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Office of the Attorney General

Governor
Jim Geringer

Attorney General
Hoke MacMillan

Civil Division
123 Capitol Building
Cheyenne, Wyoming 82002
307-777-6397/777-7886 Telephone
307-777-3687 Fax

Chief Deputy Attorney General
Vicci M. Colgan

Deputy Attorney General
Michael L. Hubbard

September 9, 2002

Ron Micheli, Director
Wyoming Department of Agriculture
2219 Carey Avenue
Cheyenne, Wyoming 82002

RE: Term of conservation district supervisors appointed to fill vacancies

Dear Mr. Micheli:

You have presented the following question for our review:

Do appointees filling vacancies in the office of conservation district supervisor during the middle of a term need to run at the next general election or can they serve the remainder of the term?

Our answer is as follows: if there is a regularly scheduled election prior to the expiration of the term filled, the appointee must run and be elected at that election in order to be entitled to serve the remainder of the term.

DISCUSSION

WYO. STAT. § 11-16-113(a) provides that if the commission determines the operation of the proposed district is administratively practicable, it appoints two (2) supervisors who are owners of land in the district to act with the three (3) supervisors elected (under WYO. STAT. § 11-16-119) as the governing body of the district.

WYO. STAT. § 11-16-119 provides that following the organization of a conservation district three (3) supervisors for the district shall be elected. One

shall serve a term of two years and the other two terms of three (3) years. "Thereafter supervisors shall be elected each year to serve for a full term of three years." *Id.*

WYO. STAT. § 11-16-118(a) provides in pertinent part:

The term of the two (2) supervisors appointed extends from their appointment until the second annual election held in the district. A supervisor shall hold office from his election or appointment and taking of the oath of office until his successor has been elected or appointed, and qualified. Vacancies shall be filled for the unexpired term. Vacancies in the office of any supervisor shall be filled by appointment by the commission upon the recommendations of the district supervisors, the appointee to serve until the next election at which time the vacancy shall be filled by the electors for the unexpired term. . . . (emphasis added)

WYO. STAT. § 11-16-120 provides for district supervisors to be elected in subsequent elections (elections held after the initial election following organization of the district) under the Special Districts Elections Act of 1994 and that new districts shall, at the first subsequent director election following establishment, elect five (5) supervisors, with three serving four year terms and two serving two year terms. Thereafter, all supervisors are elected to four year terms. *Id.*

The Special District Elections Act of 1994 (WYO. STAT. §§22-29-101 through 22-29-408) is made applicable to conservation districts under §103(a)(ii) and §§119 and 120 of the Wyoming Conservation Districts Law cited above. Section 103(b) states, "This act specifies requirements pertaining to elections and changes in the organization of the districts listed in subsection (a) . . . where the principal act is silent or unclear. Except as provided by WYO. STAT. § 22-29-401(b), the specific provisions of a principal act are effective and controlling to the extent they conflict with this act."

The Special Districts Elections Act of 1994 at § 202 provides: "(a) A vacancy in a district director office shall be filled by appointment. . ." and "(c) An appointee to the office of director shall serve until the next regular election."

In interpreting statutes, the Wyoming Supreme Court will look first to the language of the statute, and if the language is clear and unambiguous, the Court will not look at rules of statutory construction, nor will it attribute another meaning to the statute, but will give the statute effect according to its plain and obvious meaning. *Amoco Production Co. v. Hakala*, Wyo., 644 P.2d 785 (1982); *Board of County Com'rs of Campbell County v. Ridenour*, Wyo., 623 P.2d 1174 (1982); *Hayes v. State*, Wyo., 599 P.2d 558 (1979); *Mountain Fuel Supply Co. v. Emerson*, Wyo., 578 P.2d 1351 (1978). Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion. SUTHERLAND STATUTORY CONSTRUCTION Volume 2A, Section 45.02 (Singer, Sands, 4th ed. 1984). When a word or phrase in a statute is susceptible of more than one meaning, it must be considered ambiguous. *State Bd. of Equalization v. Tenneco Oil, Supra*, 694 P.2d at 99.

