

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, 2013. 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
I13-001	July 11, 2013	<p>Re: Board of Technical Registration with Regulating the Alarm Industry</p> <p>The Board’s authority to certify and regulate alarm businesses and agents is determined by reading the alarm legislation in the context of the Board’s existing statutes A.R.S. §§ 32-101 through -152. An alarm business may be licensed by either the Registrar or the Board. Alarm agents and alarm businesses certified by the Board are subject to the requirements of the alarm legislation and the Board’s other statutes.</p>
I13-002	July 11, 2013	<p>Re: Financial Treatment of Charter School Pupils at a District-sponsored Charter School</p> <ol style="list-style-type: none"><li>1. If a district sponsors a charter school that it elects to fund as a charter school—thus availing itself of the additional assistance and current funding available pursuant to A.R.S. § 15-185(A)(3)—then the students who attend the charter school must be excluded from the Rapid Growth calculation under A.R.S. § 15-185(A)(4).</li><li>2. Under the interpretation of the statute outlined here, it is not necessary to reach this question.</li><li>3. If a District opens a new charter school that serves a student population that had previously been served at a district school, then A.R.S. § 15-185(E) requires a reduction of the District’s base support level equal to the sum of the base support level and additional assistance received in the current year for those pupils that were at the District in the prior year and are now enrolled at the District’s charter school.</li></ol>
I13-003	July 12, 2013	<p>Re: Vacancy in the Legislature</p> <ol style="list-style-type: none"><li>1. Yes, A.R.S. § 41-1202(A) requires a vacancy to be filled by the qualified elector of the same political party residing in the same county as the person who is vacating the office.</li><li>2. As the answer to the first question implies, the answer to the second question depends on actual residency as a matter of fact and law. We cannot answer this question without additional factual information to indicate whether the person actually resides in the room above the commercial property.</li></ol>
I13-004	July 23, 2013	<p>Re: House Bill 2178 and gift clauses of the Arizona Constitution</p> <p>H.B. 2178 is an unconstitutional special law and thus invalid because it improperly confers tax benefits on a handful of landowners while depriving similar benefits to past, present and future landowners thrust into identical circumstances.</p> <p>We decline to address whether H.B. 2178 violates the gift clause because the question rests, in part, on issues of fact.</p>

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<b>Opinion number</b>	<b>Date of opinion</b>	<b>Opinion summary</b>
I13-005	July 23, 2013	<p>Re: Participation of Non-Traditional Teachers in a School's Classroom Site Fund Performance Pay Plan</p> <p>No. Although it is necessary for an individual to possess a qualifying teaching certificate to meet the threshold eligibility for the CSF performance pay plan, such individual should not be included in the plan unless they are also employed to provide instruction to students relating to the school's educational mission.</p>
I13-006	August 21, 2013	<p>Re: Campaign Finance</p> <ol style="list-style-type: none"> <li>1. Yes, with qualification. Arizona law permits a state legislative candidate to associate with a state political committee that supports or opposes one or more other candidates and that neither contributes nor expends funds toward the candidate's own race, provided that (a) the political committee is not the candidate's own campaign committee, (b) the candidate is not acting as an agent of his own campaign committee, and (c) the candidate follows all other state campaign finance rules.</li> <li>2. This question requires a fact-driven analysis of which factors require registration as a political committee under A.R.S. § 16-901(19) and what types of conduct constitute an independent expenditure under A.R.S. § 16-901(14). Because the answer to this question may vary based on an infinite number of factual permutations, we decline to provide a formal opinion in response to this question. We recommend that you refer to the Handbook for Candidates &amp; Political Committees and the Guide for Campaign Finance published by the Arizona Secretary of State when considering these issues.</li> </ol>
I13-007	October 2, 2013	<p>Re: Campaign Finance</p> <ol style="list-style-type: none"> <li>1. Yes, a candidate committee may accept up to the maximum contributions for both the primary and the general elections prior to the primary election.</li> <li>2. Yes, a candidate committee must establish two separate accounting systems for primary and general election contributions and expenditures.</li> <li>3. Yes, a candidate committee may spend general election contributions for the purpose of influencing the outcome of the primary election, subject to the contribution limits.</li> <li>4. Yes, a candidate committee may accept contributions for the primary election up to the contribution limits after the primary election has occurred for the purpose of retiring outstanding debts incurred by the primary election committee.</li> <li>5. Yes, a candidate committee that receives a contribution in excess of the primary contribution limit may transfer the excess to the general election committee, to the extent that both limits have not yet been reached, and to the extent that the committee-to-committee limit has not yet been reached.</li> <li>6. The candidate committee should make best efforts to ascertain the contributor's intentions, but otherwise may assume that any contribution is intended for the next upcoming election, to the extent that the contribution limit for that election has not already been reached.</li> <li>7. Yes, write-in candidates under A.R.S. § 16-341 may accept contributions for both the primary and general elections up to the statutory maximums.</li> <li>8. The language in A.R.S. § 16-913.01 requiring special reporting of contributions of at least one thousand dollars applies to an individual contribution rather than an aggregate amount from an individual.</li> </ol>

