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March 13, 1990
(Faxed & Mailed)

Mark Espinoza
City Manager
City of San Luis
23222 First Street
P.O. Box S
San Luis, Arizona 85349

RE: Letter of Opinion Re Public Inspection
of List of Names of Absentee Ballots

Dear Mark:

You have asked for an opinion as to whether or not the list of individuals requesting absentee ballots is open to the public pursuant to A.R.S. §39-121.

A.R.S. §39-121 sets forth a general policy of the State of Arizona with regard to public records and says as follows:

Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person.

The term "public records" is in itself not defined by statute but it is clear that the intent of the statute is to make public inspections of records available unless there is a statute which makes them confidential or when strong countervailing considerations are present. The question of the polling list or the list of individuals who have requested absentee ballots does not have an exception which prevents their disclosure. There are, however, practical considerations which need to be taken into account.

These practical considerations are the fact that the right to inspect the public records may not be exercised at such time and such manner as to cause disruption of public business and the

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inspection information needs only to be provided within a reasonable time. See Ariz. Atty. Gen. Op: [80-097, [78-234 and [70-001.

The applicable statutes also provide that the copies must be made while the document remains in the possession, custody and control of the representative of the city. See A.R.S. §39-121.01(D)(2). Further that the city may charge for said copies, depending upon the use requested. If the person requesting the copies asserts they are for a non-commercial use, the individual may be charged a fee for said records. If, however, the individual asserts that it is for a commercial use, then reproduction must include a certified statement setting forth a commercial purpose. A commercial purpose is defined as:

the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public records for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record. Commercial purpose does not mean the uses of a public record as evidence or as research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

The cost to be charged on being present includes factors which are set out in A.R.S. §39-121.03(D) which includes the following:

1. A portion of the cost to the public body of obtaining the original or copies of the documents, printouts or photographs;

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2. A reasonable fee for the cost of time, equipment and personnel in producing such reproduction; and
3. The value of the reproduction on the commercial market.

The state statutes also maintain penalties, both financial and criminal, in the event there are overcharges. A.R.S. §38-413. There is no requirement that the public body generate a document. In other words, if the city does not maintain a list, the city does not have to create a list for inspection. It would appear, however, that the individual requesting it has the right, assuming he complies with the other limitations regarding inspection of public records, to review the documents from which a list could have been compiled.

Sincerely,



Gerald W. Hunt

GWH/bl