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FORMAL)
OPINION)
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OF)
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No. 23-03

October 26, 2023

Jena Griswold, Secretary of State, requested this Formal Opinion under § 24-31-101(1)(d)(IV), C.R.S.

QUESTIONS PRESENTED AND SHORT ANSWERS

Questions Presented.

- (1) What is the duration of the term of office for a candidate duly elected to the office representing the eighth congressional district on the State Board of Education that was filed by the election in 2022?
- (2) What is the duration of the term of office for a candidate duly elected to the office representing the eighth congressional district on the State Board of Education that will be filled by the election in 2024?

Short Answers

- (1) 2 years. Under the plain language of subsection (1) of § 22-2-105, C.R.S., the member elected to represent the eighth congressional district on the State Board of Education “[a]t the general election held in 2022 . . . shall be elected . . . for a two-year term.”
- (2) 6 years. Because subsection (1) of § 22-2-105, C.R.S., does not provide the term length in subsequent elections for the member elected to represent the eighth congressional district, subsection (3) of § 22-2-105, C.R.S. applies, stating that “members shall be elected for terms of six years.” Therefore, the term of office for all members of the State Board of Education is six years, and such terms are staggered such that one-third of Board member seats go before the voters every two years.

BACKGROUND

I. The State Board of Education

Article IX, Section 1 of the Colorado Constitution created the State Board of Education (“Board”) to provide “general supervision of the public schools of the state.” The constitution further specified that the Board shall consist of one member from each congressional district (“CD”). However, the constitution leaves to the General Assembly the authority to prescribe the manner of election and length of a Board member’s term:

Said board shall consist of a member from each congressional district of the state and, if the total number of such congressional districts is an even number, one additional member, and said members shall be elected as hereinafter provided. The members of said board shall be elected by the registered electors of the state, voting at general elections, in such manner and for such terms as may be by law prescribed[.]

Colo. Const. art. IX, § 1.

In 1981, the General Assembly enacted § 22-2-105, C.R.S, which sets forth how members of the Board are elected and term lengths. S.B. 336, 53rd Gen. Assem., 1st Reg. Sess., § 17 (Colo. 1981). The statute has been amended several times, most recently in 2022. *See* S.B. 22-013, 73rd Gen. Assem., 2d Reg. Sess., § 33 (Colo. 2022).

Subsection (1) of § 22-2-105, C.R.S., begins with the statement that “[t]he state board of education consists of one member elected from each congressional district in the state and, if the total number of congressional districts of the state is an even number, one member elected from the state at large.” Subsection (1) continues by specifying how members would be elected in specific elections years.

Subsection (2) of § 22-2-105, C.R.S., provides the manner in which members are elected. Members from a congressional district “shall be nominated and elected by the registered electors of such district in the same manner as members of the house of representatives of the congress of the United States are nominated and elected.” When there is an at-large member due to an even number of congressional districts, that member “shall be nominated and elected at large in the same manner as state officers are nominated and elected.”

Subpart (3) of § 22-2-105, C.R.S., provides a six-year default term length for each member: “[e]xcept as provided in subsection (1) of this section, members shall be elected for terms of six years.”

Prior to 2022, the Board was comprised of seven members, one from each of Colorado’s then seven congressional districts. As a result of subsections (1) and (3), each Board member served a six-year term with staggered elections. Three Board

member seats (CD-1, CD-3, and CD-7) went before the voters in 2020, two (CD-2 and CD-4) in 2018, and two (CD-5 and CD-6) in 2016.

II. Senate Bill 22-013 and Colorado’s Eighth Congressional District

Following the 2020 United States Census, Colorado was apportioned an additional eighth seat in the U.S. House of Representatives.¹ The new district was drawn and approved prior to the 2022 general election. *See In re Colorado Indep. Cong. Redistricting Comm’n*, 497 P.3d 493 (Colo. 2021).

The establishment of Colorado’s eighth congressional district enlarged the Board membership from seven seats to nine—adding one for the eighth district and one at-large member to account for the even number of congressional districts. *See* Colo. Const. art. IX, § 1. Accordingly, four Board member seats—representing CD-5, CD-6, CD-8, at-large—would go before the voters in the 2022 general election.

In 2022, the General Assembly adopted Senate Bill 22-013 (“S.B. 22-013”), which amended § 22-2-105, C.R.S. Relevant here, the General Assembly added the following requirement to subsection (1) of § 22-2-105, C.R.S.:

At the general election held in 2022, one member shall be elected from the eighth congressional district for a two-year term, and one member shall be elected from the state at large for a six-year term, both terms commencing on the second Tuesday in January 2023.

S.B. 22-013, § 33 (codified at § 22-2-105(1), C.R.S.).

III. Interpretation of Statutes

The General Assembly has provided guidance on how to interpret laws it adopts. *See* §§ 2-4-101 *et seq.*, C.R.S. Among other things, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” § 2-4-101, C.R.S. In enacting a statute, “[t]he entire statute is intended to be effective,” and “[a] just and reasonable result is intended.” § 2-4-102, C.R.S. To the extent a statute is ambiguous, a court may consider, among other things, “[t]he object sought to be obtained; the circumstances under which the statute was enacted; the legislative history, if any; the common law or former statutory provisions, including laws upon the same or similar subjects; the consequences of a particular construction; the administrative construction of the statute; [and] the legislative declaration or purpose.” § 2-4-203, C.R.S.

