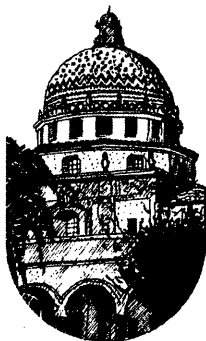


ADDENDUM MATERIAL

DATE 6-22-21

ITEM NO. ADD 11



MEMORANDUM

PIMA COUNTY ATTORNEY'S OFFICE | CIVIL DIVISION

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Attorney-Client Privilege / Confidential

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: C.H. Huckelberry, County Administrator

From: Daniel Jurkowitz, Deputy County Attorney

A handwritten signature in black ink, appearing to be 'DJ', is written over a horizontal line.

Date: May 17, 2021

Subject: County Minimum Wage Ordinance

Questions Presented

1. You have asked whether the County can adopt a minimum wage ordinance either by action of the Board of Supervisors or initiative.
2. If so, would the minimum wage apply only in unincorporated Pima County or apply to incorporated cities and towns as well.

Short Answers

1. Yes, the County can adopt a minimum wage under either process.
2. It is unclear what the extent of the coverage would be, but most likely it would apply to all jurisdictions within the geographic boundaries of Pima County.

Discussion

A.R.S. § 23-364(I) provides in pertinent part:

...A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article...This article shall be liberally construed in favor of its purposes and shall not limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

Therefore, according to the clear language of the statute, a county can adopt a minimum wage ordinance within its geographic boundaries. Since a county is empowered by general law to legislate on the matters of minimum wages and benefits, county electors have the same power as the Board of Supervisors to enact such an ordinance by initiative. Ariz. Const. art. IV, Part 1, § 1(8).

Whether or not such an ordinance would be applicable to only unincorporated Pima County or to all jurisdictions within the geographic county boundaries is less clear. The plain language of the statute, added by Proposition 202 (2006), indicates that such an ordinance adopted by a county would control “within its geographic boundaries.” It does *not* say “within the unincorporated portion of the county.” The primary rule of statutory construction is that if a statute’s meaning is clear and unambiguous, court are to give effect to the plain language. *Ariz. Dept. of Revenue v. Salt River Project*, 212 Ariz. 35 (App. 2006). If so, then the County’s ordinance would control over any

minimum wage adopted in a city or town within the County's geographic boundaries that provided for a lower minimum wage.

However, the statute governing the general ordinance authority for counties, A.R.S. § 11-251.05, provides that an ordinance adopted under that statute may only apply to the incorporated areas in the county if the ordinance is not in conflict with an existing city or town ordinance. A.R.S. § 11-251.05(D). Prior to becoming effective within the boundaries of an incorporated area, the city or town council would need to approve the application of the ordinance within the city or town by resolution. *Id.* Accordingly, an argument could be made that cities and towns might need to approve application of the County's minimum wage ordinance within their jurisdictions.

Nevertheless, A.R.S. § 11-251.05(E) provides that the general ordinance authority contained in that statute is not to be construed to prohibit a county from exercising powers and authority granted under other provisions of state law. A contrasting argument can thus be made that the specific grant of ordinance authority in A.R.S. § 23-364(I) with specific application "within its geographic boundaries" would control over the more general grant of ordinance authority in A.R.S. § 11-251.05. Where two statutes deal with the same subject matter (e.g. ordinance authority), generally the more specific statute controls. *Pima County v. Heinfeld*, 134 Ariz. 133, 134 (1982). No caselaw specifically addresses the interaction of these statutes, so it is unclear how a court would rule. However, the original intent of A.R.S. § 11-251.05 was for it to only apply in unincorporated areas of the county. *See* 1983 Ariz. Sess. Laws, ch. 223, § 2. In 1988, the statute was amended to permit the enactment of countywide ordinances subject to approval by an affected city or town. *See* 1988 Ariz. Sess. Laws, ch. 231, § 1. If the drafters of Proposition 202 wanted to provide cities and towns with the ability to veto application of a countywide minimum wage within their jurisdictions, then

they could have simply referenced A.R.S. § 11-251.05 or just not included the specific language “within its geographic boundaries.” However, this later enactment seems to indicate a different application than that provided for in A.R.S. § 11-251.05. Where two statutory provisions conflict, the more recent one generally controls. *Pima County v. Heinfeld*, 134 Ariz. at 136. Therefore, the better argument is that A.R.S. § 23-364(I) provides independent ordinance authority and would control over any lower minimum wage adopted in a city or town with the County’s geographic boundaries.