MARANA HEALTH CARE BENEFITS TRUST BOARD
NOTICE AND AGENDA
11555 W. Civic Center Drive, Marana, Arizona 85653
Board Room on Second Floor, December 9, 2019, at or after 4:00 PM

Franklin Garrett, Trustee
Matthew Haertzen,Trustee
Yiannis Kalaitzidis, Trustee
Cameron Lewis, Trustee
Thomas Plantz, Trustee

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Marana Health Care Benefits Trust Board and to the general public that the Marana Health Care Benefits Trust Board will hold a meeting open to the public on December 9, 2019, at or after 4:00 PM located in the Board Room on Second Floor of the Marana Municipal Complex, 11555 W. Civic Center Drive, Marana, Arizona.

ACTION MAY BE TAKEN BY THE MARANA HEALTH CARE BENEFITS TRUST BOARD ON ANY ITEM LISTED ON THIS AGENDA. Revisions to the agenda can occur up to 24 hours prior to the meeting. Revised agenda items appear in *italics*.

As a courtesy to others, please turn off or put in silent mode all pagers and cell phones.

All persons attending the Marana Health Care Benefits Trust Board meeting, whether speaking to the Marana Health Care Benefits Trust Board or not, are expected to observe the Marana Health Care Benefits Trust Board rules, as well as the rules of politeness, propriety, decorum and good conduct. Any person interfering with the meeting in any way, or acting rudely or loudly will be removed from the meeting and will not be allowed to return.

Accessibility
To better serve the citizens of Marana and others attending our meetings, the Board Room is wheelchair and handicapped accessible. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Town Clerk at (520) 382-1999. Requests should be made as early as possible to arrange the accommodation.

Agendas
Copies of the agenda are available the day of the meeting in the Board Room or online at www.maranaaz.gov under Agendas and Minutes. For questions about the Marana Health Care Benefits Trust Board meetings, special services or procedures, please contact the Town Clerk, at 382-1999, Monday through Friday from 8:00 AM to 5:00 PM.

This Notice and Agenda posted no later than 24 hours prior to the meeting at the Marana Municipal Complex, 11555 W. Civic Center Drive, the Marana Operations Center, 5100 W. Ina Road, and at www.maranaaz.gov under Agendas and Minutes.

MARANA HEALTH CARE BENEFITS TRUST BOARD MEETING

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE

APPROVAL OF AGENDA

ACTION

A1 Relating to Board Officers; selection of Board Chairperson and Secretary

DISCUSSION/POSSIBLE ACTION

D1 Relating to Benefits; presentation and discussion regarding the basics of self-insured plans, the history of the Town's self-insured plan, and the Town plan's experience and funding

D2 Discussion of and training by the Legal Department on the Marana Health Care Benefits Trust Document, Trustees' roles and responsibilities, conflicts of interest, open meeting law, and public records law

EXECUTIVE SESSION

Pursuant to A.R.S. § 38-431.03, the Marana Health Care Benefits Trust Board may vote to go into executive session, which will not be open to the public, to discuss certain matters.

E1 Executive Session pursuant to A.R.S. §38-431.03 (A), the Trust Board may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

ADJOURNMENT

MHCB Trust Board Meeting **A1**

TO: Board of Trustees

From: Jane Fairall, Deputy Town Attorney

DATE: 12/09/2019

SUBJECT: Relating to Board Officers; selection of Board Chairperson and Secretary

---

Discussion:

On August 6, 2019, the Marana Town Council adopted Resolution No. 2019-068, establishing the Marana Health Care Benefits Trust and approving the Trust Document. Section 3.04 of the Trust Document provides as follows:

At the commencement of each Plan Year, the Trustees shall elect a Chairperson and a Secretary from among themselves. The Chairperson shall preside over the work of the Trustees pursuant to this Trust Document. The Secretary shall preside in the Chairperson's absence. The Secretary shall cause to be maintained accurate records of all actions of the Trustees, including minutes from all Trustees' meetings. A copy of the minutes shall be retained as a record of the Trust's activities.

This item provides for the selection of the Board Chairperson and Secretary by the Trustees.

Financial Impact:

None

Staff Recommendation:

I move to appoint _____ as Board Chairperson and _____ as Board Secretary.

Attachments

No file(s) attached.

MHCB Trust Board Meeting **D1**

TO: Board of Trustees

From: Jane Fairall, Deputy Town Attorney

DATE: 12/09/2019

SUBJECT: Relating to Benefits; presentation and discussion regarding the basics of self-insured plans, the history of the Town's self-insured plan, and the Town plan's experience and funding

---

Discussion:

In 2014, the Town of Marana moved from fully-funded health and dental insurance benefits to a self-funded program for those benefits. A.R.S. §11-981 requires any municipality with a self-funded program that is located in a county with a population of more than one million people to establish a trust fund for the self-insurance program. As Pima County has now moved past the one million mark in population, the Town has established a trust fund and appointed the Trustees to oversee the management and administration of the trust.

The Town has retained Gallagher Benefit Services to provide benefits consulting services to the Town. Representatives from Gallagher will make a presentation to the Trust Board regarding the basics of self-funded plans, the history of the Town's plan, and the current status of the Town's self-funded health and dental insurance programs.

Financial Impact:

N/A

Staff Recommendation:

Presentation and discussion only

Attachments

No file(s) attached.

MHCB Trust Board Meeting **D2**

TO: Board of Trustees

From: Jane Fairall, Deputy Town Attorney

DATE: 12/09/2019

SUBJECT: Discussion of and training by the Legal Department on the Marana Health Care Benefits Trust Document, Trustees' roles and responsibilities, conflicts of interest, open meeting law, and public records law

---

Discussion:

The Legal Department will give an overview of the Marana Health Care Benefits Trust Document and the Trustees' roles and responsibilities, and provide training on Arizona conflict of interest laws, open meeting law, and public records law.

A copy of the Trust Document is attached for the Trustees' information. A copy of the League of Arizona Cities and Towns' publication "You as a Public Official" is also attached.

Financial Impact:

N/A

Staff Recommendation:

Presentation and discussion only

Attachments

Trust Document

You as a Public Official

MARANA HEALTH CARE BENEFITS TRUST

RECITALS

WHEREAS the Town of Marana, Arizona ("Marana") currently provides certain welfare benefits for certain of its employees, former employees, elected officials, and their beneficiaries;

WHEREAS Arizona law permits Marana to establish a self-insurance program for the management and administration of health benefits;

WHEREAS Arizona law requires that the funding for such self-insurance program be deposited in a trust;

WHEREAS Marana has established such a self-insurance program;

WHEREAS Marana intends the trust established by this document (this "Trust Document") to satisfy the requirements of Arizona Revised Statutes (A.R.S.) Section 11-981;

WHEREAS Marana intends the trust established by this Trust Document to be exempt from taxation pursuant to Section 115 of the Internal Revenue Code; and

WHEREAS Marana wishes trustees to hold and administer the Funds (defined below), in trust, pursuant to the terms of this Trust Document;

NOW, THEREFORE, in consideration of the foregoing Marana establishes the following Trust:

ARTICLE I
DEFINITIONS

"Account" means the bank or investment account(s) established by the Trustees to hold some or all of the Funds.

"Beneficiary" means a person designated by a Participant who is or may become entitled to a benefit under the Plan.

"Code" means the Internal Revenue Code of 1986, as amended.

"Council" means the Marana Town Council.

"Employee" means an individual that Marana classifies and treats as an employee (not as an independent contractor) for payroll purposes, regardless of whether the individual is subsequently reclassified as an employee of Marana in a court order, in a settlement of an administrative or judicial proceeding, or in a determination by the Internal Revenue Service, the Department of the Treasury, or the Department of Labor.

"Finance Director" means the individual engaged by the Town Manager to select, manage, and invest Marana's funds, subject to the investment guidelines established by the Council and Marana's Finance Department.

"Funds" means the assets of the Trust, in whatever form or location.

"Governmental Trust" means a trust that is exempt from taxation pursuant to Section 115 of the Internal Revenue Code.

"Marana" means the Town of Marana, Arizona.

"Participant" means an Employee or Marana elected official who is eligible to participate and is participating in the Plan; for purposes of this definition, a former Employee who has elected continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 is a Participant.

"Plan" means the specified group insurance pursuant to which Marana provides self-insured health care benefits to Participants and Beneficiaries and shall include any amendments, endorsements, or riders attached to the insurance.

"Plan Administrator" means Marana's Human Resources Director.

"Plan Year" means the fiscal year of the Plan.

"Premium Holiday" means a designated period of time in which the Trust waives the total premium (the amount established by the Trustees pursuant to Section 5.01(a)).

"Restricted Reserve" means the amount needed to pay Plan claims that are incurred but not reported, and also Plan claims that are incurred but not paid. The amount shall be as attested

to by an actuary who has been engaged to provide services to the Trust and as approved by the Trustees.

"Restricted-Plus-Six Reserve" means the Restricted Reserve plus an amount equal to six months of premium payments for the Plan.

"Trust" means the legal entity established pursuant to this Trust Document.

"Trustees" means the Trustees described in this Trust Document.

ARTICLE II
ESTABLISHMENT OF TRUST

Section 2.01. Establishment. Marana hereby establishes the Trust, consisting of such monies as Marana may deposit from time to time in the Account; plus all other money or property as shall lawfully become a part of the Trust; plus all the earnings, income, gains, appreciation and all other increments of any nature from the foregoing; and less payments made pursuant to this Trust Document. The Trust shall become effective only upon the determination of Marana's Town Attorney that this document is in proper form and is within the power and authority of the Council, and upon the approval of the Council.

Section 2.02. Name. The Trust shall be known as the Marana Health Care Benefits Trust.

Section 2.03. Purpose.

(a) The Funds shall be held, invested, reinvested, and administered by the Trustees in accordance with the terms of the Plan and the terms of this Trust Document, solely in the interest of Participants and Beneficiaries and for the purpose of providing benefits to the Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust.

(b) The purpose of the Trust is to fund health, welfare and related benefits, consistent with the restrictions contained in Code Section 115 and other applicable law, for the benefit of Participants and Beneficiaries, in accordance with the Plan.

(c) The successful operation and administration of the Trust requires communication and cooperation among the Trustees, the Council, Town Management, Town Staff, Employees, and other third parties. Decisions made by the Trustees regarding operation and administration of the Trust should take into account input from designated stakeholders.

