

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
SPECIAL/EXECUTIVE MEETING HELD ON
WEDNESDAY, FEBRUARY 5, 2025**

A special meeting of the Cochise County Board of Supervisors was held on Wednesday, February 5, 2025 at 1:00 p.m. in the Board of Supervisors' Executive Conference Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Frank Antenori, Chairman; Tom Crosby, Vice-Chairman; Kathleen L. Gomez, Supervisor

Staff Present: Sharon Gilman, County Administrator
Joe Casey, Interim Deputy County Administrator
Lori Zucco, County Attorney
Paul Correa, Chief Civil Deputy County Attorney
Lara Loewenheim, Clerk of the Board

Chairman Antenori called the meeting to order at 1:00 p.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

ACTION

Board of Supervisors

This executive session is authorized under A.R.S. § 38-431.03, Subsection (A), (3) and (4).

1. Discuss potential or future litigation involving the County and the Board of Supervisors, evaluate any potential conflict of interest involving the County Attorney's Office, and consider the retention of outside counsel to provide legal advice in cases where a conflict of interest or disharmony with the County Attorney's Office may exist.

Pursuant to A.R.S. § 38-421.03 (A)(3) and (4), the board may go into executive session for legal advice with the attorney of the public body to consider its position and instruct attorneys regarding the public body's position in pending litigation.

Vice-Chairman Crosby made a motion to move into executive session under A.R.S. § 38-421.03 (A)(3) and (4), to discuss potential or future litigation involving the County and the Board of Supervisors, evaluate any potential conflict of interest involving the County Attorney's Office, and consider the retention of outside counsel to provide legal advice in cases where a conflict of interest or disharmony with the County Attorney's Office may exist. Supervisor Gomez seconded the motion.

The Board discussed concerns about the transparency of going into the executive session, questioning why certain matters couldn't be open to the public. The Board expressed feeling constrained by the inability to communicate with colleagues or the public about issues, particularly after receiving a letter implying inaccuracies. The Board's discussion touched on the importance of attorney-client privilege, the interpretation of open meeting laws, and the challenges of having private conversations without fearing potential legal repercussions.

Mr. Correa suggested a work session to bring in a state representative, Danee Garone, Senior Staff Attorney with the State Ombudsman's Office.

Chairman Antenori called for the vote, and it was denied 1-2 (Crosby and Gomez opposed)

Vice-Chairman Crosby made a motion to discuss potential or future litigation involving the county and the Board of Supervisors evaluate any potential conflict of interest involving the County Attorney's Office and consider the retention of outside counsel to provide legal advice in cases where a conflict of interest or disharmony with the County Attorney's Office may exist. Supervisor Gomez seconded the motion.

Chairman Antenori called for the vote and it was approved 3-0.

Chairman Antenori discussed the possibility of suing Arizona Counties Insurance Pool (ACIP) and former County Attorney Brian McIntyre for damages related to the election issue and the legal costs denied by the insurance company. Chairman Antenori proposed hiring outside Attorney Mick Rusing, of Rusing, Lopez and Lizardi Law Firm from Tucson to assess the viability of the case, with the option to retain him for further legal action.

Mr. Correa, explained that the Civil Division assists in finding specialized attorneys when needed. He acknowledged that the County Attorney's office may lack the resources for certain cases and noted his prior experience working with Mick Rusing. Mr. Correa highlighted the importance of reviewing the ACIP policy and its exclusions, particularly regarding crimes committed by elected officials.

Vice-Chairman Crosby left meeting at 1:13 p.m.

The Board discussed concerns about the prosecution of elected officials for actions taken in good faith to represent their constituents. The conversation highlighted the financial burden placed on those prosecuted. The Board is frustrated over the County Attorney's role in influencing the insurance company's decision not to cover legal expenses, with members questioning why one legal opinion was treated as absolute without the option for a second or third opinion. The Board emphasized the need to set a precedent allowing multiple legal perspectives to prevent similar situations in the future.

Mr. Correa explained that his approach is to provide a conservative interpretation of statutes based on existing case law and judicial precedent. Mr. Correa stated that if the Board disagrees with his legal opinion, seeking a second opinion from outside counsel is a valid option.

Chairman Antenori expressed concerns about the chilling effect the situation has had on the Board of Supervisors, emphasizing that it forces members to tread carefully due to potential legal action from the Attorney General. He described what he sees as a politically motivated effort against Cochise County, citing actions not only against the

Board but also private businesses. Chairman Antenori stressed that elected officials should not face financial ruin over political disagreements and highlighted the broader legal implications, including the importance of judicial rulings that could clarify legislative immunity. He referenced Vice-Chairman Crosby's appeal and questioned why the court did not recognize his legislative immunity, drawing parallels to Ms Judd's situation and the personal toll it took on her.