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<b>Opinion number</b>	<b>Date of opinion</b>	<b>Opinion summary</b>
I13-007 <i>(continued)</i>		<p>9. A candidate committee may only accept contributions for a single primary election and general election. Candidates who are not running in a particular election cycle due to their terms of office may accept contributions for a primary and general election, but contributions accepted early (during their non-election cycle) must be counted against the contribution limits for the election cycle that they will be participating in.</p> <p>10. Existing funds in a candidate's committee on the effective date of H.B. 2593 are subject to the laws in existence when the contributions were accepted.</p> <p>11. Municipal candidates may accept contributions up to the maximum limit for the general election on or after September 13, 2013 and may accept contributions up to the maximum limit for the primary election to the extent necessary to retire debt.</p>
I13-008	August 29, 2013	<p>Re: Effect of <i>Shelby County</i> on Withdrawn Preclearance Submissions</p> <ol style="list-style-type: none"> <li>1. Yes. The statutes that were duly enacted by the Legislature are valid and enforceable.</li> <li>2. The effective date for these statutes is June 25, 2013, at the earliest.</li> <li>3. Six policies and statutes are affected by the preclearance withdrawals and subsequent <i>Shelby County</i> decision: (1) 2002 Citizens Clean Election Substantive Policy Statement; (2) Laws 2009 Ch. 134 (H.B. 2101); (3) Laws 2010 Ch. 48 (H.B. 2261); (4) Laws 2010 Ch. 314 (H.B. 2113); (5) Laws 2011 Ch. 105 (S.B. 1412); and (6) Laws 2011 Ch. 166 (S.B. 1471).</li> </ol>
I13-009	September 18, 2013	<p>Re: Lobbying</p> <p>A lobbyist's anonymous contribution to a legal defense fund on behalf of an Arizona legislator falls within the broad definition of "gift" in A.R.S. § 41-1231(9). Though somewhat ambiguous and pursuant to the rule of lenity, subsection (9)(d)'s exception to the definition of gift appears to allow this type of contribution. However, subsection (9)(d) allows such contributions to the extent that they are "not rendered to provide a benefit." The term "not rendered to provide a benefit" raises significant factual questions that can only be dealt with on a case-by-case basis.</p>
I13-010	September 25, 2013	<p>Re: Preemption of Tucson Ordinances</p> <ol style="list-style-type: none"> <li>1. Yes. Ordinances 11080 and 11081 directly contradict A.R.S. § 13-3108. Moreover, Ordinances 11080 and 11081 govern a subject in a field that state law already fully occupies.</li> </ol>
I13-011	October 7, 2013	<p>Re: Voter Registration</p> <ol style="list-style-type: none"> <li>1. No. Registrants who used the Federal Form and did not provide sufficient evidence of citizenship are not eligible to vote for state and local races. For state and local matters, registration is contingent on each applicant's providing evidence of citizenship.</li> <li>2. Yes. Arizona law authorizes the issuance of ballots containing only the federal races to the registrants described in the previous question.</li> <li>3. No. Under Arizona law, only registered voters are qualified to sign candidate, initiative, referendum, and recall petitions.</li> </ol>

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<b>Opinion number</b>	<b>Date of opinion</b>	<b>Opinion summary</b>
I13-012	December 2, 2013	<p>Re: Charging Copying Fees Under Arizona's Public Records Law</p> <ol style="list-style-type: none"><li>1. No. Pursuant to Arizona's public records law, a member of the public is entitled to inspect public records at all times during a public body's office hours. Although a public body may charge a fee to copy and mail public records when that action is requested, the statute does not expressly permit charging a fee when the requesting party wants merely to inspect public records. If, for whatever reason, the public body must make a copy of a public record to properly provide the record to the requesting party for inspection, then charging a copying fee is not appropriate.</li><li>2. No. A public body may charge copying fees under Arizona's public records law only if the public body itself makes the copies using public resources and furnishes them to the requesting party. In the event that a member of the public seeks to inspect public records and make copies using his or her own personal device, Arizona's public records law does not allow a public body to charge a fee.</li></ol>