



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN McDANIEL

Opinion No. 2014-134

January 6, 2015

The Honorable Jon Woods
State Senator
Post Office Box 8082
Springdale, Arkansas 72766

Dear Senator Woods:

This is in response to your request for my opinion on the following questions concerning Amendment 94 to the Arkansas Constitution:¹

1. Do years served in the General Assembly prior to the passage of Amendment 94 count towards the cumulative limit of sixteen years now imposed under Amendment 73, § 2? I specifically note Amendment 73, § 6(a), which was unaffected by Amendment 94:

This Amendment to the Arkansas Constitution shall take effect and be in operation on January 1, 1993, and its provisions shall be applicable to all person[s] thereafter seeking election to the offices specified in this Amendment.

In follow up to Question (1), please consider the follow[ing] examples:

¹ This amendment was known as Issue No. 3 on the general election ballot for 2014. It was proposed by House Joint Resolution 1009 (HJR 1009) during the 2013 regular session and adopted at the November 2014 election. A challenge to Issue No. 3 filed in Pulaski County Circuit Court was recently voluntarily nonsuited by the plaintiffs. *Scott et al. v. Martin*, No.CV-14-2964 (Pulaski Co. Cir. 2nd Div. Dec. 19, 2014) (order granting motion for nonsuit).

a. Assume a person sought election to the House of Representatives after January 1, 1993, was elected and served three two-year terms, and left office under the term limits imposed by Amendment 73 prior to adoption of Amendment 94. In light of Amendment 94, may that person run again for the House of Representatives or for the Senate and, if elected, serve a maximum of ten more years in the General Assembly or, assuming the person completes his or her sixteenth year of service during a term of office to which he or she was elected, until the completion of that term of office?

b. Assume a person sought election to the Senate after January 1, 1993, was elected and served two four-year terms, and left office under the term limits imposed by Amendment 73 prior to adoption of Amendment 94. In light of Amendment 94, may that person run again for the House of Representatives or for the Senate and, if elected, serve a maximum of eight more years in the General Assembly or, assuming the person completes his or her sixteenth year of service during a term of office to which he or she was elected, until the completion of that term of office?

c. If a current member of the House of Representatives is serving his or her second two-year term in the 90th General Assembly and seeks re-election in 2016, may that person serve a maximum of twelve more years in the General Assembly or, assuming the person completes his or her sixteenth year of service during a term of office to which he or she was elected, until the completion of that term of office?

d. If a current member of the Senate is serving his or her second four-year term in the 90th General Assembly and seeks re-election in 2016, may that person serve a maximum of eight more years in the General Assembly or, assuming the person completes his or her sixteenth year of service during a term of office to which he or she was elected, until the completion of that term of office?

2. Are two-year terms served as a result of an apportionment of the Senate included when calculating the total number of years served by a member of the General Assembly?

3. Are partial legislative terms served as a result of a special election under Article 5, § 6 of the Arkansas Constitution included when calculating the total number of years served by a member of the General Assembly?

RESPONSE

It is my opinion that the answer to your first question is “yes,” as to years served after January 1, 1993. The answer to each question under the examples you have presented is therefore “yes,” in my opinion. The answer to each of your remaining questions is “no,” in my opinion.

Question 1 - Do years served in the General Assembly prior to the passage of Amendment 94 count towards the cumulative limit of sixteen years now imposed under Amendment 73, § 2?

Amendment 94 is entitled “The Arkansas Elected Officials Ethics, Transparency, and Financial Reform Amendment.”² It consists of eighteen sections; and, as its title reflects, it amends the constitution in several material respects. However, the section primarily at issue here is Section 3. This section amends Section 2 of Amendment 73 to the Arkansas Constitution³ as follows:

(a) The Arkansas House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties. ~~No member of the Arkansas House of Representatives may serve more than three such two year terms.~~

(b) The Arkansas Senate shall consist of members to be chosen every four years by the qualified electors of the several districts. ~~No member of the Arkansas Senate may serve more than two such four year terms.~~

(c)(1) A member of the General Assembly shall serve no more than sixteen (16) years, whether consecutive or nonconsecutive.

