to find and give effect to the Legislature's intent. A statute's language is the best indicator of that intent. *State v. Getz*, 189 Ariz. 561, 563,

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<sup>2</sup> The previous version of A.R.S. § 15-213.01(J) that will again become effective on July 1, 2013, states as follows:

The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings, or both, will meet of the energy cost savings measures over the expected life of the energy cost savings measures implemented or within twenty-five years, whichever is shorter. The qualified provider shall reimburse the school district for any shortfall of guaranteed energy cost savings on an annual basis or exceed the costs.

<sup>3</sup> The opinion submitted for review does not discuss the term of the energy savings measures and does not indicate that such term is three years. This opinion's analysis is based upon the understanding that the three-year time limit proposed by the District for the written guarantee required by A.R.S. § 15-213.01(J) is not based on the term of the energy savings measures but is instead based upon the time frame established in A.R.S. § 15-213.01(J)(1), for the measurement and verification report.

944 P.2d 503, 505 (1997). When the statutory language is plain and unambiguous, it must generally be followed as written. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). “When the statute’s language is not clear, [courts] determine legislative intent by reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute’s context, subject matter, historical background, effects and consequences, and spirit and purpose.” *Id.* A statute’s individual provisions must be considered in the context of the statute as a whole to achieve a consistent interpretation. *State v. Gaynor-Fonte*, 211 Ariz. 516, 518, ¶13, 123 P.3d 1153, 1155 (App. 2005).

Section 15-213.01 authorizes a school district and a qualified provider to enter into a guaranteed energy cost-savings contract and mandates certain terms that the contract must contain. The contract must include a written guarantee of the energy cost savings that the school district will achieve over the expected life of the energy cost savings measures. A.R.S. § 15-213.01(J). As set forth above, the statute states that the “contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings, or both, will meet or exceed the costs of the energy cost savings measures *over the expected life of the energy cost savings measures implemented or within twenty-five years, whichever is shorter.*” *Id.* (emphasis added). The statute’s language makes it clear that the qualified provider’s written guarantee cannot cover less than the expected life of the energy cost-savings measures implemented or twenty-five years, whichever time period is shorter. Under the statute, the written guarantee could be limited to three years only if that is the expected life of the cost-savings measures.

In your opinion, you correctly noted that under the current statute, the qualified provider must prepare the measurement and verification report and annual reconciliation of savings for

the first three years only. You reason that, because the measurement and verification report and the annual reconciliation of savings are required only for the first three years, the qualified provider need not determine annually any shortfall after the first three years. But the statute's language contradicts this conclusion. It requires the provider to give a "written guarantee . . . over the expected life of the energy cost savings measures implemented or within twenty-five years, whichever is shorter." A.R.S. § 15-213.01(J). It further requires the qualified provider to reimburse the district for any shortfall "on an annual basis." A.R.S. § 15-213.01(J)(2).

Your opinion states that there is no mechanism for the qualified provider to calculate the guaranteed amount after the first three years. The statute, however, requires the provider to prepare a study that details the fixed cost-savings guarantee amount and the methodology for determining actual savings before the installation of equipment. A.R.S. § 15-213.01(E). This requires the provider to have and use a methodology that would cover more than the first three years (for any installation that has a life expectancy of more than three years). Furthermore, A.R.S. § 15-213.01(F) sets out the methodology for determining whether the projected energy or operational cost savings have been achieved. Accordingly, there is no support for limiting the guarantee of the energy cost-savings measures to the first three years based on the three-year requirement for the annual reconciliation of savings and the measurement and verification report.<sup>6</sup>

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<sup>6</sup> This conclusion is further supported by comparing the current version of the statute to its previous version (which will become effective again in July 2013 unless the Legislature takes other action). The statute's previous version did not require the qualified provider to prepare a measurement and verification report or an annual reconciliation of savings. It did require, however, that the qualified provider include a written guarantee of the cost savings over the expected life of the energy cost-savings measures implemented or within twenty-five years, whichever time period is shorter, and to reimburse the school district for any shortfall on an annual basis. A.R.S. § 15-213.01(J) (effective July 1, 2013).

Based on your opinion that the qualified provider may provide a guarantee for less than the life of the energy cost-savings measures, you state that the provider must provide for a lump-sum payment of any shortfall before the guarantee terminates. The statutory language, however, requires the qualified provider to reimburse the school district for any shortfall *on an annual basis*. A.R.S. § 15-213.01(J)(2). There is no statutory authority for the qualified provider to reimburse the school district on any basis other than annually. Therefore, the qualified provider is not authorized to make a lump-sum payment.

**Conclusion**

Section 15-213.01 requires the qualified provider to provide a written guarantee of the energy cost savings over the expected life of the cost savings measures or twenty-five years, whichever time period is shorter.

  
Terry Goddard  
Attorney General



**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>October 5, 2010</p>	<p>No. I10-006 R10-010</p> <p>Re: Applicability of Soft Capital Budget Reductions in Fiscal Years 2008-2009 and 2009-2010 to Joint Technology Education Districts</p>
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To: The Honorable Tom Horne  
Superintendent of Public Instruction

**Questions Presented**

1. Should the Arizona Department of Education ("Department") apply soft capital budget reductions from fiscal year 2008-2009 and 2009-2010 state budgets to joint technical education districts ("JTEDs")?<sup>1</sup>
2. Should the reductions apply prospectively only, or should the Department deduct from future payments the amount of soft capital that was paid to JTEDs in the past that should have been reduced?

<sup>1</sup> In 2010, the Legislature changed the term "joint technological education district" to "joint technical education district." 2010 Ariz. Sess. Laws, ch. 17.

### Summary Answers

1. Soft capital allocation reductions passed by the Legislature for fiscal year 2008-2009 (2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 6) and for fiscal year 2009-2010 (2009 Ariz. Sess. Laws, 4th Spec. Sess., ch. 2, § 2) apply to JTEDs.
2. The Department should reduce the soft capital allocations made to JTEDs for fiscal years 2008-2009 and 2009-2010 pursuant to A.R.S. § 15-962. The session laws administering the budget reductions state that the soft capital allocation reductions apply to specific fiscal years to address budget shortfalls. Thus, prospective application of the reductions would give no effect to the soft capital allocation reductions for fiscal years 2008-2009 and 2009-2010.

### Background

In 1990, the Arizona Legislature authorized the creation of JTEDs to allow existing school districts to form a regional district for the provision of vocational and technical education programs in order to avoid duplicating expensive courses and programs. 1990 Ariz. Sess. Laws, ch. 248, § 1. JTEDs were created to serve a special purpose and are therefore limited to those powers expressly or impliedly granted. *Flowing Wells Sch. Dist. v. Vail Sch. Dist.*, 145 Ariz. 278, 280, 700 P.2d 1378, 1380 (App. 1985) (citing *Olmstead & Gillelen v. Hesla*, 24 Ariz. 546, 551, 211 P. 589, 590 (1922)). JTEDs are subject to various different education statutes, including the general provisions for school district budgets; the Legislature also established specific budget limitations for JTEDs. *See, e.g.*, A.R.S. §§ 15-393(C), -947.01.

In early 2009, the Legislature enacted Senate Bill ("S.B.") 1006, a K-12 and higher education budget reconciliation bill. Among other things, this bill reduced the amount of base support level funding for K-12 education:

A. For fiscal year 2008-2009, the department of education shall reduce by \$98,198,000 the amount of base support level funding that otherwise would be apportioned to school districts statewide for fiscal year 2008-2009 and shall reduce school district budget limits accordingly. The funding reductions required under this subsection shall be made on a proportional basis based on the base support level of each school district for fiscal year 2008-2009, as prescribed in section 15-943, Arizona Revised Statutes, relative to the base support level for school districts for the state as a whole for fiscal year 2008-2009.

