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E-MAILED ONLY

MEMORANDUM

TO: David Barreira, Bill Dickrell
FROM: Robert S. Lynch 
DATE: November 26, 2018
SUBJECT: Status of Al Poskanzer, recommended action

Because Al Poskanzer's status related to service on the District Board affects the ongoing litigation with Talking Rock Ranch (TRR) and other related matters, I am writing to provide you my analysis of the situation and my recommendation concerning Board action.

THE OPERATIVE FACTS

1. Al Poskanzer sold his house within the District and moved to a rental property outside the District on or about September 1, 2018.
2. He attended and participated as a Board member in the September 27, 2018 Board meeting.
3. Thereafter, sometime in October, he reregistered to vote and did cast an early ballot in the November 6, 2018 general election using a ballot appropriate for his new location outside the District.
4. Thereafter, on or about November 2, 2018, he reregistered at an address within the District which, on information and belief, he intends to move after a house is constructed at that location.

QUESTIONS PRESENTED: What is Al Poskanzer's status as a qualified elector and how does that affect his relationship to the Board?

1. Qualified Elector

The sine qua non for service on the Board is that the person serving be a qualified elector of the District. A.R.S. Section 48-2010(A). In turn, a qualified elector must be qualified to register to vote and registered to vote in the subject political subdivision. A.R.S. Section 16-101(A). The locational qualification to vote is that the person be a resident of the aforesaid political subdivision. *Ibid.* Resident, in turn, is defined as (1) physically present (2) with intent to remain. A.R.S. Section 16-101(B). However, a temporary absence does not affect residency. *Ibid.*; see also A.R.S. Section 16-103. These provisions in the election code apply to sanitary districts. A.R.S. Section 16-191(B).

Here, Al Poskanzer moved out of the District. Were that the only controlling factor, it would operate to change his residency and vacate his office. *State v. Oakley*, 18 Ariz. 34, 881 P.2d 366 (1994). However, under similar circumstances, moving temporarily outside the jurisdiction while awaiting construction of a new residence within the same voting district or precinct has been opined by the Attorney General not to cause disenfranchisement by change of residence. Ariz. Op. Att’y. Gen. No. I79-291. The ultimate controlling factor here, in any event, is that he reregistered to vote and did vote as a resident of an area outside the District. That act removed any argument that he was still a resident of the District. *Kauzlarich v. Bd. Of Trustees of Oak Creek Sch. Dist. No. 16, Yavapai Cnty.*, 78 Ariz. 267, 271, 278 P.2d 888, 891 (1955).

Al Poskanzer’s actions constituted a change of residence to a location outside the District. Thus, he is not a qualified elector of the District as that term is defined in A.R.S. Section 16-101. His attempt to repair his prior conduct by registering after voting at a vacant or at least uninhabitable location not occupied by him is of no consequence since that location could not provide the essential element of residency, being physically present. *Parker v. City of Tucson*, 233 Ariz. 422, 437, 324 P.3rd 100, 115 (App. 2013).

2. Status with regard to the Board

This analysis starts and ends with the requirement that a District Board member must be a qualified elector of the District. Az. Const., Article VII, Section 15; A.R.S. Section 48-2010(A). For purposes of this analysis, whether moving, reregistering or voting served to remove his status as a qualified elector of the District, Al Poskanzer clearly is not a qualified elector of the District and his seat on the Board is now vacant by operation of law as a result without need for further action in that regard. A.R.S. Section 38-291(5).

RECOMMENDED COURSE OF ACTION

The Board should forthwith call a meeting at which it should announce the Board vacancy, order advertising of the vacancy per District Bylaw #5 and convene thereafter to appoint a new member per A.R.S. Section 48-2010(F).

RSL:psr

cc: William Whittington
Stephen Polk
Hans Clugston
Bob Busch