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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: Open Meeting Law and the Inscription Canyon Ranch Sanitary District

Board Members and Messrs. Whittington and Polk:

As you are aware, the Office of the Attorney General (the "Office") received a complaint alleging that the Inscription Canyon Ranch Sanitary District (the "District") violated Arizona's Open Meeting Law. The Office has concluded its review of the allegations and has determined that the District violated the Open Meeting Law by refusing to provide Mr. Alan Poskanzer—who was and is a lawful District Board member—with a copy of the November 27, 2018 executive session minutes and recording and by failing to provide Mr. Poskanzer notice of the November 27, 2018 meeting.¹ The Office was unable to substantiate a violation in connection with the remaining allegations. The facts recited in this letter serve as a basis for this conclusion, but are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. § 38-431 *et. seq.*

Violation

The complaint contained four allegations pertaining to the District's November 27, 2018 meeting: first, that the District purportedly took unnoticed legal action to remove Mr. Alan Poskanzer from the District Board; second, that the District purportedly held a non-public meeting with legal counsel after the executive session ended; third, that Mr. Poskanzer was denied access to the November 27, 2018 executive session minutes and recording; and fourth, that the District's manager failed to notify Mr. Poskanzer about the November 27, 2018 meeting.

¹ The District requested that the Office initiate a quo warranto action to remove Mr. Poskanzer from the District Board. As detailed in the attached letter, *see* May 22, 2019 Request for Quo Warranto Action, the Office has concluded that Mr. Poskanzer remained a lawful member of the District Board.

After reviewing the information in the complaint and the District's response, the Office has determined that the District violated the Open Meeting Law with respect to the third and fourth allegations. Section 38-431.03(B) requires that the minutes and discussions of an executive session are confidential and may not be disclosed to anyone, except for specifically listed persons. Because a member of the public body is specifically listed, such members properly may receive executive session information, regardless of whether the member attended the executive session. *See id.*; *see also Picture Rocks Fire District v. Updike*, 145 Ariz. 79 (App. 1985). Further, members of a public body must be provided notice of all meetings and executive sessions. A.R.S. § 38-431.02(B), (C).

Here, the District stated that it denied Mr. Poskanzer a copy of the November 27, 2018 executive session minutes because he "was a member of the public at the time of the request." *See* District's March 28, 2019 Response at 3. Additionally, Mr. Poskanzer was not personally notified of the November 27, 2018 meeting "because Mr. Poskanzer was no longer a member of the Board." *Id.* at 4. However, Mr. Poskanzer was and is a member of the District's Governing Board.

Mr. Poskanzer remained a qualified elector of the District because he retained his residency within the District—even with his temporary absence. As relevant here, residency is established when a person has both physical presence and an intent to remain. A.R.S. § 16-101(B); *see also Kauzlarich v. Bd. Of Trustees of Oak Creek School Dist. No. 16, Yavapai County*, 78 Ariz. 267, 270 (1955) ("A new residence or domicile could be acquired only by the concurrence of intention to establish it elsewhere and an act evidencing such intention."). Further, the relevant guidance and authority emphasizes that the key factor in determining residency is the individual's intent. *See* A.R.S. § 16-101(B) (When an individual temporarily leaves the district, this "absence does not result in a loss of residence if the individual has an intent to return."); A.R.S. § 16-593(A)(3) ("A person does not lose his residence by leaving his home to go to another county, state or foreign country for merely temporary purposes, with the intention of returning."); Ariz. Att'y Gen. Op. I79-261 at *1 ("a school board member who temporarily moves outside school district boundaries to await the construction of a new home within the school district remains a resident of the district and thus is entitled to remain an active member of the school board."). *See also Bialic v. Bialic*, 95 Ariz. 86, 87 (1963) (citing *Clark v. Clark*, 71 Ariz. 194 (1950)) ("The key factor, when determining [residency], is intent. This requisite intent, as evidenced by the conduct of a person in questions, becomes a question of fact.").

Here, Mr. Poskanzer established both physical presence and intent to remain through his conduct in purchasing the Talking Rock home located within the District, receiving his mail there, being registered to vote there, and stating his intent to make the Talking Rock home his permanent address. All these factors demonstrate Mr. Poskanzer's intent to remain a resident of the District. As such, the District violated the Open Meeting Law by improperly denying Mr. Poskanzer a copy of the executive session minutes and by failing to notify Mr. Poskanzer of the November 27, 2018 meeting.

