

ADDENDUM MATERIAL

DATE 12-6-22

ITEM NO. ADD 3

Corrie Cotugno

From: Ripley, Catherine <cripley@pima.edu>
Sent: Friday, November 18, 2022 1:49 PM
To: aginfo@azag.gov
Cc: Laura Conover; Sam Brown; OMLETinfo@azag.gov; druiz@az.gov; khobbs@azsos.gov; kkm@krismayes.com; ruben.reyes@mail.house.gov; btoma@azleg.gov; wpetersen@azleg.gov; Regina.Romero@tucsonaz.gov; cityclerk@tucsonaz.gov; COB_mail; Lee Lambert; Demion Clinco; Silvyn, Jeff; Abigail.obrien@mail.house.gov; jen_cox@kelly.senate.gov
Subject: Pima Community College Board Members Garcia and Gonzales' refusal to follow Arizona Law
Attachments: Atty Gen OM Violations Found.pdf

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November 18, 2022

The Hon. Mark Brnovich
Arizona Attorney General
2005 N Central Ave
Phoenix, AZ 85004-2926
aginfo@azag.gov
(602) 542-5025

Subj: Pima Community College Board Members Garcia and Gonzales' refusal to follow Arizona Law

Dear Attorney General Brnovich,

On November 14, 2022, I tendered my resignation from the Pima Community College Board of Governors in order to take on the duties of full-time caregiver for my mother. Additionally, having served as the Chair since January, the criminal and abusive behavior of board members Maria Garcia and Luis Gonzales, made it nearly impossible to effectively lead the college and conduct board business.

Since assuming the role of Chair in early 2022 I experienced firsthand with shock and horror a brazen and total disregard for the law by these two board members which have, and continue to, directly undermine the mission of this public institution, the ability of the board to conduct business and destroy the public trust. In addition to unlawful and continuous violations of the open meeting law, these two members refuse to follow board bylaws and policy which makes governance of the college nearly impossible. Their actions go beyond mere "conduct unbecoming an elected official."

Garcia's refusal to comply with Arizona Open meeting law and maintain the confidentiality of the executive sessions is an audacious dereliction of duty, an abdication of fiduciary responsibility, and extreme abuse of

CLERK'S NOTE:

COPY TO SUPERVISORS

COUNTY ADMINISTRATOR

cc: Laura Conover & Sam Brown

DATE 11-18-22 cc

DEC 05 22 PM 01:13 PC CLK OF BD

NOV 18 22 PM 02:05 PC CLK OF BD

power that has directly undermined the democratic authority of the board, costing taxpayers, and eroding the ability of the College to effectively operate.

Despite warnings from your office, hours of extensive training, and reprimands from fellow board members, Garcia refuses to comply. Records and actions are extensively documented by PCC legal counsel. Her behavior is nothing less than a mockery of Arizona law and the authority of the office of Attorney General. Since your public warning to the district and to these two board members that this behavior needed to stop, the opposite has happened, and violations have only accelerated. Garcia has made multiple disclosures of executive privileged information at public meetings and in a letter written by their friend, a Mr. Soaring Hawk, for public distribution. She has also informed the board that she had destroyed public records related to the college's accreditation. As a result of this ongoing behavior, the board can no longer effectively operate and struggles to provide direction on legal issues.

In addition to the documented disclosures, I am certain, if your office obtains Garcia's and Gonzales' personal emails, phone, text records, and documents which they have refused to turn over as part of public records requests, you will find extensive evidence of disclosures of privileged information, conspiracy with college employees and individuals to undermine the board, and collaboration with individuals that are in active litigation with PCC. This includes coordinated and repeated refusals to cooperate voluntarily with the college council, contrary to obligations as a board member. In addition, the online recordings of every board meeting reveal that nearly all of Garcia and Gonzales' statements, which are read out loud, are conspired by and written by Mr. Soaring Hawk and have included details from our executive sessions. Finally, through their actions they have created a dangerous climate of fear that has encouraged public collaborators to threaten and intimidate the publicly elected members of the board and employees of the college.