B. For fiscal year 2008-2009, the department of education shall reduce the base support level, as prescribed in section 15-943, Arizona Revised Statutes, for a school district that is not eligible to receive basic state aid funding for fiscal year 2008-2009 by the amount that that school district's basic state aid funding would be reduced pursuant to subsection A of this section if the school district was eligible to receive basic state aid funding for fiscal year 2008-2009.

C. The funding reductions required in subsections A and B of this section apply to funding for students in school district technology assisted project-based instruction programs authorized in section 15-808, Arizona Revised Statutes, and to funding for pupils in joint technological education districts authorized by title 15, chapter 3, article 6, Arizona Revised Statutes and are in addition to the reductions prescribed by Laws 2008, chapter 287, section 47.

D. The reductions prescribed in subsections A and B of this section do not apply to base support level funding for kindergarten programs and grades one through eight for a school district that has a student count of fewer than six hundred students in kindergarten and grades one through eight.

E. The reductions prescribed in subsections A and B of this section do not apply to base support level funding for grades nine through twelve for a school district that has a student count of fewer than six hundred students in grades nine through twelve.

2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 5. The law also reduced soft capital allocations:

A. For fiscal year 2008-2009, the department of education shall reduce by \$21,000,000 the amount of basic state aid that otherwise would be apportioned to school districts statewide for fiscal year 2008-2009 for the soft capital allocation prescribed in section 15-962, Arizona Revised Statutes, and shall reduce school district budget limits accordingly.<sup>2</sup>

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<sup>2</sup> Soft capital allocation monies are used for "short-term capital items that are required to meet academic adequacy standards such as technology, textbooks, library resources, instructional aids, pupil transportation vehicles, furniture, and equipment" and may be used "to meet administrative soft capital purposes after complying with the adequacy standards prescribed in A.R.S. § 15-2001." A.R.S. § 15-962(D).

B. For fiscal year 2008-2009, the department of education shall reduce the soft capital allocation for a school district that is not eligible to receive basic state aid funding for fiscal year 2008-2009 by the amount that its soft capital allocation would be reduced pursuant to subsection A of this section if the district was eligible to receive basic state aid funding for fiscal year 2008-2009 and shall reduce the school district's budget limits accordingly.

C. The reductions prescribed in subsections A and B of this section do not apply to the soft capital allocation for kindergarten programs and grades one through eight for a school district that has a student count of fewer than six hundred students in kindergarten programs and grades one through eight.

D. The reductions prescribed in subsections A and B of this section do not apply to the soft capital allocation for grades nine through twelve for a school district that has a student count of fewer than six hundred students in grades nine through twelve.

*Id.* § 6.

The Legislature specifically included JTEDs in the base support level reductions required by section 5(A) of S.B. 1006. *Id.* § 5(C) (“The funding reductions required in subsections A and B of this section apply to funding . . . for pupils in joint technological education districts. . . .”). The Legislature did not, however, include language specifying the inclusion of JTEDs in the soft capital allocation reduction; it did specifically exempt small school districts with fewer than 600 students in kindergarten programs, grades one through eight and nine through twelve. *Compare id.* § 5(C) with *id.* § 6(C).

In November 2009, the Legislature enacted S.B. 1002, a K-12 budget reconciliation bill. This bill made another reduction to the soft capital allocations for K-12 education. For fiscal year 2009-2010, it reduced the soft capital allocation provided for in A.R.S. § 15-962 by \$144,000,000 that would have otherwise been apportioned to school districts statewide.<sup>3</sup> 2009 Ariz. Sess. Laws, 4th Spec. Sess., ch. 2, § 2(1). Again, the Legislature did not include language stating that the reductions applied to JTEDs, but did specifically reduce to fifty percent the soft

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<sup>3</sup> S.B. 1002 did not reduce the base support level for school districts for fiscal year 2009-2010.

capital reduction for small school districts with fewer than 600 students in kindergarten programs, grades one through eight and nine through twelve. *Id.* § 2(4), (5).

On August 25, 2009, Senators Russell Pearce and John Huppenthal, and Representatives John Kavanagh and Rich Crandall (the Appropriations and Education committee chairs of each house, respectively) sent a letter to you indicating that the soft capital budget reductions for fiscal year 2009-2010 were not intended to apply to JTEDs. The Department complied with that interpretation and did not apply the soft capital reductions to JTEDs. In the spring of 2010, Senate President Robert Burns informed you that JTEDs were intended to be part of the soft capital budget cuts. You subsequently requested an opinion from this Office regarding whether the Legislature's recent soft capital reductions apply to JTEDs.<sup>4</sup>

### Analysis

The primary rule of statutory construction is to find and give effect to legislative intent. *Mail Boxes, Etc., U.S.A. v. Indus. Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The best and most reliable indicator of legislative intent is a statute's own words. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). Where the language of the statute is plain and unambiguous, the text must generally be followed as written. When the statute's language is not clear, legislative intent is determined by "reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose." *Id.*

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<sup>4</sup> The opinion request specifically asks whether the soft capital allocation reductions apply to JTEDs for fiscal year 2008-2009. The letter from the legislators specifically addresses the soft capital allocation reductions for fiscal year 2009-2010. The soft capital allocation reductions in S.B. 1006, for fiscal year 2008-2009, and S.B. 1002, for fiscal year 2009-2010, contain the same language. Thus, this opinion addresses whether the soft capital allocation reductions apply to JTEDs for both fiscal years 2008-2009 and 2009-2010.

The budget shortfalls in fiscal years 2008-2009 and 2009-2010 resulted in extensive budget reductions, including cuts to funding for K-12 education. For both fiscal years 2008-2009 and 2009-2010, the Legislature reduced the soft capital allocations prescribed by A.R.S. § 15-962. The soft capital allocation formula contained in A.R.S. § 15-962 details how school districts must calculate the funding and how the funds are spent and maintained. A.R.S. § 15-962(C)-(F).

Section 15-962.01 applies the soft capital allocation formula in A.R.S. § 15-962 to JTEDs. A.R.S. § 15-962.01(B) (The soft capital allocation for JTEDs “shall be the amount for students in grades nine through twelve for districts with a student count of six hundred or more *as prescribed in section 15-962.*”) (emphasis added). JTEDs are also required to “establish a district soft capital allocation fund and shall use the monies only for the purposes prescribed in section 15-962, subsection D.” *Id.* § 15-962.01(C).

Section 6(A) of S.B. 1006 requires the Department to reduce the soft capital allocation “prescribed in [A.R.S. §] 15-962” for fiscal year 2008-2009. 2009 Ariz. Sess. Laws, ch. 6, § 6(A) (“For fiscal year 2008-2009, the department of education shall reduce by \$21,000,000 the amount of basic state aid that otherwise would be apportioned to school districts statewide for fiscal year 2008-2009 for the soft capital allocation prescribed in section 15-962, Arizona Revised Statutes. . . .”). Because JTEDs are subject to the provisions of A.R.S. § 15-962 through the application of A.R.S. § 15-962.01, as noted above, and because JTEDs are not specifically exempted from the soft capital allocation reductions, as were small school districts with fewer than 600 students, JTEDs are subject to the soft capital allocation reductions in section 6(A) of S.B. 1006. Likewise, because S.B. 1002 contains essentially the same language regarding the

soft capital allocation reduction for fiscal year 2009-2010, JTEDs are subject to that reduction as well.

That the Legislature specified that JTEDs were included in the provisions addressing reductions in the base support level—yet did not do so in the provisions addressing reductions in the soft capital allocations—does not alter the conclusion that JTEDs are subject to the soft capital allocation reduction. As noted above, in fiscal year 2008-2009, the Legislature addressed budget shortfalls through reductions not only to soft capital allocations but also to the base support level, the calculation of which is set forth in A.R.S. § 15-943. Unlike the base support level reduction, the soft capital allocation reduction did not specifically mention JTEDs. However, a review of the school funding statutes demonstrates that a specific reference to JTEDs, while necessary to include these entities in the reductions to the base support level, was not necessary in S.B. 1006, section 6(A) to include them in the soft capital allocation reductions.

