

ADDENDUM MATERIAL

DATE 5/19/20 ITEM NO. ADD 3



MEMORANDUM

Date: May 15, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator
CHH

Re: **Complaint Filed by Senator Vince Leach, Representatives Mark Finchem and Bret Roberts with the Attorney General**

On Thursday, May 14, 2020 Senator Vince Leach sent the attached complaint to the Attorney General regarding the County's adoption of local public health standards by the Board to reduce or prevent the spread of COVID-19 which is currently a known public health emergency.

Today, May 15, 2020 the Chief Civil Deputy County Attorney Andrew Flagg received notification from the Attorney General regarding the "Legislator Request for Attorney General Investigation". The request from the Attorney General requires a written response by the County by 5:00 pm on Tuesday, May 19, 2020.

For this reason the Chief Civil Deputy County Attorney and I request that this item be put on Boards Executive Session Agenda of Tuesday, May 19, 2020 for discussion with and direction from the Board on this matter.

CHH/mp

Attachments

c: Jan Lesher, Chief Deputy County Administrator
Andrew Flagg, Chief Civil Deputy County Attorney

5/15/2020 12:44 PM KERB
CHH



Office of Arizona Attorney General

Mark Brnovich

Legislator Request for Attorney General Investigation of
Alleged State-Law Violation by County, City, or Town (Continued)



*Identify the member(s) of the Legislature
submitting this request for investigation
(attach additional sheet if necessary):

Senator Vince Leach

Rep. Mark Finchem, Rep. Bret Roberts

*Provide a contact person for communications from the Attorney General's Office regarding this request (may be a Legislator listed above or an employee of the Legislature).

*Name: Vince Leach

*Email address: vleach@azleg.gov

*Phone number: 602-926-3106

*Mailing address: 1700 West Washington Street

Phoenix, AZ 85007

*The specific question for the
Attorney General to investigate is:

Does the 5/13/2020 Proclamation of the Pima Co B.O.S.

violate A.R.S. 26-307 in light of Gov Ducey's E.O. 2020-36, paragraph 7?

*The name of the county, city, or town
that is the subject of this request:

Pima Co.

*The specific ordinance, regulation, order, or
other official action adopted or taken by the
governing body of the county, city, or town
and the date thereof:

5/13/2020 Proclamation of the Pima Co B.O.S.

*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts :
A. R. S. 26-307



Office of Arizona Attorney General
Mark Brnovich

Legislator Request for Attorney General Investigation of
Alleged State-Law Violation by County, City, or Town (Continued)



*All relevant facts of which you are aware (attach separate sheet if necessary):

On 5/12/2020 Gov. Ducey issued E.O. 2020-36, which at paragraph 7 restricts counties, cities, and towns.

On 5/13/2020, Pima Co. adopted its proclamation.

[Redacted lines for facts]

*All relevant legal authority, including federal and state case law, of which you are aware (attach separate sheet if necessary):

N/A

[Redacted lines for legal authority]

* Any litigation involving this issue of which you are aware (include case name, number, and court where filed) : N/A

Check this box if you are attaching supporting documentation.

NOTE: This form and other information submitted to the Attorney General's Office is subject to the public records law, A.R.S. § 39-121 et seq.

I, a current member of the Legislature, verify that I and the other Legislators listed on the previous page (if any) are submitting this request for investigation under A.R.S. § 41-194.01.

*First Name: Vince *Last Name: Leach

*Signature:

*Date:

5/14/20

Please submit the completed form to:

Arizona Attorney General's Office

Attn: Appeals and Constitutional Litigation/A.R.S. 41-194.01

2005 North Central Avenue

Phoenix, AZ 85004

governmentaccountability@azagov

* required field
Rev. 8-2016



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
APPEALS & CONSTITUTIONAL LITIGATION DIVISION

LINLEY WILSON
UNIT CHIEF COUNSEL
GOVERNMENT ACCOUNTABILITY
LINLEY.WILSON@AZAG.GOV

May 15, 2020

Via Certified Mail & Email

Andrew L. Flagg
Chief Civil Deputy County Attorney
Pima County Attorney's Office
32 N Stone Ave.
Tucson, AZ 85701
Andrew.Flapp@pcao.pima.gov

**Re: Notice of Submission of Legislator Request for Investigation Pursuant to
A.R.S. § 41-194.01; Request for Written Response**

Dear Mr. Flagg:

Enclosed with this letter is a complete copy of a Legislator Request for Investigation under A.R.S. § 41-194.01 (the “Request”) regarding the “Proclamation of the Pima County Board of Supervisors Regarding A State of Emergency Related to the COVID-19 Outbreak, Establishing Measures For Reopening of Certain Businesses and Activities” (“Proclamation”) issued by the Pima County Board of Supervisors (“County”) on May 13, 2020. Section 41-194.01 provides that one or more members of the Arizona Legislature may request that the Attorney General “investigate any ordinance, regulation, order or other official action adopted or taken by the governing body of a county, city or town that the member alleges violates state law or the Constitution of Arizona.” With the Request’s filing, the Office will now conduct an investigation and prepare a report that, under the statute, must be completed within 30 days. A.R.S. § 41-194.01(A), (B).

In the report, the Attorney General will reach one of three conclusions. *See id.*, § 41-194.01(B). If the Proclamation does not violate any provision of state law or the Arizona Constitution, the Office will take no further action. *Id.*, § 41-194.01(B)(3). If the Proclamation may violate a provision of state law or the Arizona Constitution, the Attorney General will file an action in the Arizona Supreme Court. *See id.*, § 41-194.01(B)(2); *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017). If the Proclamation violates a provision of state law or the Arizona Constitution, the Office will notify the County in writing and state that the County has 30 days to resolve the identified violation. A.R.S. § 41-194.01(B)(1). If the Attorney General determines that the County failed to resolve the violation within 30 days, the Attorney General will notify the State Treasurer, who shall withhold and redistribute from the County state shared monies as provided by A.R.S. §§ 45-5029(L) and 43-206(F).

Letter to Andrew Flagg Re Legislator Request for Investigation
May 15, 2020
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In light of the exigencies of the current circumstances, the Office hereby requests that the County voluntarily provide a written response to the Request by **5:00 p.m. on Tuesday, May 19, 2020.**

Please feel free to contact me if you have any questions.

Sincerely,



Linley Wilson

Enclosure

cc: *Via Email*

Regina Nassen
Civil Deputy Pima County Attorney
Regina.Nassen@pcao.pima.gov

Julie Castaneda
Clerk of the Pima County Board of Supervisors
Julie.Castaneda@pima.gov

Chuck Huckleberry
County Administrator
Chuck.Huckleberry@pima.gov