

Arizona Revised Statutes

Open Meeting Law

Section 38-431.02 H.

“...and other matters related thereto.”

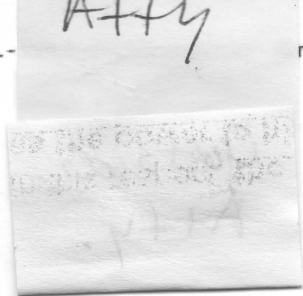
2023 May 23 Reg BOS meeting

ARTICLE III

DISTRIBUTION OF POWERS

The powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.

6/20/23



BOARD'S AUTHORITY TO HIRE OUTSIDE LEGAL COUNSEL

1. *Board of Supervisors v. Woodall*

The foregoing brings us to a consideration of the merits of the case. In this respect, **the first question to which we address ourselves is whether the Board has the power to hire "in-house" counsel independent of the County Attorney for the purpose of advising it and the various county officers relative to legal matters. Our conclusion is that it may not.**

... Of course if a county attorney refuses to act or is incapable of acting or is unavailable for some other reason, a county board may hire outside counsel to assist it. Cahn v. Town of Huntington, 29 N.Y.2d 451, 328 N.Y.S.2d 672, 278 N.E.2d 908 (1972). See also Merriam v. Bamum, 116 Cal. 619, 48 P. 727 (1897).

The further question arising in this case relates to the power of the Board to engage counsel independent of the County Attorney for the purpose of prosecuting and defending legal actions brought on behalf of or against the county. In Arizona there are a number of cases which touch upon this question.

In County of Santa Cruz v. Barnes, 9 Ariz. 42, 76 P. 621 (1904), the supervisors of Santa Cruz County hired a law firm to conduct certain civil litigation on behalf of the county. In a suit to collect fees for its services, it was held that the supervisors of a county have the power, when necessary or advisable, to employ counsel in addition to the county attorney (then called "district attorney") to protect the county's legal interests....

" * * * the board should not put the county to the expense of extra counsel unless extra counsel is needed. * * * (B)ut, in any event, it is a matter in which their judgment and discretion is not open to review by the courts." 9 Ariz. at 48, 76 P. at 623.

Thirty years later, in Pima County v. Grossetta, 54 Ariz. 530, 97 P.2d 538 (1939), the court again addressed itself to the question of whether the board of supervisors had the power to employ private counsel to handle civil litigation in which the county was interested or a party. Again it was held that the board had such power....

The Court further said:

"It will be seen by this subdivision (predecessor of A.R.S. s 11-251(14)) that the board of supervisors is given the final authority to direct and control all actions in which the county is a party, either as plaintiff or defendant. It may frequently occur that the county attorney has one idea as to the advisability of bringing an *383 **632 action for the county, or as to how it should be handled, while the supervisors have a different one, so that there would be a lack of harmony between them. Under such circumstances it would seem that the public interest would require that the men who had the final authority in all matters in regard to the action should be allowed to choose the counsel who actually handled its legal phases. Since there is no specific prohibition against it in the statutes, we think subd. 14, Supra, gives implied authority to the board of supervisors in its discretion to employ counsel in the handling of all matters to which the county is a party." 54 Ariz. at 539, 540, 97 P.2d at 542.

Board of Sup'rs of Maricopa Cnty. v. Woodall, 586 P.2d 628, 631-32, 120 Ariz. 379, 382-83 (Ariz.,1978)

.....

2. *Romley v. Daughton*

Board and the County Attorney each claim the sole discretion to determine whether the County Attorney is unavailable due to a conflict of interest. We conclude, however, that neither the Board nor the County Attorney may resolve this issue alone....

¶ 16 The court in *Salt Lake* also noted that the board of supervisors, in seeking a declaratory judgment, will need to retain outside counsel to represent it and to appear in court on its behalf. *Id.* at 909 n. 10. We agree that under similar circumstances, a board of supervisors may need to retain outside counsel to advise it about whether the county attorney has conflicts of interest and to represent it in the resolution procedures set out in *Salt Lake*. This is because the question of whether conflicts of interest exist and the issue of how to proceed to resolve the matter, including whether to bring such a declaratory action, require legal advice, which of course the county attorney would not be in a position to offer.

In *Pima County v. Grossetta*, 54 Ariz. 530, 540, 97 P.2d 538, 542 (1939), our supreme court...stated that the board of supervisors is the “final authority” in controlling the cases in which the county has an interest, and it reasoned that:

**523 *526 It may frequently occur that the county attorney has one idea as to the advisability of bringing an action for the county, or as to how it should be handled, while the supervisors have a different one, so that there would be a *lack of harmony* between them. Under such circumstances it would seem that the public interest would require that the men who had the final authority in all matters in regard to the action should be allowed to choose the counsel who actually handled its legal phases...

