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Unsupervised

Court overturns county election

By **KYLE MELINN**
Staff Writer

The Arizona Court of Appeals threw out Yuma County Supervisors Chairman Clyde Cuming's 1996 election win over opponent Tony Reyes on Thursday, saying the county's handling of absentee ballots changed the outcome of the election.

In doing so, the court overturned 3-0 a Yuma County Superior Court decision last year upholding the election. Cuming had won by 23 votes.

Appellate Judge Sheldon Weisberg wrote in the court's seven-page decision the Yuma County Recorder Office's broke state law by failing to check absentee ballot signatures with those on voter registration forms.

Because Reyes was

winning the election before the absentee ballots were counted by 151 votes, but lost after they were counted, the court ruled the oversight "indisputably changed the outcome of the election."

"To me, it's a technicality of the worst kind being exploited by a sore loser," Cuming said.

While the decision sets the stage for a new election for the District 4 seat, it did not

say how the seat should be filled in the interim.

Cuming said until the court tells the county what its options are, he's "going to sit here like a bump on a log until the next election."

A new election could be held as early as March 10 when the San Luis, Ariz., primary election and the Crane School District Bond election **See ELECTION, Page 17**



RULING VOIDS
Clyde Cuming's (top) 1996 win over challenger Tony Reyes.

Yuma Sun, Yuma, Arizona, US

December 12, 1997, Page 1

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NEWSPAPERARCHIVE

ELECTION

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are being held.

Cuming, the current chair of the Yuma County Board of Supervisors, was the incumbent.

His term runs through 2000.

Word of the appellate court's ruling thrilled Reyes and his

supporters Thursday afternoon.

The former San Luis mayor said his challenge was not about being a bad sport, but about doing the right thing.

"I want the cloud to be lifted from this election," Reyes said. "The only way to do it is to do it again and do it right."

The County Recorder's Office was swamped during the 1996 presidential election with more than

11,000 early ballots, much more than was expected.

Recorder Susan Marler said her office did not, and still doesn't, have the staffing or funding needed to follow the rules regarding early balloting to the letter.

After Cuming won the election 1,861 to 1,838, Reyes contested the election on a host of issues, including the signature issue, the breakdown of a voting machine on

election night and tardiness on the part of the Recorder's Office in processing the absentee ballots.

Superior Court Judge H. Stewart Bradshaw ruled a month after the election the errors were not severe enough to change the results.

County Attorney David Ellsworth said Cuming could file a petition with the Arizona Supreme Court but it's up to that court's discretion whether they will accept it.

Yuma Sun, Yuma, Arizona, US

December 12, 1997, Page 17

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NEWSPAPERARCHIVE

Despite ruling of appeals court, Cuming still chairman

By TONY CARROLL

Staff Writer

A state appeals court setting aside Clyde Cuming's re-election to the Yuma County Board of Supervisors won't stop him from chairing Monday's board meeting.

Absentee ballots were illegally counted in Cuming's election against challenger Tony Reyes, a three-member panel of judges ruled Thursday. And that "rendered the outcome of this election uncertain," wrote Judge Sheldon H. Weisberg.

"Uncertain" also describes Yuma County Attorney David Ellsworth's expectations of what will happen next. He said he doesn't expect anything to happen soon.

"They didn't declare Reyes the winner," he said. Instead, the judges sent the case back to Yuma County Superior Court with directions to set aside the election.

One certainty is that Cuming, who is chairman of the board, will continue to be supervisor at least for awhile, Ellsworth said. He pointed out that state law specifies that an office holder will continue to discharge duties until a successor is seated.

Ellsworth said he doesn't even know if there will be a special election to determine who is entitled to the seat — particularly because he expects Cuming will appeal the latest ruling to the state Supreme Court.

Reyes, a Democrat, had 151 more legally counted votes than Cuming, the Republican incumbent representing the supervisor's district for southern Yuma County.

However, when the absentee ballots were counted after the November 1996 election, Cuming had 23 more votes than Reyes. Supervisor's certified the final tally as 1,861 to 1,838.