These deplorable, intentional, and unlawful acts are undemocratic, reckless, and are destroying Pima Community College. ^

Given the total contempt for the law and complete disregard of warnings from your office; recent changes in leadership; departure of Board members Clinco, Hay and myself, who have held the board together; and placement of the board on monitoring from the college accreditor the Higher Learning Commission, I respectfully request you urgently and immediately remove Maria Garcia and Luis Gonzales from office. The successful operation of PCC depends on it.

PCC is a vital and necessary institution to Pima County's economic and social welfare. Board Members Garcia and Gonzales have verbally and through their actions, demonstrated their immediate intent to destroy the institution. With the college up for reaccreditation in 2023, I fear our community will suffer deeply. If action is not taken before the end of the year, I am concerned Garcia and Gonzales will successfully damage this institution beyond repair, fire leadership, and make institutional changes, not in the best interest of the college, but specially designed to obfuscate their illegal behavior and shield themselves from accountability. Thank you for your time and consideration of this serious matter.

Sincerely,

Catherine D. Ripley
Commander, USN (ret)
Former Chair of Pima Community College Board of Governors
(520) 429-5064

Attachment: 1. Office of the Arizona Attorney General re: Open Meeting Law Violations

CC:

Laura Conover, Pima County Attorney, Laura.Conover@pcao.pima.gov

Samuel E. Brown, Chief Civil Deputy, Pima County Attorney's Office, sam.brown@pcao.pima.gov (520) 724-5600

Katherine Jessen, Assistant Attorney General, OMLETinfo@azag.gov

Hon. Governor Doug Ducey, druiz@az.gov

Hon. Kati Hobbs, Arizona Governor-elect, khobbs@azsos.gov

Hon. Kris Mayes, Arizona Attorney General-elect, kkm@krismayes.com

Hon. Mark Kelly, United States Senate, jen_cox@kelly.senate.gov

Hon. Raul Grijalva, United States House of Representatives, ruben.reyes@mail.house.gov

Hon. Ann Kirkpatrick, United States House of Representatives Abigail.obrien@mail.house.gov

Hon. Rep. Ben Toma, Arizona House of Representatives, btoma@azleg.gov

Hon. Sen. Warren Petersen, Arizona Senate, wpetersen@azleg.gov

Mayor Regina Romero and the City of Tucson Council, Regina.Romero@tucsonaz.gov,
cityclerk@tucsonaz.gov

Pima County Board of Supervisors, COB_mail@pima.gov



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE
GOVERNMENT ACCOUNTABILITY UNIT

KATHERINE JESSEN
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April 14, 2022

Via Email & By Certified Mail, Return Receipt Requested

Pima County Community College District
c/o Susan Segal, District Counsel
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One E. Washington, Suite 1600
Phoenix, AZ 85004
spssegal@gustlaw.com

Re: Open Meeting Law and the Pima County Community College District

Board Members and Ms. Segal:

As you know, the Office of the Attorney General (the "Office") received a self-reported complaint alleging that the Pima County Community College District Governing Board (the "Board") violated Arizona's Open Meeting Law. The Office has concluded its review of the Board's self-reported complaint, and the Board's responses to the Office's request for additional information. As discussed below, the Office has determined Board Members Maria Garcia and Luis Gonzales violated the Open Meeting Law for two reasons. First, Ms. Garcia and Mr. Gonzales sent multiple email communications (collectively the "Email Communications")¹ that were addressed to a quorum of the Board and proposed legal action. *See* Board's July 29, 2021 Response ("Board's Response") at 1-4. Second, Ms. Garcia and Mr. Gonzales individually and collectively violated the Open Meeting Law by disclosing confidential executive session information to a third party that was not authorized to receive such information pursuant to A.R.S. § 38-431.03(B), (F). This disclosure of executive session information occurred in two separate instances: first, in the September 14, 2020 memorandum discussing "Diversity, inclusiveness and social justice,"² and second, the June 21, 2021 memorandum discussing the termination of a District employee.³ Each of these instances disclosing executive session information constitutes an Open Meeting Law violation.

