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May 24, 2019

By Certified Mail, Return Receipt Requested

Inscription Canyon Ranch Sanitary District  
c/o Messrs. William Whittington and Stephen Polk  
Boyle, Pecharich, Cline, Whittington & Stallings, PLLC  
125 N. Granite St.  
Prescott, AZ 86301

Re: Request for Quo Warranto Action

Board Members and Messrs. Whittington and Polk:

The Office received a request from the Inscription Canyon Ranch Sanitary District's (the "District") legal counsel to institute a quo warranto action against Mr. Alan Poskanzer on the basis that Mr. Poskanzer vacated his position as a Board member. The Office may initiate a quo warranto action when the Office "has reason to believe that any such office or franchise is being usurped, intruded into or unlawfully held or exercised." A.R.S. § 12-2041. After reviewing the documents provided by the District's legal counsel and Mr. Poskanzer, the Office declines to institute a quo warranto action against Mr. Poskanzer. Further, the Office's analysis below is that Mr. Poskanzer remains a lawful member of the District's Governing Board.

The facts recited in this letter serve as a basis for this conclusion, but are not administrative findings of fact. Further, this letter relates solely to the disposition of the aforementioned request to institute a quo warranto action; it is not a formal opinion of the Attorney General's Office and should not be cited as authority in other matters.

Facts

In September 2018, Mr. Poskanzer sold his home within the District. Mr. Poskanzer entered into a purchase agreement to begin construction on a new home within the Talking Rock development ("Talking Rock Home"), also located within the District. However, Mr. Poskanzer was unable to find a rental home within the District, and he moved out of the District while his new home was being built. Mr. Poskanzer nevertheless asserted that he received his mail at the Talking Rock Home and he intended to make the Talking Rock Home his permanent residence once completed. According to the Yavapai County Recorder's Office (the "Recorder's Office"), Mr. Poskanzer updated his voter registration on September 19, 2018 to reflect his rental address. Mr. Poskanzer asserted that he did so after trying to register with the Talking Rock address, and

Service Arizona rejected the address. Mr. Poskanzer further asserted that he used the rental home address to update his voter registration to preserve his right to vote in the November 2018 national election. After Mr. Poskanzer spoke with the Recorder's Office, the Recorder's Office overrode the Service Arizona error regarding the Talking Rock Home on November 2, 2018 and re-registered Mr. Poskanzer using the Talking Rock Home address. Accordingly, Mr. Poskanzer was registered to vote outside of the District boundaries for approximately six weeks.

At the November 2, 2018 District Board meeting, a member of the public stated that Mr. Poskanzer was not registered to vote within the District. Mr. Poskanzer stated that he was registered to vote in the District and that this registration was recorded through the Recorder's Office. After additional questions from members of the public, the District Board adjourned the meeting in order to obtain legal advice from the District's attorney about Mr. Poskanzer's status as a Board member. At the November 27, 2018 District Board meeting, the Board entered into executive session for purposes of receiving legal advice on declaring a vacancy for Mr. Poskanzer's Board position. After executive session, the Board voted in public session to declare a vacancy and to begin accepting applications for Mr. Poskanzer's seat. At this time, Mr. Poskanzer has not resigned his position on the Board.

#### Analysis

#### **I. Mr. Poskanzer never lost his status as a qualified elector of the District during the relevant time period between September and November 2018.**

Mr. Poskanzer was and is a qualified elector of the District. The District is created pursuant to Title 48, which requires that sanitary district governing boards have directors who are "qualified electors of the district." A.R.S. 48-2010(A). Under A.R.S. § 16-191(B), the provisions of Title 16 govern election matters for the District. Section 16-121(A) states that any person who is both "qualified to register to vote ... and who is properly registered to vote shall ... be deemed a qualified elector for any purpose which" requires such qualification. There is no argument that Mr. Poskanzer was unqualified to register to vote between September and November 2018; the question is whether Mr. Poskanzer remained a qualified elector based on being properly registered to vote as a District resident. Section 16-121(A) further states that a person remains properly registered to vote—and therefore is a qualified elector—unless and until one of the following occurs: (1) "that person's voter registration is cancelled" by the Recorder; or (2) "that person is no longer a resident."

Regarding the first factor, Mr. Poskanzer's voter registration was never cancelled by the Recorder's Office. *See* A.R.S. § 16-165(A)(8-9) (A person's registration must be cancelled when the Recorder's Office receives certain information, including that the person changed residence within the county and does not return a new registration form within 29 days after a request by the Recorder's Office to do so, or when the Recorder's Office receives written information that the person moved outside the county). Section 16-165 does not apply to the situation here. Mr. Poskanzer provided his updated rental address and voter registration to the Recorder's Office, and Mr. Poskanzer's rental address was within Yavapai County. Thus, Mr. Poskanzer's voter registration was never cancelled.

The Office was unable to substantiate a violation in connection with the first and second allegations because (1) the minutes do not reflect that the District took legal action in the November 27, 2018 executive session and (2) the District appears to have simply continued its executive session after Mr. Poskanzer's departure and no evidence established that a separate meeting with legal counsel occurred.

### Remedy

To remedy this violation, the Office considered the readily available records documenting whether the District has had any recent open meeting violations, the District's March 28, 2019 response, and the Office's determination that Mr. Poskanzer remains a lawful member of the District's Governing Board.

Having weighed these factors, and in order to resolve this matter, the Office now requires that the District acknowledge this Office's conclusions about Mr. Poskanzer's status as a lawful member of the District Governing Board at a duly noticed meeting. Further, the Office requires that the District provide Mr. Poskanzer a copy of the November 27, 2018 executive session minutes, should he request them.<sup>2</sup> 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 District and its current members.

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

Enclosures

<sup>2</sup> Additionally, if Mr. Poskanzer requests executive session minutes from the time period where he was prevented from holding his seat as a District Governing Board member, that request may not be properly denied. See *Picture Rocks Fire District*, 145 Ariz. at 80-81 (holding that members of a public body are entitled to copies of executive session minutes for meetings regardless of whether the member was present, and irrespective of whether the executive sessions were held before or after the member's election to the public body).