The base support level is a part of the school funding formula that affords a weight to the student count for certain populations of students in various sized school districts. A.R.S. §15-943. This weighting takes into account the differences in costs for educating students in small schools, high school, or students with disabilities. *Id.* The base support level for JTEDs is not governed by A.R.S. § 15-943. Instead, the base support level for JTEDs is contained in a different statute, A.R.S. §15-943.02. *Compare* A.R.S. § 15-943(2)(a) *with* § 15-943.02(A). The JTED base support level statute does not reference or otherwise subject JTEDs to A.R.S. § 15-943, which is the statute addressed in S.B. 1006, § 5(A) regarding the base support level reductions. Accordingly, if the Legislature wanted to include JTEDs in the base support level reduction contained in S.B. 1006, section 5, it needed to specifically state that they were included. 2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 5(A).

In contrast, the soft capital allocation reduction did not contain any specific reference to JTEDs. *Compare* 2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 5 with § 6. The Legislature did not need to specify that JTEDs were subject to the soft capital allocation reduction because the Legislature expressly tied JTED soft capital allocations to the allocations in A.R.S. § 15-962, and JTEDs are subject to A.R.S. § 15-962 through A.R.S. § 15-962.01. Because JTEDs are subject to A.R.S. § 15-962, the soft capital reduction applied to JTEDs.

The August 2009 letter from the chairmen of the House and Senate Appropriations and Education committees indicating that the Legislature intended that JTEDs not be subject to the soft capital cuts does not alter the analysis. *See Golder v. Dep't of Rev.*, 123 Ariz. 260, 265, 599 P.2d 216, 221 (1979) (stating “rule is clearly established in Arizona that one member of a legislature which passes a law is not competent to testify regarding the intent of the legislature passing the law”). Instead, the statutory language determines the scope of the soft capital reductions.

Finally, the application of the reductions cannot be prospective because the legislation requires the Department to apply them to specific fiscal years. As you stated in your opinion request, the Department relied on the legislators' August 2009 letter to hold JTEDs harmless from the soft capital allocation reductions for fiscal year 2009-2010. Prospective application of the soft capital allocation reductions by the Department would have the practical effect of making no soft capital allocation reduction to JTEDs because those fiscal years have passed. The Department should now retroactively reduce the soft capital allocations made to JTEDs for fiscal years 2008-2009 and 2009-2010 pursuant to A.R.S. § 15-962. The Department must apply the soft capital allocation reductions to JTEDs under A.R.S. §15-915, which sets forth the process for correcting errors if the superintendent of public instruction determines that the

calculation of state aid or budget limits within the previous three years did not conform to statutory requirements.

**Conclusion**

The Legislature's soft capital allocation reductions for fiscal years 2008-2009 and 2009-2010 apply to JTEDs. The Department must apply the soft capital allocation reductions for fiscal years 2008-2009 and 2009-2010 to JTEDs through A.R.S. § 15-915.

Terry Goddard  
Attorney General



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION

by

TERRY GODDARD  
ATTORNEY GENERAL

June 2, 2010

No. I10-005  
(R10-008)

Re: Resignation by State Employees  
Seeking Elected Public Office Pursuant to  
A.R.S. § 41-772

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To: Charles L. Ryan, Director  
Arizona Department of Corrections

**Questions Presented**

1. Pursuant to Arizona Revised Statutes (“A.R.S.”) § 41-772(B), at what point must a covered state employee seeking elected public office resign from his state position?
2. Does the phrase “candidate for nomination” mean that the employee must resign upon the circulation of his own nomination petition, or may the employee wait to resign until he actually files his nominating petition with the County Recorder’s Office?
3. Would the formation of an exploratory committee or a campaign committee—contemporaneous to circulating a nomination petition but before its actual filing—affect when the employee must resign under A.R.S. § 41-772?

### Summary Answer

Under A.R.S. § 16-311(H), one becomes a candidate for nomination or election upon the filing of nomination papers. Until that has occurred, a state employee has not become “a candidate for nomination or election to any paid public office” under A.R.S. § 41-772(B). The phrase “candidate for nomination” does not apply to an employee who is circulating his own petition because although doing so is a step toward becoming a candidate, that step is not sufficient under A.R.S. § 16-311(H) to cause one to actually become a candidate. Likewise, forming a campaign committee—which under A.R.S. § 16-903(A) and (B) is a prerequisite to circulating petitions—or forming an exploratory committee does not cause one to become a “candidate for nomination” for A.R.S. § 41-772(B) purposes.

### Analysis

#### **I. A State Service Employee Seeking Elected Public Office Must Resign Upon Submitting Nomination Papers.**

Arizona limits the political activities of its employees through A.R.S. § 41-772(B)<sup>1</sup>, which provides as follows:

*An employee<sup>[2]</sup> or member of the personnel board shall not be a member of any national, state or local committee of a political party, an officer or chairman of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, shall not hold any paid, elective public office or shall not take any part in the management or affairs of any political party or in the management of any partisan or nonpartisan campaign or recall effort, except that any employee may:*

1. Express his opinion.

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<sup>1</sup> A.R.S. § 41-772(B) applies only to covered employees. See A.R.S. § 41-771; Ariz. Att’y Gen. Op. I01-010 (stating that positions covered by the state personnel system or merit system are referred to as “covered positions”).

<sup>2</sup> Section 41-762(1) defines “employee” as “a person holding a position in state service.”

2. Attend meetings for the purpose of becoming informed concerning the candidates for public office and the political issues.
3. Cast his vote and sign nomination or recall petitions.
4. Make contributions to candidates, political parties or campaign committees contributing to candidates or advocating the election or defeat of candidates.
5. Circulate candidate nomination petitions or recall petitions.
6. Engage in activities to advocate the election or defeat of any candidate.
7. Solicit or encourage contributions to be made directly to candidates or campaign committees contributing to candidates or advocating the election or defeat of candidates.

(Emphasis added.) If the language of a statute is plain and unambiguous, courts will interpret the language as written without resorting to other methods of statutory interpretation. *Mid Kansas Sav. & Loan Ass'n v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991).

Arizona statutes set forth the requirement for becoming a candidate for nomination: “Any person desiring to become a candidate at a primary election for a political party . . . shall sign and cause to be filed a nomination paper . . .” A.R.S. § 16-311(A). The same requirement applies to nonpartisan candidates seeking to become candidates at the general election: “Any person desiring to become a candidate at any nonpartisan election and to have the person's name printed on the official ballot . . . shall sign and cause to be filed a nomination paper . . .” A.R.S. § 16-311(B). Until this filing is complete, the person desiring to become a candidate is not a candidate.

## **II. State Service Employees Need Not Resign from State Employment Before Taking Preliminary Steps to Becoming a Candidate.**

Becoming a candidate for public office involves multiple steps. The filing officer will not accept the potential candidate's nomination paper unless the candidate provides all of the

following: (1) the nomination petition; (2) a political committee statement of organization or the five hundred dollar threshold exemption statement; and (3) a financial disclosure statement. A.R.S. § 16-311(H). Because circulating a nomination petition is only one step toward becoming a candidate, employees may circulate nomination petitions provided they do not do so while on duty or at public expense. A.R.S. § 41-772(C).<sup>3</sup> Doing so does not make them candidates and therefore does not require their resignation.

Arizona requires individuals who are considering running for elective office to form an exploratory committee if they receive contributions or have expenditures of more than \$500 for that purpose. A.R.S. § 16-903(B). An exploratory committee is “a political committee that is formed for the purpose of determining whether an individual will become a candidate and that receives contributions or makes expenditures of more than five hundred dollars in connection with that purpose.” A.R.S. § 16-901(9). The exploratory committee must be created “before making any expenditures, accepting any contributions or distributing any campaign literature.” *Id.* A state employee who forms an exploratory committee is not “a candidate for nomination or election,” but rather is merely considering becoming one, and need not resign from state employment.