² Ark. Const. amend. 94, § 1.

³ Amendment 73 is the “Arkansas Term Limitation Amendment.” It was proposed by initiative petition and approved at the 1992 general election.

(2) A member who completes his or her sixteenth year of service during a term of office for which he or she has been elected may serve until the completion of that term of office.

(3) The years of service in both the Senate and the House of Representatives shall be added together and included to determine the total number of years in office.

(4) A partial legislative term served as a result of a special election under Article 5, § 6, or a two-year term served as a result of apportionment of the Senate shall not be included in calculating the total number of years served by a member of the General Assembly.⁴

With the adoption of Amendment 94, therefore, beginning November 5, 2014,⁵ a member of the General Assembly may serve up to sixteen years in either the House of Representatives or the Senate, or a combination of both.

In considering the effect of this amendment – and specifically the question whether years served prior to its adoption count toward the sixteen-year limit – the applicable rules of construction are well-established. The rules are the same as those governing the construction of statutes.⁶ The common aim is to ascertain and give effect to the intent of those who drafted and enacted the provision at issue.⁷ It is a rule of “universal application” that the constitution and its amendments must be read and construed together as a whole.⁸ All sections must be read together, in light of every other section on the same subject,⁹ “with a view of the harmonious whole.”¹⁰ An amendment to the existing constitution “fits into that organic body,”

⁴ The stricken language denotes deletions and the underlined language denotes additions to Amend. 73, § 2.

⁵ Amendment 94 went into effect on this date. Ark. Const. amend. 94, § 18 (“This amendment shall be effective on November 5, 2014.”).

⁶ *Berry v. Gordon*, 237 Ark. 547, 554, 376 S.W.2d 279 (1964) (and citations therein).

⁷ *Ragsdale v. Hargraves*, 198 Ark. 614, 129 S.W.2d 967 (1939).

⁸ *Id.* See also *Parkin Printing & Stationary Co. v. Arkansas Printing and Lithographing Co.*, 234 Ark. 697, 706, 354 S.W.2d 560 (1962) (“[A]n Amendment to the Constitution becomes a part of the whole document for the purpose of uniform construction.”).

⁹ *State ex re. Purcell v. Jones*, 242 Ark. 168, 412 S.W.2d 284 (1967).

¹⁰ *Smith v. Cole*, 187 Ark. 471, 475, 61 S.W.2d 55 (1933).

displacing only that which is necessarily repugnant to or in irreconcilable conflict with the amendment.¹¹ No interpretation of an amendment should be allowed that would conflict with any other provision of the constitution unless it is absolutely necessary to give effect to the amendment.¹² The courts cannot read words into a constitutional amendment that are not found therein either expressly or by fair implication.¹³

Bearing in mind these precepts, I believe it is of crucial significance that Amendment 94 does not take up the whole subject of term limits. Rather, by its express terms, it only amends Section 2 of Amendment 73, as set out above. Of particular significance, it says nothing about when years of service are to be counted. Nor does it mention Section 6 of Amendment 73, which as you note provides that Amendment 73 applies to persons seeking election after January 1, 1993:

This Amendment to the Arkansas Constitution shall take effect and be in operation on January 1, 1993, and its provisions shall be applicable to all person[s] thereafter seeking election to the offices specified in this Amendment.¹⁴

The Arkansas Supreme Court addressed this provision in *U.S. Terms Limits v. Hill*,¹⁵ where it was faced with the question of when the counting of terms must commence under Amendment 73. The court found the amendment ambiguous on the question, and ultimately concluded that the amendment applies prospectively to periods of service commencing on or after January 1, 1993.¹⁶

The framers of Amendment 94 are presumed to have acted with full knowledge of the existing provisions of Amendment 73, including this decision regarding the

¹¹ *Priest v. Mack*, 194 Ark. 788, 790, 109 S.W.2d 665 (1937).

¹² *State v. Donaghey*, 106 Ark. 56, 152 S.W. 746 (1912).

¹³ *Cottrell v. Faubus*, 233 Ark. 721, 347 S.W.2d 52 (1961); *Hodges v. Dawdy*, 104 Ark. 583, 149 S.W. 656 (1912).

