



OFFICE OF THE
ARIZONA STATE TREASURER

KIMBERLY YEE
TREASURER



January 2, 2024

Honorable Kris Mayes
Honorable Joshua Bendor
Arizona Attorney General Office
2005 N. Central Avenue
Phoenix, Arizona 85004

RE: Response to Governor Hobbs' Request for Attorney General Opinion for the Arizona Citizens Clean Elections Commissioner Appointments

Dear Attorney General Mayes and Solicitor General Bendor:

After reviewing Governor Hobb's December 22, 2023, letter and the subsequent communications with your office on December 28, 2023, I thought it important to briefly follow-up and ensure the issues before you are precisely tailored to the issues at hand.

First, I agree that an Attorney General Opinion regarding appointments to the Arizona Citizens Clean Elections Commission (the "Commission") would be beneficial to both of our offices. However, I reserve the right to seek judicial relief to ultimately resolve the issue.

Second, I also agree that we should make all five appointments now, but give credit to the time served to ensure consistency in terms. To that end, two statutes appear to be the most relevant. Specifically, A.R.S. § 16-955(D) requires "the governor and the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall alternate filling . . . vacancies." The statute also provides that these appointments would begin with the governor in the year 2000. Section 16-955(I) further prohibits commissioners from serving more than one term.

While § 16-955 is silent as to the applicable procedure when a commissioner's term expires but a replacement is not nominated, this void is filled by A.R.S. § 38-295(B). Under this statute, "[e]very officer shall continue to discharge the duties of the office, although the term has expired, until a successor has qualified." Thus, when § 16-955 is read together with § 38-295(B), newly appointed commissioners in this circumstance do not receive full five-year terms, but only fill the remaining terms of commissioners whose terms have expired.



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Third, the only real interpretation disagreement is related to when the alternating appointments should occur. Governor Hobbs presents that appointments should alternate based on gubernatorial and non-gubernatorial officeholders. In support of her position, she cites A.R.S. § 16-955(D). However, based on (1) the original appointment structure in § 16-955(C), (2) the intent of the statute, and (3) the history of previous appointments, appointments should instead be consistently made based upon alternating political parties. Hence, in 2000, the governor (a Republican) had the first opportunity to fill a vacancy.¹ To illustrate this point, the following chart illustrates the appointment structure of prior commissioners:

| # ² | Commissioner | Party | Nominator | Term Began | Term End |
|----------------|-----------------------------------|-------------|---------------------|------------|----------|
| 1. | David G. McKay | Republican | Gov. Hull (R) | 2000 | 2005 |
| 2. | Kathleen S. Detrick | Independent | AG Napolitano (D) | 2001 | 2006 |
| 3. | Ermila Jolley | Democrat | Gov. Hull (R) | 2002 | 2007 |
| 4. | Marcia Busching | Democrat | Gov Napolitano (D) | 2003 | 2008 |
| 5. | Tracey A. Bardorff | Republican | SOS Brewer (R) | 2004 | 2005 |
| | Carl J. Kunasek (replacement) | Republican | SOS Brewer (R) | 2005 | 2007 |
| | Donald Lindholm (replacement) | Independent | SOS Brewer (R) | 2007 | 2009 |
| 6. | Gary Scaramazzo | Independent | Gov. Napolitano (D) | 2005 | 2010 |
| 7. | Clark Dierks | Republican | SOS Brewer (R) | 2006 | 2006 |
| | Royann J. Parker (replacement) | Republican | SOS Brewer (R) | 2006 | 2011 |
| 8. | Jeffrey L. Fairman | Democrat | Gov. Napolitano (D) | 2007 | 2012 |
| 9. | Lori S. Daniels | Republican | SOS Brewer (R) | 2008 | 2013 |
| 10. | Louis Hoffman | Democrat | AG Goddard (D) | 2009 | 2014 |
| 11. | Timothy J. Reckart | Republican | Gov. Brewer (R) | 2010 | 2015 |

¹ A.R.S. 16-955(D) specifically provides that “[o]ne commissioner shall be appointed for a five-year term beginning February 1 of every year beginning with the year of 2000. Before February 1 of each year beginning in the year 2000, the governor and the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall alternate filling such vacancies. The vacancy in the year 2000 shall be filled by the governor.”

² Because the first five Commissioner selections had a specific process set forth in statute that differed from that set forth in A.R.S. § 16-955(D), those commissioners are not included in the chart.



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|-----|-------------------------------|-------------|------------------------|------|------|
| 12. | Thomas J. Koester | Independent | Corp. Comm. Newman (D) | 2011 | 2016 |
| 13. | Jeffrey L. Fairman (holdover) | Democrat | | 2012 | 2013 |
| | Mitchell C. Laird | Republican | Gov. Brewer (R) | 2013 | 2017 |
| 14. | Steve M. Titla | Democrat | Sen. Taylor (D) | 2013 | 2018 |
| 15. | Damien R. Meyer | Democrat | Gov. Brewer (R) | 2014 | 2019 |
| 16. | Mark Kimble | Independent | Sen. Hobbs (D) | 2015 | 2020 |
| 17. | Galen D. Paton | Republican | Gov. Ducey (R) | 2016 | 2021 |
| 18. | Amy B. Chan | Republican | Sen. Hobbs (D) | 2017 | 2022 |
| 19. | Steven M. Titla (holdover) | Democrat | Republican should pick | 2018 | 2023 |
| 20. | Damien R. Meyer (holdover) | Democrat | Democrat should pick | 2019 | 2024 |
| 21. | Mark Kimble (holdover) | Independent | Republican should pick | 2020 | 2025 |
| 22. | Galen D. Paton (holdover) | Republican | Democrat should pick | 2021 | 2026 |
| 23. | Amy B. Chan (holdover) | Republican | Republican should pick | 2022 | 2027 |
| 24. | Steven M. Titla (holdover) | Democrat | Democrat should pick | 2023 | 2028 |
| 25. | Damien R. Meyer (holdover) | Democrat | Republican should pick | 2024 | 2029 |

As you can see, the history of the Commission selection process proceeded based upon alternating political parties, not gubernatorial and non-gubernatorial officeholders. In other words, after Governor Hull filled the first vacancy in 2000, the appointments alternated based on the *political party* of the respective officeholders. In the absence of clear procedures, this approach is most consistent with the intent of the statute, as it would be illogical to have the same political party select a commissioner twice in a row simply because the governor’s party changed between appointments; thus, making the “alternating” requirement superfluous and provide an advantage to one party over the other.

Based on the above, I should have the opportunity to fill Mark Kimble’s (2020–2025), Amy B. Chan’s (2022–2027), and Damien R. Meyer’s (2024–2029) seats and Governor Hobbs will have the right to fill Damien R. Meyer’s (2019–2024), Galen D. Paton’s (2021–2026), and Steven M. Titla’s (2023–2028) seats.



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We appreciate your consideration of this issue and look forward to receiving an Attorney General Opinion pursuant to A.R.S. § 41-193(A)(7).

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly Yee".

The Honorable Kimberly Yee
Treasurer of Arizona