Similarly, Arizona law requires individuals running for office to form political campaign committees if they intend to receive contributions or make expenditures of more than \$500. A.R.S. § 16-903(A). The political campaign committees must be formed “before making any expenditures, accepting any contributions, distributing any campaign literature or circulating any petitions.” *Id.* Consequently, individuals seeking elective office must form their campaign

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<sup>3</sup> Section 41-772(C) states that, “[e]xcept for expressing his opinion or pursuant to § 16-402, an employee shall not engage in any activity permitted by this section while on duty, while in uniform or at public expense.”

committees before circulating their nomination petitions. And, as defined by A.R.S. § 16-311, an individual cannot become a candidate for nomination or election without filing the nomination petition. Therefore, formation of a campaign committee by a state employee does not make him a formal candidate and does not require his resignation.

### **Conclusion**

A state employee becomes a “candidate for nomination or election” upon the filing of nomination papers. None of the preliminary steps toward becoming a candidate—including circulating petitions and forming campaign committees—make that employee a “candidate for nomination or election” within the meaning of A.R.S. § 41-772(B). Therefore, a covered state employee seeking elected public office need not resign from his state position until he files his nominating papers.

Terry Goddard  
Attorney General



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>March 24, 2010</p>	<p>No. I10-004 (R09-041)</p> <p>Re: Reporting Requirements in A.R.S. §§ 1-501, -502</p>
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To: David Raber, Interim Director,  
Arizona Department of Administration

**Questions Presented<sup>1</sup>**

1. To which state employees do the provisions of subsections E in A.R.S. §§ 1-501 and -502 apply?
2. What constitutes a “discovered violation” of federal immigration law pursuant to subsections E in both A.R.S. §§ 1-501 and -502?
3. How are “discovered violations” to be reported and to whom?

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<sup>1</sup> You have asked several other questions regarding A.R.S. §§ 1-501 and -502. These issues will be addressed in a separate opinion.

### Summary Answers

1. The criminal sanctions for failing to report discovered violations of federal immigration law set forth in A.R.S. §§ 1-501(E) and -502(E) apply to all state and local employees reviewing documentation of benefit applicants and to those employees' supervisors.
2. "Discovered violations" of federal immigration law under subsections E in A.R.S. §§ 1-501 and -502 are violations established by documented verification of a benefit applicant's illegal status or by verbal or written admissions by a benefit applicant of the applicant's illegal status.
3. Discovered violations should be reported to United States Immigration and Customs Enforcement ("ICE").

### Background

In 2009, the Arizona Legislature enacted two statutory changes regarding citizenship and immigration status and public benefits. 2009 Ariz. Sess. Laws, 3rd S.S., ch. 7 § 1. The legislation addresses documentation requirements for state and local public benefits, subject to 8 U.S.C. § 1621, and federal public benefits, subject to 8 U.S.C. § 1611.

The federal laws that provide the backdrop for A.R.S. §§ 1-501 and -502 were enacted in 1996, as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). Title IV of that federal law focused on restricting access to public benefits based on immigration status.<sup>2</sup> In 8 U.S.C. § 1611, Congress specified that with certain exceptions, "an alien who is not a qualified alien . . . is not eligible for any Federal public benefit." With some exceptions, a "federal public benefit" is:

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<sup>2</sup> "Alien" is defined in federal statute as "any person not a citizen or national of the United States." 8 U.S.C. § 1101.3. "Immigrant" is defined in 8 U.S.C. § 1101.15 as "every alien except an alien who is within one of [certain] classes of nonimmigrant aliens."

(1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by any agency of the United States or by appropriated funds of the United States.

8 U.S.C. § 1611(c). Similarly, a “state or local public benefit” is:

(1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

8 U.S.C. § 1621(c). Only qualified aliens, nonimmigrants, and aliens paroled into the United States under 8 U.S.C. § 1182(d)(5) for less than one year are eligible for most state or local public benefits. 8 U.S.C. § 1621(a). In both 8 U.S.C. §§ 1611 and 1621, Congress determined that certain public benefits are available without regard to citizenship or immigrant status. *See* 8 U.S.C. §§ 1611(b), 1621(b). These public benefits include emergency medical assistance under Title XIX of the Social Security Act; “short-term, non-cash, in-kind emergency disaster relief;” certain public health assistance “for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases;” and

[p]rograms, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General’s sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided,

or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

8 U.S.C. § 1621(b)(4).<sup>3</sup>

Sections 1-501 and 1-502 parallel the requirements in A.R.S. § 46-140.01(A), which Arizona voters approved in 2004 as part of Proposition 200 ("Prop. 200"). Section 46-140.01 addressed the verification of applicants for "state and local public benefits," but that statute does not define state and local public benefits or prescribe which documents satisfy proof of acceptable immigration status. In Arizona Attorney General Opinion I04-010, this Office advised that A.R.S. § 46.140.01 applied to State and local public benefits subject to restrictions based on immigration status in 8 U.S.C. § 1621 that are within Title 46.<sup>4</sup> Like A.R.S. § 46-140.01, A.R.S. §§ 1-501 and -502 address documentation relating to immigration status, criminal penalties for failing to report discovered violations of immigration law, and standing to bring actions to enforce these statutes' requirements.

### Analysis

#### **I. The Criminal Sanctions Set Forth in A.R.S. § 1-501(E) and A.R.S. § 1-502(E) Apply to Employees Reviewing Documentation of Beneficiaries of Public Benefits and to the Employees' Supervisors.**

You have sought clarification regarding which employees are subject to the provisions of subsections E in A.R.S. §§ 1-501 and 1-502. Subsection E in A.R.S. § 1-501 and the analogous provision in A.R.S. § 1-502 provide as follows:

Failure to report discovered violations of federal immigration law by an employee of an agency of this state or a political subdivision of this state that administers any [state and local public benefit or federal public benefit] is a class 2 misdemeanor. If that employee's supervisor knew of

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<sup>3</sup> Congress specifically permitted states to provide state or local public benefits to aliens not lawfully present but "only through enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d). Arizona has not enacted any such law.

<sup>4</sup> For more information regarding State and local public benefits under 8 U.S.C. § 1621, see Arizona Attorney General Opinion I05-010.

the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.<sup>5</sup>

If the language of a statute is plain and unambiguous, courts will interpret the language as written, without resorting to other methods of statutory interpretation. *Mid Kansas Fed. Savings & Loan Ass'n v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991). If the statutory language is ambiguous, however, courts will determine its meaning by considering the statutory context, the subject matter, historical background, its effects and consequences, and spirit and purpose. *Bentley v. Building Our Future*, 217 Ariz. 265, 270, ¶ 13, 172 P.3d 860, 865 (App. 2007).

As a threshold matter, the placement of the phrase “by an employee of an agency of this state” creates some ambiguity regarding the conduct that is subject to these statutes. The statutes could be read to impose a duty to report “discovered violations of federal immigration law by an employee of this state that administers” state and local or federal public benefits. But the second sentence of this section and the statutory context as a whole clarifies that the statutes establish criminal sanctions only if certain state or local employees fail to report violations of immigration law that they have discovered.