¹ These emails are included in the July 29, 2021 Board's Response at 2-4 and the Board's April 6, 2022 Supplemental Response.

² *See* Board's Complaint at 3-4.

³ *See* Board's April 6, 2022 Supplemental Response Attachment 4 Metadata Screenshot.

The facts recited in this letter serve as a basis for this conclusion, but are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. § 38-431 *et seq.*

Violation for Email Communications Sent to A Quorum of the Board

The Board's outside counsel filed a self-reported complaint that listed multiple email communications sent by Board Members Garcia and Gonzales that (1) were sent to a quorum of the Board and (2) expressed their opinions on matters that would foreseeably come before the Board for discussion and final legal action. Specifically, the Board's Complaint identified 8 email communications that were sent to a quorum of the Board that violated the Open Meeting Law. *See* Board's Response at 1-4; Board's Supplemental Response Attachment Titled December 6, 2021 Letter to General Counsel.

Under the Open Meeting Law, a "meeting" includes "[a] one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action;" it also includes an "exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action." A.R.S. § 38-431(4)(b). An email communication sent to a quorum of the public body that merely proposes that a matter be placed on a future agenda, *without more*, does not violate the OML. *See* Ariz. Att'y Gen Op. I05-004 at 9. However, where members of a public body "are parties to an exchange of e-mail communication that involve discussion, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under the OML." Ariz. Att'y Gen Op. I05-004 at 2; *see also* A.R.S. § 38-431(4).

Here, the Email Communications went beyond simply asking for a matter to be placed on a future Board agenda. Instead, the Email Communications expressed Ms. Garcia and Mr. Gonzales' opinions and interpretations on matters that would foreseeably come before the Board for future discussion or legal action. *See, e.g.*, June 21, 2021 Memorandum to General Counsel Jeffrey Silvyn (discussing that the termination of a District employee was improper and stating that they disagree with the Chancellor's decision).⁴ These Email Communications essentially invited the Board to engage in a non-public discussion of a matter that could foreseeably come before the Board for future legal action, and expressed far more than simply asking the matter to be put on an agenda for discussion at a future meeting. Ultimately, the contents of the Email Communications should have been properly noticed and added to a meeting agenda so that the Board could address these matters in an open, public meeting rather than through emails to a quorum of the Board.

The Board's Response notes that Ms. Garcia and Mr. Gonzales believe that the Email Communications are permissible under A.R.S. § 38-431.09(B), which in relevant part, permits an *individual* member of a public body to "express[] an opinion or discuss[] an issue" through technological means that may come before the public body at a future meeting so long as such "discussion is *not principally directed at or directly given to* another member of the public

⁴ Board's Supplemental Response Attachment 3.

body.” A.R.S. § 38-431.09(B)(1) (emphasis added). Further, this exception does not apply where there is “collective deliberation to take legal action.” *See id.* at (B)(2). Here, the Email Communications plainly do not fall within the scope of A.R.S. § 38-431.09(B) as they were addressed to and principally directed at a quorum of the Board. Additionally, the Email Communications consist of collective deliberations between Ms. Garcia and Mr. Gonzales that propose the Board take legal action on various matters. *See, e.g.*, September 14, 2020 Memorandum Addressed to the Remaining Board Members and Chancellor Lambert (proposing legal action by stating that the Board needs to review its diversity efforts).⁵ This conclusion is in keeping with the Legislature’s directive that the Open Meeting Law be construed in favor of open and public meetings. A.R.S. § 38-431.09(A). Accordingly, Ms. Garcia and Mr. Gonzales violated the Open Meeting Law by sending the Email Communications to a quorum of the Board.