ARTICLE III
ORGANIZATION AND OPERATION OF TRUSTEES

Section 3.01. Appointment. The Council shall appoint individuals to serve as Trustees overseeing the management and administration of the Trust. The Council shall consider and may appoint any individual, provided that the number and identity of the appointed Trustees shall conform to the requirements of this Article. Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee agrees to hold and administer the Funds, in trust, pursuant to the terms of this Trust Document.

Section 3.02. Number and Identity. There shall be five Trustees. No Trustee may be a member of the Council. No more than one Trustee may be an employee of Marana. No former member of the Council or former employee shall be a Trustee. With the exception of the employee Trustee, if any, a Trustee shall have expertise in the field of finance, employee benefits, health care, human resources, or risk management, and shall reside in Pima or Pinal County.

Section 3.03. Bonding. All Trustees shall be bonded in an amount to be approved by the Town Manager. This requirement may be satisfied by a blanket performance bond or other coverage provided by Marana.

Section 3.04. Officers. At the commencement of each Plan Year, the Trustees shall elect a Chairperson and a Secretary from among themselves. The Chairperson shall preside over the work of the Trustees pursuant to this Trust Document. The Secretary shall preside in the Chairperson's absence. The Secretary shall cause to be maintained accurate records of all actions of the Trustees, including minutes from all Trustees' meetings. A copy of the minutes shall be retained as a record of the Trust's activities.

Section 3.05. Term. Each Trustee shall serve a four-year term, unless a term is terminated earlier as described in this Article. Notwithstanding the foregoing, the initial terms for the first five Trustees shall be as follows: two Trustees to serve an initial term of two years; and three Trustees to serve an initial term of four years. The Council shall determine which of the first five Trustees shall serve the two-year and four-year terms.

Section 3.06. Termination. The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal; failure to attend three consecutive meetings; or, for a Trustee who is an employee of Marana, the termination of such employment.

Section 3.07. Resignation of a Trustee. A Trustee may resign by giving 60 days' prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the 60-day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts appointment prior to the stated effective date, in which case the date of acceptance shall constitute the effective date of the resignation. Upon the effective date of the resignation, the resigning Trustee shall be discharged from any further duty or responsibility under the Trust, and the resigning Trustee shall deliver to the Chairman (or to the Secretary, if the Chairman is resigning) any and all property in his or her possession or control which belongs to the Plan or Trust.

Section 3.08. Removal of a Trustee. A Trustee may be removed pursuant to Marana Town Code Section 2-6-2(G). Upon the effective date of the removal, the removed Trustee shall be discharged from any further duty or responsibility under the Trust, and the removed Trustee shall deliver to the Chairman (or to the Secretary, if the Chairman is being removed) any and all property in his or her possession or control which belongs to the Plan or Trust.

Section 3.09. Meetings. The Trustees shall meet whenever required to provide for the orderly and timely administration of the business of the Plan and the Trust at such location as may be acceptable to the Trustees, but no less than four times per Plan Year. In calling, providing notice of, and holding meetings, the Trustees shall conform to applicable law.

Section 3.10. Quorum. A quorum shall consist of three Trustees.

Section 3.11. Voting. Each Trustee shall have one vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the number of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

Section 3.12. Exculpation and Indemnification of the Trustees.

(a) ***Reliance***. A Trustee may act or rely upon any of the following:

(i) Any instrument, application, notice, request, signed letter, telegram or other paper or document believed by the Trustee to be genuine and to contain a true statement of facts and to be signed or sent by the proper person; or

(ii) The advice, opinion, records, reports or recommendations of any accountant, actuary, administrator, attorney, consultant, co-trustee, investment agent or investment manager or any other advisor selected by the Trustees with reasonable care.

(b) ***Exculpation of Trustees***. No Trustee shall incur any liability individually or on behalf of other individuals for any action or omission, unless such action or omission is due to the Trustee's own gross negligence, criminal conduct, willful misconduct, or lack of good faith.

(c) ***Indemnification of Trustees***. The Trustees shall cause any person who is or has served as a Trustee to be indemnified out of the Trust against all damages, liabilities and expenses incurred by or imposed on the person in connection with any claim, suit, action or proceeding concerning the Trust or the person's acts or omissions as a Trustee, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless such acts or omissions constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith. Any indemnification provided herein shall be limited to amounts not collected pursuant to valid and enforceable liability insurance policies.

(d) ***Indemnification of Others***. To the extent permitted by law, the Trustees, in their discretion, may also cause the Trust to indemnify any person who is rendering services to the Trust or Plan against all damages, liabilities and expenses incurred by or imposed upon such a person in connection with any claim, suit, action or proceeding concerning the Plan or Trust or the acts or omissions of such a person, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless such act or omission constitutes gross negligence, criminal conduct, willful misconduct, or lack of good faith.

(e) ***Limitation on Indemnification***. Notwithstanding the foregoing, no indemnification shall be provided unless and until:

(i) It is adjudicated that the action or omission did not constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith; or

(ii) The Trust receives a written opinion from legal counsel for the Trust that any such adjudication would have determined that the action or omission did not constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith.

Section 3.13. Compensation of Individual Trustees. An individual Trustee shall not be paid any compensation or reimbursement from the Trust for services provided to the Trust.

Section 3.14. Conflicts of Interest. Each Trustee shall comply with applicable state and federal law concerning conflicts of interest.

Section 3.15. Service in More Than One Fiduciary Capacity. Any individual, entity or group of persons may serve in more than one fiduciary capacity with respect to the Plan, the Trust, or both to the extent such is permitted by law.

ARTICLE IV
RESPONSIBILITIES AND POWERS OF THE TRUSTEES

Section 4.01. In General. The Trustees shall have the power to perform all acts, to take all proceedings, and to exercise all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer and manage the Trust so as to carry out the purposes of this Trust Document and the Plan. The Trustees shall discharge their responsibilities under this Trust Document:

(a) For exclusively governmental purposes, namely providing benefits to Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan and Trust;

(b) With the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the provisions of the Plan and this Trust Document.

Section 4.02. Discretionary Powers. The Trustees may without limitation do all of the following:

(a) Adopt policies, rules and procedures for the administration of the Trust; provided, however, that these policies, rules and procedures may not be inconsistent with the provisions of this Declaration of Trust or any applicable local, state, or federal law or regulations.

(b) Authorize the Plan Administrator or designee on behalf of the Trust to retain the services of actuaries, auditors, engineers, private consultants, administrators and advisors as the Trustees consider necessary to carry out the business and purposes of the Trust. The Trustees may seek private outside legal counsel when legal advice is considered necessary. For routine matters associated with administration of the Trust, the Trustees may seek counsel from the Town Attorney or designee.

(c) Recommend modifications of the terms and conditions of this Trust document to the Council.

(d) Authorize the Plan Administrator or designee to administer the day-to-day affairs of this Trust.

Section 4.03. Statutory Requirements.

(a) ***Risk Management Consultant or Insurance Administrator.*** Prior to paying Plan expenses on a self-insured basis, the Trustees shall confirm that the Town Manager has designated a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2 of the Arizona Revised Statutes, and the Trustees shall further confirm that such license was verified by the Council prior to such designation.

(b) ***Auditor.*** Marana shall engage an external auditor to perform an annual audit of the Trust. Each audit report shall be kept on file for five years with the Town Clerk. The Trustees shall work and cooperate with such auditor.

(c) ***Stop-Loss.*** Prior to paying any Plan claims on a self-insured basis, the Trustees shall confirm that Marana has procured stop-loss insurance for the Trust from an insurer authorized to do business in Arizona.

Section 4.04. Management. The Trustees shall have the power to manage the Trust, including the acquisition and disposition of property that is in or part of the Trust, as follows:

(a) ***General Authority.*** The Trustees shall have exclusive authority and responsibility with respect to the custody and management of the Trust, except to the extent any such authority has been assigned elsewhere by this Trust Document or has been delegated by the Trustees pursuant to this Trust Document.

(b) ***Separate Account.*** The Trustees have the exclusive responsibility and authority to maintain the Funds in Trust. The Trustees shall maintain the Funds at a financial institution approved by Marana.

(c) ***Contributions and Distributions.*** The Trustees have the authority and responsibility to determine the required contributions to and appropriate distributions from the Trust, as more fully described in Article V.

(d) ***Restricted Reserve.*** The Trustees have the authority and responsibility to determine the appropriate amount of Funds that the Trust should hold as Restricted Reserve, based on accepted actuarial standards and consistent with accounting principles generally accepted in the United States.

(e) ***Premium Holidays.*** No Premium Holiday shall be permitted unless it is recommended by the Trustees. The use of Funds for a Premium Holiday is subject to the following limitations:

(i) ***Premium Holiday.*** The Trustees may determine that Funds in excess of the Restricted-Plus-Six Reserve be used to pay for a Premium Holiday. The Trustees shall not approve a Premium Holiday if the use of Funds for the Premium Holiday would cause the total Funds to fall below the level of the Restricted-Plus-Six Reserve.

(f) ***Service Providers***.

(i) ***For the Trust***. The Trustees have the authority to request that appropriate Marana staff provide services to the Trust. In addition, the Trustees have the authority to engage suitable third parties to provide services for the Trust. Such authority is exclusive to the Trustees, with the following exceptions: Marana has the authority to select and engage an external auditor for the Trust, and Marana has the authority to select and purchase stop-loss coverage for the Trust.

(ii) ***For the Plan***. The Trustees do not have the authority to engage third parties to provide services for the Plan.

(iii) ***Payment***. The Trustees have the authority to pay reasonable compensation and expenses for any parties engaged to provide services for the Trust as set forth above.

(iv) ***Compliance***. All engagements and payments pursuant to this Section shall comply with applicable procurement laws, policies, and procedures.

(g) ***Accounts, Books, and Records***. The Trustees have the authority and responsibility to keep full and accurate accounts, books, and records concerning the Fund. All such accounts, books, and records shall be open to inspection in accordance with applicable law.

(i) ***Valuation***. The Trustees shall cause the Fund to be valued no less than annually and shall forward notice of such value to the Town Council and the Plan Administrator.

(ii) ***Accounting***. Within a reasonable time after the end of each Plan Year, the Trustees shall provide the Plan Administrator an accounting of the administration of the Trust since the previous accounting. The accounting shall include all transactions of the Trust during the relevant period, as well as all property in the Trust and its fair market value at the end of the relevant period.

(h) ***Legal.*** The Trustees have the authority to prosecute or defend actions, claims, or proceedings necessary or advisable for the protection of the Trust.

Section 4.05. Investments. The Trustees will, through the Finance Director and in accordance with the reasonably prudent investment standard for Trustees, provide for the investment of Trust monies in a manner consistent with the provisions of Arizona Revised Statutes Title 35, Chapter 2, Article 2.1 regarding management of public monies.