Because the statute addresses the verification process concerning eligibility for state and local and federal public benefits, the criminal penalties for failing to report logically apply to those employees reviewing the documentation described in these statutes and to their supervisors. The statute could be read to apply to all state employees that may have some knowledge of a possible violation of federal immigration law. But, if the Legislature had intended that the provision apply to every state employee, there would have been no need to

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<sup>5</sup> This provision is almost identical to A.R.S. § 46-140.01(B) which provides that “[f]ailure to report discovered violations of federal immigration law by an employee is a class 2 misdemeanor. If that employee’s supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.”

specify that an employee's supervisor is guilty of the same misdemeanor for knowingly failing to report the discovered violation, since that supervisor would already be included as an employee with knowledge of a discovered violation of federal immigration law. Therefore, the criminal sanctions set forth in these subsections apply to employees who review documentation of the beneficiaries of public benefits and to those employees' direct supervisors who know of a failure to report and do not direct the employees to report. Of course, other state employees who become aware of a violation of federal immigration law may voluntarily report such a violation, and state agencies may not limit or restrict reporting by any employee who chooses to make such a report. *See* 8 U.S.C.A. §§ 1373, 1644.

**II. "Discovered Violations" Are Violations Established by Documented Verification of an Applicant's Illegal Status or by an Admission by an Applicant of the Applicant's Illegal Status.**

You have asked what constitutes a "discovered violation" of federal immigration law under A.R.S. §§ 1-501 and -502. These statutes do not define this term, but based on federal statutory provisions and on case law from other jurisdictions interpreting similar reporting statutes, "discovered violations" include those violations established through documented verification by a federal agency or by verbal or written admissions of illegal status by a benefit-seeking applicant.

The power to regulate immigration is "unquestionably exclusively a federal power." *De Canas v. Bica*, 424 U.S. 351, 354 (1976). Courts have distinguished between state agents making independent determinations of immigration status and state agents merely verifying immigration status. *See League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 770 (C.D. Cal. 1995) (upholding a California provision requiring state agents to verify immigration status of benefit applicants, while rejecting a provision requiring state agents to independently determine immigration status of arrestees or state-created categories of

immigration status); *Fonseca v. Fong*, 167 Cal. App. 4th 922 (2008) (upholding a statute requiring state and local law enforcement agencies to notify an appropriate federal agency when the law enforcement agency has reason to believe that a person arrested for a specified drug offense is not a citizen of the United States). In *Fonseca*, the California court found that, unlike previously enacted provisions requiring a state or local law enforcement agency to independently determine whether an arrestee is lawfully present in the United States, the statute at issue required only that state agents “verify” immigration status. *Fonseca*, 167 Cal. App. 4th at 936. Accordingly, the court upheld the reporting statute and rejected claims that it impermissibly interfered with the federal government’s power to regulate immigration. *Id.* at 939.

Federal regulations also include reporting requirements. For example, 7 C.F.R. § 273.4(b)(1) requires state agencies to inform ICE when “any member is ineligible to receive food stamps because the member is present in the U.S. in violation of [federal law].” A State may satisfy this reporting requirement by conforming with Interagency Notice 65 FR 58301, which advises that a state entity will “know” that an alien is not lawfully present in the United States “only when the unlawful presence is a finding of fact or conclusion of law that is made by the entity as part of a formal determination that is subject to administrative review on an alien’s claim for any of [several statutorily specified programs].” In addition, a Systematic Alien Verification for Entitlements (SAVE) response showing no record individual or a status that renders the person ineligible for a benefit “is not a finding of fact or conclusion of law that the individual is not lawfully present.” 65 FR 58303. Thus, state agents do not independently determine immigration status and instead only to verify such status as determined by federal authorities.

Consistent with these principles, A.R.S. §§ 1-501 and -502 do not require Arizona state employees to independently investigate immigration status. However, state employees who learn of a violation of federal immigration law when verifying the immigration status of a beneficiary of public benefits must report the “discovered violation.” This reporting obligation extends to a benefit applicant’s admission of illegal status. Accordingly, state employees administering benefits subject to A.R.S. §§ 1-501 and 1-502 should report verified violations of federal immigration law and verbal or written admissions of illegal status.

Finally, A.R.S. §§ 1-501 and 1-502 do not change the requirements regarding whose immigration status is relevant to the eligibility determination. If, for example, state or federal benefits are available to a child legally present in the United States regardless of the child’s parents’ immigration status, state employees are not required to verify the immigration status of a parent seeking benefits to which the child is entitled. Furthermore, although state employees may voluntarily report suspected violations of federal immigration law at any time, state employees should not base such reports solely on factors that do not determine immigration status. For example, a state employee should never submit a report because the person’s primary language is a language other than English, or if the person was not born in the United States, does not have a Social Security Number, has a “foreign sounding” name, or has been denied eligibility because of a lack of proof of citizenship. These factors do not provide a basis for concluding that the person is violating any immigration laws.

### **III. Discovered Violations Should Be Reported to United States Immigration and Customs Enforcement (“ICE”).**

Sections 1-501 and -502 do not change current procedures for reporting violations of federal immigration law. Accordingly, state employees should follow the procedures in place for reporting violations of federal law under A.R.S. § 46-140.01(A)(4) or as otherwise specified in

federal authorities. Pursuant to directives from the United States Department of Homeland Security, immigration violations are reported to United States Immigration and Customs (ICE). State and local employees should follow the guidance ICE provides regarding the reporting procedures. Currently, reports may be provided by e-mail to [azicereport@dhs.gov](mailto:azicereport@dhs.gov).

### **Conclusion**

The criminal sanctions in subsections E of A.R.S. §§ 1-501 and -502 apply to state employees reviewing documentation of beneficiaries and to those employees' supervisors. The term "discovered violations" of federal immigration law contained in subsections E of A.R.S. §§ 1-501 and -502 includes violations established by documented verification of a benefit applicant's illegal status or by verbal or written admissions by a benefit applicant of the applicant's illegal status. Discovered violations should be reported to United States Immigration and Customs Enforcement ("ICE").

Terry Goddard  
Attorney General



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>March 11, 2010</p>	<p>No. 110-003 (R09-040)</p> <p>Re: School Districts' Provision of Food, Beverages, or Refreshments to Staff and Parents</p>
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To: David J. Cantelme  
Cantelme & Brown, P.L.C.

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), this opinion revises the opinion that you prepared for Glendale Elementary School District ("District") regarding the District's ability to provide food, beverages, or refreshments to staff and parents participating in school activities after hours and weekends. We issue this opinion to provide guidance concerning this matter to all school districts within Arizona.

**Questions Presented**

Can the District provide food, beverages, or refreshments to staff or parents who assist in governing board-authorized District activities after normal school hours or on weekends?

### **Summary Answer**

The District may provide food, beverages, or refreshments to staff or parents who assist in governing board-authorized District activities after normal school hours or on weekends only where and to the extent the District is authorized to do so by the laws pertaining to travel and subsistence, gifts, grants (including federal grants), or devises. The District may also include terms regarding the provision of food, beverages, or refreshments in employment contracts with some limitations. Such expenditures must comply with the Gift Clause of the Arizona Constitution.

### **Background**

The District provides food, beverages, or refreshments to staff and parents who assist in governing board-authorized District activities after normal school hours or on weekends. The District does not use funds generated by taxpayers to do so. Instead, the District uses funds generated primarily from 1) gifts and donations earmarked for food and beverages or left to the governing board's discretion; 2) rentals of facilities; and 3) grant monies that require outreach efforts and allow for food expenditures.

Section 15-341(A)(14) allows school district governing boards to accept gifts, grants, and devises and spend the money for the donor's intended purpose. A.R.S § 15-1105(E) allows school districts to lease school property and use the generated funds for civic center school purposes. Governing boards may expend surplus monies in the civic center school fund for maintenance and operations or unrestricted capital outlay after they cover the expenses of the civic center fund. A.R.S § 15-342(29). Finally, school districts may expend federal grants they receive in accordance with the purposes of the grant. A.R.S. § 15-207(B).