¶ 22 The supreme court in *Woodall*, 120 Ariz. at 382, 586 P.2d at 631, addressed whether the Board could “engage counsel independent of the County Attorney for the purpose of prosecuting and defending legal actions brought on behalf of or against the county.” The court quoted at length from the opinions in *Barnes* and *Grossetta* before reversing the trial court's order “insofar as it forbids the Board of Supervisors from hiring all outside legal counsel for the purpose of litigation.” *Id.* at 383, 586 P.2d at 632.

5 ¶ 23 The *Woodall–Grossetta–Barnes* trilogy of cases does not, in our view, authorize the Board to divest the County Attorney on a wholesale basis of his duty and authority to represent the county in civil litigation, as the Board has done here

...

The Board may retain outside counsel when the County Attorney has a conflict of interest, and therefore is unavailable to represent the County, see *Salt Lake*, 985 P.2d at 907, or when there is a “lack of harmony” between the Board and the County Attorney regarding the handling of a particular legal matter. See *Grossetta*, 54 Ariz. at 540, 97 P.2d at 542. “Lack of harmony” in this context refers to a disagreement about legal strategy in a particular case, not some general disharmony in the personal relationship between the County Attorney on one hand and members of the Board on the other. Furthermore, according to our supreme court, it is for the Board alone to decide when such a lack of harmony exists and its decision in this regard is not subject to judicial review.

Romley v. Daughton, 225 Ariz. 521, 525–26 (App. 2010)

OPEN MEETING LAW

A board member may e-mail staff and a quorum of the board proposing that a matter be placed on a future agenda. Proposing that the board have the opportunity to consider a subject at a future public meeting, without more, does not propose legal action, and, therefore, would not violate the OML.

Copy to McIntyre Karwaczka English and Ludd?

.....
indebtedness. " *Max M... ..*
meeting approving the expenditure before incurring any obligation or
to other provisions of law and takes a legal action at a properly noticed open
article, unless the public body has authority to make the expenditure pursuant
its officers in any legal action commenced pursuant to any provisions of this
counsel to provide legal services or representation to the public body or any of
B A public body shall not expend public monies to employ or retain legal

<https://www.azleg.gov/ars/38/00431-07.htm>

AR 5

to me, Tom

Mar 4,
2022,
1:11 PM

As of today, we have evidence (documents) showing that **the County Attorney engaged Jellison** to represent the county, without bidding or discussion with or by the Board. And, the CAO had to assure the County procurement dept that the bypass procedure was necessary.

While then-Chief Deputy Britt Hanson signed the county on behalf of the County Board of Supervisors, the Board was not involved in that decision except to, after-the-fact, approve payment of Jellison's invoices.

Sent: Wednesday, April 17, 2019 1:12 PM

To: Hanson, Britt W <BHanson@cochise.az.gov>

Cc: Moline, Maria <MMoline@cochise.az.gov>; Contreras, Maria G <MContreras@cochise.az.gov>

Subject: Direct Selection of Legal Counsel for Jim Jellison

Importance: High

Britt,

We're processing the requisition for Jim Jellison's services provided to the County. Per Cochise County Procurement Policy, Section 12.3.2, provided below, please provide your authorization and determination for the use of the subject vendor as a direct selection for the legal services rendered. We'll need this before proceeding further. Thank you sir! Have a great day!

12.3.2.1 Conditions for Use.

Unless determined by the County Attorney that direct selection is in the best interest of the County or except as provided under Section 9.8 (Sole Source Procurement) or Section 10.2 (Emergency Procurements), the services of legal counsel shall be procured in accordance with this section.

