



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2021-036

July 20, 2021

The Honorable John Thurston
Secretary of State
Arkansas State Capitol
Room 256
Little Rock, AR 72201

Dear Secretary Thurston:

This is in response to your request for an opinion concerning Act 349 of 2021, which in pertinent part amended Ark. Code Ann. § 6-14-111 with respect to candidate filing requirements for school board elections. As background for your request, you set out the following text of Act 349 of 2021 (“the Act”) that is amending Ark. Code Ann. § 6-14-111(e)(1), with the stricken and underlined text of subdivision (e)(1)(B) as it appears in the Act:¹

(e)(1) The petition affidavit of eligibility, and the candidate’s political practices pledge shall be filed with the county clerk as follows:

(A)(i) For even-numbered years, during the party filing period as set forth in § 7-7-203 for school elections held concurrently with a preferential primary election; and

(ii) For odd-numbered years, during the dates that would be the filing period as set forth in § 7-7-203 if a preferential primary and general election were to be held in that year; or

¹ See Act 349 of 2021, § 1. The stricken language denotes deletions and the underlined language denotes additions to subdivision 6-14-111(e)(1)(B).

(B) During a one-week period ending at 12:00 noon ~~on August 1 for school elections held on the first Tuesday following the first Monday in November~~ ninety (90) days before a general election.

You have asked me to assume for purposes of your request that the General Assembly does not reconvene prior to July 28, 2021 and that the Act becomes effective on that date.² You note that numerous school board elections are currently scheduled for November 2, 2021, throughout the state.³ As you point out, however, there will be no “general election” in November of 2021, or in any other odd-numbered year. Hence, the question arises regarding the proper interpretation of the above-underlined language newly added to subdivision 6-14-111(e)(1)(B) by the Act. You posit the following “practical construction” and ask for my opinion as to the appropriate interpretation of Act 349:

A practical construction of the amendment to subdivision (e)(1)(B) to apply the ninety-day period to all November elections would permit the timely and cost-effective administration of future school board elections, including the November 2, 2021, elections in which the filing period would run from noon Wednesday, July 28, 2021, through noon Wednesday, August 4, 2021.

RESPONSE

Because a literal interpretation would make the amended statute impossible to apply for school board candidates in the November 2, 2021, elections, a strong argument can be made in favor of the construction you posit. Absent legislative clarification, however, I cannot definitively state that a court would accept this argument.

² Act 349 of 2021 does not contain an emergency clause, nor does it specify an effective date. This office has opined that unless the General Assembly reconvenes on or before July 27, 2021, acts with no emergency clause or specified effective date become effective on July 28, 2021. *See* Op. Att’y Gen. 2021-029.

³ The November 2021 annual school elections are scheduled pursuant to Ark. Code Ann. § 6-14-102(a)(1)(A)(ii) (Supp. 2019), which allows school districts to conduct the elections in odd-numbered years on either the “[f]irst Tuesday following the first Monday in November,” or the “[t]hird Tuesday in May.”

DISCUSSION

The first rule in considering the meaning and effect of subdivision 6-14-111(e)(1)(B), as amended by Act 349, is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language.⁴ When statutory language is plain and unambiguous, there is no need to resort to rules of statutory construction.⁵ But when the meaning is not clear, courts look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.⁶ Additionally, while courts are very hesitant to interpret statutes contrary to their express language, they will do so “when it is clear that a drafting error or omission circumvents legislative intent.”⁷

In this case, the meaning of subdivision 6-14-111(e)(1)(B), as amended by Act 349, is unclear because while tying the school board candidate-filing period to “a general election” works in *even-numbered* years (when school districts can choose to hold the annual school election concurrently with the general election⁸), it makes no sense in odd-numbered years, when there will be no general election. The annual school election in odd-numbered years must be held “on the ... [f]irst Tuesday following the first Monday of November; or ... [the] [t]hird Tuesday in May.”⁹

You state in your correspondence that it appears subdivision (e)(1)(B) is intended to address November school elections—whether held on the date of the general election in even-numbered years (pursuant to section 6-14-102(a)(1)(A)(i)(b)),¹⁰ or on the “[f]irst Tuesday following the first Monday in November” in odd-numbered

⁴ *Macsteel, Parnell Consultants v. Ark. Ok. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005) (internal citations omitted).

⁵ *Id.*

⁶ *Id.*

⁷ *Neely v. State*, 317 Ark. 312, 318, 877 S.W.2d 589, 592 (1994).

⁸ School districts have the option in even-numbered years of holding the annual election on “the date of the ... [p]referential primary election; or ... [g]eneral election.” Ark. Code Ann. § 6-14-102(a)(1)(A)(i).

⁹ *See supra* n.3.

