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CITY OF SAN LUIS

P. O. Box S
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TO: Marco Antonio Reyes, Mayor
Miguel A. Lopez, Vice-Mayor
Juan S. Espinoza, Councilmember
Estella S. Luna, Councilmember
Irma Rios, Councilmember
Martina Lopez, Councilmember
Alex Ruiz, City Manager



Dear Mayor Reyes, Council and Mr. Ruiz:

This letter is to set forth an opinion regarding the proper procedure incident to filling a vacancy on the City Council when the same is the result of a resignation.

Article §8 of the Constitution of the State of Arizona recites as follows:

When any office shall, from any cause, become vacant, and no mode shall be provided by the Constitution or by law for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment.

The State Constitution does go on and provides procedures and remedies where a vacancy occurs in certain specific offices. For example, Article 7, §17 of the State Constitution specifically provides for an election to fill vacancies through resignation or any other cause for U. S. senators or representatives to Congress. The State Constitution also provides for specific relief when the governor resigns. See Article 5-6 of the State Constitution.

The particular Constitution provision quoted above, however, refers to when no mode shall be provided by the Constitution or by law. The provision which Arizona has adopted to comply with the "or by law" is set forth in A.R.S. §9-235, which recites as follows:

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The council shall fill by appointment for the unexpired term a vacancy that may occur through death, resignation, removal from the town or removal from office a member of the council. The member appointed shall be a legal resident of the precinct in which the former member held office. [Emphasis supplied.]

The City Code in turn recites in §2-1-4 that:

The Council shall fill by appointment for the unexpired term any vacancy that may occur for whatever reason.


These provisions indicate with the mandatory language that is used that the sole remedy that shall be available for replacing of a councilmember is the appointment by the council of a member to fill the vacancy.

A.R.S. §38-446 recites as follows:

Notwithstanding any provision of law to the contrary, no public officer . . . is personally liable for acts done in his official capacity in good faith reliance on written opinions of the attorney . . . of the city or town attorney of the city or town for which the officer or employee serves or is employed.

The sole purpose of this letter is to outline the correct procedure which the Council is to employ when replacing a council vacancy.

Sincerely,



Gerald W. Hunt
SAN LUIS CITY ATTORNEY
GWH/mk