Reyes challenged the outcome. His attorney argued that signatures on the absentee ballots had not been checked by County Recorder Susan Marler, as required by state law. There were 1,310 absentee ballots cast in the Cuming-Reyes race. More than 11,000 were cast

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CUMING

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countywide.

Yuma County Superior Court Judge H. Stewart Bradshaw rejected the challenge, however. He ruled that comparing the signatures on the absentee ballots would have placed "an undue burden" on Marler's office.

The Arizona Court of Appeals disagreed.

"Election statutes are mandatory, not advisory, or else they would not be law at all," Weisberg wrote.

"If the state unduly burdens election officials, the recorder or other appropriate officials may lobby the Legislature to change it," he continued. "Until then it is law."

Still, as Cuming completes the first year of his third elected four-year term, the board isn't slated to discuss the issue at its meeting Monday morning.

"Nothing has really happened yet," said County Administrator Wally Hill. He added that while it's

too late to determine how each of the absentee voters voted, no one even knows if there were 23 or more questionable absentee ballots cast in the election.

"We don't care who checks them," said Marler, who said she still doesn't have enough staff to compare signatures on the absentee ballot envelopes against voter registration signatures. Her lack of staff was one of the points she brought out while suing the board earlier this year over cuts in her budget.

But even if her office had the staff to compare signatures, she said she wonders if it would have made any difference.

State law doesn't tell the recorders what to do if they question absentee ballots, she said.

But she said she wasn't surprised with the appeals court ruling. "I think we all thought that this would come down this way."

Hill, however, called it "an extreme step for a court to set aside an election."

Yuma Sun, Yuma, Arizona, US

December 13, 1997, Page 15

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NEWSPAPERARCHIVE

It's a judgment call

Fate of supervisors seat doesn't rest with voters, says county attorney

By **TONY CARROLL**
Staff Writer

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Voters won't be asked to decide who will represent southern Yuma County through 2000 on the board of supervisors, according to the county attorney.

David Ellsworth said Monday that Clyde Cuming's contested seat on the board will be in the hands of judges.

Cuming, a Republican and this

year's board chairman, won re-election last year to represent southern Yuma County on the board by 23 votes. Tony Reyes, a Democrat and former mayor of San Luis, Ariz., would have beaten Cuming by 151 votes if the 1,310 absentee ballots weren't counted. And his attorney argued that they shouldn't

have been counted.

Last week, the Arizona Court of Appeals agreed that County Recorder Susan Marler should have compared signatures on absentee ballot envelopes with registered voters' signatures on file in her office.

The appeals judges sent the case back to Yuma County Superior Court, where Judge H. Stewart Bradshaw had upheld Cuming's election. It also gave the county court direction to "set

aside" last year's election.

After setting aside the election, the judge would have to determine which candidate received the highest number of legal votes, Ellsworth told the board.

Ellsworth later told The Yuma Daily Sun that there is nothing in the law providing for a new election for the board seat. But the ruling also stated the election results were "uncertain."

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Yuma Sun, Yuma, Arizona, US

December 16, 1997, Page 1

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FATE

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leaving the outcome to be determined, he added.

Supervisors and Reyes later said they believed the ruling could lead to a special election. A Sunday column by Sun Editor Terry Ross hinted at the possibility of a special election.

Ross also wrote that Cuming should step down from the board until legal questions are settled.

Although the matter wasn't scheduled for discussion by the supervisors Monday, board member Casey Prochaska announced to the public that the way she reads the law, Cuming is still a member of the board.

"I know the people of Yuma County need some clarification," she told Ellsworth.

Ellsworth agreed. State law provides that Cuming will remain on the board until a successor has been determined.

"I think we need to have a

special session to discuss the issue," said Supervisor Bob McClendon, one of two Democrats on the five-member board.

"There's nothing we can do about it," Ellsworth answered. "It's before the courts."

When McClendon said the board was facing a court order, other supervisors told him he was wrong. But McClendon said he wants to answer questions he's hearing in the community.

