

SUMMARIES OF ATTORNEY GENERAL OPINIONS

The Secretary of State’s Office is required to publish summaries of Attorney General Opinions under A.R.S. § 41-1013(B)(4). The following Attorney General Opinions were issued between July 1 and December 31, 2008. For copies of these opinions, call (602) 542-5025 or view them online at the Attorney General’s web site:

<http://www.azag.gov/opinions/index.html>

Opinion number	Date of opinion	Opinion summary
I08-005	July 10, 2008	Re: Publicity Pamphlet Argument For or Against a School District Unification Plan In connection with the publicity pamphlet for school redistricting elections, the governing boards of affected districts may submit an argument in favor of or in opposition to the unification plan that is on the ballot. Any discussion of the proposed argument by a quorum of the Board must take place in a properly noticed open meeting.
I08-006	August 18, 2008	Re: Election Procedures for School District Unification Elections In designating proposed new districts on ballot questions in Unification Elections, County School Superintendents should insert names that conform with Arizona Revised Statutes (“A.R.S.”) § 15-441(B). If the Plan involves the subdivision of an existing high school district, the ballot question should make clear which portion of the existing school district will be subdivided and included in the proposed new district.  If the Plan calls for the subdivision of an existing school district and unification of the subdivided portion with other existing school districts, the ballot may contain a single question asking the voters to approve or not to approve the Plan. In this situation, qualified electors who reside in the portions of the existing high school district that would not be included in the proposed new district are permitted to vote on the proposed unification.
I08-007	September 2, 2008	Re. Calculation of Average Daily Membership by School Districts When reporting attendance of high school students for determining ADM, a school district is not limited to reporting only absences based on a requirement that a student be present a certain number of hours a day. Rather, a school district may determine full-time student status by considering annual hourly totals comprising an instructional program, as described in A.R.S. § 15-901(A)(2).
I08-008	September 29, 2008	Re. Application of Open Meeting Law to Meetings of Public Bodies Conducted Online Yes. The definition of “meeting” under A.R.S. § 38-431 includes the gathering of a quorum of a public body through technological devices and would encompass serial communications of a quorum if the public body through the Internet or other online medium. Measures must be taken, however, to provide clear notice to the public about when the board will be deliberating in its online meeting and to facilitate the public’s access to the meeting.
I08-009	September 30, 2008	Re. Excluding Passing Time in Calculating Instructional Time for Determining Average Daily Membership Yes. ADE may reasonably exclude passing time between an instructional period and a non-instructional period, such as lunch, home room, study hall, or recess or excessive passing time when calculating instructional time. <sup>1</sup>

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I08-010	December 12, 2008	<p>Re. Cancellation of Contracts Pursuant to A.R.S. § 38-511</p> <p>1. Pursuant to A.R.S. § 38-511, if a person who was significantly involved in negotiating or drafting a contract on the behalf od the State or a political subdivision of the State becomes an employee or an agent of another party to the contract within three years of the execution of the contract, the State or its political subdivision may cancel the contract.</p> <p>2. If outside counsel played a significant role in the drafting or negotiation of a contract for the State or political subdivision of the State, he or she may not become and agent for, or an employee of, another party to the contract without subjecting the contract to cancellation pursuant to A.R.S. § 38-511.</p>
I08-011	December 12, 2008	<p>Re. Statutes Requiring Paving or Stabilization of Parking Lots and Driveways as Air Pollution Control Measures</p> <p>The enforcement of ordinances or other laws that A.R.S. §§ 9-500.04(A)(7) and 49-474.01(A)(6) requires would not result in a taking of property under either the Arizona or United States constitutions or under A.R.S. § 12-1134, as long as such ordinances or other laws did not deprive a landowner of virtually all beneficial or economic use of the land.</p>
I08-012	December 18, 2008	<p>Re. Average Daily membership Calculation and Concurrent Enrollment</p> <p>Arizona statutes specifically address ADM in the following four scenarios: (1) a student enrolled in both a charter school and a JTED who resides within the boundaries of a school district participating in the JTED may generate up to 1.25 ADM; (2) a student enrolled in a traditional school district and a JTED satellite program where the career and technical education and vocational education courses or programs, including satellite courses, are provided in a facility owned or operated by the school district in which a student is enrolled may generate up to 1.25 ADM; (3) a student enrolled in a traditional school district or a charter school and a TAPBI cannot generate more then 1.0 ADM; and (4) a student enrolled in a traditional school district and a charter school cannot generate more than 1.0 ADM.</p> <p>With regard to full-time high school students concurrently enrolled in two or more traditional school districts or two or more charter schools, the language of A.R.S. § 15-901(A)(2)(b)(ii) supports the current policy of the Department of Education (“Department”) limiting the ADM of such students to 1.0. However, statutory language and legislative history pertaining to JTEDs supports an exception from the 1.0 ADM limitation for full-time high school students concurrently enrolled in a traditional school district and a JTED main campus. Finally, elementary and fractional students are not limited to 1.0 ADM.</p>
I08-013	December 30, 2008	<p>Re. Application of One-Person, One-Vote Requirement of U.S. Constitution to Joint Technological Education District Elections</p> <p>Yes. Because JTEDs possess general governmental powers and perform important governmental functions, their elections must comply with the one-person, one-vote principle mandated by the U.S. Constitution. Therefore, the single-member districts from which a JTED elects its governing board members must be redistricted periodically to ensure the districts’ populations are nearly as equal as practicable.</p>

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