Section 4.06. Responsibilities Not Assigned to the Trustees. The Trustees shall have no authority or responsibility for:

(a) Designing, adopting, amending, or terminating the Plan;

(b) Ensuring that the Plan complies with state or federal laws mandating the terms of the Plan;

(c) Determining what portion of Plan premiums should be paid by Participants and Beneficiaries;

(d) Collecting premiums from Participants or Beneficiaries.

Authority and responsibility for the foregoing items in this Section are assigned to Marana, which may delegate this authority and responsibility to a third party.

ARTICLE V
CONTRIBUTIONS TO AND DISTRIBUTIONS FROM THE TRUST

Section 5.01. Contributions

(a) ***Premiums.***

(i) ***Amount***. The Trustees shall determine the total premium that shall be required to participate in the Plan at each coverage level (e.g., individual coverage, family coverage). In determining premiums, the Trustees shall consult with the risk management consultant or insurance administrator engaged to assist the Trust, the Plan Administrator, and the Finance Director, and shall also consult with an actuary familiar with the Trust and the Plan. In determining the total premium, the Trustees shall consider all reasonable factors, including but not limited to the amount of reserves in the Trust, the claims experience of the Plan and Trust, market conditions, and cost trends. The Trustees shall determine the total premium no less frequently than annually, but the Trustees have the authority to increase premiums more frequently if reasonably necessary to protect the financial stability of the Trust. The Trustees may recommend Premium Holidays subject to Section 4.04(e).

(ii) ***Administration***. At its discretion, the Trustees may establish a contribution schedule, adopting a funding policy, or using any similar mechanism to arrange for the orderly contribution of funds to the Trust. Marana shall forward the premiums to the Trust no less frequently than monthly, in accordance with the arrangement adopted by the Trustees. Upon the Trustees' knowledge that Marana is delinquent in its contributions, the Trustees shall promptly provide written notice of the delinquency to the Council, the Town Manager, and the Town Attorney.

(iii) ***Payment By Participants and Beneficiaries***. Marana may determine that a portion of the premium should be paid by Participants and Beneficiaries. In such event, Marana shall be responsible for collecting such portion from Participants and Beneficiaries and forwarding those monies to the Trust for deposit. If a Participant or Beneficiary fails to pay the appropriate portion of his or her premium, Marana shall ensure that the total premium shall nevertheless be paid to the Trust. Marana shall be responsible for recovering delinquent amounts from Participants or Beneficiaries.

(b) ***Other Funding***. The Trustees may permit the Trust to receive additional funding, including but not limited to any one or more of the following: interest, dividends, rebates, gifts, grants, special taxes levied to satisfy judgments, recovery from insurers, subrogation, or reimbursement.

Section 5.02. Distributions. Distributions from the Trust may be made for any of the following:

(a) Paying for or providing benefits to Participants or Beneficiaries, in accordance with the terms, provisions and conditions of the Plan, as determined and directed by the Plan Administrator.

(b) Paying all reasonable expenses of operating, administering, or managing the Plan or Trust, including but not limited to:

(i) Where third parties are engaged to provides services to the Plan or Trust, as described above, compensating such third parties;

(ii) Where Marana employees render services to the Trust or Plan, compensating Marana for such services;

(iii) Where taxes or assessments are levied or imposed upon the Trust or the Plan, paying such taxes or assessments.

(c) Upon termination, pursuant to Section 6.03.

Section 5.03. No Inurement to Private Interests. Except as specified in Section 5.02, at no time shall any part of the principal or income of the Trust inure to the benefit of a private individual or entity.

ARTICLE VI
AMENDMENT AND TERMINATION

Section 6.01. Amendment of Trust. This Trust Document may be amended in writing at any time by the Council. The Trustees may recommend amendments to the Council. Notwithstanding the foregoing, no amendment shall be adopted which alters the basic purpose of the Trust, causes the Trust to lose its status as a Governmental Trust, conflicts with any applicable law or government regulation, causes the use or diversion of any part of the Trust for purposes other than those authorized herein, or retroactively deprives anyone of a vested right or interest.

Section 6.02. Termination of Trust. The Trust shall continue until terminated by the Council in writing. The Council shall supply a copy of the writing to all the Trustees and to the Plan Administrator.

Section 6.03. Distribution Upon Termination.

(a) Upon termination of the Trust, the Trustees shall use the Funds to pay or to provide for the payment of any and all obligations of the Trust and the Plan, and the Trustees shall distribute and allocate the Funds in accordance with the then-current provisions of the Trust and the Plan; provided that, notwithstanding any Plan provision to the contrary, the Funds shall be allocated and distributed in the priorities and according to the categories required by applicable law.

(b) Upon termination of the Trust, after all obligations of the Trust and Plan have been satisfied, any remaining Funds shall revert and be distributed to Marana's general fund.

Section 6.04. Amendment and Termination of Plan. Nothing in this Trust Document shall affect Marana's ability to amend or terminate the Plan.

ARTICLE VII
GENERAL PROVISIONS

Section 7.01. No Right, Title, or Interest. No Employer, Employee, Participant, or Beneficiary shall have any right, title or interest in the Trust or any right to contributions to be made thereto, or any claim against the Trust on account thereof, except as may be provided from time to time by this Trust Document or the Plan, and then only to the extent of the benefits payable to such person under the Plan.

Section 7.02. Nonalienation of Benefits. The Trust shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse, former spouse or any relative, until such payment has been actually received by the person entitled to it. Any attempt to anticipate, alienate, settle, transfer, assign, pledge, encumber, charge or otherwise dispose of the same shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

Section 7.03. Prohibition of Diversion.

(a) It shall be impossible by operation of the Trust or by its natural termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of the Trust or any funds contributed thereto to be used for or diverted to purposes other than as described herein.

(b) Notwithstanding the foregoing, a contribution made by Marana as the result of a mistake may be returned to Marana if the Trustee so directs, provided that the repayment is not prohibited by applicable law.

Section 7.04. Incompetency. If it is determined that any person entitled to receive benefits is unable to care for his or her affairs because of mental or physical incapacity, the benefits due such person may be paid to his or her legal guardian or conservator, or to any relative by blood or by marriage to be used and applied for the benefit of such person. Payment to such legal representative or relative of the person on whose account benefits are payable shall operate to discharge the payor from any liability to such person or to anyone representing him or her (or his or her interest), and the Trustees shall have no duty or obligation to see that the funds are used or applied for the benefit of such person.

Section 7.05. Notice and Delivery of Documents. Any notice required to be given under this Trust Document may be given in person or by first-class mail. When notice is given by mail, it shall be deemed to have been given as of the date of posting to the last-known address of the addressee available from the Trust records.

Section 7.06. Headings. Titles of articles and headings of sections and subsections are inserted for convenience of reference. They constitute no part of this Trust Document and are not to be considered in the construction hereof.

Section 7.07. Construction. This Trust Document is created and accepted in the State of Arizona. All questions pertaining to its validity or construction not otherwise preempted by federal law shall be determined in accordance with the laws of the State of Arizona. If any provision contained in this Trust Document or in any collective bargaining agreement pursuant to which this Trust Document is created should be held unlawful, such provision shall be of no force and effect and this Trust Document or any such collective bargaining agreement shall be treated as if such provision had not been contained therein.

IN WITNESS HEREOF, the Town of Marana hereby establishes the Marana Healthcare Benefits Trust.

DATED this 6th day of August 2019

TOWN OF MARANA, ARIZONA
A Municipal Corporation

Ed Honea, Mayor

ATTEST:

Cherry Lawson, Town Clerk

APPROVED AS TO FORM

Frank Cassidy, Town Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 7th day of August 2019, by Ed Honea, the Mayor of the TOWN OF MARANA, ARIZONA, a municipal corporation, on its behalf.

(Seal)

Suzanne Sutherland
Notary Public
Pima County, Arizona
My Comm. Expires 09-11-2022
Commission No. 551302

Notary Public



YOU AS A PUBLIC OFFICIAL

YOU AS A PUBLIC OFFICIAL

Prepared by

League of Arizona Cities and Towns
1820 West Washington Street
Phoenix, Arizona 85007
(602) 258-5786
www.azleague.org

August 2019

TABLE OF CONTENTS

INTRODUCTION **1**
OPEN MEETING LAW **1**
General Provisions 1
Public Notices of Meetings 3
Agendas 3
Website Postings 4
Executive Sessions 4
Minutes 5
E-mail and Other Social Media Violations 6
Ratification 7
Sanctions 7
CONFLICT OF INTERESTS **8**
Applicability 8
Conflict of Interests Defined 9
Additional Provisions 10
Declaration of a Conflict 11
Legal Opinions 12
Filing of Disclosures 12
Penalties 12
PUBLIC RECORDS **12**
Simple and Sweeping 12
Complex Maze of Exceptions 13
Steps to Comply 14
Violations 15
Practical Tips 15
INCOMPATIBILITY OF OFFICES **16**
Early Concepts of Incompatible Offices 16
State Laws and Interpretations 16
Arizona State Constitution 16
State Statutes 17
City Charter Provisions 17
Attorney General Opinions 17
League General Counsel Opinions 18
NEPOTISM **18**
FINANCIAL DISCLOSURE **19**
LIMITS ON ENTERTAINMENT **19**
CONCLUSION **20**

INTRODUCTION

Congratulations on making the choice to serve your community as an elected official. As a mayor or member of your city or town council, you are putting into action the best principles of our form of government. You are continuing in the tradition of citizen lawmakers, people who are willing to give up their time and privacy, and apply their experience and knowledge to the business of making public policy choices for their communities.

Holding public office is an honor but it comes with certain legal responsibilities that can be a challenge. As an elected official, you need to know and understand the various Arizona laws that apply to your conduct in office and how to comply with them.

This report is designed to assist you in meeting that challenge. Seven topics are included: open meetings; conflict of interests; public records; incompatibility of offices; nepotism; financial disclosure; and limitations on entertainment. These laws apply not only to elected officials, but also appointed officials (city or town staff) with the exception of the final one - limitations on entertainment - which only applies to elected officials.

The life of a public official is not an easy one. In addition to the challenges of making good decisions for the future of your community, you must be careful to not violate state laws in the course of your service on the city or town council. These laws, like the seven highlighted in this report, continually affect the decision-making process. While very few public officials ever intend to violate the law in the conduct of their duties, good intentions alone (such as, "but I didn't **mean** to violate the law") are not enough. Even well-intentioned elected officials who violate the law may face stiff penalties. Therefore, it is in your own self-interest as well as the interest of your city of town to be familiar with the laws governing your conduct in public office.

