



## **MEMORANDUM**

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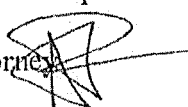
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To: Hon. Chairman and Members, Pima County Board of Supervisors

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

Date: August 13, 2019

Subject: May 7, 2019 Stonegarden Approval and the Open Meeting Law

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### **Introduction**

This memorandum responds to requests from Supervisors Miller and Christy at the August 6, 2019 meeting, regarding whether Arizona's open-meeting statutes were violated when the County Administrator submitted a request on July 11, 2019 seeking to reallocate \$530,347 in Stonegarden grant funding to humanitarian aid.<sup>1</sup> Supervisors Miller and Christy raised the concern that the application did not comply with the Board's direction when it approved Stonegarden grant funding on May 7, 2019. Based on the information I have reviewed,<sup>2</sup> it is my opinion that no violation of the open-meeting statutes took place.

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<sup>1</sup>In addition to our role as the Board's legal advisor, we have statutory authority to investigate written complaints alleging violations of the open-meeting statutes. A.R.S. § 38-431.06(A). We have received no written complaint, and this memorandum is provided in our capacity as the Board's legal advisor. It would conflict with our advisory role here to initiate any investigation. Accordingly, in the event we receive a written complaint, we will refer it to the Arizona Attorney General.

<sup>2</sup>I was present at the May 7 meeting and have reviewed the minutes and background material from that meeting. I also have reviewed the video of the Board's discussion and action at the July 22, 2019 special meeting, along with the background material for that item. I was also present at the August 6 meeting and have reviewed video of the discussion surrounding Addendum item 1. Finally, I have read the County Administrator's August 8, 2019 memorandum.

## Background

On May 7, 2019, the Board, by 3-2 vote, approved the award of Stonegarden grant funds to the County. That vote included several conditions, including that the County “receive a maximum allowable indirect cost reimbursement” and that \$200,000 of the grant “be repurposed for humanitarian aid to assist local, faith based, non-profit organizations through FEMA Grants Program Information Bulletin 436 . . .” Sometime after that approval, Catholic Community Services of Southern Arizona approached the County about using portions of the Juvenile Detention Center to provide temporary assistance to asylum seekers. On July 11, the County Administrator submitted a letter to the Arizona Department of Homeland Security indicating his understanding that the indirect-cost recovery “will be difficult to operationalize with only five months remaining on the performance period of the grant” and therefore stating that “Pima County will forego the indirect cost recovery this award year, and, instead, seek to apply the \$330,347 amount that would have been recovered to the above-referenced \$200,000 amount.” The letter accordingly requested that \$530,347 of the Stonegarden grant be repurposed to humanitarian aid. According to the County Administrator’s August 8 memorandum, he believed the July 11 request was consistent with the Board’s intent in its May 7 approval.

On July 22, 2019, the Board held a special meeting to consider a cooperative agreement with Catholic Community Services to allow it to offer services to asylum seekers at the Juvenile Detention Center. Included in the background material were references to grant funding being sought to pay the costs, including a specific reference to the \$530,347 in repurposed Stonegarden funds sought in the July 11 letter. The County Administrator specifically mentioned the July 11 request in his staff report, and Supervisor Miller expressed concern about the change in indirect-cost reimbursement. The Board, by a 3-2 vote composed of a different majority than the May 7 majority, approved the cooperative agreement. No member of the majority expressed any disagreement with the County Administrator’s plan to pay the costs associated with the cooperative agreement, including the July 11 request.

## Analysis

The open-meeting statutes require that discussion and action by a public body take place at a properly noticed public meeting. *See* A.R.S. §§ 38-431.01(A), 38-431.02(A)(2). Thus, a quorum of a public body must conduct its business in public—it cannot meet secretly, whether in person or by electronic means, or whether all at once or serially. The Board’s May 7 and July 22 meetings were properly noticed and open to the public.

The County Administrator is not subject to the open-meeting statutes. *See* A.R.S. § 38-431(6) (defining “public body”). He is, however, charged with carrying out the direction of the Board. Pima County Code § 2.12.070(A). When the County Administrator takes action based on his interpretation of the Board’s direction,<sup>3</sup> he need not do so at a public meeting. Therefore, the County Administrator’s actions subsequent to the May 7 meeting did not violate the open-meeting statutes.

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<sup>3</sup>As the County Administrator notes, he has authority to make grant applications on behalf of the County. Pima County Code § 2.12.070(M).

If a majority of the Board felt that the County Administrator's action was inconsistent with the May 7 approval, it could have attempted to change that direction or take action against the County Administrator, or both (at a properly noticed public meeting, of course). But the July 22 vote at least strongly suggests that a majority of the Board approved the County Administrator's action. In any event, any alleged deviation by the County Administrator from the Board direction is not, by itself, an open-meeting issue.

It appears that Supervisors Miller and Christy may be concerned that a meeting of the Arizona Border Counties Coalition led Supervisor Bronson (Pima County's representative on that Coalition) to direct Mr. Huckelberry to request the \$530,347 for humanitarian aid in the July 11 letter. The County Administrator's comments at the August 6 meeting do suggest that the Coalition played some role in the process. But the County Administrator's August 8 memorandum shows that the Coalition met on April 11, before the May 7 vote. And, even assuming Mr. Huckelberry had taken direction from Supervisor Bronson regarding the request, that would not have violated the open-meeting statutes because one Board Member does not constitute a quorum. Had a quorum of the Board met in secret or serially communicated regarding this subject after May 7, *that* would have violated the open-meeting statutes. But I am aware of no evidence that occurred.

### **Conclusion**

It is my opinion, based on the evidence I have reviewed, that no violation of the open-meeting statutes took place when the County Administrator submitted the July 11 request to repurpose \$530,347 in Stonegarden grant funding for humanitarian aid.

c: C.H. Huckelberry, Pima County Administrator