

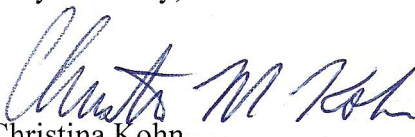
While the Arizona Supreme Court upheld a Tucson ordinance setting a residency requirement for elective offices, *Triano v. Massion*, 109 Ariz. 506, 513 P.2d 935 (1973), Tucson is a charter city, vested with the autonomous powers that a town, such as Quartzsite, does not have. *See City of Tucson v. Consumers for Retail Choice Sponsored by Wal-Mart*, 197 Ariz. 600, 603, 5 P.3d 934, 937 (App. 2000). In fact, other jurisdictions have recognized that even home rule cities may not establish qualifications that contradict those established by statute. *See, e.g., People ex rel. Wexford County Prosecuting Attorney v. Kearney*, 345 Mich. 680, 690, 77 N.W.2d 115, 120 (1956).

Additionally, Quartzsite's interpretation of its "judge of qualifications" power appears to be incorrect. A.R.S. § 9-234 allows a city to "judge the elections, qualifications, and returns of its members," in language nearly identical to a provision in the United States Constitution. Art. I, § 5, cl. 1 ("Each House shall be the judge of the elections, returns and qualifications of its own members"). The U.S. Supreme Court has held that this clause only gives Congress a very limited authority, and that it "leaves the House without authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution." *Powell v. McCormack*, 395 U.S. 486 (1969). Because A.R.S. § 9-234 allows the town council to "judge" the qualifications of its members, not to "set" qualifications for candidates, it is therefore more appropriately interpreted as giving the town power to determine who has won the election, rather than giving it the authority to prescribe standards for candidates.

Because the Town of Quartzsite exceeded its authority in passing Ordinance No. 09-15, we urge you to cease enforcement and in future elections accept applications for town mayor and council from those who are otherwise qualified.

Thank you very much for considering these concerns.

Very sincerely,



Christina Kohn

Attorney, Scharf-Norton Center  
for Constitutional Litigation

cc: Vice Mayor Barbara Cowell; Council Members Bob Kelley, Jose Lizarraga, Joe Winslow, Jerry Lukkasson, Patricia Anderson; Interim Town Manager Alex Taft; Town Clerk Karen Norris; Town Attorney Pamela Walsma

# GOLDWATER

I N S T I T U T E

*in defense of liberty*

## CENTER FOR CONSTITUTIONAL LITIGATION

January 21, 2011

### Via U.S. Mail & Email

Hon. Ed Foster, Mayor  
Town of Quartzsite  
465 North Plymouth Ave.  
P.O. Box 2812  
Quartzsite, AZ 85346

### **RE: Quartzsite Town Ordinance No. 09-15**

Dear Mayor Foster:

I am writing on behalf of the Goldwater Institute, a government watchdog and litigation organization, to express concerns regarding Quartzsite Town Ordinance No. 09-15, which sets requirements for the eligibility of town mayor and council candidates. It has been brought to our attention that this ordinance has been used to prohibit otherwise-qualified candidates from running for these offices. Because it established eligibility requirements beyond those set by state statute, the Town of Quartzsite acted outside the scope of its authority in passing and enforcing this ordinance.

Ordinance No. 09-15, which requires that “no delinquent or fixed fines and penalties, user fees, permit fees, and sales tax be owed to the Town of Quartzsite at the time of declaration of candidacy,” states that it was adopted pursuant to A.R.S. § 9-234, which allows a common council to “judge” the “qualifications” of its members. However, a state statute already sets forth the qualifications for city and town council candidates.<sup>1</sup> That statute does not include any restrictions on running for office based on outstanding financial obligations to the town.

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<sup>1</sup> A.R.S. § 9-232 states that “a person shall not be a member of a city or town council unless, at the time of the election, the person is eighteen years old, is a qualified elector residing within the city or town at the time of the election, and has resided in the city or town for one year next preceding the election, or if an area has been annexed to the city or town for a period of less than one year next preceding the election has resided in such area for one year next preceding the election.”

**Clint Bolick** | DIRECTOR