We hope you will take the time to read this report and retain it for future reference. Most importantly we hope this report will prompt you to discuss each of these laws with your city or town attorney. This report is not intended to replace the need for you to review these laws with your local attorney; it's really only a starting point for discussion of your particular situation in your city or town.

OPEN MEETING LAW

GENERAL PROVISIONS[1] - The operation of government and the activities, decisions and policies of government officials are issues of concern to the general public. The public has a right to expect—and state law demands—adherence to an important and distinct principle: THE PUBLIC'S BUSINESS MUST BE CONDUCTED IN PUBLIC!

The Arizona Legislature has declared its policy concerning open meetings very clearly:

> "It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this [law] shall construe any provision of this [law] in favor of open and public meetings."[2]

State law requires that all public officials elected or appointed to a public body review Open Meeting Law materials prepared by the attorney general at least one day before taking office. The Open Meeting Law materials from the attorney general's office are to be posted on the public body's website.[3]

Arizona's Open Meeting Law (Law) provides very simply that, with a few limited exceptions, all meetings of a public body shall be open to all persons desiring to attend and listen to the deliberations and proceedings.[4] The Law defines a "meeting" as "the gathering, in person or through technological devices of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action." The definition of a meeting also includes "electronic communications that propose legal action, including one-way communication from one member to a quorum of members of a public body or an exchange of electronic communications among a quorum of the public body."[5] Technological devices include but are not limited to e-mail, website, blogs, tweets, Facebook, telephone and video conferences and similar technologies. The label attached to a particular meeting does not alter application of the Law. Whether the meeting is referred to as regular or special, workshop or study session, the Law's requirements must be met. A meeting may also occur when less than a quorum of the council discusses a matter of city or town business and one or more members later discusses the matter with another member of the council. The only exception to the public meeting requirement is an executive session, which is discussed later.

Members of the public body may express an opinion or discuss an issue with members of the public outside of a meeting without violating the Law. Examples of this would include a person to person conversation, through the media or other form of public broadcast communication or through technological means if the opinion or discussion is not principally directed at or directly given to another member of the public body, or if there is no concerted plan to engage in collective deliberation to take legal action.[6] The attorney general has determined that an individual member of the public body may speak to the media about an issue that may come before the public body without violating the Law.[7]

"Public body" is defined as: "the Legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article."[8]

This broad definition includes planning and zoning commissions, boards of adjustment, state licensing boards, library boards, and school boards. It also includes advisory committees and subcommittees created by action of the mayor and council, even if no member of the original appointing public body is a member of the advisory group.[9]

PUBLIC NOTICES OF MEETINGS - The Law requires a public body to give advance notice of every public meeting and executive session to the general public and to each member of the public body. In giving notice, the first step is to conspicuously post on the city/town website or on the League's website a statement identifying where notices of the meetings of the public body will be posted, including physical and electronic locations.[10]

Once this statement has been posted, the Law requires the public body post notice of each of its meetings in accordance with the statement and "give such additional public notice as is reasonable and practicable."[11] Notice of individual meetings is not necessary if the public body intends to meet at a regular day, time, and place and chooses to post one notice of all of its meetings during a specified time period.[12] Such notice must be posted at the beginning of the period and specify the period covered.

Except in the case of an actual emergency, no public meeting or executive session may be held with less than 24 hours' notice to the general public and each member of the public body.[13] The 24-hour period includes Saturday if the public has access to the physical posted location but excludes Sundays and holidays. The notice must include the date, time, and place of the meeting. If an executive session will be held, the notice must also cite the specific provision of law authorizing the executive session.[14]

There are three exceptions to the notice requirements outlined above. First, a meeting for which notice has been properly posted may be recessed and resumed with less than 24 hours' notice, although the date, time, and place of the resumed meeting must be announced prior to recessing the originally posted meeting or the method by which notice is to be given is announced publicly.[15] Second, an emergency meeting may be held with less than 24 hours' notice in the case of an *actual* emergency. Such an emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequences that would result from waiting until the required notice could be given. Prior to the emergency discussion or action, the public body must give as much notice as possible, announce the nature of the emergency, include those reasons in the minutes of the emergency meeting, and post a public notice within 24 hours declaring that an emergency session has been held and setting forth the agenda items covered.[16] Third, notice of a meeting to consider ratification of a prior act taken in violation of the Law requires at least 72 hours' advance notice.[17]

AGENDAS - In addition to notice of the date, time, and place of the meeting, the Law requires that the notice include either an agenda of the matters to be discussed, considered, or decided at the meeting, or information on how the public may obtain a copy of the agenda. The agenda for a public meeting must list the "specific matters to be discussed, considered or decided,"[18] and should contain "such information as is reasonably necessary to inform the public of the matters to be discussed or decided."[19] Such items as "new business" or "old business" are insufficient unless the specific items of new or old business are identified.

Agendas for executive sessions must contain a "general description of the matters to be considered" and must "provide more than just a mere recital of the statutory provisions authorizing the executive session," but the agenda should not contain information that "would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege."[20]

The agenda may be made part of the public notice or, if the notice advises members of the public how they can obtain an agenda, then it can be distributed separate from the notice. In either case, the agenda must be made available at least 24 hours before the meeting, unless an actual emergency exists. The 24-hour period includes Saturday if the public has access to the physical posted location but excludes Sundays and holidays. Supporting documentation that is referred to in or made part of the agenda should be made available to the public in the same time frame to the extent possible. It may be appended to the actual agenda itself (provided the public can read it), or the agenda may advise the public where such supporting documentation can be obtained.

The agenda sets the parameters of what can be done during a public meeting. Only those items specifically listed on the agenda or matters related thereto may be discussed, considered, or decided.[21] Two quasi-exceptions apply.

First, agendas may include a "summary of current events" item, during which any member of the public body or the chief administrator "may present a brief summary of current events without listing in the agenda the specific matters to be summarized."[22] However, the public body may not propose, discuss, deliberate, or otherwise take legal action on such a matter at that meeting, unless that particular matter also has been specifically identified on the posted agenda.

Second, a public body may (but is not required to) put an "open call to the public" on its agenda to allow members of the public to address the public body on matters not otherwise listed on the agenda. The public body may impose reasonable time restrictions on speakers during "call to the public." However, the public may only raise issues within the jurisdiction of the public body, and members of the public body may not discuss or take legal action on new matters raised during an open call to the public. Members of the public body have four options: sit in silence or wait until "the conclusion of an open call to the public" and then respond to criticism, ask staff to review a matter, or ask that a matter be put on a future agenda so it can be discussed.[23] The best practice is to include language on the agenda that explains to the public that the council members are limited to these responses pursuant to the Law.

WEBSITE POSTINGS - All public notices of meetings held by any public body of a city or town that maintains a website must be posted on the website. If the city or town does not maintain a website, the information can be posted on the League's website. The Open Meeting Law requires that cities and towns with populations in excess of 2,500 post on their website a statement showing legal actions taken by a city/town public body during a meeting (including how each member voted) or a recording of the meeting within three working days after the meeting. In addition, approved minutes of council meetings must be posted to the website within two working days of approval except for executive session minutes, which remain confidential. An exception to the time frame requirements is made for advisory committees and subcommittees. Those bodies must post a statement of legal action or a recording of their meeting within 10 working days of the meeting. Minutes must remain on the website for at least one year from the date posted and are subject to records retention requirements.

EXECUTIVE SESSIONS - The Law permits an executive session (a closed meeting) to be held only for seven limited purposes. In addition to the notice and agenda requirements set forth earlier, members of the public body must vote during a public meeting to agree to meet in executive session. The general public is properly excluded from an executive session. Only those "individuals whose presence is reasonably necessary in order for the public body to carry

out its executive session responsibilities may attend the executive session." [24] The public body must instruct those present at the executive session that all matters discussed in the executive session, as well as the minutes, must be kept confidential. [25] Finally, no vote may be taken during an executive session. However, the public body may instruct its attorneys or representatives on the issues listed below under 4, 5, and 7. Any final action on an item discussed in an executive session must be taken when the public body reconvenes in a public meeting.[26]

The only purposes for which an executive session discussion may be held are the following:

1. Personnel matters involving a specific position or individual (and these individuals must be given written notice at least 24 hours in advance in case they want to be discussed in open session).[27] The employee being discussed may be invited to attend but has no right to do so. Personnel matters are extremely sensitive, and there may be other laws and city charter provisions that will apply to these discussions. It is critically important that your legal counsel be consulted.

2. Confidential information specifically exempt by law from public inspection.

3. Legal advice provided by the public body's attorney.[28]

4. Discussion with the public body's attorney regarding pending or contemplated litigation, settlement discussions to avoid or resolve litigation, or contract negotiations.

5. Instruction of designated representatives concerning salary and compensation negotiations with employee organizations.

6. International and interstate negotiations, and negotiations by a city or town with a tribal council located within or adjacent thereto.

7. Instruction of designated representatives concerning negotiations for the purchase, sale, or lease of real property.[29]

Improper use of the executive session provision is one of the most common types of Open Meeting Law violations. Therefore, a public body, with the assistance of its attorney, should establish a clear procedure to use before holding an executive session.

MINUTES - All public bodies must take and retain written minutes or a recording of all meetings.[30] The minutes or a recording of all public meetings must include, at a minimum, the following:

1. The date, time, and place of the meeting.

2. The members of the public body recorded as either present or absent.

3. A general description of the matters discussed or considered.

4. An accurate description of all legal actions proposed, discussed, or taken, and the names of members who proposed each motion.

5. The names of persons making statements or presenting material to the public body and a reference to the specific legal action addressed by the person.

6. Sufficient information to permit further investigation of the background or specific facts of a decision if the discussion in the public session does not adequately disclose the subject matter and specifics of the action taken.

7. In case of an actual emergency, a statement setting forth the reasons necessitating a discussion, consideration, or decision without the matter being placed on an advance agenda.

8. In case of ratification, a copy of the required disclosure statement.

The minutes of executive sessions must contain the information described in 1, 2, 3, and 7 above, and an accurate description of all instructions given in an executive session and such other matters as may be deemed appropriate by the public body.[31]

The minutes or a recording of any meeting (*except* an executive session) must be available for public inspection no later than three working days after the meeting.[32] In addition, for cities and towns with populations in excess of 2,500, a statement showing legal actions and votes taken by a city/town public body at a meeting must be posted within three days of the meeting and approved minutes of council meetings must be posted to the city/town website within two working days of approval except for executive session minutes which are confidential. Advisory committees and subcommittees have ten working days to post a statement of legal action or a recording of their meeting on the website.

