OFFICE OF THE CITY ATTORNEY

OPINION NO. 92-08

TO: Richard M. Gomez, City Clerk

FROM: Stephen M. Kemp, City Attorney

DATE: December 15, 1992

SUBJECT: Election Issues

QUESTION:

You requested an opinion on the following issues:

1. Is a voter whose name has been placed on the County's inactive voter registration roster eligible to sign a petition.

1a. What form of identification is required for someone to vote when their name appears on the inactive voter registration roster.

2. Can a candidate who has already submitted nomination petitions and the number of signatures filed is less than the 10%, collect and then file petitions with additional signatures.

2a. Can a candidate come in and remove the signatures on the petitions that have been submitted, gather additional signatures and then refile his petitions.

OPINION:

In regard to Question 1, the answer is yes. The inactive voter registration roster is created pursuant to A.R.S. §16-166. This list consists of voters who have not provided the County Recorder with a current residence address. Under A.R.S. §16-165, the registration of an individual on the inactive voter list may not be canceled by the County Recorder until the person has been on the inactive voter list for four years.
Clearly a reading of both statutes together, indicates a person

remains registered until the end of the four year period. Further, if the person does provide a current residence address, then they will no longer qualify for being on the inactive voter list. Therefore, we conclude that a person whose name has been placed on the inactive voter registration roster is eligible to sign a nominating petition.

In regard to Question 1a, no additional information is required of inactive voters to vote, then that required of other voters. A.R.S. §16-583 provides that a separate precinct register shall be required for all inactive voters. Further, the statute provides that such individuals may vote in an election. Obviously, a precinct election board could assist the County Recorder by attempting to confirm the new address, however there is no statutory requirement that the voter provide additional information.

In regard to Question 2, there is no statutory prohibition on the filing of additional signatures. The numbers of signatures is governed by A.R.S. 16-322, in the absence of City Charter or election provisions. In Opinion No. 84-081, the Arizona Attorney General opined that nominating petitions need not be filed, that signatures could not be withdrawn and that a penalty did not exist for collecting an excess number of signatures.

Following the reasoning of the Arizona Attorney General, it is our opinion that there is no requirement that all nominating petition signatures be filed simultaneously, provided that all signatures are filed by not more than one hundred and five and not less than seventy-five days prior to the election.

Finally, in regard to Question 2a. Once nominating petitions are filed, they are a public record that the City Clerk is required to maintain. A.R.S. §16-311. There is no authority for alteration of a public record, except as required by law. Additionally, there is no authority for the City Clerk to accept a "second filing" of the same nomination petitions. Therefore it is our opinion that nomination petitions once filed, may not be returned to the candidate for alteration and resubmission.

If you should have any questions, please do not hesitate to contact me.

cc:Honorable Mayor and Council