



1

City of Peoria • 8401 West Monroe Street • Peoria, Arizona 85345

OFFICE OF THE CITY ATTORNEY

CIVIL	602-412-7330
PROSECUTOR	602-412-7335
FACSIMILE	602-412-7043

OPINION NO. 96-01

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: February 28, 1996
SUBJECT: Recall Election Petitions - Statements of Organization

QUESTION:

Whether failure to file a statement of organization by a group of individuals who circulated recall petitions renders all signatures collected before that date void and not subject to being counted.

OPINION:

For purposes of this opinion, the following background is provided. In May, 1995, Rebekah Coty (Coty) was elected council member for the Pine District for the Peoria City Council. Coty took office on June 6, 1995. Pursuant to A.R.S. §19-202.A., a recall petition may not be taken out against a public officer until they have held office for six months.

Carlo Leone (Leone) requested in October, 1995, that the City Clerk provide him a recall packet. On December 26, 1995, Leone requested that the Peoria City Clerk's Office (Clerk) issue a recall number for a Petition to recall Coty. The Clerk's office issued a recall petition number.¹

¹The recall packet consists of various forms and information, including applicable state statutes. Peoria uses a standard packet including some forms also used by the Arizona Secretary of State. This packet includes a statement of

Opinion No. 96-01

Petitions were circulated and filed with the Clerk on February 20, 1996. This date was within the 120 day limit required by A.R.S. §19-203.B. At no time prior to filing signed petitions with the City Clerk was a Statement of Organization filed by Leone. The filed petitions were circulated by seven individuals and notarized by three individuals, two of whom also signed petitions.²

On February 27, 1996 a complaint was filed by a citizen with the clerk indicating that no statement of organization had been filed and requesting a determination of whether the signatures were void pursuant to A.R.S. §19-202.C. Subsequently, the City Clerk requested an opinion from this office.

The starting point in reviewing a recall issue is to recognize that the constitutional right of recall is for the benefit of the public, not the elected official. Johnson v. Maehling, 123 Ariz. 15, 597 P.2d 1 (1979). When the issue of compliance with statutory provisions arises, substantial compliance should be sufficient to warrant recall. Miller v. Wilson, 59 Ariz. 403, 129 P.2d 668 (1942).

In this matter, the first question to be addressed is whether a group of individuals who circulated recall petitions constitute a political committee. A.R.S. §16-901(15) defines political committee as:

15. "Political Committee" means a candidate or any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town, district or precinct in this state, that engages in political activity in behalf of or against a candidate for election or political activity in behalf of or against a candidate for election or retention or in support of or opposition to an initiative, referendum or recall or any other measure or proposition and, in the case of a candidate, that receives contributions or makes expenditures of more than two hundred fifty dollars in connection therewith, notwithstanding that the association or combination of persons may be part of a larger association, combination of persons or sponsoring organization not primarily organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town, or precinct in this state. Political

organization form.

²The circulators were as follows: Fred Galioto (7); Bertha Galioto (5), Carlo Leone (3), Ralph Babel (3) Judith Tucker (1), Janice Trueblood(1), Doris J. Willis (1)

committee includes the following types of committees:

- (d) A committee organized to circulate or oppose a recall petition or to influence the result of a recall election.

....

This issue has been addressed by the Arizona Court of Appeals in Van Riper v. Threadgill, et al, 197 Ariz. Adv. Rep. 12, (1995). In Van Riper, the court held that an informal coalition of individuals cooperating on a referendum of a city council action constituted a political committee under A.R.S. §16-901.15.

In this case, there are seven individuals who circulated petitions for recall. As in Van Riper, the group may be characterized as a "loose affiliation of like minded individuals with a common objective." Therefore it must be determined that the individuals who circulated the recall petitions against Coty constituted a Political Committee under A.R.S. 16-901.15.

The issue then becomes, when must a political committee file a statement of organization pursuant to A.R.S. §16-901.15 and §19-202.C, when it is involved in a recall. In Van Riper, a majority of the Court of Appeals, held that a political committee must file a statement of organization prior to circulation of referendum petitions, but refused to apply the statute, since the proponents had no notice of its provisions.³

Unlike the recall subsection A.R.S. §16-901.15(d), the statute does not specifically reference the circulation of initiative and referendum petitions. Consequently, the decision in Van Riper provides little guidance in resolving this issue.

To resolve this issue, one must first consider the purpose of the statement of organization. If such a statement, is a minor issue, such as not using one's full legal name, then the failure to file the statement is a minor issue and the provisions of the law pertaining to recall should be deemed to have been substantially complied with. Conversely, if the statement of organization serves a substantive purpose, then failure to file such a statement may constitute sufficient grounds to void the signatures.

While this issue has not been addressed in Arizona, the Washington

³Interestingly, the Court of Appeals did not address A.R.S. §16-901.15(c) which defines a political committee as a committee acting in support of or opposition to the qualification, passage or defeat of a ballot measure, question or proposition.