### Analysis

A school district governing board's powers are limited to those that the Legislature has expressly or impliedly conferred upon it. *Tucson Unified Sch. Dist. No. 1 v. Tucson Educ. Ass'n.*, 155 Ariz. 441, 442-43, 747 P.2d 602, 603-4 (App. 1987); Ariz. Att'y Gen. Op. I00-022. The statutes concerning the authority of school district governing boards focus on the districts' responsibility to educate children. Ariz. Att'y Gen. Op. I00-022; *see also Prescott Community Hosp. Comm'n v. Prescott Sch. Dist. No. 1*, 57 Ariz. 492, 494, 115 P.2d 160, 161 (1941) (stating that a school district's purpose is to promote the education of the State's youth, and its granted powers are intended to meet that purpose). Although the District uses only the non-taxpayer sourced funds identified above for refreshments, these funds are deposited with the county treasurer and constitute public funds. A.R.S. §§ 15- 341(A)(14) & (19), -996, -1105(E); Ariz. Att'y Gen. Op. I91-003. Therefore, school districts must expend these public funds in a manner that relates to the districts' legal purpose and complies with their express and implied authority. Ariz. Att'y Gen. Op. I00-022. Moreover, any expenditure of public funds must comply with the Arizona Constitution's Gift Clause. *Id.*; Ariz. Const. art. IX, § 7.<sup>1</sup>

#### **I. Providing Subsistence to Staff.**

There is no express statutory scheme that addresses the means by which a school district may provide food or beverages to staff, except for the provisions relating to the reimbursement of expenses for subsistence when staff members travel for a school purpose. A.R.S. § 15-342(5); *see also* Ariz. Att'y Gen. Op. I90-077 (analyzing A.R.S. §§ 15-342(5), 38-621 to -622 and

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<sup>1</sup> Article 9, section 7 of the Arizona Constitution states the following:

Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

concluding that “school district monies . . . may not be used to purchase meals for administrators attending such board meetings because . . . persons are eligible for subsistence only when traveling away from their ‘designated post of duty’”). Section 15-342(5) permits school district superintendents, principals, or their representatives to travel for a school purpose as determined by their school district governing boards and requires any expenditures for travel and subsistence to comply with A.R.S. §§ 38-621 through -627. A.R.S. § 15-342(5).<sup>2</sup> School district governing boards may designate teachers and other district employees as superintendent or principal “representatives” for purposes of the statute. Ariz. Att’y Gen. Ops. I79- 077, 66-23-L, & 61-47.<sup>3</sup>

Staff subsistence is allowed when staff members are away from their “designated post of duty.” A.R.S. § 38-621(A). The “designated post of duty” is “where one’s desk is situated and where primary employment duties are performed.” Ariz. Att’y Gen. Op. I79-152. Therefore, as a general rule, when school district staff attend meetings or other activities at their designated post of duty, they are not entitled to subsistence as defined by A.R.S. § 15-342(5). Ariz. Att’y Gen. Op. I90-077.

The non-taxpayer source funds from the rentals of facilities pursuant to A.R.S. § 15-1105(E) are subject to these restrictions when used for maintenance and operations purposes. School districts must first use the monies from rentals of facilities for civic center school purposes.<sup>4</sup> A.R.S. § 15-1105(E). Any excess monies may be expended for maintenance and operations or unrestricted capital outlay pursuant to A.R.S. § 15-342(29). Maintenance and operations expenditures may include the provision of refreshments as long as the expenditures

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<sup>2</sup> The term “school purpose” has not been defined precisely and is a determination left to the discretion of the school district governing board so long as the governing board does not act in a manner that is arbitrary or capricious. Ariz. Att’y Gen. Ops. I61-47, I79-007.

<sup>3</sup> For district employees not traveling as representatives pursuant to A.R.S. §15-342(5), their entitlement to reimbursement is governed by A.R.S. §§ 38-621 and -622. Ariz. Att’y Gen. Op. I61-47.

<sup>4</sup> Civic center school purposes include those expenses incurred by the school district in meeting the needs of the program established by A.R.S. § 15-1105. See A.R.S. §§ 15-342(29), 15-1105.

comply with the restrictions for travel and subsistence identified in A.R.S. §§ 15-342(5), 38-621 and -622. *See* Ariz. Att’y Gen. Op. I90-056 (stating that maintenance and operations funds could be used for refreshments for self-insurance trustees subject to the restrictions of A.R.S. §§ 15-342(5), 38-621 and -622).

However, statutory provisions regarding the use of certain funds may provide exceptions to the above restrictions. For example, school districts have the express authority to spend federal grant monies in accordance with the purposes of and in the manner set forth in the grant. A.R.S. § 15-207(B); Ariz. Att’y Gen. Op. I82-121. Although the federal grant statute does not specifically authorize the school districts to provide food and beverages, such authority may be implied where it is consistent with the intended purpose of the funds. *See Maricopa County v. Douglas*, 69 Ariz. 35, 39, 208 P.2d 646, 648 (1949) (stating that the legislative intent of a statute includes that which is necessarily implied as well as what is expressed) ; Ariz. Att’y Gen. Op. I88-031. Therefore, if a federal grant specifies that the monies may be expended for food and beverages for staff or volunteers, a school district may do so. The school district must still comply with all applicable state laws, including procurement requirements, unless federal law provides otherwise respecting a particular grant or program. Ariz. Att’y. Gen. Op. I82-121. School districts must also ensure that the expenditure of funds for refreshments does not constitute a gift of public funds. Compliance with the Gift Clause requires that the expenditure of public funds be for a public purpose where the expenditure does not exceed the worth of the direct benefits enjoyed by the public body. *Turken v. Gordon*, No. CV-09-0042-PR, 2010 WL 246088, at \*7 (Ariz. January 25, 2010).

Similarly, A.R.S. § 15-341(A)(14) requires that school districts expend gifts, grants, and devises “for the intended purpose for the monies.” Therefore, school districts have the authority

to use these funds to pay for subsistence for district staff at governing board-authorized district activities if that use is in accordance with the intended purpose of the monies. However, as with federal grants, school districts must still comply with applicable state law, including the Arizona Constitution's Gift Clause. Moreover, donors cannot attach conditions to donations that are contrary to law or that are inconsistent with the school districts' public trust obligations. Ariz. Att'y Gen. Op. I00-005. Finally, school districts should be cognizant of whether a gift, grant or devise presents a conflict of interest for staff pursuant to A.R.S. §§ 38-504(C) and 38-505.<sup>5</sup>

When interpreting statutes, the statute's language is the best indicator of legislative intent. *State v. Getz*, 189 Ariz. 561, 563, 944 P.2d 503, 505 (1997). Moreover, statutes must be construed in a manner that gives effect to an entire statutory scheme. *Backus v. State of Arizona*, 220 Ariz. 101, 104, ¶ 10, 203 P.3d 499, 502 (2009). Thus, when considered together with the travel and subsistence statute, the statutes requiring school districts to expend federal monies and gifts, grants, and devises in accordance with their intended purposes give school districts additional authority to provide food and beverages to staff.

School districts may also be able to include provisions for food, beverages, or refreshments as benefits in employment contracts, with some limitations. School district governing boards may contract with employees and fix their salaries and benefits for the

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<sup>5</sup> Whether a gift rises to the level of a conflict of interest will depend on the specific facts of each case. The conflict of interest statutes are as follows:

A.R.S. § 38-504(C) states that

[a] public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

A.R.S. § 38-505(A) states that

[n]o public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

succeeding year. A.R.S. § 15-502(A). Fringe benefits are employment benefits received in addition to an employee's net or take-home salary. Ariz. Att'y Gen. Op. I81-136. Fringe benefits have historically included such items as dental, medical, disability and life insurance, sick and annual leave, and housing and tuition allowances. Ariz. Att'y Gen. Op. I81-057; *see also* Ariz. Att'y Gen. Op. I01-004 (discussing school districts' practice of offering early retirement programs as fringe benefits under A.R.S. § 15-502(A)). School districts have some latitude in offering fringe benefits to employees as long as the districts confer the benefits in a manner that complies with the Arizona Constitution's Gift Clause. Ariz. Att'y Gen. Ops. I79-121; I76-178.