The Board’s Response also included instances where District staff member Andrea Gauna was directed by Ms. Garcia to forward Email Communications to other Board Members. *See* Board’s Response at 2-4. By directing Ms. Gauna to forward these Email Communications to a quorum of the Board, Ms. Garcia violated the Open Meeting Law. *See* A.R.S. § 38-431.01(I).

Violation for Disclosure of Confidential Executive Session Information

Executive session minutes and the discussions held during executive session must remain confidential. *See* A.R.S. § 38-431.03(B), (F). The only persons that can receive executive session information are listed in A.R.S. § 38-431.03(B). Because executive session information is designated as confidential by statute, *see* A.R.S. § 38-431.03(B), (F), civil and criminal sanctions may apply due to its improper disclosure. *See, e.g.*, A.R.S. § 38-431.07; A.R.S. § 38-504(B); A.R.S. § 38-510.

Here, the metadata for the September 14, 2020 Memorandum (concerning efforts to diversify the District) and the June 21, 2021 Memorandum (concerning the termination of a District employee) both contain confidential executive session information. *See* Board’s Complaint at 5-6, Tab 9; Board’s Supplemental Response Attachment 3. The Board provided metadata for both the September 14, 2020 Memorandum and the June 21, 2021 Memorandum that shows that along with Ms. Garcia and Mr. Gonzales, a person called Soaring Hawk also authored and/or edited both of these memoranda. *See id.* As of the date of this letter, Soaring Hawk is not a current or former Board Member, and is otherwise not one of the persons or entities authorized to receive executive session information under A.R.S. § 38-431.03(B). *See* Board’s Complaint at 6.

Additionally, and of greater concern, it appears from the September 14, 2020 Memorandum and the June 21, 2021 Memorandum that members of the press and the public at large were copied on these memoranda. *See* Board’s Complaint at Tab 9 (addressing the memo to include “faculty, staff, student body, and county residents” among others); Board’s Supplemental Response Attachment 3 (“Our Constituents” listed as cc recipient). As stated above, confidential executive session information may not be released to any person or entity that is not listed in A.R.S. § 38-431.03(B). Because Ms. Garcia and Mr. Gonzales communicated

⁵ Board’s Complaint at 5-6, Tab 9.

and provided access to confidential executive session information to unauthorized persons, Ms. Garcia and Mr. Gonzales individually violated A.R.S. § 38-431.03(B), (F) for both the September 14, 2020 Memorandum and the June 21, 2021 Memorandum.

Remedy

To remedy this violation, the Office considered the readily available records documenting whether the Board has had any recent open meeting violations, the Board's responses and documentation, the nature and scope of the violations found herein, and that Board Members Garcia and Gonzales did not respond to or provide affidavits addressing the questions asked in the Office's March 24, 2021 inquiry letter.

Having weighed these factors, and in order to resolve this matter, the Office now requires that the Board and relevant District staff attend an Open Meeting Law training conducted by the Arizona Ombudsman-Citizens' Aide, another pre-approved organization, or a pre-approved attorney within sixty days of receipt of this letter. This Open Meeting Law training should emphasize the confidential nature of executive session materials and the implications of using email and other technological communications involving Board business. Evidence of completion of such training shall be provided to the Office to be kept on file.

Additionally, the Board must share the contents of this violation letter (excluding any executive session information) with the public at the next practicable public meeting. Any statement read to the public regarding this matter must be pre-approved by the Office. The Office has noted this occurrence as a violation, which will be considered in determining the response to any further Open Meeting Law violations by the Board and its current members.

Further, any subsequent Open Meeting Law violations by Board Members Garcia and Gonzales proposing legal action to a quorum of the Board via email, and/or the disclosure of confidential executive session information will be considered knowing violations pursuant to A.R.S. § 38-431.07(A).

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaint; it is not a formal opinion of the Attorney General's Office and should not be cited as authority in other matters.



Katherine Jessen
Assistant Attorney General
Open Meeting Law Enforcement Team