¹⁰ The general election is held on “the Tuesday next after the first Monday in November in every even-numbered year.” Ark. Code Ann. § 7-5-102 (Repl. 2018).

years (pursuant to section 6-14-102(a)(1)(A)(ii)(a)). The plain language (“a general election”) of course does not support that interpretation. As noted above, however, the Arkansas Supreme Court has held that a legislative act must be interpreted in a manner contrary to its express language “when it is clear that a drafting error or omission circumvents legislative intent”:

We are very hesitant to interpret a legislative act in a manner contrary to its express language; however, we must do so when it is clear that a drafting error or omission circumvents legislative intent. In *Johnson v. United States Gypsum Co.*, 217 Ark. 264, 229 S.W.2d 671 (1950), we quoted *State ex rel Atty. Gen. v. Chicago Mill & Lbr. Co.*, 184 Ark. 1011, 45 S.W.2d 26 (1931), and held “When a word in a statute is omitted or misused it is the duty of the courts to disregard the error if the context plainly indicates the legislative intent.” See also *Dollar v. State*, 287 Ark. 61, 697 S.W.2d 868 (1985); *Murphy v. Cook*, 202 Ark. 1069, 155 S.W.2d 330 (1941).¹¹

The “drafting error” exception is extremely limited. Usually, the courts will not “add, and mend, and by construction make up, deficiencies....”¹² My research indicates that the only instance in which a court will supply words is where the omission is obvious based on the language used and supplying the word(s) is necessary to carry out the legislative intent.¹³ The legislative intent must be “manifest,” and will not be inferred.¹⁴

In trying to make sense of Act 349’s amendment to subdivision 6-14-111(e)(1)(B), it seems manifest that the amendment was intended to establish a one-week candidate filing period ending exactly 90 days before the election, as opposed to the

¹¹ 317 Ark. at 318, 877 S.W.2d at 592.

¹² *Hodges v. Dowdy*, 104 Ark. 583, 596-97, 149 S.W. 656, 661 (1912).

¹³ See, e.g., *Snowden v. Thompson*, 106 Ark. 517, 522, 153 S.W. 823, 824 (1913) (“We cannot arbitrarily supply words merely to give the effect which we think the lawmakers might have intended; but it is fairly within the limits of the rules for construction that courts can supply obvious omissions, in order to carry out the legislative intent.”).

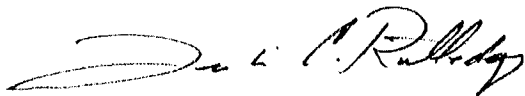
¹⁴ *Hazelrigg v. Board of Penitentiary Comm’rs*, 184 Ark. 154, 156, 40 S.W.2d 998, 999 (1931) (“[W]hile the courts cannot add to, take from or change the language of a statute to give effect to any supposed intention of the Legislature, words and phrases may be altered and supplied when that is necessary to obviate repugnancy and inconsistency and to give effect to the manifest intention of the Legislature.”) (citation omitted).

90 days more-or-less under current law. It also seems clear from the disjunctive “or” that subdivisions (e)(1)(A) and (e)(1)(B) address different subject areas. Subdivision (e)(1)(A) appears to address school elections held in either March or May in even-numbered years (per subdivision (e)(1)(A)(i)’s reference to “school elections held concurrently with a preferential primary election”¹⁵) and those held in May in odd-numbered years (pursuant to section 6-14-102(a)(1)(A)(ii)(b)).¹⁶

Importantly, this leaves **November** school elections unaddressed by subdivision (e)(1)(A). It would seem to follow that despite its wording, subdivision (e)(1)(B) is intended to address school elections held in November, which will always be held—whether in odd- or even-numbered years—on the first Tuesday after the first Monday in November.

This reading indicates that subdivision (e)(1)(B)’s reference to “a general election,” without more, was a drafting error. The error could be corrected, as you have suggested, by interpreting “ninety (90) days before a general election” as “ninety (90) days before all November elections.” Because literal application of the statute is impossible and courts disfavor interpretations that make a statute impossible to apply,¹⁷ a strong argument can be made in favor of the construction you posit since general elections are always held on the second Tuesday after the first Monday in November. However, I cannot predict with certainty whether an Arkansas court would agree to interpret subdivision 6-14-111(e)(1)(B) contrary to its express language. Legislative clarification is necessary to definitively resolve the matter.

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹⁵ See Ark. Code Ann. § 7-7-203(b) (Supp. 2019) (preferential primary election dates).

¹⁶ In addressing the school board candidate-filing period “[f]or odd-numbered years,” subdivision 6-14-111(e)(1)(A)(ii) refers to “the dates that would be the filing period as set forth in § 7-7-203 if a preferential primary and general election were to be held in that year.” This must refer to the dates that apply when the office of Governor will be on the ballot, when the preferential primary is in May and the party filing period is a one-week period ending March 1. See Ark. Code Ann. § 7-7-203(b)(1), (c)(1)(A) (Supp. 2019).

¹⁷ *Sessions v. Dimaya*, 138 S. Ct. 1204, 1256 (2018) (citing Antonin Scalia & Brian A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 63 (2012)).