The Board discussed the legal ambiguities surrounding statutory language, particularly between "shall" and "may," and how such working can lead to differing interpretations. The Board also discussed the definition of "canvas" in election law-whether it means simply approving results or thoroughly reviewing them. The Board emphasized the issue of political influence over legal interpretations, with frustration over the potential for elected officials to face severe personal and financial consequences for decisions they believe are in the best interest of their constituents.

Chairman Antenori expressed frustration with how the process unfolded, particularly regarding attorney-client privilege being breached. He questioned the authority of the Attorney General to oversee County Attorneys, citing former County Attorney McIntyre's justification for disclosing privileged information under alleged guidance from the Attorney General. Chairman Antenori argued that County Attorneys, like elected officials, should answer only to voters rather than an outside entity. He supported bringing in Attorney Rusing to investigate the situation, not necessarily to file a lawsuit but to assess whether legal action is warranted.

Mr. Correa stated that Attorney Rusing's role would primarily be as coverage counsel. He stated if coverage is denied but should have been provided, Attorney Rusing would assess whether there is a bad faith insurance claim.

The Board discussed the importance of establishing a precedent that allows seeking a second legal opinion without conflict. The Board discussed potential future election anomalies and the risk of facing legal action if the Board chose to investigate irregularities beyond a set deadline.

The Board and staff expressed frustration over perceived politically motivated legal actions and discussed the need for protection similar to qualified immunity for elected officials acting in good faith. The Board agreed that Attorney Rusing, possibly in collaboration with Mr Correa, should evaluate the legal grounds for potential action, with the Board making a final decision based on his findings.

Mr. Correa clarified that Mr. McIntyre is an employee with the County Attorney's Office, therefore, ethical rules would prevent their office from participating in the lawsuit.

Chairman Antenori made a motion for the Board to hire Attorney Rusing and Associates to provide legal advice and make a determination if we have a claim against ACIP and to investigate if the Board has a claim against Mr. McIntyre. Supervisor Gomez seconded the motion.

Chairman Antenori explained that there are legal arguments suggesting a "triangular effect," where ACIP may claim they acted in good faith based on the advice they received. To move forward, it would need to be demonstrated that ACIP was given bad or improper legal advice.

Chairman Antenori called for the vote and it was approved 2-0 (Crosby absent).

Vice-Chairman Crosby returned to the meeting at 1:39 p.m.

The Board and staff discussed frustrations with the interpretation and enforcement of open meeting laws, emphasizing how it restricts their ability to communicate and govern effectively. Concerns were raised about how even casual conversations could be perceived as violations, making it difficult to coordinate political strategies or respond to public accusations. Members highlighted that while larger governing bodies with five or more members have more flexibility, a three-member board faces unique challenges where any two members discussing an issue could be seen as a quorum. They also questioned whether the current interpretation stifles their First Amendment rights and considered whether legislative changes are needed to clarify or modify the law for small boards.

Chairman Antenori stated pursuant to A.R.S. § 38-421.03 (A)(3) and (4), the board may go into executive session for legal advice with the attorney of the public body to consider its position and instruct attorneys regarding the public body's position in pending litigation.

Vice-Chairman Crosby made a motion to go into executive session. Supervisor Gomez seconded the motion.

The Board moved into executive session at 1:50 p.m.

The Board came out of Executive Session at 2:35 p.m. All Board members were present.

Mr. Correa put on the record that Alice Novoa left the room before going into the Executive Session.

Mr. Correa informed the Board that he had sent a document titled *Scope of Representation* to the County Administrator, outlining the Arizona Supreme Court's updated ethical guidelines. He explained that all counties are providing similar documents to their departments, clarifying the role of the County Attorney's office, who the client is, and the limits of legal representation. The document also addresses attorney-client privilege, decision-making authority, conflicts of interest, and guidance on employment actions. Correa invited the Board to review the document and reach out with any questions or request a work session for further discussion.

The Board discussed the recent Supreme Court updates to ethical rules, which apply specifically to government attorneys. Mr. Correa clarified that his role is to represent the county as an entity, rather than individual officials, and to provide legal guidance while the Board makes policy decisions. Mr. Correa encouraged Board members to reach out with any questions and offered to hold a work session for further clarification.

Chairman Antenori adjourned the meeting at 2:43 p.m.

APPROVED:

Frank Antenori, Chairman

ATTEST:

Lara Loewenheim, Clerk of the Board