¹⁴ Ark. Const. amend. 73, § 6(a).

¹⁵ 316 Ark. 251, 872 S.W.2d 349 (1994).

¹⁶ *Id.* at 274.

counting of periods of service.¹⁷ This decision is now part of Amendment 73.¹⁸ When Amendment 94 “fits into” the constitution, therefore, the result is a constitutional term-limits amendment that sets a sixteen-year limit on service as of November 5, 2014, with years served after January 1, 1993, counted for limitation purposes. This follows, in my opinion, from the above canons of constitutional construction. Amendment 94 displaces only that which is necessarily repugnant to or in irreconcilable conflict with the new amendment. In my opinion, there is no conflict between Amendment 94 and the existing law regarding when periods of service are counted for purposes of disqualification under Amendment 73. More specifically, I perceive no conflict between Section 18 of Amendment 94 – which makes the amendment effective on November 5, 2014 – and Section 6 of Amendment 73. I do not read into this stated effective date any implied amendment of Section 6 of Amendment 73. Amendment 94 only amended Section 2 of Amendment 73, which only addresses the number of years a member may serve, without regard to when years of service are counted. Section 6 of Amendment 73 was not amended, either expressly or by implication; and there is nothing in Amendment 94 to suggest that the framers intended to displace prior law on when counting periods of service must commence.

In response to your question, therefore, it is my opinion that years served in the General Assembly after January 1, 1993, count towards the cumulative limit of sixteen years now imposed under Amendment 73. Accordingly, the answer to each question under the examples you have presented is “yes,” in my opinion.

Question 2 - Are two-year terms served as a result of an apportionment of the Senate included when calculating the total number of years served by a member of the General Assembly?

No, pursuant to the plain language of subsection (c)(4) of Section 2 of Amendment 73, as amended by Amendment 94. It bears noting that the exclusion of two-year Senate terms encompasses both terms that are cut short due to the election

¹⁷ See generally *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004); *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413(1943). As confirmation that the General Assembly was fully aware of the existing amendment and the judicial decisions concerning it, Amendment 94 specifically excludes partial terms and two-year senate terms from the sixteen-year limit. Ark. Const. amend. 94, § 3 (amending Ark. Const. amend. 73, § 2 to add (c)(3) and (4), as set out above). This was previously an unclear point. In *Moore v. McCuen*, 317 Ark. 105, 876 S.W.2d 237 (1994), the court held that the two-year terms drawn after reapportionment do not count as a “term” for purposes of term limits.

¹⁸ See *Gibson v. Gibson*, 264 Ark. 418, 572 S.W.2d 146 (1978) ((noting that “... as time passes, the interpretation given a statute becomes a part of the statute itself.”)).

required after reapportionment¹⁹ and two-year terms that are drawn by lot following reapportionment.²⁰ Thus, for instance, in the case of a senator who was elected in 2010 and reelected in 2012, and who drew a two-year term thereafter, neither the two years from 2011-2013 nor the two years from 2013-2015 will count in calculating his or her total years of service for purposes of term limits under Amendment 94.

Question 3 - Are partial legislative terms served as a result of a special election under Article 5, § 6 of the Arkansas Constitution included when calculating the total number of years served by a member of the General Assembly?

No, pursuant to the plain language of subsection (c)(4) of Section 2 of Amendment 73, as amended by Amendment 94.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,


DUSTIN MCDANIEL
Attorney General

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¹⁹ All state senators are required to run for office in the next general election after the State Board of Apportionment reapportions the senate districts after the federal decennial census. Ark. Const. art. 8, § 6.

²⁰ At the first regular legislative session succeeding any such reapportionment, the Senate is to divide itself into two classes by lot, "eighteen of whom shall serve a period of two years and the remaining seventeen for four years until the next reapportionment..." Publisher's Note to art. 8, § 6. *Williams v. Elrod*, 244 Ark. 671, 426 S.W.2d 797 (1968) (holding that the lot-drawing provisions of Ark. Const. amend. 23 – which rewrote article 8 – were not in conflict with Ark. Const. amend. 45, which amended amend. 23).