Minutes must be taken in executive sessions and must be kept confidential except from the members of the public body that met in executive session; the officers, appointees, or employees who were the subject of discussion in a personnel executive session; the auditor general when conducting an audit; or the attorney general or county attorney when investigating alleged violations of the Law.[33] If the public body wishes to exclude all staff from attending the executive session, then the minutes should be kept or recorded by a member of the public body.

In addition to written or recorded minutes of the meeting, the Law provides that any part of a public meeting may be recorded by any person in attendance by means of a tape recorder, camera, or other means of sonic reproduction as long as there is no active interference with the conduct of the meeting.[34]

E-MAIL AND OTHER SOCIAL MEDIA VIOLATIONS - The Law applies to all meetings of a public body, whether a quorum gathers "in person or through technological devices."[35] Therefore, you should be extra careful when communicating with any other council members – even less than a quorum – via technology, such as by telephone or e-mail. This includes serial discussions where you communicate with one member and that member speaks to another, etc. Otherwise, you may find that you have violated the Law.

A "meeting" occurs when a quorum of a public body "gathers" and takes any one of four actions: discusses legal action, proposes legal action, takes legal action, or deliberates with respect to any such actions. The law states that the simple act of a public body member sending out a single e-mail to a quorum of the public body could violate the Law if the e-mail proposes legal action.[36] Moreover, "[t]hree of these activities [to discuss, deliberate, or take action] necessarily involve more than a one-way exchange between a quorum of a public body," so even the simple act of a member of the public body responding to, exchanging, or otherwise circulating e-mails regarding legal action among a quorum could be interpreted as a violation of the Law.[37] Therefore, you should be extra cautious whenever communicating with other council members using e-mail or other technological devices.

To help public bodies comply with the Law, the attorney general recommended that, while it is not legally required, members of public bodies who send e-mails to each other might want to include the following language in their e-mail message to remind colleagues that replying or circulating an e-mail to others could be construed as discussing, deliberating, or taking legal action:

> "To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board (council) members and board (council) members should not reply to this message."

For similar reasons, the attorney general advised that staff might want to use the following language:

> "To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the public body. Members of the public body may reply to this message, but they should not send a copy of the reply to other members."

Your city or town should adopt a policy governing social media and consider the provisions of the Open Meeting Law in drafting the policy. Discussions among members of a public body via blogs, tweets, Facebook and similar social media are subject to the Open Meeting Law in the same manner as e-mail.

RATIFICATION - A public body may ratify legal action that may have been taken in violation of the Law. Ratification is appropriate when the public body needs to validate retroactively a prior act in order to preserve the earlier effective date of the action.

Ratification merely validates the prior action. It does not eliminate liability of the public body or others for violation of the Law.

All legal action transacted during a meeting held in violation of the Law is null and void unless ratified. The procedure for ratification is prescribed in A.R.S. § 38-431.05(B). It is a detailed and complicated procedure that must be followed carefully, "within thirty days after discovery of the violation," and with advice by the public body's attorney.

SANCTIONS - All legal action transacted by any public body during a meeting held in violation of the Open Meeting Law is null and void unless the ratification procedure discussed above is utilized.[38] However, the Open Meeting Law does not render null and void all legal action taken

at a meeting at which an Open Meeting Law violation occurs if the violation involves only a single improperly noticed agenda item.[39] The Law can be enforced against a member of a public body and any person who knowingly aids, agrees to aid, or attempts to aid in violating the Law.[40] Any person affected by an alleged violation, the attorney general, or the county attorney for the county in which an alleged violation occurred, may file an action and obtain civil penalties. If the court finds that a public officer (in this report the term "public officer" includes elected and appointed officials of a city or town) knowingly violated the Law, the court may remove the officer from office and assess him or her personally with the attorney's fee award. The court may impose a civil penalty of $500 for the second violation and a penalty of $2500 for a third or subsequent violation. Civil penalties assessed against the public officer cannot be paid or reimbursed to the public officer by the public body. The court may also exempt from liability a public officer who objected to any unlawful action taken by the public body if the objection was noted on a public record. Moreover, a member of a public body shall not direct staff to communicate in violation of the Law. [41]

In addition to enforcement of the Open Meeting Law by the attorney general's office, the state ombudsman-citizens aide has been given investigative authority for alleged violations of both the Open Meeting Law and Public Records Law. The ombudsman may investigate, hold hearings, and issue subpoenas if necessary to compel testimony or evidence when the city or town has failed to produce information when requested. The ombudsman's office is also charged with the responsibility of providing educational programs on both laws and providing educational materials regarding the public access laws.[42]

CONFLICT OF INTERESTS

One of the most misunderstood phrases in the media today is: conflict of interests. The phrase carries such negative connotations, and yet it is only natural, in our system of part-time citizen legislators, for elected and appointed officials to face potential conflict of interests situations. It is not "bad" to have a conflict of interests, but it is illegal to fail to declare a conflict of interests under Arizona law or to participate or otherwise be involved in discussions on issues or contracts where such a conflict exists.

This portion of the report may help you identify potential conflicts of interests and how you may avoid violations of this state law, which is one of the most complicated set of laws on the books. To understand its effect on your actions we suggest you discuss the law and your particular situation with your own private attorney, or your city or town attorney. You should also discuss with relatives (see definition below) their various business dealings so you do not inadvertently discuss or vote on a matter where your relative has a substantial interest. FIND OUT AHEAD OF TIME WHAT YOUR CONFLICTS ARE!

APPLICABILITY - The Conflict of Interests Law covers all public officers and employees of incorporated cities and towns. This includes the mayor, council members, and members of all appointed boards and commissions (parks, planning and zoning, libraries, etc.); the city manager, his or her appointees, and all consultants; and full-time, part-time, and contractual employees of the city or town.

The Conflict of Interests Law is also applicable when the private interests of a public official's or public employee's relative are under consideration. The law broadly defines a relative to be not only a husband or wife, child, grandchild, parent, grandparent, brother or sister (and their spouses) but also the following in-laws: brothers, sisters, parents, and the child of a spouse.[43] All other relatives, whether by blood or marriage, are not subject to the restrictions of this law.

CONFLICT OF INTERESTS DEFINED - The Conflict of Interests Law distinguishes between interests that are "remote" and those that are "substantial."[44]

Essentially what it says is that remote interests are so minor that they do not constitute illegal conflicts of interests, and that any interest which is not remote, as detailed in state law, is a substantial interest. If you have only a “remote interest” in a matter before the council, then you can vote and participate in the discussion. Here is what the law defines as a remote interest.

REMOTE INTERESTS exist when the public officer or employee or a relative is:

1. A nonsalaried officer or member of a nonprofit corporation. Thus, being a nonsalaried officer or a member of a nonprofit health agency doing business or requesting a grant from the city or town technically would not constitute a conflict.

2. The landlord or tenant of a contracting party. For example, a council member may lease office space to a party that has a private interest in a public matter without it resulting in a conflict of interests.

3. An attorney of a contracting party. For attorneys who serve on council or as a member of any other public body or as employees of a public body there may be State Bar ethics rules, which could restrict their actions.

4. A member of a nonprofit cooperative marketing association.

5. The owner of less than 3 percent of the shares of a corporation with an interest in a matter with the city or town, provided that:

    a. Total annual income from dividends, including the value of stock dividends, does not exceed 5 percent of the officer's or employee's total annual income; and

    b. Any other payments made to the officer or employee by the corporation do not exceed 5 percent of the officer's or employee's total annual income.

6. Being reimbursed only for actual and necessary expenses incurred in performance of official duties.

7. Receiving municipal services on the same terms and conditions as if the person were not an officer or employee of the municipality. Thus, when a council member who owns a business within the city or town votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.

8. An officer or employee of another political subdivision, a public agency of another political subdivision, or any other public agency unless it is the same governmental entity being served who is voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a council member who is a school teacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the council member.

9. A member of a trade, business, occupation, profession, or class of persons and has no greater interest than the other members of that trade, business, occupation, profession, or class of persons. A class must consist of at least 10 members to qualify the interest as remote.

10. A relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.

11. The ownership of any publicly traded investments that are held in an account or fund, including a mutual fund, that is managed by one or more qualified investment professionals who are not employed or controlled by the officer or employee and that the officer or employee owns shares or interest together with other investors.

SUBSTANTIAL INTEREST is defined in this law as any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than those that are remote.[45] In general, a conflict of interests will result when an officer or employee of a city or town or relative of an officer or employee is involved in substantial ownership or salaried employment with a private corporation doing business with the city or town. For example, if a council member owns or is employed by a lumberyard selling to the city, then a conflict may exist. On the other hand, if the council member is the lawyer for that lumberyard, or if the council member leased land to the lumberyard, then it is possible that no conflict exists.

A public officer or an employee may sell equipment, material, supplies, or services to the municipality in which the officer or employee serves if this is done through an award or contract let after public competitive bidding.[46] An exception to this law allows cities and towns to purchase supplies, materials, and equipment from a member of the council without going to public competitive bid as long as the single transaction does not exceed $300 and the annual total of such transactions with a member of the council does not exceed $1,000.[47] The city or town must adopt a policy governing such purchases and must approve this policy on an annual basis. All transactions above these limits must take place as a result of public competitive bidding. However, the city or town officer or employee would not be allowed to influence the bidding process in any way and must make known in a timely manner such interest in the official records of the city or town.

The attorney general has concluded that there is no statutory restriction on a school board member or employee bidding on property being sold by the district, as long as the board member or employee publicly discloses such interest in the property being sold and refrains from participating in any manner in the decision to sell the property.[48]

ADDITIONAL PROVISIONS - The Conflict of Interests Law also contains the following restrictions on the activities of public officers and employees that should be reviewed with your city or town attorney.