So long as . . . fringe benefits have been adopted by the school district governing board prior to the time that the school district's employees have entered into their contracts for the ensuing year, all of those fringe benefits are granted in consideration of those employees promising to perform and performing services for the school district for that year. That consideration is valuable and adequate and negates the existence of a gift.

Ariz. Att'y Gen. Op. I76-178. Therefore, to the extent that the provision of food, beverages, or refreshments can be considered a fringe benefit, school districts may include such terms in their employment contracts. School districts should, however, remain cognizant of the type of funds they intend to use for the provision of refreshments to ensure that they are complying with the legal requirements pertaining to such funds.

## **II. Providing Subsistence to Parents.**

There is no express statutory scheme that addresses a means by which a school district may provide food, beverages, or refreshments to parents. Parents are not usually subject to the statutory provisions for travel and subsistence set forth in A.R.S. §§ 15-342(5), 38-621 and -622. These provisions pertain to school district employees and individuals with whom the district has contracted to perform services where the contract includes travel expenses. Ariz. Att'y Gen. Op.

66-23-L. However, where parents can be appropriately “designated [as] representatives of the superintendent or principal or as persons under contract to provide services to the district traveling for a ‘school purpose’ and reimbursed therefore from monies properly budgeted,” then the district may be able to pay such expenditures pursuant to A.R.S. § 15-342(5) without violating the Arizona Constitution’s Gift Clause. Ariz. Att’y Gen. Op. I79-077.<sup>6</sup>

Moreover, a school district may provide subsistence to parents if the funds utilized are from federal funds or a gift, grant, or donation intended for such a purpose so long as the district complies with the Gift Clause restrictions. Therefore, the school district must receive direct benefits from the parents’ participation in the school activities that exceed the expenditure. Finally, the school district must also abide by all of its statutory and public trust obligations with regard to any expenditure for refreshments. *See* Ariz. Att’y Gen. Op. I00-022 (stating that school district governing boards “may expend funds for a particular purpose if they have express or implied legislative authority to do so.”); Ariz. Att’y. Gen. Op. I00-005 (stating that a governing board “cannot make contractual promises to a private party in exchange for a donation of money or land that are contrary to statutory or constitutional requirements or are inconsistent with the district’s public trust obligations.”)

### **Conclusion**

The District may provide food, beverages, or refreshments to staff or parents who assist in governing board-authorized District activities after normal school hours or on weekends only and to the extent it is authorized to do so by the laws pertaining to travel and subsistence, gifts, grants (including federal grants), or devises. The District may also include terms regarding the

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<sup>6</sup> Attorney General Opinion I79-077 analyzed A.R.S. § 15-442(B)(5), which was the precursor to and substantially the same as A.R.S. § 15-342(5).

provision of food, beverages, or refreshments in employment contracts with some limitations.

Such expenditures must comply with the Gift Clause of the Arizona Constitution.

Terry Goddard  
Attorney General



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>January 15, 2010</p>	<p>No. I10-002 (R08-044)</p> <p>Re: Length of Term of Office for a Judge Elected After Governor Appoints Judge to Newly Created Division of the Superior Court</p>
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To: The Honorable Michala M. Ruechel  
Navajo County Superior Court

**Question Presented**

Pursuant to article VI, section 12 of the Arizona Constitution, if the Governor appoints a judge to a newly created division of the superior court in a county having fewer than two hundred fifty thousand persons, the office is then placed on the ballot for the next general election. You asked if the judge elected serves a four-year term of office, or if the judge is elected for only the remainder of an unexpired term that began following the new division's creation?

**Summary Answer**

In counties that have fewer than two hundred fifty thousand persons, the judge elected at the next general election serves a regular four-year term following the appointment of a judge to a newly created division of the superior court.

### Analysis

On December 1, 2006, the Governor appointed a judge to a newly created division of the Navajo Superior Court. In fall 2008, the judicial office was placed on the ballot and the previously appointed judge was elected. You have asked whether the elected judge serves a term of four years, or if she serves the remainder of an unexpired term that began following the new division's creation.

The Governor creates a new superior court division by approving the new judgeship upon the petition of a county board of supervisors for an additional judge based on recent estimates of county population growth. See Arizona Revised Statutes ("A.R.S.") § 12-121(B). After the Governor creates a new division of the superior court, he or she may appoint a judge to fill the newly created position. See A.R.S. § 12-121(D) ("Additional judges authorized by the terms of this section shall be appointed or elected as provided by law."). Article VI, section 12 of the Arizona Constitution states:

A. Judges of the superior court in counties having a population of less than two hundred fifty thousand persons according to the most recent United States census shall be elected by the qualified electors of their counties at the general election. They shall hold office for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election, and until their successors are elected and qualify. The names of all candidates for judge of the superior court in such counties shall be placed on the regular ballot without partisan or other designation except the division and title of the office.

B. The governor shall fill any vacancy in such counties by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term.

When interpreting the constitution, the "primary purpose is to effectuate the intent of those who framed the provision." *Cain v. Horne*, 220 Ariz. 77, 80, ¶ 10, 202 P.3d 1178, 1181

(2009) (quoting *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994)). When a provision is clearly written, courts should rely only on the text. *Id.* When a provision is unclear on its face, courts can look to other sources in an attempt to give meaning to all of its language. *Id.* Further, general principles of construction provide that when a statute, or in this case a provision of the constitution, is silent on an issue “we must look beyond the [constitutional] language and consider the [constitution’s] effects and consequences, as well as its spirit and purpose.” *Calmat of Ariz. v. State*, 176 Ariz. 190, 193, 859 P.2d 1323, 1326 (1993).

Subsection A of article VI, section 12 establishes that, in counties with a population of less than two hundred fifty thousand persons, voters elect judges of the superior court to four-year terms of office. Subsection B authorizes the Governor to appoint a judge to fill a vacancy and that appointee serves until “the election and qualification of a successor,” which occurs “[a]t the next succeeding general election following the appointment of a person to fill a vacancy.” If a vacancy occurs before the general election that is mid-way through a four-year term, the candidate elected at that next general election does not serve a full four-year term, but rather, serves the remainder of the unexpired term.

In a previous opinion, this Office concluded that subsection B of article VI, section 12 of the Arizona Constitution requires that the judicial office of a new superior court division created and filled by appointment a few months before the general election be placed on the ballot of that general election. *See Ariz. Att’y Gen. Op. I88-097*. In so concluding, it noted that “[w]hen a new division is created, a vacancy exists in the office of superior court judge for that division.” *Id.* The opinion focused on the language in subsection B stating that following the appointment of a person to fill a vacancy, a judge shall be elected “[a]t the next succeeding general election.”

*Id.* That opinion did not address the length of the term of the judge that is elected at that next general election.

Theoretically, the four-year term for a new division could begin when the Governor creates the new division or appoints a person to fill it. This interpretation, however, presents certain logistical problems and conflicts with language in subsection A of article VI, section 12. According to subsection A, voters elect judges “for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election.” Ariz. Const. art. VI, § 12(A). Subsection A also fixes the start of that four-year term at “the first Monday in January next succeeding their election.” The Constitution does not authorize the Governor to bestow a four-year term upon an appointee; rather, the Governor only has the power to appoint a person to serve an interim term. *See* Ariz. Const., art. VI, § 12. Nor does the Constitution allow a four-year term to begin at any time other than at the time fixed in subsection A.

If the four-year term begins at the time of the creation of or appointment to the newly created division, the four-year term could expire in the middle of the election cycle, which is contrary to the system established in Article VI, section 12. In addition, nothing in Article VI, § 12 indicates that a four-year term may begin in the middle of an election cycle. Such a result would be unworkable. *See State v. Estrada*, 201 Ariz. 247, 251, ¶ 16, 34 P.3d 356, 360 (2001) (courts interpret statutory language in a way that will avoid an irrational or untenable result).

