



# Resolution

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

## RESOLUTION NO. 460.

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, YUMA COUNTY, ARIZONA, DECLARING AND ADOPTING THE RESULTS OF THE RECALL ELECTION HELD ON NOVEMBER 6, 2001, IN THE CITY OF SAN LUIS, ARIZONA.

WHEREAS, the City of San Luis, Yuma County, Arizona did hold a recall election on the 6<sup>th</sup> day of November, 2001, for three (3) Council members; and

WHEREAS, the recall election returns have been presented to and have been canvassed by the City Council.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of San Luis, Yuma County, Arizona, as follows:

**SECTION 1.** That the total number of ballots cast at said recall election as shown by the poll lists was 1264.

**SECTION 2.** That the number of ballots to be verified was 49, and that voters found to be ineligible were 0.

**SECTION 3.** That the votes cast for the candidates for the Council Member position held by Guillermina Fuentes were as follows:

<u>Name</u>	<u>Vote Total</u>
Escamilla, Juan Carlos	683
Fuentes, Guillermina	521

**SECTION 4.** That the votes cast for the candidates for the Council Member position held by Dolores Concha were as follows:

*Did not pass. There was a 3-3 vote. The 3 Council Members who were recalled voted against the resolution. A Resolution is not necessary to Revers Vote. See Attached*

NOTE:

*Salcido*

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SAN LUIS CITY COUNCIL

*Did Not Pass*

<u>Name</u>	<u>Vote Total</u>
Chong, Yolanda	664
Concha, Dolores	525

**Section 5.** That the votes cast for the candidates for the Council Member position held by Charles Page were as follows:

<u>Name</u>	<u>Vote Total</u>
Felix, Abraham	562
Page, Charles	421
Merida, Carmen	235

**SECTION 6.** That it is hereby found, determined and declared of record, that Council Members Guillermina Fuentes, Charles Page and Dolores Concha are recalled, and that the following candidates did receive the highest number of votes and shall be issued certificates of election:

- Juan Carlos Escamilla, to the Council position held by Guillermina Fuentes
- Yolanda Chong, to the Council position held by Dolores Concha
- Abraham Felix, to the Council position held by Charles Page

**SECTION 7.** This Resolution shall be in full force and effect immediately upon its adoption.

**PASSED AND ADOPTED** by the Mayor and Council of the City of San Luis, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Alex Joe Harper, Mayor

APPROVED AS TO FORM:

*[Signature]*  
\_\_\_\_\_  
Glenn Gimbut, Assistant City Attorney

ATTEST:

\_\_\_\_\_  
Enrique Castillo, City Clerk

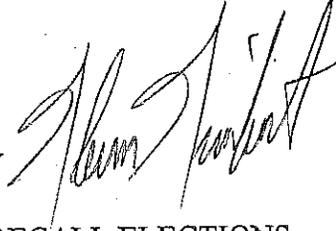
MEMORANDUM AND OPINION

DATE: NOVEMBER 19, 2001

TO: ENRIQUE CASTILLO, CITY CLERK

FROM: GLENN GIMBUT, CITY ATTORNEY

RE: CANVASS OF NOVEMBER 6, 2001 RECALL ELECTIONS



On November 6, 2001 recall elections of the council member positions held by Guillermena Fuentes, Delores Concha, and Charles Page were held in the City of San Luis. The results of the elections as reported by the Election Board show that the aforementioned council members were recalled.

Pursuant to the provisions of Arizona law, the Recall Election Board for the aforesaid special elections, counted the ballots cast, prepared tally lists, statements of canvass, abstracts of the vote, and condensed abstracts of the vote.

A.R.S. §19-235 provides: "The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards and other public officials who conduct general elections, are conferred and imposed upon similar officers conducting recall elections under the provisions of this article together with the penalties prescribed for the breach thereof."

A.R.S. §19-216(A) provides in part: "The candidate receiving the largest number of votes shall be declared elected for the remainder of the term and shall begin serving the remainder of the term on his qualification for the office and on completion of the canvass. Unless the incumbent receives the largest number of votes he shall be deemed removed from office upon qualification of his successor."

A.R.S. §16-642.A provides: "The governing body holding an election shall canvass the election not less than six days nor more than fifteen days following the election."

A.R.S. §16-643 provides: "The canvass of the election returns shall be made in public by opening the returns, other than the ballots, and determining the vote of the county, by polling places, for each person voted for and the vote for and against each proposed constitutional amendment and initiated or referred measure appearing upon the ballot at such election."

A.R.S. §16-644 provides: "No list, tally, certificates or endorsement returned from any precinct shall be set aside or rejected for want of form, or for not being strictly in accordance with the explicit provisions of this title, if they can be clearly understood, nor shall any declaration of result, commission or certificate be withheld or denied by reason of any defect or informality in making the returns of the election in any precinct, if the facts which the returns should disclose can be definitely ascertained."