Best regards,

Brandon L. Morrison

Contracts Administrator

Cochise County

Procurement Department

Office: (520) 432-8391

Fax: (520) 432-8397

bmorrison@cochise.az.gov

3

5

From: [Correa, Paul](#)
To: [Johnson, Tiffany](#)
Subject: FW: Direct Selection of Legal Counsel for Jim Jellison
Date: Monday, March 21, 2022 3:57:00 PM
Attachments: Engagement Letter JLO-Cochise County (Welch) - signed bwh.pdf

This should also be produced

Paul Correa

Civil Deputy County Attorney
Cochise County Attorney's Office
Civil Division
100 Higgins Hill
P.O. Drawer CA
Bisbee, Arizona 85603
(520) 432-8755 Direct
(520) 432-8700 Main
(520) 432-8778 Fax

Public Programs . . . Personal Service

www.cochise.az.gov

From: Hanson, Britt W
Sent: Wednesday, April 17, 2019 1:55 PM
To: Morrison, Brandon <BMorrison@cochise.az.gov>
Cc: Moline, Maria <MMoline@cochise.az.gov>; Contreras, Maria G <MContreras@cochise.az.gov>
Subject: RE: Direct Selection of Legal Counsel for Jim Jellison

Brandon,

Attached is the engagement letter that I signed. I did so after conferring with Ed and Brian McIntyre. And yes, I believe that in this instance direct selection was in the best interests of the County.

Let me know if you need anything further, thanks.

Britt Hanson
Chief Civil Deputy
Cochise County Attorney
520/432-8755

From: Morrison, Brandon

2

Complies with
County
Procurement
Policy but not
the ARS's
38-431-07
"Regulation
Buffet"

Potential Open Meeting Law violation language:

County Attorney:

Madame Chair,

I believe the direction of the comments are beyond the scope of the noticed discussion posted by the Clerk of the Board. Any further comments in this manner may be in violation of the Open Meeting Law.

County Administrator:

Madame Chair, may I address the Board,

Supervisor _____, I need to inform you an Open Law Violation could result in increased liability by the County, a fine, and/or removal from office. In order to limit the County's liability, I would request acknowledgment of the warning given by the County Attorney and me before any further comments are made.

Chair: (Choose option 1 or 2, NOT both)

- 1) **I agree** with the warning of the County Attorney and request that you refrain from making any further comments that are beyond the scope of the posted agenda.
- 2) **I don't agree** with the warning of the County Attorney and you may proceed with your comments.

Board member being addressed:

Thank you, I acknowledge the warnings and comments that were given to me.

(Choose option 1 or 2, NOT both)

- 1) **I agree** with the warning of the County Attorney and I will refrain from making any further comment.
- 2) **I don't agree** with the warning of the County Attorney and I will proceed with my comments.

The Attorney may not interject. The Attorney isn't part of the board discussion unless solicited for opinion by a majority.

The board my limit or close debate, not the attorney.

.....

County Atty; 11-532. Powers and duties; definition

7. When required, give a written opinion to county officers on matters relating to the duties of their offices.

9. Act as the legal advisor to the board of supervisors, attend its meetings and oppose claims against the county that the county attorney deems unjust or illegal.

.....

This section does not say or imply that the County Attorney has all or any other powers not specified in this ARS Title Section.

11-201. Powers of county

A. The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law.

11-202. County as corporate body; name

A. Each county is a body politic and corporate, possessing all the powers expressly provided in the constitution or laws of this state and such powers as are necessarily implied therefrom.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

Point of order: The attorney is out of order. As noted at the top of this agenda, this is a Board of Supervisors meeting. Although the Chair has heretofore improperly included non agendized "Surprise special guests" to present, with no public comment submittal, like the State Elections Director, the Elected County Attorney, and other County Supervisors, Such is improper.

If a Board Member wishes to hear from the Attorney, there should be a motion, a second and a vote. If the attorney does not already have the signed, written opinion at hand, the meeting should be recessed until the attorney can produce it.

In the absence of rules of order besides the Ann English non-existent rules of order, I insist we use the ARS's. I insist my constituents are represented as they expect to be. *(and the Const.)*

The Attorney may not interject. The Attorney isn't part of the board discussion unless solicited for opinion by a majority.

The board may limit or close debate, not the attorney.

Under ^{ARS} County Atty; 11-532. Powers and duties; definition

7. When required, give a written opinion to county officers on matters relating to the duties of their offices.

9. Act as the legal advisor to the board of supervisors, attend its meetings and oppose claims against the county that the county attorney deems unjust or illegal. *I + doesn't say "admonish," "interrupt" or "interject"*

This section does not say or imply that the County Attorney has all or any other powers not specified in this ARS Title Section.

B Mac quote

position is "Attorney for the Board", or something like that. title is Chief Civil Deputy County Atty.

Presumably could claim that I as one member of the Board, am not the Board. I would claim that just because my colleagues do not care to supervise, or are intimidated into not supervising by the opinion of Ms. Roberts, should not mean I have to relinquish my authority and duty.