1. When a public officer or employee has been directly concerned or has exercised "administrative discretion" in an issue, that officer or employee may not represent another person before an agency of the city or town on the same issue and receive compensation for such representation. This restriction extends to 12 months after termination of office or employment with the city or town.[49]

2. During the period of a public officer's term or employee's employment and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties that has been clearly designated to the officer or employee as confidential and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee cannot disclose or use confidential information obtained during the term of office or employment.[50]

3. A public officer or employee cannot receive any compensation (other than as provided by law) for performance of services in any case, special proceeding, application, or other matter pending before any agency of the city or town.[51]

4. A public officer or employee cannot use or even attempt to use his or her position to obtain anything of value that normally would not be received in the performance of official duties. Something is considered to have "value" when it exerts a "substantial and improper" influence on the duties of the public official.[52]

The State Bar of Arizona has placed another restriction on local elected officials who are lawyers. The State Bar ruled that attorneys on city or town councils cannot represent clients in the city or town's courts.[53] However, the Arizona Supreme Court has ruled that attorneys on city and town councils may represent clients in superior court in cases that involve members of the police department in such council member's city as adverse witnesses.[54]

DECLARATION OF A CONFLICT - When a public officer or employee (or their relative) has a substantial interest in any decision of, or contract, sale, purchase, or service, to their city or town, the public officer or employee must:

1. Refrain from <u>participating in any manner</u> (voting, discussing, or in any way attempting to influence) in their capacity as an officer or employee a decision of the governing body or agency of the city or town; and

2. Make the substantial interest known in the official records of the city or town. For a member of the council, this can be done by either declaring at a council meeting that a conflict of interests exists and having this declaration officially entered in the minutes or filing a written declaration with the city or town clerk. For an employee who faces a conflict of interests situation, the employee should file a letter with the manager or clerk declaring in writing that a conflict exists. Both officers and employees with a substantial interest must refrain from

participating in any manner as an officer or employee in the decision or issue.[55] As a best practice, you should file notice with the clerk as soon as you become aware of the conflict.

The provisions of state law relating to conflict of interests, specifically the requirement that members of the council refrain from participating in or attempting to influence a decision in which they have a substantial interest, may preclude the council from acting as required by law in its official capacity. For example, this situation may occur when a majority of the members of the *entire* council (not just those present at a particular meeting) have a substantial conflict of interests. To address this potential problem, state law provides that if the conflict of interests statutes prevent a public body from acting as required by law in its official capacity, such action shall be allowed if the members of the public body with the apparent conflicts make known their substantial interests in the official records of the public body.[56] For example, each affected council member should state that he or she has a substantial interest in the issue before the council, and then make sure it is recorded in the official minutes of the meeting. Such statement should be made at the beginning of any discussion of the issue by the council. This process can be tricky, so seek legal counsel before proceeding.

LEGAL OPINIONS - If you ask your city or town attorney for an opinion on conflict of interests, the request is confidential. However, formal final opinions are a matter of public record and must be filed with the city or town clerk.[57] This filing requirement does not apply to verbal communications between a mayor or council member and the city/town attorney. In addition, no city/town public officer or employee is personally liable for acts done in his official capacity in good faith reliance on written opinions of the city or town attorney of the city or town where they serve.

FILING OF DISCLOSURES - The clerk must maintain a special file for all disclosures of conflicts of interests. One method to comply with this requirement would be to place a separate copy of the council meeting minutes when a conflict is declared in a special file labeled "Conflict of Interests Disclosures."

PENALTIES - A public officer or employee who intentionally or knowingly conceals or fails to disclose any substantial interest or engages in any of the activities prohibited by A.R.S. § 38-503 through 38-505, is guilty of a class 6 felony, plus a conviction will automatically forfeit office. A public officer or employee who negligently or recklessly violates the Conflict of Interests Law by failing to disclose a substantial interest or engaging in the activities prohibited by A.R.S. § 38-503 through 38-505, is guilty of a class 1 misdemeanor. Any person affected by a decision of a public agency where a conflict of interests is alleged may bring a civil suit in superior court, which may order equitable relief including attorney's fees to the prevailing party. In addition, any contract made in violation of the law may be voided by action of the city or town.[58] WHEN IN DOUBT ABOUT POTENTIAL CONFLICTS, ASK YOUR ATTORNEY!

PUBLIC RECORDS [59]

Arizona's Public Records Law is an odd paradox. On the one hand, the sweeping language of its core provisions makes the law appear to be straightforward and simple. On the other hand, the hundreds of exceptions in other statutes and judicial decisions can make application of the law rather complex at times. Given this unique blend of simplicity and complexity, you should learn

the following basics, but then seek immediate assistance if you directly receive a request for public records.

SIMPLE AND SWEEPING - Arizona's Public Records Law commands that "[p]ublic records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours."[60] The law applies to, among others, officers of cities and towns.[61] The definition of "public records" is quite sweeping, so the law reaches not only paper items (including "all books, papers, maps, photographs or other documentary materials"), but also all other information "regardless of physical form or characteristics, including … items produced or reproduced on film or electronic media."[62] E-mail generated or maintained on a government e-mail system are public records but purely personal e-mails may be exempted from disclosure.[63] Likewise, e-mails on a personal computer relating to official business may also be public records. Use of social media such as Facebook and Twitter may also create public records depending on the subject matter. The recommendation for a social media policy for compliance with the Open Meeting Law applies to the Public Records Law as well. Assume anything you make a record of, in any format, related to your position as a public officer or employee is a public record.

The Arizona Supreme Court has ruled that a public record maintained in an electronic format includes not only the information normally visible upon printing the document but also any embedded metadata.[64] The court has also indicated if the record is maintained electronically, in most cases it must be provided in that format.

Sometimes the law specifically details what is a public record. For example, disciplinary records involving public officers or employees of a public body must be open to inspection and copying unless inspection or disclosure of the records or information in the records is contrary to law.[65] Importantly, if any doubts exist about whether a member of the public can see a particular document, courts have declared that public records are "presumed open to the public for inspection."[66]

COMPLEX MAZE OF EXCEPTIONS - That presumption of openness, however, is just a presumption and not an absolute rule. Indeed, the Arizona Supreme Court has recognized three sets of exemptions to the sweeping presumption of openness: when confidentiality restrictions apply, when privacy interests of individuals outweigh the public's right to know, or when the best interests of the government outweigh the public's right to inspection.[67]

First, Congress and the Legislature have enacted hundreds of confidentiality exceptions to the Public Records Law. Often buried in obscure niches of federal and state statute books, these confidentiality restrictions usually are designed to protect the public at large (*e.g.*, prevent disclosure of the vulnerability of certain facilities to sabotage or attack),[68] guard the safety of certain individuals (*e.g.*, prevent disclosure of the home addresses and telephone numbers of a long list of public officials including judges, prosecutors, public defenders, peace officers, border patrol agents, code enforcement officers, law enforcement support staff and victims of domestic violence, stalking, or harassment),[69] and protect against identity theft (*e.g.*, prevent disclosure of social security numbers).[70] Note that you do not have independent authority to promise that documents will be protected as confidential.[71]

Secondly, privacy interests may protect certain information in public records from being released. For example, the Arizona Supreme Court declared that a public teacher's birth date could be withheld from public inspection, based on the court's recognition that such personal identifying information could be combined with other information, which in turn could lead to identity theft.[72]

Finally, a record may be withheld from public inspection when disclosure would be detrimental to "the best interest" of the government. The Arizona Court of Appeals clarified this otherwise broad exemption when it noted that while "public records are presumed open to the public for inspection," certain records may be withheld if "the public official can demonstrate a factual basis why a particular record ought not be disclosed to further an important public or private interest."[73] Note that the burden is on the public official to prove that the record should be kept from the public rather than on the person seeking the record.

STEPS TO COMPLY - Public officials should keep the following seven steps in mind to comply with public records requests.

Step One: Properly Maintain Public Records. Arizona law imposes duties on public officers even before they receive a request to produce public records for inspection. For example, the law mandates that "[a]ll officers and public bodies shall maintain all records … reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from the state or any political subdivision of the state."[74] Moreover, "[e]ach public body shall be responsible for the preservation, maintenance and care of that body's public records and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to" an authorized document retention policy.[75]

Step Two: Seek Assistance. With the exceptions to the Public Records Law ever evolving and sometimes "hidden" in statute books and judicial decisions, application of Arizona's Public Records Law can be complex. Therefore, if you ever receive a request for a public record, then the best practice is to seek help immediately from staff members who are more familiar with the law. Staff members, in turn, should contact their legal counsel for guidance to avoid problems.

Step Three: Receiving a Public Records Request. The law allows "any person" to request access to a public record. Importantly, the law does not require people to identify themselves when they are seeking access to public records. Nor do they have to identify why they want to see the record although you may confirm that that request is not for a commercial purpose.

Step Four: Act "Promptly." The law declares that "[a]ccess to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record," although the law does not define precisely what "promptly" means.[76] Denying access to a public record exposes the public body to liability, so reasonable efforts must be made to provide the requested documents "promptly."

Step Five: Inspection and Copying. Members of the public actually have rights relating to public records. They have a right to "inspect" those documents, which essentially means they may "examine" or "look at" the requested records.[77] (A court still may review the withheld

documents and order them disclosed.) If a person wants, they are entitled to get "copies, printouts or photographs" of the records, which must be provided "promptly." As noted above if the records are maintained electronically, they must be provided electronically.

Certain records may contain information that legitimately should be withheld from public inspection. In those situations, the information that is confidential, private or harmful to the best interest of the government should be withheld but the rest of the record should be made available to the person requesting the public record.[78]

Step Six: Recovering Costs. Searching for and making copies of public records costs time and money. The law recognizes two categories of requestors and limits what each may be charged. When a person requests public records for a "commercial purpose" – for example, obtaining lists of names to try to sell insurance – then the public body may charge a "reasonable fee" for both the time searching for the records and the actual cost of the copying.[79] When, however, the request is not for a commercial purpose, then the public body may charge only for the cost of the copying; it is not authorized to charge for the cost of searching for the records. There is an exception to the right to impose any charge for records and it covers crime victims. A victim of a crime or the immediate family of the victim if the victim is killed or incapacitated is entitled to a free copy of the police report from the investigative law enforcement agency as well as the minute entry or portion of any court proceeding which is necessary for the person to pursue a claimed victim's right.[80] There is also an exception for issuing certified copies of public records or searching for them when they are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits to be received from the United States.[81]

Note: Because of the First Amendment, requests by journalists are ***not*** considered to be for a commercial purpose.

Step Seven: Mailing. The law allows a person to "request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges."[82]

VIOLATIONS - Violations of the Public Records Law come in two forms: "governmental" violations and "personal" violations.

"Governmental" violations occur when the government (operating through public officials and employees) fails to comply with the Public Records Law by, for example, refusing to produce public records, purposefully delaying the release of public records, refusing to release records based on speculation that they may contain information that does not need to be produced,[83] or overcharging for copies of public records.[84] The court may award attorney's fees and other legal costs that are reasonably incurred in any action under the Public Records Law if the person seeking public records has substantially prevailed.[85] Additionally, "[a]ny person who is wrongfully denied access to public records pursuant to this article (the Public Records Law) shall have a cause of action against the officer or public body for any damages resulting from the denial."[86]

"Personal" violations occur when, for example, a public officer or employee releases confidential information that is protected from disclosure by statute,[87] steals or in an unauthorized way removes, secretes, mutilates, or defaces a public record,[88] or otherwise "tampers with a public record" by destroying, altering, or falsifying a public record.[89] The penalties for personal violations can range from removal from office and imposition of civil penalties to being convicted of a class 4, 5, or 6 felony.