Cuming wouldn't say whether he plans to appeal the ruling. "I've got 15 days (from Thursday's ruling) to decide," he said. He added that he doesn't like paying the legal bills, which he is personally responsible for in this case.

He said the issue was a petty technicality. There is no requirement to check voters' signatures for people who go to the polls on election day, he noted.

Marler has maintained that supervisors have not provided her with the staff to check absentee signatures. She brought up the point while unsuccessfully suing the supervisors this summer over cuts ordered for her budget.

Superior Court Judge H. Stewart

Bradshaw had ruled that checking the signatures would overburden Marler's office.

Reyes told The Sun Monday that he agreed with the appeals court ruling, stating that the law is the law, and not a recommendation.

"I always knew my case would prevail if it were taken out of local politics," he said. "I would pray that the only votes that would count would be the ones legally counted, and those would be the ones cast on election day."

He also said he isn't surprised with assassinations on his character that he has heard since the ruling was publicized. Some have charged that he is a convicted felon and ineligible to serve in elected office.

"That's typical of the right-wing fanatics that call the talk shows," he said.

His "brush with the law" ended up being a misdemeanor, he explained. He was fined \$250 in federal court in 1987 for helping an illegal alien — a cousin — buy an airline ticket.

Reyes remained mayor of San Luis after the conviction. He also was elected to the post three years later.

Yuma Sun, Yuma, Arizona, US

December 16, 1997, Page 13

<https://newspaperarchive.com/other-articles-clipping-dec-16-1997-3638736/>

NEWSPAPERARCHIVE

County supervisor's plea denied

By TONY CARROLL
12/9/96

Cuming says he'll appeal election ruling to highest court

The Arizona Court of Appeal has ruled it won't reconsider a December ruling ordering a local judge to set aside C. Dale Cuming's 1996 election to the Yuma County Board of Supervisors.

"I'm going to appeal it to the state Supreme Court," Cuming told The Yuma Sun last Wednesday. "I didn't win this thing to give it away."

The final vote for the board's southern Yuma County seat favored Cuming, the Republican

incumbent, but defeated former Senator Mike Reyes by 23 votes. The Democrat, however, appealed the election results, arguing that county Recorder Susan Marler had not checked the signatures on 1,216 absentee ballots cast in the election as required by state law.

Marler said she doesn't have enough staff to check the signatures on the absentee ballots.

Excluding the absentee ballots, Reyes tallied 155 votes more than

Cuming.

Yuma County Superior Court Judge H. Stewart Brink has originally ruled in Cuming's favor, but Reyes came out on top in the appeals court, which ruled that the county was required to follow state election law.

The appeals judges ordered the case back to Yuma County with direction to set aside the election.

No allegations of voter intimidation, undue influence or fraud or

ballot tampering have been suggested by Reyes, Cuming's attorney Stephen Shelle wrote, asking the appeals judges to reconsider "either the matter before the court is simply one of a defeated candidate attempting to take advantage of the financial problems of a county in which he sought office."

On the day the motion was denied, Phoenix attorney Paul Stoller argued on Reyes' behalf for a quick denial of the motion "to

preserve the effect of this court's opinion."

Stoller argued that the ruling would negate any results of the election between Cuming and Reyes, forcing a "special" election which could only be held in November, midway through Cuming's elected term.

For an election to be held, the court would have less than six months to settle the appeal, he added.

Yuma County Attorney David ER. Voth, however, has told county supervisors that he does not believe there is any provision for a special election provided for in the law. He said he believes it would be up to the judge to determine who legally won the election.

Reyes said he was pleased with the appeals court's quick rejection of Cuming's motion to reconsider its ruling. But he said he expected an appeal. Reyes said he believed Cuming will try to stretch the case out as long as he can.

Until a new supervisor is seated, state law provides that Cuming has the authority to retain the seat.

Yuma Sun, Yuma, Arizona, US

January 08, 1998, Page 1

<https://newspaperarchive.com/other-articles-clipping-jan-08-1998-3638618/>

NEWSPAPERARCHIVE

Cuming's appeal in doubt

County supervisor won't give up fight for his seat

By **TONY CARROLL**

Staff Writer

Clyde Cuming still has a strong appeal in his fight to remain a county supervisor — even if the appeals court says he didn't file it, his attorney says.

