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OPINION NO. 99-04

TO: Joe La Rue, City Council Member, Ironwood District
FROM: Stephen M. Kemp, City Attorney
DATE: February 1, 1999
SUBJECT: Reimbursement for Recall Campaign Expenses

QUESTION:

You have inquired as to the operation of the provision pertaining to payment of recall campaign expenses found in Article 8, Part 1, Section 6 of the Constitution of the State of Arizona.

OPINION:

For purposes of this Opinion, the following factual information is provided. The Arizona Constitution states:

§6. Application of general election laws; implementary legislation

Section 6. The general election laws shall apply to recall elections in so far as applicable. Laws necessary to facilitate the operation of the provisions of this article shall be enacted, including provisions for payment by the public treasury of the reasonable special election campaign expenses of such officer.

There are two citations reviewing the applicability of this provision. The Arizona Attorney General reviewed this matter in 1988. At that time, the Attorney General noted that "The framers of the constitution have given no additional guidance on the subject, but have instead left the matter of details such as the method, timing and calculation of payment to the discretion of the legislature." *ARIZ. ATTY.GEN.OP. 188-035 (1988)*.

Subsequently, this matter was considered by the Arizona Supreme Court in *Mecham v. Arizona House of Representatives*, 162 Ariz. 267, 782 P.2d 1160 (1989). *Mecham* involved a special action petition to the Supreme Court attacking the state senate trial of an impeached governor and requesting payment of campaign expenses for Mecham who was also the subject of a recall.

The Supreme Court declined jurisdiction of the Petition holding: "The recall expense provisions of Art.8, Pt.1, §6 of the Arizona Constitution are not self executing, but depending on statutory authorization." The Court noted that the statute authorizing such payments had been repealed in 1973.

Under general rules of statutory interpretation, the constitutional provision must be read as a whole. The second sentence of the constitutional provision states:

"Laws necessary to facilitate the operation of the provision of this article shall be enacted."

Clearly, this language indicates a requirement that the legislative body, in this case, the Peoria City Council must exercise its legislative power by enacting an ordinance to authorize payment of the reasonable special election campaign expenses of such officer.

As set forth in the constitutional provision, legislation may be enacted to provide for payment of the reasonable special election campaign expenses of a public officer being recalled. Reasonable is defined in Websters II, New Riverside University Dictionary, 1988 ed. as "Within the bounds of common sense". Certainly, expenses at a minimum would have to comply with the requirements of Title 16, Arizona Revised Statutes, in order to be reimbursed. The amount of reimbursement is not unlimited. However, the initial responsibility to establish the definition of reasonableness is that of the legislative body, in this case, the City Council.

The constitutional provision requires such expenses to relate to the special election campaign of such officer. Until the recall petitions are verified by the city clerk and county recorder¹ and the petition is formally filed by the city clerk as required by A.R.S. §19-208.03, there is no recall election for which campaign expenses may be incurred. Therefore, expenses incurred prior to the date of filing the recall petition would not be special election campaign expenses of the officer subject to reimbursement under legislation enacted pursuant to the Arizona Constitution.

Although the Arizona Attorney General opined in Opinion I88-035 that the expenses must be made prior to payment, that opinion appears to be unduly restrictive.² The constitutional provision in Article 8, Pt.1, §6, does not use terms such as reimburse, incurred, paid or similar language indicating an intent by the framers that such costs be paid out and reimbursed to the officeholder, rather the relevant language states: "...including provision for payment by the public treasury of the reasonable special election campaign expenses of such officer. When the language is clear and unambiguous, no construction is necessary and the language

¹The verification process is set forth in A.R.S. §19-208.01 and §19-208.02.

² Webster's II, New Riverside University Dictionary, 1988 ed. defines expenses as "something requiring the expenditure of money".

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should be applied as is. Tobel v. Department of Public Safety, 198 Ariz. 168, 939 P.2d 801 (App. 1997).

The Constitutional provision being clear, absent action by the Legislative body, that requires such expenses to be incurred and reimbursed, the Constitutional provision would not preclude payment of funds prior to the incurring of such expenses.

Therefore it is the opinion of this office that: First, the provisions of Article 8, Pt.1,§6 require a legislative enactment authorizing the payment of the reasonable special election expenses of a public officer subject to recall. Second, such election expenses must be in compliance with the provisions of Title 16, Arizona Revised Statutes and reasonable, which is a responsibility for the legislative body to initially define. Third, absent the legislative body imposing such a requirement, such expenses would not have to be incurred in advance prior to payment.

If you should have any further questions, please contact this office.

cc: Honorable Mayor and Council
Terry Ellis, City Manager
Janice L. Graziano, City Clerk

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