

MEMORANDUM

DATE: JULY 11, 1998
TO: ALEX RUIZ, CITY MANAGER/CITY CLERK
FROM: GLENN GIMBUT, ASSISTANT CITY ATTORNEY
RE: OPINION REGARDING ANNEXATION 98-3

This memorandum is being written as a public record reflecting the legal opinion given to you, as City Manager, on July 9, 1998 by both Gerald Hunt, City Attorney and myself, that the filing of annexation petition A98-1 of the City of Yuma was for territory that could not be legally annexed to the City of Yuma, and therefore was an act which was void ab initio. In addition to the reasons given on February 16, 1998, and in the memo to you on March 5, 1998, you are specifically referred to the Statement by the City of San Luis to City of Yuma Proposed Annexation No. A98-01 dated March 4, 1998 together with attached exhibits.

It is the legal Opinion of the office of City Attorney that the events described in the foregoing documents have rendered the City of Yuma legally powerless to annex territory based upon the filing of February 5, 1998. If this document ever had any legal force, effect, or established any rights upon which the City of Yuma could rely¹, because Yuma no longer can ever acquire proper jurisdiction to adopt an ordinance based upon City of Yuma Petition no A98-01 as recorded on February 5, 1998, the presence of this document in the public record no longer carries any such force or effect.

On July 10, 1998 an affidavit was executed by you pursuant to the opinions given by Mr. Hunt and myself, as afore stated, with an attached blank petition for annexation by the City of San Luis No. 98-3 together with an attached map. This affidavit was executed in conjunction with a notice withdrawing San Luis Annexation Petition No. 98-1.² Both the notice of withdrawal and the new petition for annexation were authorized by a vote of the City Council on July 8, 1998.

On July 10, 1998, pursuant to your direction, a search was conducted of the records of Yuma County. That search revealed that the only petitions appearing of record with respect to the territory described by petition no. 98-3 was San Luis Petition No. 98-1 and the aforementioned Yuma Petition No. A98-1. The Notice of Withdrawal of San Luis Petition for

¹ It is the position of this office that this filing was void ab initio for reasons which have been previously documented.

² No signatures have ever been gathered on Petition No. 98-1, and, as a result, no signed petitions have ever been recorded.

Annexation No. 98-1 was then recorded. The affidavit and petition for San Luis Petition for Annexation No. 98-3 was recorded next.

The affidavit for Petition No. 98-3 stated truthfully that to the best of your knowledge and belief there was no **valid** filing of a petition of annexation for the territory described by the attached petition, and no previous filing for annexation by the City of San Luis. The affidavit noted the filing of the notice of withdrawal.

At present time it is the opinion of this author that of the afore described petitions, the only filing which can presently confer legal jurisdiction upon a municipality to annex territory is the filing made on July 10, 1998 by the City of San Luis.