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OPINION NO. 99-03

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: June 20, 2007
SUBJECT: Recall Election Opinion Request

QUESTION:

1. What if the call must be made and the first available election date does not fall within the no less and no more than and is more than 180 days prior to pursuant to A.R.S. §19-209.A.
2. At what point in the recall process may someone begin circulating recall nomination petitions?
3. Verification of recall petitions by the County Recorder includes removal of duplicate names. Does this preclude the removal of duplicate names by the City Clerk during the Clerk's review process?
4. What are the means for and when must withdrawal of signatures from a recall petition occur.

OPINION:

For purposes of background, a petition seeking to recall a City Council member has been taken out and duly filed with the Peoria City Clerk for initial review and verification. Under the statutes, if the City Clerk and County Recorder ultimately verify the Petitions as having enough signatures, then unless the officeholder resigns, a recall election must be held.

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At the same time in 1997, the legislature has enacted A.R.S. §16-204 establishing certain election dates during which all local elections must be held.¹ Unfortunately, the dates specified in the recall statutes and A.R.S. §16-204 are in conflict.

The calling of recall elections is set forth in A.R.S. §19-209.A., which provides:

Order for special recall election:

A. If the officer against whom a petition is filed does not resign within five days, excluding Saturdays, Sundays and other legal holidays, after the filing as determined pursuant to A.R.S. §19-208.03, the order calling a special recall election shall be issued within fifteen days and shall be ordered to be held not less than seventy-five nor more than one hundred twenty days after such order, unless a regularly scheduled election is to be held within one hundred eighty days after an order for a special recall election, the special recall election may be held in conjunction with the regularly scheduled election.

In this case, Recall Petitions against a Peoria City Council member were filed on Tuesday, January 20, 1999. Pursuant to statute, the City Clerk has 10 days to perform the initial verification procedures on the Petitions, at which time if sufficient signatures to require a recall remain, the Petitions must be transferred to the County Recorder. The deadline for initial verification to be complete is February 1, 1999.

Under the statute, the County Recorder then has sixty days to complete the verification process before returning the Petitions to the City Clerk. That deadline is Friday, April 2, 1999. After the recall petitions are returned to the City Clerk, the City Clerk has five days to verify the number and if the number is sufficient under the Arizona Constitution, commence the notice process and issue and order calling the election. This deadline is April 9, 1999. Under this scenario, the earliest date a recall election could be held is June 25, 1999 and the latest date is August 8, 1999.

¹ A.R.S. §16-204 provides in part:

B. Notwithstanding any other law or any charter or ordinance of any county, city or town to the contrary, an election held for or on behalf of a county, city or town, a school district, a community college district or a special district organized pursuant to title 48, chapters 5, 6, 8, 10 and 13 through 16 may only be held on the following dates:

1. The second Tuesday in March.
2. The third Tuesday in May.
3. The eighth Tuesday before the first Tuesday after the first Monday in November. A primary election that is held in an odd-numbered year may be held on this date.
4. The first Tuesday after the first Monday in November. A general election that is held in an odd-numbered year may be held on this date.

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This is directly in conflict with A.R.S. §16-204, which provides that the only available election dates to the City in 1999 are:

March 9, 1999
May 18, 1999
September 7, 1999
November 2, 1999

In this case, both statutes must be construed as a whole, with the intent to give effect to the legislature's intent and meaningful operation to all of its provisions. Wyatt v. Wehmueller, 167 Ariz. 281, 806 P.2d 870 (1991). The intent of the legislature in enacting A.R.S. §16-204 was to provide that all local elections, with one exception occur on the four specified dates. It would defeat the legislative intent if recall elections could be excepted from this statute.

Further, if one were to apply this rationale to the extreme, since the City can only hold elections on specified dates and the next available scheduled City election after May 18, 1999 is March 13, 2001, the recall must be held on that date. This would be an absurd result, since the Council position would be up for reelection at that time. Such an interpretation conflicts with the reservation of the right to recall in the Arizona Constitution and violates the rules of statutory interpretation. State v. Baca, 187 Ariz. 61, 926 P.2d 528 (App. 1996).

Therefore it is our opinion that depending on the date that verification of the recall petitions is complete, if the election can be scheduled within 75 to 120 days of May 18, 1999, then that should be the date on which the election should be held. If the May 18, 1999 date can not be met, the next available date for the recall election is September 7, 1999.

Regarding your second question, until there is a determination by the Clerk that a recall election must be held, there is nothing to be nominated for. That point does not occur until the following time frames have been met.

