ADDENDUM MATERIAL
DATE 8-5-25 ITEM NO. ADD 2

MEMORANDUM

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To:	Hon. Rex Scott, Chair, Hon. Jennifer Allen, Vice-Chair, Hon. Steve Christy, Hon. Matt Heinz, and Hon. Andrès Cano.
From:	Laura Conover, County Attorney
Date:	July 23, 2025
Subject:	Outside Legal Counsel

This memo responds to Chair Scott's request for an opinion related to Supervisor Heinz's request for Pima County to lobby the Legislature to allow county supervisors to hire outside legal counsel for any purpose, without permission from the County Attorney.

Generally, the Board of Supervisors "...has no authority to employ private counsel..." *Bd. of Sup'rs of Maricopa County v. Woodall*, 120 Ariz. 379, 382 (1978). However, the Board of Supervisors may hire outside counsel when the County Attorney refuses to act, is incapable of acting, is unavailable, has a conflict of interest, or where there is a disagreement over legal strategy in a particular case causing a "lack of harmony" *Id.*; *Romley v. Daughton*, 225 Ariz. 521, 526, ¶ 24, (App. 2010). The Arizona Supreme Court concluded in *Romley* that Arizona Constitution "created the Office of County Attorney and the statute prescribes the duties attached thereto..." *Id.* at 524.

A.R.S. § 11-532(A)(9): County Attorney Serves as Attorney for Pima County and the Board.

Per statute, the County Attorney serves as attorney for Pima County and, specifically, the Board of Supervisors. A.R.S. § 11-532(A)(9). As the Board's legal advisor, the County Attorney must "attend its meetings and oppose claims against the county that the county attorney deems unjust or illegal." The County Attorney could not execute these core statutory duties if the Board of Supervisors could hire outside counsel for any purpose without County Attorney input. Thus, section 11-532(A)(9) would have to be referenced in the new or modified legislation, or would have to itself be modified or eliminated in order to grant county supervisors with unfettered authority to hire outside counsel for any purpose.

A.R.S. § 11-251(14): County Attorney Directs and Controls County Prosecution and Defense.

The Board has the statutory authority to "[d]irect and control the prosecution and defense of all actions to which the county is a party, and compromise them." A.R.S. § 11-251(14). Arizona Courts have ruled that "because of this authority, the board has the power to hire outside counsel for litigation matters when the county attorney" has consented to the hiring. *Romley* at 525. Where the County Attorney has not consented, the *Romley* Court held definitively that " the Board's

authority to retain counsel separate from the County Attorney to provide day-to-day advice to the Board, the County, and County employees and entities, our supreme court in *Woodall* made it clear that the Board generally does not have such authority." *Id.* at 527. The *Romley* Court ruled that a Board may divest the County Attorney of her "duty and authority to represent the County on a case-by-case basis, when the County Attorney is unavailable due to a conflict of interest or when there exists the type of "lack of harmony" in the handling of a particular case..." *Id.*

Considering the Court's application of section 11-251(14), section 11-251(14) would likely have to be referenced in new or modified legislation, or itself modified or eliminated in order to grant county supervisors with unfettered authority to hire outside counsel for any purpose.

The Peoples' Elected Attorney

The Office of County Attorney was created by the Arizona Constitution, " *Section 3. There are hereby created in and for each organized county of the state the following officers who shall be elected by the qualified electors thereof: a sheriff, a county attorney, a recorder, a treasurer, an assessor, a superintendent of schools and at least three supervisors, each of whom shall be elected and hold his office for a term of four (4) years...*" Ariz. Const. art. XII, § 3.

The people of Pima County have *twice* elected Laura Conover to serve as their County Attorney and to fulfill the above-referenced statutory duties, including serving as the County's lead prosecutor, providing legal advice, and engaging in protective civil litigation. An effort to change the laws in order to usurp her authority and transmit some or all of the duties she was elected by voters to fulfill may be perceived as anti-democratic.

Supervisor Heinz provided examples relating to the ethical conflict of interest related to investigating the Sheriff during an election, and PCAO's refusal to provide advice to PAG/RTA. Those examples certainly highlight some of the ethical and practical constraints associated with the county attorney system. However, we are constrained to point out that the County Attorney can only represent statutorily authorized clients under A.R.S. § 11-403 and that these examples do not, in our humble opinion, justify the risk associated with taking an anti-democratic stance related to the current democratically elected County Attorney or future County Attorneys.

The Sheriff and PAG/RTA

PCAO had conflicts related to investigating the Sheriff: we advise the County on election matters, the Sheriff (along with all Pima County elected officials) is a client representative, and the issue between the Sheriff and his staff members raised potential civil employment and tort issues for which PCAO could later be called on for advice.[1] PAG/RTA is an independent political subdivision of the State. A.R.S. § 48-5302. PCAO advised Supervisor Heinz that while it could (and did) provide legal guidance to him as the Board representative for PAG/RTA, it could not (and did not) provide legal guidance to be used to resolve PAG/RTA's legal and employment concerns related to the executive director or to the-then-current legal counsel. Nor could we have provided

[1] The comments to Ethical Rule 1.7 of the Arizona Supreme Court state, "A government lawyer owes a duty of loyalty to a government organization and fulfills that duty by providing advice to the organization's client representatives. Therefore, a government lawyer cannot provide advice to, or represent, the client representative in one matter, and act as an advocate against the client representative in another matter, even when the matters are unrelated."

open meeting law advice to be shared with PAG/RTA as PCAO could later be called upon to review and adjudicate an allegation of an OML violation *against* PAG/RTA.

While a private firm may not have the same types of conflicts as PCAO, in a legal market as small as Tucson's it is reasonably likely that a private firm might have *also* had a conflict of interest related to investigating the Sheriff for other reasons. Attorneys at a private firm – just like PCAO attorneys – are governed by the Arizona rules of ethics. Even assuming that there was no statutory bar to providing legal advice to a separate political subdivision of the State, the ethical rules prohibit an attorney from advising another attorney's client without consent from all parties. At the time Sup. Heinz, a single Board member, asked our office for advice, PAG/RTA was represented by counsel. A private firm attorney would have been just as constrained as Mr. Brown in advising Sup. Heinz on legal advice related to employment of the Executive Director, OML violations, etc. (issues that should have gone to the PAG/RTA attorney).

Conclusion

Such a change would likely encounter stiff resistance from most if not all of Arizona's fifteen county attorneys. While it is possible to lobby the Legislature to undo decades of statutory and constitutional precedence outlining the contours of a county attorney's duties, authorities, roles, and responsibilities to county boards and to the electorate, it is unlikely that such efforts will result in a system that permits boards of supervisors to hire outside counsel in any instance and for any purpose without the consent of the county attorney.