The time to file the appeal ran out Monday, according to the order signed by a deputy clerk.

Shadle filed Cuming's appeal Wednesday.

"We'll try to straighten it out this morning," said Stephen Shadle, representing Cuming in a civil action filed by former San Luis Mayor Tony Reyes.

Cuming, a Republican, beat Reyes by 23 votes for the southern Yuma County seat on the Yuma County Board of Supervisors. However, the Arizona Court of

Appeals ordered the election be set aside, finding the county did not follow state law regarding absentee ballots.

The votes cast on election day would have given Reyes, a Democrat, a 151-vote win.

On Dec. 30, the appeals court refused to reconsider its ruling. Cuming later said he would take the case to the state's highest court. But Thursday, the Yuma County Superior Court clerk received an order mandating the local court to set aside Cuming's election.

"Somehow they're counting from the wrong date," Shadle told The Yuma Daily Sun, referring to the court's contention that Cuming's appeal was filed late. "The statute's pretty clear. You

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APPEAL

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have 15 days after the order."

If the appeal is filed late, it could still go to the Supreme Court, but with an order pointing out that it had been filed late, Shadle said.

When the court gets an appeal, it decides first if it will consider the case. If an appeal is filed late, it would give the court reason to turn the case away without considering the merits.

Shadle said he was working with court clerks this morning to have any mention of the confusion over time limits removed from the record.

He also said the Supreme Court should be able to look deeper into election law than the appeals court, which referred to a case that involved fraud.

"There are no allegations of wrongdoing," Shadle said. "It was simply a workload matter."

Reyes' attorneys have successfully argued that the county didn't follow state election laws because Recorder Susan Marler did not check the absentee ballot signatures against the signatures on voter registration rolls.

Reyes told The Sun that he believes Cuming is trying to delay resolution of the case as long as he can. It would have to be decided by June for the county to hold a special election for the seat in November.

Yuma County Attorney David Ellsworth, though, has said that the way he reads the law, the judge would determine who got the most legally counted votes in the election.

Clerical error blamed for Cuming mix-up

Yuma County Supervisor Clyde Cuming's appeal to the Arizona Supreme Court made the deadline.

The Arizona Court of Appeals office made a clerical error when handling Cuming's paperwork, meaning Cuming's case will be considered by the state's highest court, said County Administrator

Wally Hill on Friday. Clerks from the Court of Appeals said earlier this week the deadline was Monday, but corrected themselves Friday.

Cuming filed his paperwork on Wednesday for the Court of Appeals ruling that set aside the election he won against Tony Reyes in 1996, which was the last day he could do so.

Yuma Sun, Yuma, Arizona, US

January 17, 1998, Page 3

<https://newspaperarchive.com/other-articles-clipping-jan-17-1998-3638724/>

NEWSPAPERARCHIVE

'I want to close this up'

County recorder looking to settle absentee issue before next election

By **TONY CARROLL**
Staff Writer

Yuma County's recorder wants to see that absentee ballots don't send future elections to court.

Susan Marler is looking for clearance from the U.S. Justice Department on a

procedure to clear up the issue that has put Clyde Cumini's 1996 election to the Yuma County Board of Supervisors in the hands of judges.

Ultimately, it could require an increase in her budget, she said. Supervisors cut her budget last summer.

Former San Luis Mayor Tony Reyes continues to challenge Cumini's election

because Marler did not check signatures on absentee ballots, as required by state law.

Cumini, the Republican incumbent representing southern Yuma County on the board, finished 23 votes ahead of Reyes. Excluding 1,210 absentee ballots, also known as early ballots, the Democrat outpolled Cumini by 151 votes.

Cumini remains a supervisor, as he

attempts to appeal a state appeals court order to set aside his election.

"I want to close this up so it doesn't happen again," Marler said.

