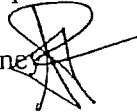


**ATTORNEY/CLIENT PRIVILEGE
CONFIDENTIAL
MEMORANDUM**

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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. Chair and Members, Pima County Board of Supervisors

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

Date: August 28, 2017

Subject: Board Authority to Censure Board Member over Facebook Comment

At the August 21, 2017 meeting, I was asked to prepare this memorandum, which addresses what authority the Board has to "censure" Supervisor Miller for posting the following comment on Facebook in response to an article posted by another user: "I'm sick and tired of being hit for being white....It is all about making us feel like we need to apologize. I am WHITE-and proud of it! No apologies necessary." As I noted in a prior memorandum, it is my understanding that this comment was an expression of Supervisor Miller's personal opinion and came from her personal Facebook account on a Saturday.

A "censure" is "[a]n official reprimand or condemnation; an authoritative expression of disapproval or blame; reproach."¹ The formality and official nature of a censure implies that it is in effect a disciplinary action, even though it is in the form of a statement of reproach and includes no tangible form of punishment such as a fine, suspension, firing, or demotion. Thus, the question is whether the Board has authority to formally discipline Supervisor Miller for her private speech. I conclude that the Board has no clear authority to do so.

No statute expressly authorizes the Board to censure or otherwise discipline one of its Members.²

¹Censure, BLACK'S LAW DICTIONARY (10th ed. 2014).

²Arizona law contemplates other statutory means of disciplining elected officials for instances of misconduct, misfeasance, or malfeasance in office. See A.R.S. § 11-223 (misconduct by supervisor); A.R.S. §§ 38-341 through 38-345 (removal of county officers). There is also the constitutional threat of removal

There are likely limited means of implied disciplinary authority in some limited contexts. The Board *is* statutorily authorized, for example, to make rules “for the government of its body, the preservation of order and the transaction of business,” *see* A.R.S. § 11-251(21), and that may imply authority to censure a Member who violates those rules.³ But, in this case, I am aware of no such rule that would reach a Board member’s expression of personal opinion via a personal Facebook account.⁴

The Board, however, can and does from time to time adopt resolutions stating the County’s position on issues of importance to the County. The Board could therefore adopt a resolution expressing the County’s position on the issues surrounding Supervisor Miller’s comments, so long as the resolution does not purport to discipline her in any way.

This may seem little different than adopting a resolution purporting to formally censure Supervisor Miller. But given that a censure is commonly understood as a form of discipline, and given that the Board lacks clear disciplinary authority over a Member in this context, I would caution the Board against taking any action that might be characterized as discipline, including censure.

cc: C.H. Huckelberry, County Administrator

through recall. *See* Ariz. Const. art. VIII, Pt. 1, § 1. The Board, however, plays no real role in any of those processes.

³Resolution 1990-193, for example, provided for censure of any “transgressor” (presumably including Board Members) of certain non-interference requirements, on a vote of four Members.

⁴In a memorandum dated August 17, 2017, I explained my opinion that Supervisor Miller did not violate Board of Supervisors Policy C 2.1.