So as we've discussed before about the duties of the ^{Attorney} unless the majority of the Board directs



Cochise County Board of Supervisors

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TOM CROSBY

Supervisor
District 1

To Shannon Hawley Mataele
Assistant Attorney General
2005 N. Central Ave.
Phoenix, AZ 85004-1592

September 6, 2023

Tom Crosby

From Tom Crosby
Cochise County Supervisor, Dist #1
1415 Melody Lane, Bldg. G
Bisbee, AZ 85603

Response from Crosby, Cochise County Supervisor, Ref. OML 2022-0073

Introduction

In March of 2021 I introduced and passed a Resolution declaring Cochise County a Constitutional County.

The U.S. Constitution Article 4, Section 4 states,

“The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”

The most fundamental definition of the term “Republican Form of Government” is ***elected representation***, such as I provide to my constituents.

(1)

The term “Republican Form of Government” is further defined as “This Constitution”, and “the supreme law of the land”:

The U.S. Constitution Article 6 states,

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;”

Article 2, Sections 3 A and B of the **Arizona Constitution** agree:

“Section 3. A. The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject.”

and

“B. To protect the people's freedom and to preserve the checks and balances of the United States Constitution,…”

Article 3, Section 1 of the Arizona Constitution states, “

Distribution of Powers

The powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments shall be **separate and distinct**, and no one of such departments shall exercise the powers properly belonging to either of the others

There is a very serious ambiguity between the Arizona State Constitution’s listing of the Attorney General as a member of the executive branch, vs. Rule 32, excerpts provided below:

[Effective: January 1, 2022

A.R.S. Sup.Ct.Rules, Rule 32

Rule 32. Organization of the State Bar of Arizona

Currentness

(a) State Bar of Arizona. The Supreme Court of Arizona maintains ***under its direction and control*** a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* Every person licensed by this Court to engage in the practice of law must be a member of the State Bar of Arizona in accordance with these rules.

8. "State bar" means the State Bar of Arizona created by rule of this court.]

Besides this Arizona Constitutional question being a very interesting subject, for now at least, Rule 32 presumes to place attorneys clearly in the judicial branch. As a County Supervisor I am not in the judicial branch, and therefore, no attorney is above me in a "chain of command" or oversight, or supervisory capacity.

Both the Attorney General and the Board of Supervisors exercise authority over the County Attorney:

[41-193. Department of law; composition; powers and duties

A. The department of law shall be composed of the attorney general and the subdivisions of the department created as provided in this article.

4. Exercise supervisory powers over county attorneys of the several counties in matters pertaining to that office and require reports relating to the public business thereof.
5. At the direction of the governor, or if deemed necessary, assist the county attorney of any county in the discharge of the county attorney's duties.]

And,

[11-251. Powers of board

The **board of supervisors**, under such limitations and restrictions as are prescribed by law, may:

1. **Supervise the official conduct of all county officers** and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that the officers faithfully perform their duties and direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.]

Therefore, because of my concerns for elected representation and separation of powers, ***I do not concede*** that I, as a County Supervisor, am under the authority of the Office of the Attorney General or any attorney in this case.

Nonetheless, in the interests of expeditious conclusion to this matter, I offer the following responses to your EXHIBIT A:

Ref; Exhibit A (1):

To the best of my knowledge and recollection, Mr. Blehm was not paid, and has not been paid for the “Marra Special Action”. I have the Agenda for an Emergency meeting 11-29-22 for case CV 202200553 referring to the Valley Law Group and County agreement. What I refer to as the “Marra Special Action” I have noted as CV 202200553, filed 11-14-22. I sent that case to lots of people that I thought might be interested in it, but not to Ms. Judd, at any point, ever.

I delivered the Marra case to the Superior Court in Sierra Vista 11-14-2023. Although I can’t say I specifically remember seeing Judd’s signature page that day, I’m willing to presume that that day would be the first time I knew that Ms. Judd had agreed to the same case as I had with Mr. Blehm.

In other words, **any person** can tell Ms. Judd and I separately, “I want the dog pound to be in Bisbee”, for instance. As long as they don’t violate the admonition I note in the below email, no OML law violation has occurred. That’s the way the events happened.

So far, the closest I have come to an email referring to Ms. Judd is **below**. Note **my admonition** about OML’s. As for the title, I doubt that Ms. Judd asked XXXXXX to contact me, but it’s possible. XXXXXX may have construed something Ms. Judd said that way. I do not know. Regardless, it doesn’t have anything to do with Marra. I include it for the sake of **the admonition**, which is typical of what I tell people whom I presume are in contact with myself and my colleagues (Ms. Judd or Ms. English) at the same time.