PRACTICAL TIPS - To avoid problems, you might want to keep the following three tips in mind. First, whenever creating documents (including informal writings, such as e-mail, which are subject to the Public Records Law[90]), presume they will be public records available for inspection, copying, and printing on the front page of the local newspaper. Therefore, be as careful with the tone and language of the document as you are with the substantive accuracy of your writing.

Secondly, don't "tamper" with a public record – by destroying it, backdating it, hiding it, altering it (such as erasing or changing portions of it), or otherwise falsifying it. Each of these acts is a crime in Arizona. Redaction of confidential portions of a record may be permissible, but you should consult with your city or town attorney on what is appropriate.

Thirdly, whenever you receive a request for a public record, it is a sound practice to immediately seek help from staff.

INCOMPATIBILITY OF OFFICES

On many occasions, local officials have asked the League whether a public official may hold two or more public offices at one time. In response to these requests, we compiled the following information to help in determining when two or more public offices may be incompatible.

EARLY CONCEPTS OF INCOMPATIBLE OFFICES - Arizona's law prohibiting the holding of incompatible offices can be traced, in large part, to early English common law. Offices were said to be incompatible or inconsistent if:

1. The main duties of the two offices could not be carried out with care and ability; or

2. One office is subordinate to and interferes with the other office such that the duties of the two offices cannot be performed at the same time with "impartiality and honesty."

Very few laws, if any, have been based upon the first principle. Apparently, it has been difficult to determine when an individual fails to execute the duties of two public offices with "care and ability." The second principle mentioned above has been the basis for most Arizona law on the incompatibility of public offices.[91]

STATE LAWS AND INTERPRETATIONS - From Arizona's Constitution and statutes, and interpretations by the attorney general and the League's general counsel, we have compiled a list of legal provisions focusing on the issue of incompatible public offices.

ARIZONA STATE CONSTITUTION

1. No member of the Legislature may hold any other office or be employed by the state or any county, city, or town, except a legislator may also be a school board member or a teacher.[92]

2. Incumbents of a salaried elective office may not "offer" themselves for nomination or election to any salaried local, state, or federal office unless during the final year of their term. However, an incumbent may resign and then run for another office.[93]

3. Justices of the peace may hold the additional position of police magistrate in incorporated cities and towns.[94]

STATE STATUTES

1. A public official may not hold two salaried public offices at the same time. However, elected officials in the final year of their term of office may offer themselves for nomination to another elected office. The point in time at which an elected official is determined to have offered herself or himself for nomination or election to another public office is upon the filing of nomination papers or upon formal declaration of candidacy for such office, whichever occurs first.[95]

2. Mayors, aldermen, or council members cannot receive any compensation from the city or town during the term of office for which they were elected in addition to the compensation paid to them as elected officials.[96] As a result, city and town elected officials cannot hold any other paid public office with the city or town. In the opinion of our League general counsel, this provision also prevents a mayor or council member from resigning office and accepting another compensated position with the municipality prior to the end of the term of office for which the person was elected.[97]

3. Public defenders employed by the county may also serve as public defenders for a city or town. State law requires the city or town to reimburse the county for the public defender's services.[98]

4. Members of the State Personnel Board and <u>most</u> state employees cannot be candidates for nomination or be elected to any paid public office, nor may they take part in managing a political party or political campaign.[99] Certain state employees are exempted from these restrictions, so we suggest that you discuss individual cases with your city or town attorney.

5. A person may not be a candidate for more than one public office if the elections for the offices are held on the same day and the person would be prohibited from serving both positions simultaneously.[100]

CITY CHARTER PROVISIONS - If you are holding office in a charter city, there may be additional limitations placed on your ability to hold other public offices. We suggest you consult the charter or your city attorney on any such provisions.

ATTORNEY GENERAL OPINIONS - The attorney general has issued a number of opinions on the topic of incompatibility of office. Of particular interest to cities and towns:

1. State employees subject to the State Personnel Commission may not hold the position of city or town council member, if the council position is compensated.[101]

2. The positions of school board member and council member could be held by the same individual because the school board position was uncompensated.[102]

3. A legislator may not assume an elective office in a charter city during the legislative term for which he or she was elected.[103]

4. The duties of a county supervisor are not inherently inconsistent with the duties imposed on a member of the Arizona Board of Regents.[104]

LEAGUE GENERAL COUNSEL OPINIONS - The League's general counsel has been requested on a number of occasions to issue opinions on possible instances of incompatible offices. The following is a list of these opinions:

1. One individual in a non-chartered city cannot hold the positions of mayor and city or town magistrate at the same time.[105]

2. The compensated positions of city alderman and volunteer fireman could not be held at the same time by one individual because aldermen can only receive the specific compensation designated by law for their service as aldermen.[106]

3. A magistrate, during absence from his post, may request another magistrate or justice of the peace from a neighboring city or town to serve in his post. The city or town should, however, adopt an ordinance authorizing this arrangement.[107]

4. The general counsel of the League also suggests that the offices of town manager and police magistrate not be held by one individual.

Before an employee accepts another public office, local ordinance provisions and personnel rules and regulations should be consulted. For particular employees there may be departmental regulations that also govern such activities.

NEPOTISM

As a city or town official, you must exercise caution when your relatives are being considered for appointment to offices or positions of employment with the city or town. Arizona's anti-nepotism statute prohibits public officials from appointing their relatives to offices or positions of employment compensated from public funds.[108]

Specifically, any executive, legislative, ministerial, or judicial officer cannot appoint or vote for (or even suggest, arrange, or be a party to) the appointment of a relative who is related by blood or marriage "within the third degree" to a paid office or position of employment. Public officers of a city or town subject to this restriction would include mayors, council members, appointed officials, and department heads.

As mentioned above, the law prohibits the appointment of relatives by blood or marriage "within the third degree." To apply this law accurately, there is a method to compute whether a person is related within what is legally defined as the "third degree." In summary, this method of computation would prohibit a public officer from appointing or participating in the appointment of the following in-laws or blood relatives: a husband or wife, brother or sister, parent or child, great grandparents, grandparents, grandchildren, great grandchildren, uncles or aunts, and nephews or nieces.[109] To illustrate, the attorney general found that the wife of a justice of the peace could be appointed by her husband to perform the function of setting bail.[110] This opinion was based in part on the fact that the public official's wife was not compensated for these duties. In another attorney general's opinion a justice of the peace could not appoint his wife's sister to a compensated position of clerk without violating this law.[111]

One important question is whether a city or town employee can continue employment after a relative within the third degree has assumed a position on the city or town council or some other position with appointment authority. In addressing a situation of this nature, the general counsel of the League was of the opinion that an employee could continue employment even though a relative was elected to the city or town council.[112] However, if a situation arises where the employee's appointment or reappointment is placed before the council, the relative on the council should not participate in any way in that decision.[113]

The council-manager form of government or the existence of a merit system also affect the application of the anti-nepotism law because the law does not prohibit the appointment or employment of a relative, but rather governs the participation of the related public official in the decision-making process. If there are questions that relate to nepotism, we suggest that you discuss these with your local city or town attorney. In most instances, questions of nepotism can be clarified quickly due to the precise nature of this law.

FINANCIAL DISCLOSURE

State law requires elected officials, including those appointed to elective office, to file an annual financial disclosure statement.[114] Since 1984, cities and towns have been required to adopt standards of financial disclosure consistent with the standards imposed for state elected officials.[115]

The annual financial disclosure statement is due each year on January 31 covering the immediately preceding calendar year. The city or town clerk should make the forms available to meet this filing requirement.[116] Candidates for city or town office must file the financial disclosure statement covering the preceding 12-month period when nomination papers are filed.[117]

The law requires elected public officials to disclose personal financial data including information on members of the “household” (defined as the public official's spouse and any minor child of whom the official has legal custody). Information on business holdings is required under certain circumstances. Property owned by the official or a member of the official's household must also be reported (with certain exceptions).

The report must be filed with the city or town clerk and is available for public inspection. Failure to file or filing a false or incomplete financial disclosure statement, if done knowingly, is a class 1 misdemeanor.[118]

LIMITS ON ENTERTAINMENT

In 2000, the Legislature extended part of the state's lobbying laws to prohibit certain entertainment for local officials if paid by compensated lobbyists. The law provides that it is illegal for a compensated lobbyist to offer and for a member of a city or town council (as well as other local governing bodies) to accept "an expenditure or single expenditure for entertainment."[119]

Careful attention to these three parts – the giver, the recipient, and the outlawed gift – is important because violations may result in criminal and civil penalties.[120] As for the giver, the law applies to "a person who for compensation attempts to influence the passage or defeat of legislation, ordinances, rules, regulations, nominations and other matters that are pending or proposed or that are subject to formal approval by the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board or any person acting on that person's behalf." So even if the people offering entertainment do not call themselves "lobbyists," the law still applies if they are compensated to do any of the things listed. Next, as for the receiver, the law applies in the city and town context to city/town elected officials (whether elected or appointed), but not directly to city or town staff (although local ordinances or policies might).[121]

Third, the law prohibits giving or receiving "entertainment," which is defined to mean "the amount of any expenditure paid or incurred for admission to any sporting or cultural event or for participation in any sporting or cultural activity."[122] As written, the ban prohibits not only receiving tickets to attend a sporting or cultural event, but also having a compensated lobbyist pay for your participation in any cultural or sporting event. In other words, a compensated lobbyist may not offer – and council members cannot accept – tickets to sporting or cultural events (such as baseball, basketball, football, hockey, or soccer, or any other sports at any level – professional, college, or local – or art gallery, ballet, movie, opera, theater, or anything else). Nor may they offer to pay or you allow or accept their payment for your "participation" in "sporting or cultural" activities such as golf, fishing, hunting, bowling, yoga, painting, ballet, or any other activity.

CONCLUSION

Accepting a position as a public official may introduce a number of complex and confusing legal situations into an individual's life. This report has tried to shed some light on selected areas of law that place restrictions and requirements on the activities of public officials in Arizona cities and towns. If the report has raised questions, please do not hesitate to contact the League office. However, we emphasize the importance of consultation with your personal attorney or the city or town attorney on specific questions regarding all of the subjects discussed in this report.

