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OPINION NO. 95-09

TO: Janice L. Graziano, City Clerk

FROM: Stephen M. Kemp, City Attorney

DATE: June 9, 1995

SUBJECT: Request for City Attorney Opinion

QUESTION:

Are Waivers of Fees by the Arizona Superior Courts for litigation involving a candidate's right to appear on the ballot, campaign expenditures within the definition of Title 16, Arizona Revised Statutes.

OPINION:

Your question arises out of the following facts. One of the candidates in the 1995 Peoria City Election was the defendant in an action seeking to have her removed from the ballot for lack of sufficient signatures. After the completion of the proceeding in the Superior Court where the court issued an order removing the candidate from the ballot, the candidate subsequently appealed to the Supreme Court. At the time of filing the appeal to the Supreme Court, the candidate applied to the Clerk of Superior Court for a waiver of filing fees for filing the Notice of Appeal. Subsequently, you have received a complaint indicating that such expenditures should be disclosed on this candidate's campaign financial reports.

The starting point for the answer to this question is a determination of the nature of a fee waiver. Fee waivers arise out of a decision by the United States Supreme Court in Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.E.D. 2d 113 (1971). This decision requires that a state must authorize the waiver of fees whenever the state controls the sole means of settlement of a dispute involving a right. Clearly, election disputes would appear to fall within this category. First, such matters are the creation solely of statute. There is no procedure except that created by statute for the resolution of these matters. Secondly, the State requires that in order to resolve these matters you must file an action in Superior Court. Consequently, the State controls the means for resolution of these cases. Therefore, it must be concluded that the provision of fee waivers in election matters to indigent persons is constitutionally required.

The statutory basis for fee waivers is found in A.R.S. §12-306. The relevant portion of that statute provides:

A. The Supreme Court shall adopt forms and procedures for the application for a waiver of court costs.

B. The application for a waiver of court costs shall be granted if the applicant establishes by affidavit or otherwise either that he:

1. Is receiving benefits pursuant to a decision of an authorized representative of the department of economic security in one or more of the following programs:

(a) The aid to families with dependent children program (42 United States Code §§ 601 through 615).
(b) The food stamp program (7 United States Code §§ 2011 through 2029).
(c) The general assistance program pursuant to title 46, chapter 2, article 2.[1]

2. Is receiving benefits pursuant to the supplemental security income program (42 United States Code §§ 1381 through 1385).

3. Has an income which is insufficient or barely sufficient to meet the daily essentials of life and includes no allotment that could be budgeted for the expenses to gain access to the court. In considering insufficient income pursuant to this paragraph, the court may consider as evidence of insufficient income the following:

(a) The applicant has a gross monthly income which is one hundred fifty percent or less of the then current monthly poverty threshold established by the United States office of management and budget.

(b) The applicant has an income that is considered sufficient, but the applicant provides proof of extraordinary expenses, including medical expenses, costs of care for elderly or disabled family members or other expenses that are deemed extraordinary.

This statute is clear in that two different types of financial assistance are being referred to, benefits and income. Receipt of benefits or lack of income entitles an individual to this fee waiver.

The question then becomes whether the fee waiver is a benefit provided by the Supreme Court to an individual who meets the statutory qualifications or whether it is actual income received by the individual. It is clear reading from the statute, that the intent is to provide a benefit to an individual. The statute clearly makes reference to specific guidelines for eligibility. Further, the statute also requires that the applicant must be granted the fee waiver if they meet these minimum eligibility requirements.

Therefore, it must be concluded that the fee waiver is a benefit provided to qualified individuals by the Supreme Court. As a benefit, it does not constitute income or monies received. It is the opinion of this office that the receipt of a fee waiver in a lawsuit pertaining to a person's right to be placed on a city election ballot is not monies received by that person subject to campaign reporting. Instead, the fee waiver is simply a benefit provided by a unit of government with no discretion provided that the individual is qualified to receive it.

Therefore, we must conclude that the receipt of a fee waiver by a qualified individual from the Arizona Superior Court pursuant to the guidelines established by the Arizona Supreme Court is not a source of monies which need be reported on a campaign finance report pursuant to Title 16, Arizona Revised Statutes. If you should have any further questions, please feel free to contact me.

cc: Honorable Mayor and Council

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