She wants the absentee vote issue settled as her office notifies people living in the city of San Luis and the Crane Elementary School

See **ABSENTEE**, Page 11

Yuma Daily Sun, Yuma, Arizona, US

January 27, 1998, Page 1

<https://newspaperarchive.com/other-articles-clipping-jan-27-1998-3638705/>

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ABSENTEE

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District that they can vote absentee by mail in special March elections.

John White, the chief civil deputy in the Yuma County Attorney's Office, said the county cannot institute a voting procedure without clearance from the Justice Department. He added that he is hoping to hear something soon.

Under Marler's proposed procedures, members of her staff would compare the signatures on the envelopes of absentee ballots with signatures on the voter registration rolls.

When Reyes' challenge was heard in Yuma County Superior Court at the end of 1996, Marler testified she didn't have the staff to check the signatures on more than 11,000 absentee ballots.

She told Superior Court Judge H. Stewart Bradshaw that she had no one on staff qualified to compare signatures.

When the appeals court overturned Bradshaw's rejection of Reyes' challenge, the ruling stated that special qualifications were not needed to compare signatures.

"Election statutes are mandatory, not advisory, or else they would not be law at all," appeals Judge Sheldon Weisberg wrote for the majority, quoting a previous state Supreme Court ruling.

Marler said Monday she could be in need of temporary part-time staff to handle the duties of employees in her office who are checking absentee signatures.

"We're going through the budget process soon, and I hope (county supervisors) will listen to us this year," she said. "If they don't, there will always be a problem."

Last year, Marler was one of three county elected officials to sue the Board of Supervisors, claiming that 4.57 percent budget cuts had failed to provide them with enough money to fund their departments.

A Maricopa County judge agreed her department was underfunded but did not order supervisors to increase her budget.

Under Marler's proposal, any ballots in question would be forwarded to the absentee ballot board with a photocopy of the voter registration signature attached.

Marler said it's unclear what would happen to ballots if the signatures don't match. State law doesn't give her the authority to throw out votes — although it may end up throwing out absentee ballots she didn't check.

"We really want an end to that statute," she said. "But it's really something that nobody wants to touch."

Second-place finisher

San Luis City Councilman **Tony Reyes** appears to be keeping his sense of humor about his legal challenge for Yuma County Supervisor **Clyde Cuming's** seat.

During the election of Yuma Metropolitan Planning Organization Executive Board officers recently, Tony seconded the nomination for chairman and then again for vice chairman.

"I've been coming in second all day. Some of us want a recount," Tony joked, referring to his election loss to Clyde by 23 votes.

Clyde, meanwhile, was sitting at the head of the table as the outgoing executive board chairman.

For the record, Yuma City Councilman **Frank Irr** and Somerton Mayor **Augustin Tumbaga** were unanimously elected chairman and vice chairman, respectively. Tony did eventually get a chance to be first. He nominated Supervisor **Casey Prochaska** as secretary/treasurer, who also was unanimously approved.

'We've had our day in court'

State justices won't consider Yuma County supervisor's appeal; election outcome appears headed back to the polls

By **TONY CARROLL**
Staff Writer

Arizona's highest court has put Clyde Cuming's 1996 election to the Yuma County Board of Supervisors back in the hands of a Yuma judge — leaving the man who lost by 23 votes looking for another shot at the polls this fall.

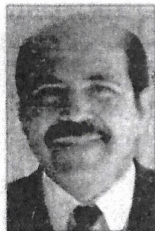
"We've had our day in court," said San Luis Democrat Tony Reyes. "Now we need our day in front of the voters."

Reyes' Phoenix attorneys have argued that the 1,210 absentee votes cast in the race were not legally counted. The signatures on the ballot envelopes were not compared against signatures on voter registration cards, as required by state law.

If the absentee votes had not been



CUMING



REYES

counted, Reyes would have beaten Cuming, the incumbent Republican, by 151 votes.

In December, the Arizona Court of Appeals ordered the Yuma Court to set aside the election seating Cuming on the board to represent southern Yuma County.

