



1

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OPINION NO. 93-11

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: December 6, 1993
SUBJECT: Legal Opinion

QUESTION:

You have inquired regarding the following questions:

1. Does the re-drawing of the city's electoral boundaries constitute "a newly created division or district of an elective office,..." as discussed in A.R.S. §19-201.B?
2. Nomination paperwork, and campaign contributions and expenditures statement, specifically reflect that candidate ran for the office of "councilmember - specific district," or for "Mayor - at large". Loyalty oaths given to the newly seated Mayor and Council members specify that the Mayor took his Loyalty oath as "Mayor -at large," and the Council members were sworn in as "Councilmember - specific district." Please define the words "all the candidates for the office held by the officer" as discussed and relating to the above statute provisions.
3. Based on the answers to the above questions, please provide the basis and method of calculating the number of signatures needed on a recall petition for the position of Mayor; and for the Council members for each district in the City of Peoria.

OPINION:

The answer to question number 1 is no. The purpose of A.R.S. §19-201 is to provide a method for calculation of signatures in the case of newly created offices, such as divisions of superior court, special districts, etc. In these cases, the original incumbent of the office is appointed by the Governor, or Board of Supervisors. Therefore, there is no prior election to use for purposes of calculating signatures on which to base a recall of the officer.

Without A.R.S. §19-201, recall of such appointed officials would be impossible. The law in Arizona is well established that the language of the constitution and statutes shall be construed to provide for recall elections. Johnson v. Maehling, 123 Ariz. 15, 597 P.2d 1 (1979).

In the case of redrawing election boundaries, there is no new elective office. While the boundaries may be different, the office remains the same. This is reflected in Article II, Section 2.F. of the Peoria City Charter which provides: "...the redrawing of District Boundaries shall not remove the residence of an incumbent Council member from the District he she represents during the term for which elected." The provision indicates an intent to maintain the elective office even if boundaries change. Therefore, it must be concluded A.R.S. §19-201 does not apply.

In light of the answer to question no. 1, the second question is moot, since the provision of the statute does not apply.

Regarding question no. 3, it is necessary to refer to A.R.S. §9-273.A. which provides:

Upon the change from town to city government, the city may, by a majority vote of the qualified electors, elect to be governed by a ward system of municipal government, and in accordance with the election of the common council by a majority vote shall adopt such resolution or ordinance, dividing the city into wards, not exceeding six in number, and the councilmen shall thereafter be elected from wards by the inhabitants thereof and shall be styled aldermen instead of councilmen. [emphasis added]

As a charter city, this statute may not specifically apply, since there is no evidence of legislative intent to preempt the electors of a charter city from incorporating such changes in their charter. However, it provides specific evidence of the legislature's intent on how the elections should be conducted.

Opinion No. 93-11
June 11, 2007
Page 3

This statute clearly indicates that upon conversion to a district system, the officeholders are the "aldermen" for a specific ward. As such they are designated "aldermen-ward no. ____". Similarly, under the district system council members are elected officials for a distinct separate district.

As distinct elected officials from a individual district, it is necessary to review the provisions of A.R.S. §19-201.A:

"...A number of qualified electors equaling twenty-five percent of the number of votes cast at the last preceding general election for all the candidates held by the officer, even if that officer was not elected at that election, divided by the number of offices that were being filled at that election, may, by recall petition, demand his recall."

Under this provision, the City Clerk should determine the numbers of votes cast at the last preceding general election, or primary election if no general election occurred in each district and for Mayor. For those districts where an election was held in 1993, that date would be used. For those districts where an election was held in 1991, that date would be used. As the most recent election for Mayor was in 1993, the 1993 election should be used.

Therefore, in each case, the city clerk should multiply the total number of votes cast in most recent election in each district by 25%. The resulting number is the minimum amount of signatures necessary for a recall of a council member in that particular district.

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

cc: Honorable Mayor and Council