Under this subsection, individuals working together on a ballot measure would only become a committee at the stage of supporting or opposing the county recorder's verification of the ballot measure.

Opinion No. 96-01

Supreme Court considered this issue in McCormick v. Okanogan County, 90 Wash.2d 71, 578 P.2d 1303 (1978). McCormick involved a prosecuting attorney who sought a writ stopping a recall election from being held to remove him from office.

The Washington Supreme Court held that the statute requiring a statement identifying all persons who contributed financially to the preparation, circulation and filing of the petition must be complied with, although a failure to notarize the statement as required by statute did not render it defective. See, 90 Wash.2d at 77, 578 P.2d at 1307.

The Washington court held that the legislature intended that all participants in a recall should be revealed. Similarly, A.R.S. §16-902 requires the identification of the treasurer and chair of political committees. As the Court of Appeals noted in Van Riper:

We agree with the Defendants that it is important for interested parties to know exactly who is backing a referendum drive and that it is reasonable to require individuals to file a form that discloses whether they are acting alone or in concert with others. We also believe however, that reasonable notice of such a requirement must be imparted to every applicant.

This issue was addressed by the Arizona Attorney General in 1987. The Attorney General noted that recall in Arizona cuts the elected official's term short and compels them to stand before the voters for election. The Attorney General noted that it would be contradictory if individuals seeking a normal nomination to public officer would be required to file a statement of organization, while those seeking to end an elected officials term would not. Ariz. Atty. Gen. Op. I87-097 (1987).

Although the Arizona Supreme Court rejected the attorney general's opinion in Mecham Recall Committee, Inc v. Corbin, 155 Ariz. 203, 745 P.2d 950 (1987), the legislature subsequently amended A.R.S. §16-901 to include recall and override the opinion of the Supreme Court. Therefore it must be concluded that the Arizona Legislature intended that filing a statement of organization is a mandatory requirement in recall elections that must be substantially complied with.⁴

The issue then becomes whether compliance with other recall provisions, but failure to file a statement of organization constitutes substantial compliance with the recall provisions of the Arizona Constitution, Article VIII and Title 19, Arizona

⁴This opinion does not address the issue of a defective or partially complete statement of organization, only whether such a statement must be filed at all.

Opinion No. 96-01

Revised statute. This office is compelled to conclude that failure to file a statement of organization at all precludes a finding of substantial compliance that should permit the recall to proceed for the following reasons:

First, the Arizona Legislature, specifically added this requirement after the Mecham Recall Committee, decision by the Supreme Court. If recall matters are to be treated different from election campaigns, it is the legislature's decision to make. Second, the plain language of A.R.S. §16-901.15.(d) itself compels this result. The subsection states: (d) A committee organized to circulate or oppose a recall petition or to influence the result of a recall election. [emphasis added]. Finally, the filing of the statement of organization serves an important public purpose, namely allowing the public to know the parties who are leading a group to recall of an elected official.

The general rule of statutory construction is that a court presumes the legislature did not write a meaningless provision and will interpret the statute to give meaning to every word. State v. Pitts, 178 Ariz. 405, 874 P.2d 962 (1994).

The legislature chose to use the language "a committee organized to circulate or oppose a recall petition. If it had meant to require the statement of organization to be filed when the recall petitions are qualified by the county recorder, the legislature could have used the language in A.R.S. §16-901.15.(c). However, it chose not to do so. It is the role of this office to give effect to the law as written and for the legislative body to make it. Canon School District No. 50 v. W.E.S. Construction Co., Inc. 177 Ariz. 526, 869 P.2d 500 (1994).

Therefore, it must be concluded that a statement of organization must be filed if two or more persons are organized to circulate or oppose a recall petition.

Finally, this raises the issue of the effect of a failure to file a statement of organization prior to the circulation of recall petitions. This issue is addressed in the provisions of A.R.S. §19-202.C which states:

C. Signatures obtained on recall petitions by a committee or any of its officers, agents, employees or members before filing of the committee's statement of organization are void and shall not be counted in determining the legal sufficiency of the petition.

Again, this provision was added by the legislature in 1991 after the Arizona Supreme Court decision in the Mecham Recall Committee case. Again, the issue appears to be one of statutory

Opinion No. 96-01

construction. The legislature having used the words "organized to circulate recall petitions" as defining a political committee elected by enacting subsection C in 1991, to punish those who failed to comply by declaring the signatures void.

To permit counting of the signatures filed before submission of the statement of organization would render the provisions of §A.R.S. 16-901.15.(d) a nullity. Achen-Gardner, Inc. v. Superior Court in and for the County of Maricopa, 173 Ariz. 48 839 P.2d 1093 (1993) Instead it is the duty of courts and this office to interpret two or more statutes on a topic to give force to all statutes involved.

Therefore based on the plain language of A.R.S. §19-202.C. it is our opinion that all signatures filed before a statement of organization was filed in the Coty recall matter are void and shall not be counted in determining the legal sufficiency of the petition.

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

cc: Honorable Mayor and Council