The Colorado Supreme Court has also specified how courts should construe laws. The “primary task in construing a statute is to ascertain and give effect to the

¹ U.S. Census Bureau, “2020 Census: Apportionment of the U.S. House of Representatives,” <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

intent of the General Assembly . . . [t]o discern that intent, a court should look first to the language of the statute . . . interpreted so as to give consistent, harmonious, and sensible effect to all its parts.” *People v. Dist. Ct., Second Jud. Dist.*, 713 P.2d 918, 921 (Colo. 1986). If a statute’s plain language is clear, “it is not necessary to resort to other rules of statutory interpretation.” *Scoggins v. Unigard Ins. Co.*, 869 P.2d 202, 205 (Colo. 1994).

A court will find a statute to be ambiguous when its language is “susceptible to more than one interpretation.” *Aspen Highlands Skiing Corp. v. Apostolou*, 866 P.2d 1384, 1389 (Colo. 1994). If ambiguous, a court may consult other sources to determine a statute’s intent, such as “legislative history, the consequences of a given construction, and the end to be achieved by the statute.” *People v. Yascavage*, 101 P.3d 1090, 1093 (Colo. 2004) (citing § 2-4-203, C.R.S.). Moreover, “a statutory construction that defeats the legislative intent or leads to an absurd result will not be followed.” *Ingram v. Cooper*, 698 P.2d 1314, 1315 (Colo. 1985) (citing § 2-4-102(1)(c), C.R.S.).

ANALYSIS

I. Under the plain language of § 22-2-105, the term length for the Board member elected in 2022 to represent the eighth congressional district was two years, and six years for subsequent elections.

Subsection (3) of § 22-2-105, C.R.S., states that, “[e]xcept as provided in subsection (1) of this section, members shall be elected for terms of six years.” The plain language clearly indicates that *each* member of the Board shall serve a six-year term unless a different term is set forth in subsection (1) of the statute. § 22-2-105(3), C.R.S.

And indeed, the General Assembly did include a different term length in subsection (1)—for the 2022 election. Subsection (1) of § 22-2-105, C.R.S., as amended by S.B. 22-013, states: “[a]t the general election held in 2022, one member shall be elected from the eighth congressional district for a two-year term” By providing a different term length in subsection (1), the default six-year term in subsection (3) did not apply for the 2022 election.

However, for the 2024 election and all subsequent elections, the General Assembly did not provide a different term length for the Board member from the eighth congressional district. Thus, the default six-year term in subsection (3) applies in future elections following the 2022 election.

To be clear, the “two-year term” clause in subsection (1) cannot be read to apply beyond the 2022 election. The clause that immediately proceeds it—“[a]t the general election held in 2022”—qualifies that the “two-year term” only applies to the 2022 election. Reading the “two-year term” clause as a general rule that applies at every election moving forward would render the proceeding clause regarding the 2022

election superfluous. Instead, we attempt to give effect to every word in a statute because we presume the General Assembly does not use “language idly and with no intent that meaning should be given to its language.” *Lombard v. Colorado Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 571 (Colo. 2008) (internal quotation omitted).


Legislatures are presumed to know how to make laws. *F.D.I.C. v. First Interstate Bank of Denver, N.A.*, 937 F. Supp. 1461, 1470 (D. Colo. 1996) (“[A] legislature is presumed to know existing law and judicial precedent when it enacts legislation.”). Had the General Assembly intended for the two-year term requirement to continue beyond the 2022 election, it would have stated so. However, § 22-2-105(1), C.R.S., does not state “[a]t the general election in 2022 *and at each election thereafter.*” Instead, the General Assembly expressly included in § 22-2-105(1), C.R.S., only the words “[a]t the general election in 2022” as a descriptor of the two-year term requirement. The statute cannot be read to create a two-year term beyond the 2022 election because “we must accept the General Assembly’s choice of language and not add or imply words that simply are not there.” *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015) (quoting *People v. Benavidez*, 222 P.3d 391, 394 (Colo. App. 2009)).

The plain language of § 22-2-105, C.R.S., is unambiguous; therefore, under the court’s precedent, we do not look to other statutory construction aids. Reading subsections 1 and 3 of § 22-2-105, C.R.S., in harmony clearly demonstrates that the Board member from the eighth congressional district: (1) serves a two-year term following the 2022 election; and (2) serves a six-year term in 2024 and subsequent elections.

CONCLUSION

The establishment of the eighth congressional district resulted in two new members on the State Board of Education. In response, the General Assembly enacted S.B. 23-013 to accordingly update § 22-2-105, C.R.S., for the new Board members’ terms of office. Under a plain reading of the statute, the Board member representing the eighth congressional district is elected to a two-year term at the 2022 election. In subsequent elections, the Board member’s term of office is—like that of all other Board members—six years.

Issued this 26th day of October, 2023.



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