The more logical interpretation based on the language and structure of Article VI, section 12 is that the four-year term for a new superior court division begins only after an election. As prescribed in subsection B of section 12, the Governor’s appointee serves only “until the election

and qualification of a successor.” The person elected at the next general election then begins a full four-year term, as prescribed in subsection A.

**Conclusion**

In a county with fewer than two hundred thousand fifty persons, a candidate for a superior court judgeship is elected to a four-year term of office at the next general election following the appointment of a judge to a newly created division of the superior court.

Terry Goddard  
Attorney General



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>January 14, 2010</p>	<p>No. I10-001 (R09-027)</p> <p>Re: Whether Private Investigator Licensing Requirements Apply to Photo-Enforcement System Vendors</p>
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To: The Honorable Sam Crump  
Arizona House of Representatives

**Question Presented**

You have asked for an opinion on the following two questions:

1. Must a vendor contracting with the Department of Transportation<sup>1</sup> to provide a state photo-enforcement system pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1722 meet the private investigator licensing requirements of Title 32, Chapter 24?
2. Is a contract to provide a state photo-enforcement system pursuant to A.R.S. § 41-1722 invalid if a vendor fails to meet the licensing requirements of Title 32, Chapter 24?

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<sup>1</sup>Section 41-1722 provides for the Arizona Department of Public Safety, not the Department of Transportation, to enter into a contract with a vendor to establish a state photo-enforcement system. This discrepancy, however, does not alter the analysis or opinion rendered.

### Summary Answer

A vendor contracting with the Department of Public Safety (“DPS”) to provide a state photo-enforcement system is not required to meet the private investigator licensing requirements of Title 32, Chapter 24. Because a vendor need not be a licensed private investigator, the second question is moot.

### Analysis

In 2008, the Legislature established a state photo-enforcement system. 2008 Ariz. Sess. Laws ch. 286, § 23 (codified as A.R.S. § 41-1722). Section 41-1722(A) provides as follows:

Notwithstanding any other law, the department [of public safety] shall enter into a contract or contracts with a private vendor or vendors . . . to establish a state photo enforcement system consisting of cameras placed throughout the state . . . to enforce the provisions of title 28, chapter 3, articles 3 and 6 relating to vehicle traffic and speed.

Section 41-1722(C) establishes the photo-enforcement fund, and the Legislature appropriated over \$20 million from the fund “to the department of public safety for contract payments to private vendors for the operation of photo enforcement cameras and the processing of citations.” 2008 Ariz. Sess. Laws ch. 286, § 35. In the same bill, the Legislature amended A.R.S. § 28-1593(B) to allow persons, in addition to peace officers or duly authorized agents, to be paid to act on a traffic enforcement agency’s behalf to issue traffic complaints. 2008 Ariz. Sess. Laws ch. 286, § 16.

Chapter 24 of Arizona Revised Statutes, Title 32, regulates the conduct of private investigators. A private investigator is defined in A.R.S. § 32-2401(16), which provides as follows:

“Private Investigator” means a person . . . who, for any consideration, engages in business or accepts employment to:

- (a) Furnish, agree to make or make any investigation for the purpose of obtaining information with reference to:
  - (i) Crime or wrongs done or threatened against the United States or any state or territory of the United States.

- (ii) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person or group of persons.
  - (iii) The credibility of witnesses or other persons.
  - (iv) The whereabouts of missing persons, owners of abandoned property or escheated property or heirs to estates.
  - (v) The location or recovery of lost or stolen property.
  - (vi) The causes and origin of, or responsibility for, a fire, libel, slander, a loss, an accident, damage or an injury to real or personal property.
- (b) Secure evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.
- (c) Investigate threats of violence and provide the service of protection of individuals from serious bodily harm or death.

Private investigators are required to be licensed by DPS. *See* A.R.S. §§ 32-2402, -2411.

The power to enact licensing laws is based upon the legislature's police power, which is the power "to enact any law deemed necessary for the protection of the property, peace, life, health and safety of the inhabitants of the state." *State Bd. of Technical Registration v. McDaniel*, 84 Ariz. 223, 228, 326 P.2d 348, 351 (1958). The purpose of an act which is promulgated under the state's police power is to protect the public health, safety or welfare. *State v. Beadle*, 84 Ariz. 217, 221, 326 P.2d 344, 347 (1958).

The purpose of licensing and regulating private investigators is to protect the public from "unscrupulous and unqualified investigators." *Landi v. Arkules*, 172 Ariz. 126, 135, 835 P.2d 458, 467 (App. 1992). The court reasoned as follows:

The public policy behind licensing and regulating private investigators is apparent from the Legislature's enactments. Qualifications for licensing are set forth by statute and include the applicant's good moral character and prior investigative experience. The statute imposes specific duties on licensees with respect to the confidentiality and accuracy of information and the disclosure of investigative reports to the clients. A license may be suspended or revoked for a wide range of misconduct, including acts of dishonesty or

fraud, aiding the violation of a court order, or soliciting business for an attorney.

*Id.* (citations omitted).

In *Landi*, the defendant entered into a private contract with the plaintiff to locate potential heirs to an estate. The court found that persons who provide heir locating services must be licensed as private investigators because the “genealogical research” contracted for in the case squarely fell within the definition of private investigator. *Id.* at 134, 835 P.2d at 466. Since the defendant acted as a private investigator without a license, the court found the contract unenforceable as contrary to public policy. *Id.* at 135, 835 P.2d at 467.

The public policy concerns behind the private investigator statutes do not, however, apply to a vendor operating photo-enforcement cameras and processing citations pursuant to A.R.S. § 41-1722(A). Unlike in *Landi*, which involved a private service which any member of the public may hire, a photo-enforcement system vendor does not provide a private service and is not available to the public to hire. Issuing traffic citations is a state function, and the Legislature enacted A.R.S. § 41-1722 allowing the vendor to issue citations on behalf of the state. Under the statutes governing photo enforcement, the regulation and oversight through the contracting process with DPS protects the public, separate and apart from the private investigator licensing statutes.

A previous Arizona Attorney General Opinion addressed a similar question with respect to whether engineers who investigate the origin of fires involving electrical apparatuses and then testify at trial as expert witnesses must have a private investigator’s license. Ariz. Att’y Gen. Op. No. I91-011. The opinion concluded that interpreting the private investigator licensing statute to include engineers would frustrate the intent of the Legislature, which was to protect the public from unscrupulous private investigators and detectives operating privately. *Id.*; see also *Kennard v.*

*Rosenberg*, 127 Cal. App. 2d 340, 345-46, 273 P.2d 839, 842 (1954) (holding that California's private investigator licensing requirement could not be applied to engineers, because the intent of the law was not to encompass persons employed to gather data in cases requiring the use of technical knowledge). In so concluding, the opinion noted that a literal interpretation of the private investigator licensing statute would produce an absurdity. *Id.* (citing *City of Phoenix v. Superior Court*, 101 Ariz. 265, 267, 419 P.2d 49, 51 (1966) (holding that if literal interpretation produces absurd result, legislation must be construed so that it is a reasonable and workable law)).

That rationale applies here. The Legislature established a photo-enforcement system that does not contemplate requiring vendors to be private investigators. Extending the definition of private investigator pursuant to A.R.S. § 32-2401(16)(b) to apply to a photo-enforcement system vendor under A.R.S. § 41-1722 imposes additional requirements unintended by the Legislature. "If reasonably practical, a statute should be explained in conjunction with other statutes to the end that they may be harmonious and consistent." *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970).

Thus, vendors operating photo-enforcement cameras and processing citations pursuant to A.R.S. § 41-1722 need not be licensed as private investigators.

### **Conclusion**

A vendor who contracts to provide a state photo-enforcement system, pursuant to A.R.S. § 41-1722, is not required to be licensed as a private investigator.

Terry Goddard  
Attorney General