Mr. Blehm would have been aware of that admonition as well.

FW: ! Peggy Judd asked I reach out,
Inbox
Search for all messages with label Inbox
Remove label Inbox from this conversation



Crosby, Tom <TCrosby@cochise.az.gov>

Nov 20, 2022,
2:46 PM

to me

From: XXXXXXXXXXX) <XXXXXXXXXXXXXXXX>
Sent: Sunday, October 30, 2022 8:16 PM
To: Crosby, Tom <TCrosby@cochise.az.gov>
Subject: Re: ! Peggy Judd asked I reach out,

CAUTION: EXTERNAL EMAIL*

Hi Tom

Thank you for trying to reach me. I was out of state. I was flying most the day today. I just landed can you talk now?

XXXXXXXXXXXX

XXXXXXXXXXXX

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

From my cell phone, please excuse any typos

From: Crosby, Tom <TCrosby@cochise.az.gov>
Sent: Sunday, October 30, 2022, 5:33 PM
To: XXXXXXXXXXXX <XXXXXXXXXXXX>
Subject: RE: ! Peggy Judd asked I reach out,

XXXXXXX

I left you a message yesterday, Sat.

Tom Crosby

From: XXXXXXXXXXXXXXX <XXXXXXXXXXXXXXXXXXXX>
Sent: Thursday, October 27, 2022 11:19 AM
To: Crosby, Tom <TCrosby@cochise.az.gov>; Recorder <recorder@cochise.az.gov>
Subject: RE: ! Peggy Judd asked I reach out,

CAUTION: EXTERNAL EMAIL*

Understood, Flying now but will be in touch,

Can I reach you by cell phone? Here is mine XXXXXXXXXXXX

Thank you and best regards;

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX XXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

CLICK LINK TO SCHEDULE A CALL

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

The information transmitted (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521, is intended only for the person(s) or entity/entities to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient(s) is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

From: Crosby, Tom <TCrosby@cochise.az.gov>
Sent: Thursday, October 27, 2022 10:08 AM
To: XXXXXXXXXXXX <XXXZZZZZZZZZZZZZZZZ>; Recorder <recorder@cochise.az.gov>
Subject: Re: ! Peggy Judd asked I reach out,

It will be nice to meet and talk to you. (Above mentioned admonition:) For open meeting considerations, do not tell me what a colleague like Ms. Judd says, thinks or how they will vote. Otherwise the forces of darkness will say our actions are invalid. I'm still trying to be mellow after COVID. Still hoarse.
Crosby .

Get [Outlook for iOS](#)

(Continuing response to Exhibit A)

Exhibit A (1) A: To my knowledge, none.

Exhibit A (1) B: To my knowledge, none.

Exhibit A (1) C: To my knowledge, none.

Exhibit A (1) D: To my knowledge, none.

Exhibit A (1) E:

Mr. Blehm does not have my permission to forego attorney/client privilege of confidentiality, and I do not forego my attorney/client privilege of confidentiality. Regarding carbon copies or blind copies; to my knowledge, none.

Persons alleging violation of the OML's are suggesting that either Ms. Judd and I HAD to have had a secret meeting to come up with the "Marra Special Action", or that Mr. Blehm facilitated a "chain meeting".

In the above mentioned example, "In other words, any person can tell Ms. Judd and I separately, "I want the dog pound to be in Bisbee", for instance."

This is analogous to Mr. Blehm providing the identical advice to Ms. Judd and I separately, and resulting in each of us separately concluding to follow that same advice. The analogy does not change by virtue of the subject involving the "Marra Special Action" instead of *the dog pound*. However, the analogy does change by virtue of the inarguable attorney/client privilege.

If one were to examine the voting record of the Cochise BOS's, there would be very little or nothing in the way of suggestion that any of us collude with another to pre-determine an outcome on issues. We have many split votes. It is fair to say that the way Ms. Judd votes has no bearing on how I vote *whatsoever*.

Exhibit A (1) F: Besides my accidental but rare oversight to avoid the "reply to all" function on my County phone, to my knowledge, none.

Exhibit A (1) G: To my knowledge, none.

Exhibit A (1) H: To my knowledge, none.

Exhibit A (2): To my knowledge, none.

Exhibit A (3): To my knowledge, none. Repeating line 1 of this response; Ref Exhibit A (1). To the best of my recollection, Mr. Blehm was not paid for the suit against Marra.

Exhibit A (4): I defer to the Cochise County IT Department and Procurement Department policies which I have forwarded to Ms. Mataele by email.

