




ATTORNEY/CLIENT PRIVILEGE
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M E M O R A N D U M

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This is a privileged attorney-client communication and should not be disclosed to persons other than Pima County officials and employees involved in the matter that is the subject of the communication. The privilege is held by Pima County and can be waived only by an official action of the Board of Supervisors.

To: Hon. Stephen W. Christy, District 4 Supervisor

From: Andrew L. Flagg, Chief Civil Deputy County Attorney 

Date: December 13, 2017

Subject: Proposed Canoa golf course donation; conflict question

You asked whether you have a conflict of interest with respect to a proposed substantial donation of real property to Pima County for park purposes. Based on the information you provided, and as further explained below, it is my opinion that you have no legal conflict of interest and are not legally required to disqualify yourself from voting on the matter, should it come before the Board. If any of my understanding below as to the facts is incorrect or incomplete, please let me know immediately, as it could affect my opinion. Additionally, please note that I am providing you this advice in your official capacity as a Board Member, which means that the County is the client. Accordingly, this memorandum may not be released to the public and its contents may not be discussed with anyone other than County employees who have a "need to know," unless the Board were to vote to do so.

Your concern arises from your relationship with Morgan North. Mr. North is a member of Borderland Investments I, LLC, which owns the real property proposed to be donated to the County. The real property is a golf course that, as I understand it, has not been used for several years. The LLC, and presumably Mr. North by extension, stand to benefit financially from the donation at least insofar as it would relieve the LLC of the obligation to pay property taxes and may qualify for a tax deduction.

You and Mr. North are close personal friends, have previously been neighbors, and are both involved in some of the same community activities. He contributed substantially toward your campaign. He is also the CEO and Owner of Borderland Construction, which has frequently been a construction contractor on County projects.

The conflict-of-interest statutes preclude a Board Member from participating in Board action if the Member has a “substantial interest” in the Board action.¹ For an interest to be “substantial,” it must be both “nonspeculative” and “pecuniary or proprietary.”² The prohibition on voting extends to relatives, but not to friends. The type of personal relationship you have described to me is not a substantial interest under the statutes. The only possible financial interest would be future campaign contributions from Mr. North. It would be a felony, however, to arrange for a vote in exchange for a financial benefit,³ and what you have described to me certainly doesn’t fall into that category. Because you have no substantial interest in the decision on the proposed donation, you are not legally required to disqualify yourself if the matter come to the Board for a vote.

¹A.R.S. § 38-503(A) & (B).

²A.R.S. § 38-502(11).

³A.R.S. § 13-2602.