A.R.S.16-646 provides:

16-646. Statement, contents and mailing of official canvass

A. When the result of the canvass is determined, a statement, known and designated as the official canvass, shall be entered on the official record of the election district which shall show:

1. The number of ballots cast in each precinct and in the county.
2. The number of ballots rejected in each precinct and in the county.
3. The titles of the offices voted for and the names of the persons, together with the party designation, if any, of each person voted for to fill the offices.
4. The number of votes by precincts and county received by each candidate.
5. The numbers and a brief title of each proposed constitutional amendment and each initiated or referred measure voted upon.
6. The number of votes by precincts and county for and against such proposed amendment or measure.

This is done by the Clerk.

A.R.S. §16-647 provides: "The board of supervisors shall declare elected the person receiving the highest number of votes cast for each office to be filled by the electors of the county or a subdivision thereof, and the clerk of the board shall, unless enjoined from so doing by an order of the court, deliver to each such person, upon compliance with the provisions imposed by law upon candidates for office as conditions precedent to the issuance of such certificates, a certificate of election, signed by the clerk and authenticated with the seal of office of the board of supervisors.

It is the duty of the Recall Election Board to count the votes and prepare the returns. A.R.S. §16-644 makes it clear that the City Council is without power to question the returns or otherwise dispute the results as determined by the Recall Election Board.

Case law throughout the United States makes it clear that the canvass of the votes and the declaration of results is a ministerial not a legislative function. *Orth v. Benavides*, 125 S.W.2d 1081 (Ct. App. Tex 1939); *Mazzotti v. Swezey*, 103 NYS2d 956 (Sup. Ct. 1951); *Fairfield-Suisin Sewer District v. Hutcheon*, 294 P.2d 102 (Ct. App. 3<sup>rd</sup> Dist. Cal. 1956); *McGary v. Barrows*, 163 A.2d 747 (Me. 1960); *Shriver v. Hayes*, 76 NE2d 869 (Ohio Sup. Ct. 1947); *Payne v. Kirkpatrick*, 685 S.W.2d 891 (Mo.App. 1985.)

In *Fairfield-Suisin Sewer District v. Hutcheon*, 294 P.2d 102 (Ct. App. 3<sup>rd</sup> Dist. Cal. 1956) the clerk entered the results of the election without a formal vote of the Board on canvass. The Court ruled harmless error since the act of voting to declare the results was merely a ministerial act.



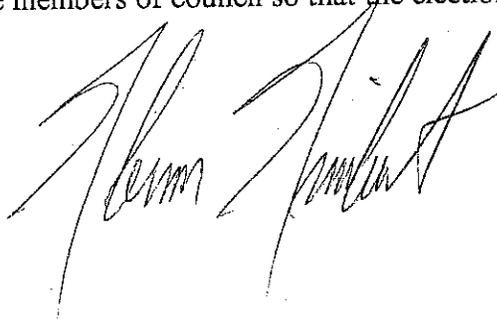
If one believes that there were errors or irregularities in the election process affecting the vote totals as evidenced by the returns the procedure to deal with those issues is in an election contest proceeding, not in a canvass and declaration of result. *Shriver v. Hayes*, 76 NE2d 869 (Ohio Sup. Ct. 1947); *Mazzotti v. Swezey*, 103 NYS2d 956 (Sup. Ct. 1951). Arizona has held that election contest proceedings are unknown at common law and therefore the procedure and right to contest an election is purely statutory and the statutes must be strictly followed. *Griffin v. Buzard*, 86 Ariz. 166; 342 P. 2d 201 (1959); *Harless v. Lockwood* 85 Ariz. 97, 332 P. 2d 887 (1959); *Grounds v. Lawe*, 67 Ariz. 176, 193 P. 2d 447 (1948).

Mandamus and Quo warranto are available remedies if election officials fail to perform their duties as mandated by law under these circumstances.

Courts have held that the judicial system is without power to inquire into the results of an election unless provision is made in the state statutes for such inquiry. *Payne v. Kirkpatrick*, 685 S.W.2d 891 (Mo.App. 1985.) Arizona is in accord. *Fish v. Redecker*, 2 Ariz. App. 602, 411 P. 2d 40 (1966); *Griffin v. Buzard*, 86 Ariz. 166; 342 P. 2d 201 (1959); *Harless v. Lockwood* 85 Ariz. 97, 332 P. 2d 887 (1959); *Grounds v. Lawe*, 67 Ariz. 176, 193 P. 2d 447 (1948).

In *Rogers v. Shanahan*, 221 Kan. 221, 565 P.2d 1385 (1976) the Supreme Court of Kansas quoted at length the treatise by McCrary on elections at pages 1388 and 1389. The treatise pointed out the great harm that could occur to the public if a disgruntled candidate were allowed to deprive a person shown to obtain to highest count of the votes from obtaining office simply by filing a contest in court. The same harm is true if that same disgruntled candidate, without any legal authority, were allowed to prevent a canvass and certificate of election by failing to perform duties mandated by law.

As a result, since the returns are prima facie evidence of who is entitled to hold office, and those who have been recalled should not be allowed to usurp the office of city councilman simply by failing to perform duties mandated by law, it is the opinion of this office that a canvass can occur with three members of council so that the election may be concluded in a timely and proper manner.

A handwritten signature in black ink, appearing to be "John Smith", written in a cursive style.