ENDNOTES

1. To read the state statutes on the Open Meeting Law see A.R.S. § 38-431 through 38-431.09.
2. A.R.S. § 38-431.09.
3. A.R.S. § 38-431.01(G). The Open Meeting Law information from the attorney general's office can be accessed at www.azag.gov and on the city/town website. The Arizona ombudsman - citizens' aide office also produces a helpful publication on the requirements of the Open Meeting Law. It can be accessed at www.azoca.gov.
4. A.R.S. § 38-431.01(A). The Open Meeting Law grants the public the right to attend and listen to a public body's deliberations and proceedings. See Attorney General Opinions I83-049 and I84-133. This includes the right to know exactly how each individual council member votes on an issue. A.R.S. § 38-431.01(B).
5. A.R.S. § 38-431(4).
6. A.R.S. § 38-431.09.
7. Ariz. Att'y Gen. Op. I07-013.
8. A.R.S. § 38-431(6).
9. A.R.S. § 38-431; For a discussion of the applicability of the Open Meeting Law to special boards created by political subdivisions see Ariz. Att'y Gen. Op. I07-001.
10. A.R.S. § 38-431.02(A).
11. A.R.S. § 38-431.02(A)(4).
12. A.R.S. § 38-431.02(F).
13. A.R.S. § 38-431.02(C).
14. A.R.S. § 38-431.02(B).
15. A.R.S. § 38-431.02(E).
16. A.R.S. § 38-431.02(D) & (J).
17. A.R.S. § 38-431.05(B)(4).
18. A.R.S. § 38-431.02(H).
19. A.R.S. § 38-431.09; *see* Ariz. Att'y Gen. Op. I83-56. The Open Meeting Law does not specifically prohibit a public body from considering agenda items in an order different from that appearing on the agenda. However, when changing the order of discussion, it must be done in a way that is not designed to deny any member of the public the opportunity to listen to the discussion of any agenda item.
20. A.R.S. § 38-431.02(I).
21. A.R.S. § 38-431.02(H).
22. A.R.S. § 38-431.02(K).

23. A.R.S. § 38-431.01(H).

24. A.R.S. § 38-431(2).

25. A.R.S. § 38-431.03(C).

26. A.R.S. § 38-431.03(D); *see Johnson v. Tempe Elementary School Dist. Governing Board*, 199 Ariz. 567, 20 P.3d 1148 (2001) (dismissing a public body's appeal as improper when the public body instructed its attorney in an executive session to file an appeal but then failed to confirm that instruction in public with a proper formal vote).

27. A.R.S. § 38-431.03(A).

28. Only legal advice, not policy discussions, may be discussed; *see City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 803 P.2d 891 (1990).

29. *See Tanque Verde Unified School Dist. v. Bernini*, 206 Ariz. 200, 76 P.3d 874 (2003) (affirming that a public body violated the Open Meeting Law by conducting a site selection process in an executive session).

30. A.R.S. § 38-431.01(B).

31. A.R.S. § 38-431.01(C).

32. A.R.S. § 38-431.01(D).

33. A.R.S. § 38-431.03(B).

34. A.R.S. § 38-431.01(F).

35. A.R.S. § 38-431(4).

36. A.R.S. § 38-431(4). *See* Ariz. Att'y Gen. Op. I05-004 ("Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML (Open Meeting Law) requirements. … While some one-way communications from one board member to enough members to constitute a quorum would not violate the OML, an e-mail by a member of a public body to other members of the public body that proposes legal action would constitute a violation of the OML.").

37. Arizona Agency Handbook § 7.5.2 (Rev. 2018). ("Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions…. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss the topic that is or may be presented to the public body for a decision.")

38. A.R.S. § 38-431.05(A).

39. Ariz. Att'y Gen. Op. I08-001.

40. A.R.S. § 38-431.07(A).

41. A.R.S. § 38-431.01(I).

42. A.R.S. § 41-1376.01.

43. A.R.S. § 38-502(9).

44. *Compare* A.R.S. § 38-502(11) ("substantial interest") and 38-502(10) ("remote interest"); *see also* Ariz. Att'y Gen. Op. I85-052.

45. A.R.S. § 38-502(11); *see* Ariz. Att'y Gen. Op. I03-005.

46. A.R.S. § 38-503(C). *see* Ariz. Att'y Gen. Op. 70-5, 79-067, 79-133, I06-002; General Counsel Opinion May 18, 1979, and letter dated October 23, 1984 from attorney general to Town of Parker.

47. A.R.S. § 38-503(C)(2).

48. Ariz. Att'y Gen. Op. I85-067.

49. A.R.S. § 38-504(A).

50. A.R.S. § 38-504(B).

51. A.R.S. § 38-505.

52. A.R.S. § 38-504(C).

53. State Bar Ethics Opinion No. 74-28.

54. *See Gomez v. Superior Court,* 149 Ariz. 223, 717 P.2d 902 (1986).

55. A.R.S. § 38-503(A) & (B).

56. A.R.S. § 38-508.

57. A.R.S. § 38-507.

58. A.R.S. § 38-506; *see also* A.R.S. § 38-511.

59. *See* Arizona Agency Handbook prepared by the attorney general's office (www.azag.gov) and Arizona Public Records Law prepared by the office of the Arizona ombudsman-citizens' aide (www.azoca.gov).

60. A.R.S. § 39-121.

61. A.R.S. § 39-121.01(A).

62. A.R.S. § 41-151.18.

63. *Griffis v. Pinal County*, 156 P.3d 418, 215 Ariz. 1 (2007).

64. *David Lake v. City of Phoenix*, 218 P.3d 1004, 222 Ariz. 547 (2009).

65. A.R.S. § 39-128.

66. *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984).

67. *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984).

68. A.R.S. § 39-126.

69. A.R.S. §§ 11-483, 16-153 39-123(A).

70. 42 U.S.C. § 405(C)(2)(c)(ii) (viii)(l); A.R.S. § 44-1373.

71. *Moorehead v. Arnold*, 637 P.2d 305, 130 Ariz. 503 (Ariz. App. 1981).

72. *Scottsdale Unified School Dist. v. KPNX Broadcasting,* 191 Ariz. 297, 955 P.2d 534 (1998); *Judicial Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 267 P.3d 1185 (Ariz. App. 2011).

73. *Star Publishing Co. v. Pima County Attorney's Office*, 891 P.2d 899, 181 Ariz. 432 (Ariz. App. 1994).

74. A.R.S. § 39-121.01(B).

75. A.R.S. § 39-121.01(C).

76. A.R.S. § 39-121.01(D)(1), (E); *see Phoenix New Times, L.L.C. and John Dougherty v. Joseph M. Arpaio*, 217 Ariz. 533, 177 P.3d 275 (2008); *West Valley View, Inc. v. Maricopa County Sheriff's Office*, 165 P.3d 203, 216 Ariz. 225 (Ariz. App. 2007); McKee v. Peoria Unified School District, 236 Ariz. 254, 338 P.3d 994 (Ariz. App. 2014); *Congress Elementary School Dist. No. 17 of Yavapai County v. Warren* 227 Ariz. 16, 251 P.3d 395 (Ariz. App. 2011).

77. A.R.S. § 39-121.01(D)(1).

78. *Carlson*, 687 P.2d at 1243-1246 ("a practical alternative to the complete denial of access would be deleting specific personal identifying information, such as names"); *see also Cox Arizona Publications v. Collins*, 175 Ariz. 11, 852 P.2d 1194, 1198 (1993)(finding that the county attorney violated the Public Records Law by withholding public records without offering to redact portions and producing the rest for inspection).

79. A.R.S. § 39-121.03 (explaining what may be charged for commercial copies).

80. A.R.S. § 39-127.

81. A.R.S. § 39-122.

82. A.R.S. § 39-121.01(D)(1).

83. *Star Publishing Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (1994).

84. *Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332 (1981).

85. A.R.S. § 39-121.02(A), (B); *Democratic Party of Pima County v. Ford* 228 Ariz. 545, 269 P.3d 721 (Ariz. App. 2012).

86. A.R.S. § 39-121.02(C).

87. A.R.S. §§ 39-124, 13-2401.

88. A.R.S. § 38-421.

89. A.R.S. § 13-2407.

90. Ariz. Att'y Gen. Op. I05-004 at 10 ("E-mails that board members or staff generate pertaining to the business of the public body are public records.] Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection.").

91. 3 McQuillin Mun. Corp. § 12:12(3d ed.); *see Ari. Att'y Gen. Op.* 76-41.

92. Arizona Constitution, Article IV, Part 2, Section 5; Ariz. Att'y Gen. Op. 77-221.

93. Arizona Constitution, Article XXII, Section 18; *see* A.R.S. § 38-296.

94. Arizona Constitution, Article VI, Section 32. Justice of the peace and magistrate courts are not courts of record and would not be subject to the restriction of Article VI, Section 28 of the Constitution.

95. A.R.S. § 38-296.

96. A.R.S. § 9-304.

97. General Counsel Opinion August 17, 1988.

98. A.R.S. § 11-585.

99. A.R.S. § 41-752.

100. A.R.S. § 38-296.01.

101. Ariz. Att'y Gen. Op. 71-32-L (The state personnel commission's jurisdiction extends to all state offices and positions except those specifically exempted by law.); see A.R.S.§ 41-752.

102. Ariz. Att'y Gen. Op. 72-20-L and 80-061.

103. Ariz. Att'y Gen. Op. 77-221.

104. Ariz. Att'y Gen. Op. 80-019; *see* Ariz. Att'y Gen. Op. 59-30, 75-2-L, and 77-216.

105. General Counsel Opinion December 10, 1965.

106. General Counsel Opinion November 2, 1966.

107. General Counsel Opinion May 26, 1970.

108. A.R.S. § 38-481.

109. See *Graham County v. Buhl,* 76 Ariz. 275, 263 P.2d. 537 (1953), Ariz. Att'y Gen. Op. 77-115.

110. Ariz. Att'y Gen. Op. 63-75-L.

111. Ariz. Att'y Gen. Op. 63-9. *see* Ariz. Att'y Gen. Op. 54-26, 65-6-L.

112. General Counsel Opinions June 26, 1968; *see* Ariz. Att'y Gen. Op. 78-71.

113. *See* Ariz. Att'y Gen. Op. 77-138.

114. A.R.S. Title 38, Chapter 3.1, Article 1.

115. A.R.S. § 38-545.

116. *See* League Municipal Election Manual for forms.

117. A.R.S. § 38-543.

118. A.R.S. § 38-544.

119. A.R.S. § 41-1232.08(B).

120. Ariz. Att'y Gen. Op. I00-031.

121. League General Counsel Opinion January 15, 2001.

122. A.R.S. § 41-1231(5).