Clerk receives recall petitions verified back from County Recorder.²
Clerk completes her five day review on whether sufficient signatures
Exist to order recall and files petitions for recall.³
Five-day period for office holder to resign after Clerk files petitions.⁴

If the office holder being recalled does not resign five days after the Petitions for Recall are filed with the City Clerk, the Order for Recall must be issued. At that point, absent the officeholder vacating the office, the election must be held. However, at that point there is no date for the election, which is a mandatory item

² A.R.S. §19-208.02.

³ A.R.S. §19-208.03.

⁴ A.R.S. §19-208.

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that must be completed on the nomination petitions. A.R.S. §19-212. It would be futile to allow candidates to circulate petitions that are not complete.

After the five-day period to resign has elapsed after the City Clerk formally files the recall petitions, the City Clerk must issue an order calling the recall election in accordance with A.R.S. §19-209. At that point there is a date for the special recall election that is a mandatory component of the nomination petitions. It is at that point that nominating petitions may be pulled. Therefore it is our opinion that nomination petitions may be pulled at any time after the City Clerk issues the Order calling the special recall election.

Your third question pertains to verification of recall petitions by the County Recorder that includes removal of duplicate names. Does this preclude the removal of duplicate names by the City Clerk during the Clerk's review process?

It is our opinion that it does not. As the Arizona Attorney General has noted, "the joint efforts of the City Clerk and the County Recorder result in a verification of the total number of signatures present on the petition submitted.

ARIZ.ATTY.GEN.OP. I86-102 (1986) The City Clerk starts the initial verification process pursuant to A.R.S. §19-208.01 following the standards contained in A.R.S. §19-121.01. If the City Clerk determines that as part of that initial verification process that a duplicate signature has been placed on the recall petitions, the Clerk may remove the duplicate signature. Each signature is determined on its face and if one signature is valid, it is counted and all duplicates removed. Whitman v. Moore, 59 Ariz. 211, 125 P.2d 445 (1942); ARIZ.ATTY.GEN.OP. I87-145 (1987).

Your fourth question is: What are the means for and when must withdrawal of signatures from a recall petition occur? The relevant statute is found in A.R.S. §1-261, which provides:

Withdrawal of petition signature; payment of remuneration; violation; classification

A. A person who has signed a petition prescribed by statute for any initiative, referendum or formation or modification of a county, municipality or district may withdraw his signature from the petition not later than 5:00 p.m. on the date set by law for filing of the petition, or if no date is set by law, 5:00 p.m. on the date the petition containing the person's signature is actually filed. A person who has signed a recall petition may withdraw his signature from the petition not later than 5:00 p.m. on the date the petition containing the person's signature is actually submitted for verification pursuant to A.R.S. §19-203.

B. To withdraw a petition signature, a person may either:

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1. Verify the withdrawal by signing a simple statement of intent to withdraw at the office of the receiving officer.

2. Mail a signed, notarized statement of intent to withdraw to the receiving officer.

C. A signature withdrawn pursuant to subsection B of this section and received by the receiving officer within the time provided for in subsection A of this section shall not be counted in determining the legal sufficiency of the petition.

D. A person who knowingly gives or receives money or any other thing of value for signing a statement of signature withdrawal pursuant to subsection B of this section is guilty of a class 1 misdemeanor.

Although in 1987, the Arizona Attorney General rendered an opinion on this matter,⁵ the statute has been amended since that date.

Signature withdrawal from a recall petition may be accomplished under the provisions of the statute by any of the following:

1. Signing a simple statement of intent to withdraw at the Office of the City Clerk.
2. Mail or deliver a signed, notarized statement of intent to withdraw to the City Clerk.

Although the statute does not make specific reference to hand delivery, it would be an absurd interpretation of the statute to hold that a withdrawal must be mailed and could not be hand delivered.

Under the 1992 amendment to A.R.S. §1-261, the language is now specific, a signature may be withdrawn from the time the Petition is submitted to the City Clerk until the end of the business day that the petition was received in the County Recorder's Office. In this particular case the date the Petition for Recall must be submitted for verification by the County Recorder is February 1, 1999. Therefore signatures may be withdrawn from the recall petitions pertaining to the recall of the Councilmember from the Ironwood District up and through 5:00 p.m. on Monday, February 1, 1999.

I trust that this answers your questions regarding this matter. Should you have any further questions, please contact me.

⁵ ARIZ.ATTY.GEN.OP.187-140(1987)