Regarding the second factor, Mr. Poskanzer also remained a resident of the District. The test for residency requires that a person establish physical presence combined with an intent to remain. A.R.S. § 16-101(B); see also *Kauzlarich v. Bd. Of Trustees of Oak Creek School Dist. No. 16, Yavapai County*, 78 Ariz. 267, 270 (1955) (“A new residence or domicile could be acquired only by the concurrence of intention to establish it elsewhere and an act evidencing such intention.”).

Mr. Poskanzer met this test to remain a resident of the District. First, though physical presence is required to establish residency, continuous presence is not required to maintain it. *Clark v. Clark*, 124 Ariz. 235, 236-37 (1979); see also *Vilaysane v. Vilaysane*, No. 17-0254, 2018 WL 1601757 at *1, ¶7 (Ariz. App. Apr. 3, 2018). Here, Mr. Poskanzer remained physically present within the District because he purchased the Talking Rock Home within the District, he received his mail there, and he was registered to vote there.

Further, the conclusion that Mr. Poskanzer lacked physical presence within the District because he temporarily resided outside of the District directly contravenes relevant guidance and authority (including an Attorney General Opinion that addressed a nearly identical factual pattern), which emphasizes that the key factor in determining residency is the individual’s intent. See A.R.S. § 16-101(B) (When an individual temporarily leaves the district, this “absence does not result in a loss of residence if the individual has an intent to return.”); A.R.S. § 16-593(A)(3) (“A person does not lose his residence by leaving his home to go to another county, state or foreign country for merely temporary purposes, with the intention of returning.”); see also *Bialic v. Bialic*, 95 Ariz. 86, 87 (1963) (citing *Clark v. Clark*, 71 Ariz. 194 (1950)) (“The key factor, when determining [residency], is intent. This requisite intent, as evidenced by the conduct of a person in question, becomes a question of fact.”); Ariz. Att’y Gen. Op. 179-261 at *1 (“a school board member who temporarily moves outside school district boundaries to await the construction of a new home within the school district remains a resident of the district and thus is entitled to remain an active member of the school board.”). Mr. Poskanzer has made multiple statements that he intended to make the Talking Rock Home his permanent address, and his conduct supports these statements.¹

Taken as a whole, the facts support that Mr. Poskanzer remained a District resident even though he was briefly registered to vote at an address outside of the District. This brief period of time where Mr. Poskanzer was not registered at an address within the District does not demonstrate Mr. Poskanzer’s intent to make the rental home his permanent address, particularly in light of his other conduct regarding the Talking Rock Home. Thus, between September and November 2018, Mr. Poskanzer remained a resident of the District, and he remained a qualified elector of the District.

¹ A statement of intent to make a dwelling the individual’s permanent residence is not conclusive; however, any evidence supporting such a statement should be construed in favor of supporting the assertion. See *Kauzlarich*, 78 Ariz. at 270-71.

II. Mr. Poskanzer's actions during September and November 2018 did not create a vacancy as a matter of law.

Because Mr. Poskanzer remained a resident of the District, his seat on the Board was not vacated as a matter of law. An office is deemed vacant as a matter of law if "the person holding the office ceas[es] to be a resident of the district ... for which the person was elected, or within which the duties of the person's office are required to be discharge." A.R.S. § 38-291(5). As previously discussed, Mr. Poskanzer remained a resident of the District because he was physically present and intended to return and remain permanently within the District once construction on the Talking Rock House was completed. Thus, Mr. Poskanzer's actions did not create a vacancy on the District Board, and he continues to occupy that Office, irrespective of any Board action purporting to create or fill a vacancy.

Conclusion

Because Mr. Poskanzer remained a qualified elector of the District between September and November 2018, and he currently remains a qualified elector, a quo warranto action against him would be unwarranted and improper. Accordingly, this letter serves as a refusal to bring an action pursuant to A.R.S. § 12-2043.



Evan Daniels
Chief of Government Accountability Unit

Enclosures