Objections

1. There is nothing in your inquiry letter citing your office's claimed administrative authority, remedies, and my recourse.
2. There is no inclusion of the complaints, to which I surely must be entitled.
3. As long as they don't violate the admonition I note, "For open meeting considerations, do not tell me what a colleague like Ms. Judd says, thinks or how they will vote", no OML law violation has occurred. That's the way the events happened. I object that your office refuses to take that at face value.



Cochise County Board of Supervisors

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TOM CROSBY

Supervisor
District 1

To Shannon Hawley Mataele
Assistant Attorney General
2005 N. Central Ave.
Phoenix, AZ 85004-1592

October 2, 2023

From Tom Crosby
Cochise County Supervisor, Dist #1
1415 Melody Lane, Bldg. G
Bisbee, AZ 85603

DRAFT

Tom Crosby

Original Allegation of Open Meeting Law Violation by County Attorney
from Crosby, Cochise County Supervisor

Introduction

First, I want to make clear that I have the highest respect for Attorney Jim Jellison. He has represented Cochise County on multiple matters.

Welch Supreme Court case Pg 7, para 19 Exhibit attached electronically

¶19 The relationship between the Board's decision to appoint Call and his compensation is too remote to support taxpayer standing. A justice of the peace salary, even one paid to a **legally dubious nominee...**

(1)

1415 Melody Lane, Building G
Bisbee, Arizona 85603
520-432-9200
520-366-2406 cell
520-432-5016 fax
tcrosby@cochise.az.gov

And,

DRAFT

Pg 13, para 33

Because the Board's decision affected Welch's statutorily protected interest in preventing self-dealing, he has standing to challenge it. See § 38-506(B).

Pg 13, para 34

Under § 38-431.05(A), any legal action transacted by a public body in violation of the open-meeting law is "null and void" by default.

Welch agreement page 5, Exhibit attached electronically

E. No Admission by Cochise County. Welch understands and acknowledges that this Agreement resolves all issues between Cochise County and him as alleged in the Petition and Amended Petition and as defined in this Agreement. Further, he understands that Cochise County's entering into this Agreement does not constitute an admission of any breach of contract, or violation of any state, federal or local law, ordinance or regulation, or admission of any violation of Cochise County policies or procedures, or of any liability or wrongdoing whatsoever.

This below document indicates the Chief County Civil Deputy Attorney for the Board of Supervisors was present during the process of nominating "a legally dubious nominee...", as implied by the Supreme Court.

https://destinyhosted.com/cochimindocs/2019/EXEC/20190212_1656/594_2.12.19_SpclMtg.JP5_OPEN%20SESSION_FINAL.pdf

In my opinion, the Cochise Board of Supervisors did not have an agenda item and public vote on hiring Mr. Jellison as outside counsel for the "Welch case" before incurring any obligation or indebtedness.

Thus, in my opinion, the County Attorney is at fault for violating the following ARS Section: 38-431.07.

B. A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to **any provisions of this article**, unless the public body has authority to make the expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving the expenditure before incurring any obligation or indebtedness.

"This article" is 3.1 and contains all of sections 431. The attached "Welch case" is full of references to section 431.

Exhibit 2

This is an email dated April 17, 2019, which appears to indicate that former Chief Civil Deputy County Attorney engaged Mr. Jellison with the "conferring" of County Attorney McIntyre, at or about that time.

Exhibit 3

This is another email dated the same as above naming Mr. Jellison. Although it appears the selection is made according to County procurement policy, in my opinion, it still violates ARS Section: 38-431.07 (B).

1. "Discussion and possible direction regarding the ongoing litigation and options regarding Welch v. County Board of Supervisors, CV201900060."

I (Crosby) cited the above section of the ARS's. Deputy County Attorney Roberts said the section was "not relevant".

"Supervisor Crosby asked at what meeting the Board publicly approved expenditure of funds to engage Mr. Jellison. Ms. Roberts stated that it has been approved since 2019 and is not a topic for today. Supervisor Crosby cited A.R.S. § 38-431.07 and stated that he objects pursuant to state statute. Ms. Roberts stated that the statute is not relevant."

In my opinion, she was mistaken. The engagement of Mr. Jellison violated paragraph (B). Because of that violation, the entire case up to the Supreme Court and back down to settlement is null and void.

Under § 38-431.05(A), any legal action transacted by a public body in violation of the open-meeting law is "null and void" by default.

In my opinion, the violations do not involve Mr. Jellison.