Reversing a decision by Yuma County Superior Court Judge H. Stewart Bradshaw, the appeals judges found "election statutes are mandatory, not advisory, or else they would not be law at all."

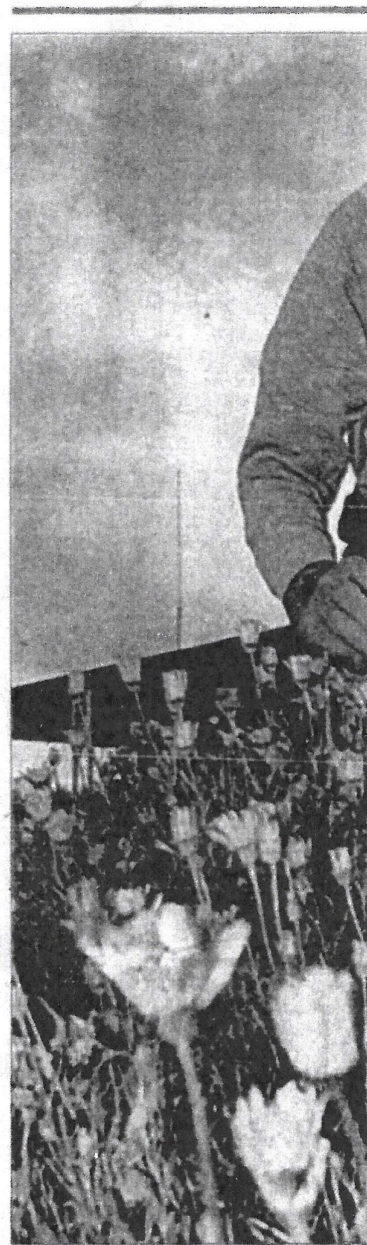
This week, the Arizona Supreme Court refused a request to reconsider the decision, a spokeswoman from the clerk's office in Phoenix reported Thursday.

"I'm really surprised," said Stephen Shadle, Cuming's attorney. He said he believed the high court would want to use questions over his client's election to define ambiguous state law.

"I'm not surprised with anything that happens in politics," Cuming told *The Yuma Daily Sun*.

Shadle said he would have to see the Supreme Court order before deciding what to do next. If the case is sent back to Yuma County Superior Court, he said he still may be able to argue against his client's election

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Yuma Sun, Yuma, Arizona, US

March 20, 1998, Page 1

<https://newspaperarchive.com/other-articles-clipping-mar-20-1998-3638676/>

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APPEAL

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being set aside.

He said that Reyes' attorneys have never shown any voter fraud. He suggested looking at the signatures on the absentee-ballot sleeves could determine if there could have been enough fraudulent votes to have made a difference in the election.

There is no way to determine which way individuals voted, though. The 3,699 votes cast in the race exist as anonymous ballots, according to county officials.

Yuma County Attorney David Ellsworth has told county supervisors he doesn't see state law authorizing a new election, leaving the judge to decide who holds the seat.

Reyes said his attorneys have

held that setting the election aside means Cuming would have to vacate his seat and the Board of Supervisors would have to appoint a replacement until the next general election.

The next regular election for county supervisors isn't scheduled until 2000. However, the central Yuma seat on the board will be decided in this fall's general election because the board appointed Jim Buster to replace an elected supervisor. Gary Pierce resigned a year ago to pursue Phoenix-area business interests.

Reyes said he feels vindicated by the Supreme Court's failure to accept Shadle's petition.

"A lot of people were saying this

was just a technicality," he said. But he noted that the county modified its election rules to conform with the law.

The day the Supreme Court voted on whether to take up the Yuma case, the Yuma County Attorney's Office received a letter from the U.S. Justice Department clearing a procedure that will allow county Recorder Susan Marler and her staff to draw attention to absentee ballots if the signatures on the sleeve don't match those on the voter registration cards.

Reyes, a former mayor of San Luis, currently sits on the city council. He told The Sun that he would have no problem resigning the post if he were required to do so in order to run for the county board.

Yuma Sun, Yuma, Arizona, US

March 20, 1998, Page 15

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