



November 27, 2023

The Honorable Kris Mayes
Arizona Attorney General
Office of the Attorney General
2005 N. Central Ave.
Phoenix, AZ 85004-2926

Re: Request for a Legal Opinion

Dear Attorney General Mayes:

I am writing to request a written opinion on whether the City of Tucson is required to recount its November 7, 2023, election, which included a General and Special Election. The Special Election called for voter consideration of Proposition 413. Proposition 413 proposed an amendment to the Tucson City Charter to adjust the salaries of the City of Tucson mayor and each councilmember.

The Proposition was narrowly passed by the City's voters, with the vote totals coming in as:
YES 47,165
NO 46,876

The margin of votes cast was 289 votes; an amount less than ½ of 1% of the total votes cast for the Proposition. On November 21, 2023, the City of Tucson canvassed the election results. A.R.S. § 16-642.

Given the narrow margin of votes on the Proposition, the question remains as to whether the automatic recount statutes require the City of Tucson to conduct a recount. Specifically, A.R.S. § 16-661(A) states as follows:


A recount of the vote is required when the canvass of returns in a primary or general election shows that the margin between the two candidates receiving the greatest number of votes for a particular office, or between the number of votes cast for and against initiated or referred measures or proposals to amend the Constitution of Arizona, is less than or equal to one-half of one percent of the number of votes cast for both such candidates or on such measures or proposals.

In his review of the Arizona recount statutes, A.R.S. §§ 16-661- 16-667, the Tucson City Attorney, Mike Rankin, has opined that a recount is not required for numerous reasons. Mr. Rankin's analysis is contained in the attached November 24, 2023 letter. Because the Secretary of State lacks the authority to provide Mr. Rankin with the legal opinion he is seeking, I am reaching out to you. Obtaining an opinion from

your Office will provide important assurance to all localities in the State regarding how to proceed under similar circumstances.

In accordance with A.R.S. § 41-193(A)(7), I respectfully request a formal legal opinion on whether the final results for Proposition 413 require the City of Tucson to conduct a recount.

Sincerely,

A handwritten signature in green ink, appearing to read "Adrian Fontes". The signature is stylized and written in a cursive-like font.

Adrian Fontes
Arizona Secretary of State

Attachments