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OPINION NO. 95-06

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: March 13, 1995
SUBJECT: Write In Candidates-Municipal Elections

QUESTION:

What is the number of write in votes that a candidate must receive at the March 14, 1995 municipal election in order to be nominated as a candidate for the May 16, 1995 municipal election.

OPINION:

For purposes of this opinion, some background is beneficial. On March 14, 1995, the City will be holding a primary election to nominate three Council members and a Mayor. The Council members are elected by wards or districts. In the Pine district, one candidate is listed on the ballot and two candidates are official write in candidates pursuant to A.R.S. §16-312.¹

Under the City Charter, if a candidate receives the majority of the votes cast at such election, they shall be declared elected.²

¹Only those candidates who have filed write in papers pursuant to A.R.S. 16-312 may receive write in votes and have those votes counted.

²See, Article IX, Section 6, Peoria City Charter.

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The term "votes cast" has been defined by the Arizona Supreme Court to mean the total number of ballots legally cast for any candidate in the primary election. See, Maxwell v. Fleming, 64 Ariz. 125, 166, P.2d 831 (1946).³

In the case of a write in candidate, two requirements must be met in order for the candidate to proceed forward into the general election. First, the write in candidate must receive a number of votes equal to or greater than the number required to obtain nomination by petition.⁴ See, Board of Supervisors of Maricopa County v. Superior Court, 4 Ariz. App. 110, 113, 417 P.2d 744, 747 (1966), Rev. Den. (1967). Second, no candidate must receive more than one half of the total votes cast for election.

Therefore, the answer to your question may be answered as follows:

First, if any candidate, write in or otherwise, receives more than one-half of the total votes cast (ballots processed) in the Pine District in the March 14, 1995, primary election, they will be declared elected to the four year term for City Council member beginning in June, 1995. Second, if no candidate receives a majority of the votes cast in the Pine District and both write in candidates receive at least 45 write in votes, then the two candidates with the most votes will proceed to the general election. Third, if no candidate receives a majority of the votes cast in the Pine District and no write in candidate receives at least 45 write in votes, then the candidate who was nominated by petition would proceed to the general election.

³The difference between votes cast and votes received is the difference between the total number of ballots processed in the district and the total number of votes received for all candidates. An example can be found in some cities, where many individuals vote for mayor, but not the other city offices. Those votes would still be counted as votes cast for those offices for the purpose of determining the number of votes needed for election in the primary election.

⁴In the Pine District, based on the 1991 general election results, 45 signatures were required for nomination by petition. See, A.R.S. §16-322.

I trust that this answers your questions. If you should need any further information, please do not hesitate to contact this office.

cc: Honorable Mayor and Council
Peter C. Harvey, City Manager

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