

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, 2009. 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
I09-005	September 1, 2009	<p>Re: The Arizona Bar Foundation’s Beneficial Interest in and Exclusive Right to Interest Earned on Trust Accounts in IOLTA Program under Arizona Supreme Court Rule 43</p> <p>Yes. The Arizona Bar Foundation will own the entire beneficial interest in and will have the exclusive right to all interest income, minus a reasonable service charge or fee, earned on trust accounts to be established by attorneys in conformance with Arizona Supreme Court Rule 43.</p>
I09-006	September 1, 2009	<p>Re: Daily Attendance Requirements and Reporting of Absences by Public Schools</p> <p>1. When considered together, A.R.S. §§ 15-901(A)(6)(e), -801(A), -801(B), -861(A) and -901(A)(2)(c)(vi) do not require that a school report a full-time high school student as absent unless he or she attends school for four hours of instruction each day. Rather, Arizona statutory law allows schools flexibility in the manner in which they report students’ daily attendance by permitting them to report absences as prescribed in A.R.S. §§ 15-901(A)(6)(d) or (e).</p> <p>2(A). A school may report the attendance of a full-time high school student enrolled in a full-time instructional program who is scheduled to attend and actually does attend school for three hours on certain days in one of two ways:</p> <p>Under A.R.S. § 15-901(A)(6)(d), if the student is enrolled in four subjects, and the student attends the three hours for which he is scheduled on a given day, then no absences need be reported to the Department. However, if the school calculates attendance under the exception in A.R.S. § 15-901(A)(6)(e), the school would report one-fourth of a day’s absence for each day on which the student only attended school for three hours.¹</p> <p>2(B). A school may report the attendance of a full-time high school student enrolled in a full-time instructional program who attends school for three hours but is scheduled to attend four hours in one of two ways:</p> <p>Under A.R.S. § 15-901(A)(6)(d), if the student is enrolled in four special subjects and misses one of the four hours for which he is scheduled on a given day, an absence should be reported to the Department for the missed hour. Similarly, if the school calculates attendance under the exception in A.R.S. § 15-901(A)(6)(e), the school would report one-fourth of a day’s absence to the Department for each day on which the student only attended school for three hours.</p> <p>3. The Department is not entitled to deference regarding its definition of the word “day” because its definition conflicts with the statutes that define “daily attendance” and “full-time instructional program.”</p>

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Opinion number	Date of opinion	Opinion summary
I09-007	September 2, 2009	Re: A.R.S. § 15-341.01, Proposition 301, and the Voter Protection Act Section 15-341.01(B) as amended does not conflict with Proposition 301 by defining “one hundred eighty days” to include “an equivalent number of minutes of instruction per school year based on a different number of days of instruction.” The amendment to A.R.S. § 15-341.01(B) did not repeal, amend, or supersede provisions of or appropriate or divert funding created or allocated by Proposition 301. Therefore, the Voter Protection Act’s provisions delineated in the Arizona Constitution, article IV, part 1, section 1(6) and (14) do not apply to the amendment to A.R.S. § 15-341.01(B), which merely defined the meaning of the phrase “one hundred eighty days.”
I09-008	September 29, 2009	Re: Diminution of School District Boundaries Under A.R.S. § 15-460(B) 1. Under A.R.S. § 15-460(B), the boundaries of Rucker Elementary School District may be diminished, not eliminated. 2. Having concluded that the boundaries of Rucker may be diminished, not eliminated, under A.R.S. § 15-460(B), we do not reach the second question.
I09-009	November 24, 2009	Re: Management of the State’s Defined Contribution Retirement System The plain language of Article 29 of the Arizona Constitution prohibits the reduction of benefit payments to System members. Because ASRS may not reduce System members’ benefits, we do not reach the second, third, and fifth questions. If there are insufficient funds to pay benefits to System members who retired on or after July 1, 1981, those benefits would be payable from the Plan trust fund. If there are insufficient funds to pay benefits to System members who retired before July 1, 1981, the State is liable for the shortfall, and a legislative appropriation would be necessary to satisfy the obligation.
I09-010	December 9, 2009	Re: March 2010 School District Override Elections Authorized by H.B. 2011 For fiscal year 2009-2010, school districts that conducted failed budget override elections in November 2009 may conduct another override election in March 2010 pursuant to H.B. 2011, section 72(1).

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Opinion number	Date of opinion	Opinion summary
I09-011	December 9, 2009	<p>Re: Applicability of Rationale in <i>Jenkins v. Hale</i> to All Circulated Petitions</p> <ol style="list-style-type: none">1. In addition to nomination petitions, which were specifically addressed in <i>Jenkins</i>, petitions for new party recognition are encompassed by the holding and analysis of <i>Jenkins</i>. That case rejected a <i>per se</i> rule that signatures containing a post office box address, as opposed to an actual residence address, are invalid. The holding of <i>Jenkins</i>, however, likely does not apply in the context of referendum, initiative and recall petitions.2. Under <i>Jenkins</i>, with regard to nomination petitions, when a signature is challenged pursuant to Arizona Revised Statutes (“A.R.S.”) § 16-351(A) on the basis that the signer included only a post office box address, such a signature loses the presumption of validity to which it otherwise may have been entitled. In such case, the burden shifts to the proponent of the signature to persuade the trier of fact that the signature is that of a qualified elector. With regard to new party recognition petitions, Arizona law requires county election officials to verify and count the signatures of qualified electors. Although, under <i>Jenkins</i>, signatures that are accompanied by solely a post office box address lose any presumption of validity, if election officials can verify that such signatures are those of qualified electors, then they should count those signatures.3. The process for referendum, initiative and recall petitions is set forth in Title 19, A.R.S. §§ 19-121.01, -121.04, -208.01, -208.02, and Ariz. Const. art. 4, pt. 1 § 1(9). Under the applicable provisions, election officials should invalidate signatures on such petitions for which only a post office box address is provided.