In interpreting statutes a court will first look at the plain and ordinary meaning of the words contained therein. *Parker Land & Cattle Co. v. Wyoming Game and Fish Commission*, 845 P.2d 1040 (Wyo. 1994). Statutes are "construed as a whole with the ordinary and obvious meaning applied to words as they are arranged in paragraphs, sentences, clauses and phrases to express the intent of the legislature." *Peterson v. Wyoming Game and Fish Commission*, 989 P.2d 113, 117 (Wyo. 1999). Statutes must be read as a whole and in conjunction with other statutes on the same subject matter. *Parker*, 845 P.2d at 1042. A statute is unambiguous if worded so that reasonable persons can agree as to its meaning. *Id.* A statute is ambiguous only if it is vague or uncertain and subject to varying interpretations. *Id.* Once a statute has been determined to be ambiguous:

the court 'will resort to general principles of statutory construction in the effort to ascertain legislative intent.' . . . We believe that in ascertaining the legislative intent in enacting a statute . . . the court . . . must look to the mischief the act was intended to cure, the historical setting surrounding its enactment, the public policy of the state, the conditions of the law and all other prior and contemporaneous facts and circumstances that would enable the court intelligently to determine the intention of the lawmaking body.

Id. at 1044 (internal citations omitted).

The Wyoming Supreme Court has held that “where, in the enactment of a law, the legislature employs in a subsequent clause of the same act or in later legislation on the same subject language clarifying a doubtful expression theretofore used, the court should give that language the meaning the legislature intended.” *Romero v. Hoppal*, 855 P.2d 366, 369 (Wyo. 1993) (quoting *State Bd. of Equalization v. Stanolind Oil Co.*, 54 Wyo. 521, 94 P.2d 147, 153 (1939) (quoting *Moore v. Pleasant Hasler Const. Co.*, 51 Ariz. 40, 76 P.2d 225 (1937).)

Applying the above cited rules of statutory construction to WYO. STAT. § 11-16-118(a) shows that the legislature intended the sentence, “Vacancies shall be filled for the unexpired term,” to merely describe the maximum period an appointed supervisor would serve before being required to stand for election. Further, the next sentence clearly requires “the appointee to serve until the next election at which time the vacancy shall be filled by the electors for the unexpired term.” Read together, the two sentences dictate an appointment for the period of the unexpired term, subject to approval by the electors at the next election. The legislature wanted to maintain the staggered terms provided for in WYO. STAT. § 11-16-119, while still providing electors the opportunity to confirm appointments or select their choice of supervisors to fill vacancies at the next scheduled election.

The above construction finds further support when considering the question from a historical perspective. In 1998, the legislature made significant changes to §11-16-120(a). Prior to the changes it read: “District supervisors shall continue to be elected as provided in W. S. 11-16-119 until the board or boards of county commissioners of each county in which the district is located adopt a resolution to make the Wyoming Election Code of 1973 applicable as provided in W. S. 22-2-101(a)(vii). After adoption of such resolution, successor supervisors shall be elected under chapter 29 of the Wyoming Election Code of 1973 and as hereinafter provided for new districts.”

Following the changes made in 1998, which became effective January 1, 1999, the statute read, as it does now: “District supervisors shall be elected in subsequent elections under the Special Districts Elections Act of 1994 and as hereinafter provided for new districts.” 1998 Wyo. Sess. Laws, ch. 115, § 2. As noted above, the Special Districts Election Act provides that appointees serve until the next regular election. A supervisor appointed to fill a vacancy will be required to stand for election at the first regularly scheduled election following appointment under either WYO. STAT. § 11-16-120(a) or WYO. STAT. § 22-29-202.

CONCLUSION

Appointees filling vacancies in the office of conservation district supervisor must stand for election at the next regularly scheduled election occurring prior to the expiration of the term.

Sincerely,



Hoke MacMillan
Attorney General



Michael L. Hubbard
Deputy Attorney General



Kennard F. Nelson
Senior Assistant Attorney General

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