



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
DUSTIN MCDANIEL

Opinion No. 2014-133

December 11, 2014

The Honorable Eddie Joe Williams  
State Senator  
401 Cobblestone Drive  
Cabot, Arkansas 72023

Dear Senator Williams:

You have requested my opinion on the following question concerning the timing of the change in status of the Arkansas majority party:

To ensure a smooth transition on all county election commissions, please clarify when majority party status attaches. Does this occur on the date the election is certified or another date?

It is my understanding that this question may be prompted, at least in part, by the existence of vacancies on some county boards of election commissioners (hereinafter "county boards"). As background for the question, you note that "[b]y definition, the party with a majority of candidates elected to constitutional offices is the majority party."<sup>1</sup>

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<sup>1</sup> "Majority party" is defined under the Election Code as "that political party in the State of Arkansas whose candidates were elected to a majority of the constitutional offices of this state in the last preceding general election." A.C.A. § 7-1-101(17) (Supp. 2013). "Minority party" is defined as "that political party whose candidates were elected to less than a majority of the constitutional offices of this state in the last preceding general election or the political party that polled the second greatest number of votes for the office of Governor in the last preceding general election if all of the elected constitutional officers of this state are from a single political party." *Id.* at (20).

## RESPONSE

As you have indicated, the Election Code's definition of "majority party" means that majority party status is determined by the results of the races for constitutional state offices in the last-preceding general election.<sup>2</sup> We therefore now know that the Republican Party is the majority party.<sup>3</sup> However, this does not resolve your question regarding a "transition on all county election commissions." I assume this question is concerned with the timing of the selection of the members of the county boards (hereinafter "commissioners"). That question is governed by A.C.A. § 7-4-102, which in relevant part provides for the selection of commissioners in January of odd-numbered years:

(a)(1) In *January of each odd-numbered year following the election of county committee officers,*<sup>[4]</sup> members of the county board of election commissioners shall be elected by their respective county committees.

(2) The membership of the county board shall be as follows:

(A) Two (2) members elected by the county committee of the majority party; and

(B) One (1) member elected by the county committee of the minority party.<sup>5</sup>

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<sup>2</sup> A.C.A. § 7-1-101(17), *supra* n. 1.

<sup>3</sup> The official election results show that Republican Party candidates were elected to each of the state constitutional offices. See <http://results.enr.clarityelections.com/AR/53237/149537/Web01/en/summary.html> (last visited Dec. 3, 2014).

<sup>4</sup> Members of the county party committees are "elected by a majority vote of those votes cast for each membership position at the primary elections held by the political party." A.C.A. § 7-3-104(a)(1) (Repl. 2011). The primary election dates are governed by A.C.A. § 7-7-203(a) and (b) (Supp. 2011). The general primary is held on the second Tuesday in June preceding the general election; and the preferential primary is held on the Tuesday three weeks before the general primary. *Id.*

<sup>5</sup> A.C.A. § 7-4-102 (Repl. 2011) (emphasis added).

It is clear from this statute that commissioners serve a two-year term.<sup>6</sup> Additionally, commissioners “hold office until their successors are appointed and qualified.”<sup>7</sup> Thus, while the status of the “majority party” was determined at the November 4, 2014, general election<sup>8</sup> – and the majority party is now the Republican Party – there will be no change in the composition of the county boards until sometime in January, 2015.

With regard to the filling of vacancies on the county boards, the same statute noted above governing county board transition provides for the election of a new commissioner “by the county committee of the appropriate party.”<sup>9</sup> I interpret “appropriate party” to mean the party of the commissioner who vacated. Commissioners represent, and serve at the pleasure of, their respective county party committees, i.e., the party committee that elected them.<sup>10</sup> It reasonably follows that a vacancy on the board will be filled by the county party committee that elected the vacating commissioner.<sup>11</sup>

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<sup>6</sup> *Accord* Op. Att’y Gen. 2013-023 (noting that “[g]overning law provides that commissioners are elected every two years, in January of odd-numbered years,” citing A.C.A. § 7-4-102(a)(1)).

<sup>7</sup> A.C.A. § 7-4-105(a) (Repl. 2011). However, commissioners serve at the pleasure of their respective county party committees and may be removed by a committee by majority vote. A.C.A. § 7-4-102(e).

Commissioners qualify by appearing before the county clerk to take the oath of office within thirty days of their selection. A.C.A. § 7-4-102(b)(2).

<sup>8</sup> *See n. 3, supra.*

<sup>9</sup> A.C.A. § 7-4-102(f)(1). If the county committee does not select a new commissioner within forty-five days of the vacancy, the state party chair makes the appointment. *Id.* at (2).

<sup>10</sup> *Id.* at (e) (“A member of the county board shall serve at the pleasure of his or her respective county committee, and a county committee may remove a member of the county board representing the county committee by majority vote of the county committee.”).

<sup>11</sup> Of course, this conclusion assumes that the position is still available. It could be the case that, after the November general election, the party that was in the majority becomes the minority. Between the November election and January, such a party keeps its two seats on the board. So if one of those seats becomes vacant, the party is free to fill it. But in January, that party loses its second seat. *See* A.C.A. § 7-4-102(a).

The Honorable Eddie Joe Williams  
State Senator  
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Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion,  
which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dustin McDaniel". The signature is fluid and cursive, with a large initial "D" and "M".

DUSTIN MCDANIEL  
ATTORNEY GENERAL

DM/EAW:cyh