

**ATTORNEY/CLIENT PRIVILEGED
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To: Pima County Supervisor Rex Scott
From: Sam Brown, Chief Civil Deputy Attorney
Date: March 24, 2022
Subject: Gun Show Memorandum Follow-Up

On Tuesday March 22, 2022, Supervisor Scott posed three follow-up questions to the March 1, 2022 Gun Show memo, relating specifically to the Southwestern Fair Commission (SFC):

- 1. If the SFC chose not to enter into any future contracts with the current gun show promoter, would the SFC be obliged to share their reasons for refusing to do so?*
- 2. Can the SFC be sued simply for refusing to enter into a new contract? On what basis? These questions apply to both the current promoter as well as others that might approach the SFC.*
- 3. If the SFC were sued for refusing to enter into a new contract, what would be their chances of prevailing?*

The SFC should retain its own legal counsel to provide legal advice. It is not legally permissible for PCAO to provide legal advice to SFC as they are not our client. Accordingly, Supervisors should not share this information with the SFC.

1. If the SFC chose not to enter into any future contracts with the current gun show promoter, would the SFC be obliged to share their reasons for refusing to do so?

We can see nothing in SFC's agreement with Pima County, or its rental agreements, that would require it to share their reasons. However, if there is a legal challenge to an SFC decision not to rent

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to a particular entity, their reasoning may be questioned, and they may be required to share their reasoning.

2. Can the SFC be sued simply for refusing to enter into a new contract? On what basis? These questions apply to both the current promoter as well as others that might approach the SFC.

Yes. For example, if an entity or plaintiff believed the refusal to contract violated local, state, or federal law (e.g. discriminatory purpose, etc.). Based on the language of the contract between the SFC and the current gun show promoter, it does not appear that the SFC could be sued for refusing to enter a new contract. Unlike SFC's contract with the County, SFC's contract with the gun promoter does not contain language addressing contract renewal.

The contract between SFC and the County says that SFC "shall use the Fairgrounds to conduct an annual fair...and may also use the Fairgrounds to conduct...other shows and events." Beyond hosting the annual fair, SFC has discretion as to whether to host other shows or events.

A gun show promoter may argue that SFC is a political subdivision (or, at least, that it is acting as an agent of a political subdivision) and that by refusing to contract with gun shows the SFC is violating A.R.S. § 13-3108. However, § 13-3108 prohibits a political subdivision from enacting an ordinance, rule, or tax relating to the sale of firearms. It is unlikely, but possible, that refusing to contract with a particular renter would constitute an ordinance, rule, or tax. But, if SFC were held to be (or held to be acting on behalf of) a political subdivision, a claimant could argue that by refusing to contract with gun shows, generally, SFC is regulating commercial land and structures in a different manner than other commercial businesses (see A.R.S. § 13-3108 (G)(3)).

Finally, the contract between SFC and the gun show contains an arbitration clause. Depending on a gun show promoter's claims, it may be required by contract to pursue arbitration. The arbitration clause states: "In the event of dispute between the parties as to this agreement authorized by or arising from this agreement, such dispute shall be resolved by arbitration, pursuant to A.R.S. 12-501, and controlled by the law of the state of Arizona and such arbitration shall take place in Tucson, Arizona."

3. If the SFC were sued for refusing to enter into a new contract, what would be their chances of prevailing?

It depends. SFC may have a good chance of prevailing because their current contract with the gun show promoter does not create an obligation to continue contracting. The promoter's success in bringing suit under the firearm statutes would hinge on the promoter's ability to show that SFC is a political subdivision or is acting on behalf of a subdivision. But, even then, it would have to prove that SFC either enacted an ordinance, rule, or tax, or that it is regulating commercial land in a different manner than other commercial businesses.