




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. Ally Miller, District 1 Supervisor

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

Date: May 14, 2018

Subject: Legality of County Administrator providing information to one Board member

On May 11, you sent me the attached email, asking two legal questions. The second question will be the subject of a forthcoming memorandum by our office. This memorandum answers the first question, which you framed as "the ability of Administrator Huckelberry to withhold information from any board members."

Your question is a general one, but it arises in a specific context, and I will answer it in light of that context. On April 17, the Board voted to accept a donation of the Canoa Hills Golf Course to the Pima County Regional Flood Control District. After that vote, our office became aware that the Assessor believes the golf course is being (or has been) converted to a different use, resulting in a tax penalty under A.R.S. § 42-13154. As is our practice with potentially significant legal issues, we discussed the statute preliminarily with Mr. Huckelberry at our standing meeting on May 3. On May 7, Mr. Huckelberry then sent me a memorandum on the subject, which you attached to your email to me. That memorandum copies Supervisor Christy, Tom Burke, Keith Dommer, and Nicole Fyffe. You received the memorandum from a constituent.

Under these circumstances, Mr. Huckelberry had no legal obligation to provide copies of the memorandum to other Board Members. The memorandum did not relate to an item on an upcoming Board agenda, and did not include information that was specifically requested by the Board as a whole or any other Board Members.

Mr. Huckelberry's authority comes primarily from the Pima County Code and Board of Supervisors

Policies. Nothing in Pima County Code § 2.12.070, which sets forth his “Duties and Responsibilities,” requires him to copy all Board Members when distributing material to one Member. The County Administrator is required to “make such reports as the board may require concerning the operations and administration of the county” and to “recommend to the board such measures and ordinances as are necessary or expedient,” § 2.12.070(F), but here the Board did not vote to require a report on this subject and Mr. Huckelberry’s memo does not make a recommendation to the Board. And, while the County Administrator is required to “direct the preparation” of items for Board agendas, § 2.12.070(G), his memorandum concerned an item the Board had already acted on and was not prepared for a specific future agenda item.

Similarly, no Board of Supervisors Policy or Administrative Procedure requires a communication to one Board Member to be provided to other Members. Under Administrative Procedure 3-7, the County Administrator is responsible for following up with the Board or a Board Member if a request for follow-up information on an agenda item. But if follow-up information is provided to a single Member, and is not in response to a request from the full Board, the procedure does not require copies to go to the other Members.

I am aware of no other formal ordinance or policy that would have required Mr. Huckelberry to provide a copy of the memorandum to other Board Members. I note that, as I understand it, it has been Mr. Huckelberry’s general practice to post copies on the County website of his correspondence to (or copied to) one Board member. But that practice has an exception for confidential documents. Because Mr. Huckelberry’s May 7 memorandum was addressed to me and related to obtaining legal advice on the applicability of A.R.S. § 42-13154, it is (at least arguably) protected by attorney-client privilege, and it would not have been appropriate to post it publicly absent a waiver of that privilege.

As explained above, there are circumstances in which County ordinance or policy require Mr. Huckelberry to provide information to the entire Board. Because those provisions did not require Mr. Huckelberry to distribute the May 7 memo to other Board members, I conclude he had no legal obligation to do so.

cc: Hon. Richard Elías, Chairman
Hon. Ramón Valadez, District 2 Supervisor
Hon. Sharon Bronson, District 5 Supervisor
Hon. Steve Christy, District 4 Supervisor
C.H. Huckelberry, County Administrator