



City of San Luis

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San Luis City Attorney Opinion

Re **OPINION: HR POLICY ON EMPLOYEES RUNNING FOR OFFICE**

DATE: March 12, 2018

TO: HR Director Olivia Jenkins
Employee Elias Gonzalez, Jr.

COPY TO: City Manager Tadeo A. De La Hoya,
Mayor Gerardo Sanchez,
Vice Mayor Maria Cecilia Ramos,
Council Member Africa Luna Carrasco,
Council Member Matias Rosales,
Council Member Gloria Torres and
Council Member Ruben Walshe

FROM: City Attorney Kay Marion Macuil

This memorandum will serve as an official legal opinion of the Office of the City Attorney of the City of San Luis, Arizona. It will be on file with the San Luis City Clerk.

I. **FACTS**

This opinion responds an inquiry from the HR Director and Employee Elias Gonzalez, Jr. Elias Gonzalez, Jr. is exploring the possibility of running for the elected office of Yuma County Constable, for Precinct Number 2. A.R.S. § 22-131 and A.R.S. § 22-131 explain the duties of a Constable which include in part:

- attending the Justice Court, Precinct 2 in San Luis,
- serving and returning to the Justice Court proof of service for all types of court documents including warrants, notices including eviction notices and
- attending mandatory ethics and other training.

II. **QUESTION PRESENTED**

What is the San Luis Personnel Policy and law on City Employees running for elected office?

III. THE LAW, PERSONNEL POLICY and ANALYSIS

There are no Arizona statutes on this point. A city may regulate the political activity of its classified civil service employees. (§ 12:173.28.Engaging in politics; soliciting gifts or political contributions, 3 McQuillin Mun. Corp. § 12:173.28 (3d ed.)).

City of San Luis Personnel Policy (current version July 1, 2008) states in HR 5-01 Standards of Conduct §(C)(16)

“Running for political elected office. An employee shall submit the resignation prior to the announcement of his candidacy for public office.”

A. Does this policy apply to constable?

1. Is constable a “political” office?

Answer, yes, Black’s Law Dictionary defines “political” as an adjective “[o]f, relating, or involving politics; pertaining to the conduct of government. (Black’s Law Dictionary (10th ed. 2014)). Constable pertains to the conduct of government.

2. Is constable an “elected” office?

Answer, yes, Arizona Statute A.R.S.§22-102 states that constables have an elected term of four years.

3. Is constable a “public” office?

Answer, yes, “public” in the common understanding of the word means government.

B. When does the announcement of candidacy happen?

Arizona Statute A.R.S. §38-296(B) deals with those holding elected office seeking another elected office. Even though that is not the case presented here, the statute says that the individual running for office “. . . is not deemed to have offered himself for nomination or election to an office by making a formal declaration of candidacy for the office.” (Emphasis added). Instead, the statute requires a “. . . filing of a nomination paper.” So announcement for candidacy happens upon filing the nomination papers for constable with Yuma County. The employee could take actions on his own time toward the goal of running for constable and continue working for the city if at some point in time before he files the nomination papers he resigns.

C. Is leave rather than resignation an option?

Answer, no, civic duty leave under Personnel Policy HR-4-07(E) does not cover public office. Although, civic duty leave is allowed for service on government boards and commissions or similarly constituted governmental bodies. HR-4-07(E) is why employee service on school boards and on internal city boards is allowed.

IV. **CONCLUSION**

If Elias Gonzalez, Jr. opts to file nomination papers for Yuma County Constable, Precinct Number 2, he must resign from employment with the City of San Luis before that filing.

San Luis City Attorney

Kay Marion Macuil