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January 4, 2017

Hon. J.D. Mesnard
Arizona House of Representatives
1700 West Washington, Suite H
Phoenix, AZ 85007

Re: I17-001 / R17-001
Meaning of "By Mail" in A.R.S. § 16-824

Dear Speaker-Elect Mesnard:

You requested an opinion from this Office on the following question: "Under A.R.S. § 16-824, does 'by mail' allow for delivery by email?" As you may be aware, our formal opinion process necessarily involves several layers of review and is not, therefore, conducive to a speedy turnaround. We understand time is of the essence regarding your request. For this reason, we offer the following informal opinion regarding the question presented.

Under A.R.S. § 16-824, "[t]he chairman of the county committee shall give notice of the time and place of such meeting *by mail* to each precinct committeeman at least ten days prior to the date of such meeting." (Emphasis added). At issue in this informal opinion is the meaning of the term "by mail" in this statute.

While judicial authority interpreting the phrase "by mail" under Arizona law is limited, the U.S. District Court for the District of Arizona recently interpreted the word "mail" as used in Arizona Rule of Civil Procedure 4.2(c). *Cachet Residential Builders, Inc. v. Gemini Ins. Co.*, 547 F. Supp. 2d 1028 (D. Ariz. 2007). The court, relying on an established dictionary definition, held that mail is "defined as 'letters, packets, etc. that are sent or delivered by means of the post office.'" *Id.* at 1030 (citing Webster's Encyclopedic Unabridged Dictionary of the English Language 864 (1989)).

This definition, which focuses on whether the item is "sent or delivered by means of the post office," is consistent with how the term "mail" is used elsewhere under Arizona law. For example, Rule 35(c)(1) of the Arizona Rules of Protective Order Procedure distinguishes between communications by mail and email. Ariz. R. Protect. Ord. P. 35(c)(1) ("A limited jurisdiction court may allow contact by mail *or e-mail* to arrange

parenting time”) (emphasis added). Likewise, the Arizona Rules of Civil Appellate Procedure specify that “[a] party that serves documents on another party *by mail* in an expedited election appeal *also must deliver the documents by electronic means*, including email or facsimile, or as agreed to by the parties.” Ariz. R. Civ. App. P. 10(h); *see also* Ariz. R. Civ. P. 5(c)(2)(C), (D) (distinguishing service by “mailing it” from service “by any other means, including electronic means”). Further, in the Code of Judicial Administration, the term “notify” is defined to mean “written communication by mail, fax *or* email.” Ariz. Code of Jud. Admin. § 6-211 (emphasis added). The distinction between “mail” and “email” in the above rules would be superfluous if “mail” already encompassed email. These authorities also show that, when delivery by email is permitted under Arizona law, Arizona authorities have expressly authorized it.

For purposes of the present question, our preliminary conclusion is that notice requirements elsewhere in Arizona law provide the best analogue to the requirement in A.R.S. § 16-824. Those provisions illustrate that, where email notice is permitted, it is listed separately from “mail.” This interpretation is also consistent with dictionary definitions and common usage as explained in *Cachet Residential Builders*. For these reasons, notice by email appears insufficient to satisfy A.R.S. § 16-824.

Sincerely,

Dominic E. Draye
Solicitor General