



City of Peoria • 8401 West Monroe Street • Peoria, Arizona 85345
OFFICE OF THE CITY ATTORNEY

CIVIL
PROSECUTOR
FACSIMILE

602-412-7330
602-412-7335
602-412-7043

OPINION NO. 99-10

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: August 3, 1999
SUBJECT: Recall of Officer and Expenses

QUESTION:

1. If a recall election has not been called, are any expenses or monies that may have been spent or received by the Officer to provide his/her constituents with information pertaining to the recall (such as responding to allegations) subject to the State's campaign finance laws and therefore, reportable?
2. If the Officer is not required to report any contributions on the state campaign finance laws, are there any restrictions regarding the source or amount of contributions?
3. If the answers to items 1 and 2 are "no", at what point in time would the contributions or expenses become reportable under the statute?
4. If the answers to items 1 and 2 are "no" is the officer even allowed to accept contributions and would they be considered "gifts" and must be reported under the Financial Disclosure laws.

OPINION:

1. The Arizona Attorney General has opined that the raising and expenditure of funds to defeat a Recall Petition Drive from the date that the number is obtained through the issuance of the Order Calling the Recall Election is not subject to the Campaign Finance Laws. Ariz. Atty. Gen. Op. I88-043. This opinion is consistent with the decision of the Arizona Supreme Court in Mecham Recall Committee v. Corbin, 155 Ariz. 203, 745 P.2d 950 (1987). The Supreme Court held that as Title 16 did not include recall committees in its restrictions on campaign finance practices, such recall committees are not subject to the statute.

Therefore, expenditures and receipts by a public officer for the purpose of defeating a recall petition drive from the date of the issuance of a number for a recall petition through the date on which the city clerk issued the order calling the recall election are not subject to the contribution limitations and campaign finance reporting provisions of A.R.S. §16-901 et seq.

2. The public officer is subject to the restrictions contained in A.R.S. §38-504 prohibiting gifts to public officials in exchange for official actions. Again, it must be noted that in light of the decision of the Supreme Court in Mecham Recall Committee v. Corbin, A.R.S. §16-921 prohibiting expenditures by corporations and labor organizations is silent on recall drives, therefore if the statute is to apply, the legislature must amend it accordingly. Absent such amendments there is no prohibition on the source or amount of contributions received for the purposes of defeating a recall drive from the date the Recall Petition number is issued through the date of issuance of the Order of Recall Election for the officer in question.

3. The provisions of A.R.S. §16-901 become effective once the City Clerk issues the Order for Special Recall Election. At that point an election must be held and the candidate becomes subject to the contribution guidelines and restrictions in A.R.S. §16-901, et seq. The candidate is no longer attempting to defeat a recall petition drive, but to finance an election campaign. Unlike recalls the provisions of A.R.S. §16-905.7 indicate a clear legislative intent to apply these requirements to recall elections.

4. Peoria City Code (1992) Section 2-37 requires all Public Officers of the City to file a financial disclosure if they receive more than \$500 dollars in gifts. The code provision states:

(8) The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars (\$500.00) received by the local public officer and members of his household in their own names during the preceding calendar year, or by any other person for the use or benefit of the local public officer or any member of his household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any Inter vivos or testamentary trust established by a spouse or by an ancestor, or gifts received from any other member of the household or relatives to the second degree of consanguinity. Political campaign contributions shall not be construed as gifts if otherwise publicly reported as political campaign contributions as required by law.

Such amounts are subject to all other legal restrictions on gifts, such as prohibiting their receipt in exchange for official action. To the extent that amounts are received by a public official for defense of a recall from the date of

issuance of the recall petition number through the date of the order calling the recall election, they must be reported on the financial disclosure, if applicable.

If you have any further questions, please contact me.