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CIVIL AND CRIMINAL LITIGATION AND ADVICE SECTION

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August 19, 2014

Britt Hanson
Cochise County Attorney's Office
P.O. Drawer CA
Bisbee, Arizona 85603

RE: Open Meeting Law Complaint

Dear Ms. English:

Thank you for your April 22, 2014 e-mail on behalf of the Cochise County Board of Supervisors ("Board") which responded to an Open Meeting Law complaint alleging that the Board improperly held meetings on April 7, 2014 without properly notifying the public. The Arizona Attorney General's Office ("Office") has concluded its review of the Open Meeting Law complaint against the Board. Based upon a review of all of the information our Office received, we have determined that the Board did violate the Arizona Open Meeting Laws as outlined below. However, we do not believe the violations were committed with any intent to circumvent the Open Meeting Laws.

Violations

1. Meetings held without proper notification and without proper minute taking:

In your response e-mail you stated that the Board does not consider the budget discussions held on April 7, 2014 to be "meetings" as defined under the Open Meeting Laws. Your e-mail states:

By way of background, these discussions between the Board of Supervisors and the many County departments and offices start the annual budgetary process. They are informal, and preliminary to the formal annual budget process, typically consisting of questions and answers between individual Board and the department/office representatives concerning the status of programs, budgets, personnel needs, etc.

Following these informal discussions, more formal work sessions are scheduled (usually in May, I believe) by the Board with the same departments and offices. The work sessions then lead to final budget proposals for the upcoming fiscal year, which are considered, modified and approved at formal Board meetings.

You also stated in your e-mail that while the Clerk of the Board posts notices of the budget discussions as a courtesy and clearly notes in the postings that "no legal action will be taken", the County has neither an agenda nor minutes for the discussions.

We do not agree with the Board's position that the budget discussions are not "meetings" as defined in the Open Meeting Law. A.R.S. § 38-431(4) defines a "meeting" as:

4. "Meeting" means 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.

A.R.S. § 38-431(3) defines "legal action" as:

3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.

As noted in the Section 7.5.1 of the Agency Handbook, which is published by our Office as a guide to State agencies and which can be located at <https://www.azag.gov/agency-handbook> :

All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. Ariz. Att'y Gen. Ops. 75-8, 179-4. See also A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att'y Gen. Op. 105-004. Whether the matter to be discussed may foreseeably require final action is the key to this inquiry. It is difficult to say precisely when this foreseeability test has been met. Each case should be viewed on its own merits with doubts resolved in favor of compliance with the Open Meeting Law. The safest course of action is to assume the Open Meeting Law applies whenever a majority of the body discusses the business of the public body. It does not matter what label is placed on a gathering. It may be called a "work" or "study" session, or the discussion may occur at a social function. Ariz. Att'y Gen. Op. 179-4. Discussion of the public body's business may take place only in a public meeting or an executive session in accordance with the requirements of the Open Meeting Law.

The budget discussions at issue here involved a quorum of Board's members. The Board members discussed the budget, asking questions and giving answers. The County budget is a matter that not just foreseeably, but definitely, would require a final decision or legal action by the Board.

It does not matter that the discussions were "informal" or that they were preliminary to more formal discussions that were to take place in the future. The "formality" of the discussions is not a determining factor. They were still discussions of matters that would foreseeably come before the Board for legal action.

Because a quorum of the Board was discussing matters that will foreseeably come before the Board for legal action we conclude that a "meeting" was being held within the meaning of Arizona's Open Meeting Laws. Accordingly, the "meeting" should have been noticed in accordance with A.R.S. § 38-431.02 including the publishing of an agenda. Also, minutes of the meeting should have been taken as required by A.R.S. § 38-431.01. Because these things were not done, we find that the Board violated the Open Meeting Laws.

Settlement

The Arizona Attorney General's Office does not believe that the actions which constitute the violations listed above were done with any bad intent. We believe the Board was simply acting under a misunderstanding of what the Open Meeting Laws require. Accordingly, we believe that the appropriate remedy here is simply to have the Board undergo some training on the Open Meeting Laws in regards to what constitutes a meeting. You, or another attorney from the Cochise County Attorney's Office, may provide the training to the Board yourself as their legal counsel or you can seek training from an outside entity such as the Arizona Ombudsman's Office.

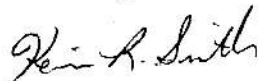
We also require that this letter and the proposed settlement terms be appropriately noticed on the agenda of the next regular Board meeting. The letter is to be read aloud, discussed, and copies of the letter shall be made available to members of the public. The letter shall also be approved and/or appropriately ratified at the next regular Board meeting. A copy of the notice and agenda for that Board meeting shall be sent to me at the Arizona Attorney General's Office.

If the proposed agreement is acceptable to your client, please so indicate by having the Board members sign page five of this letter and return a signed copy of the entire letter to me on or before October 1, 2014. If this agreement is not acceptable the Arizona Attorney General's Office will move forward to enforce the Open Meeting Law and seek any appropriate further remedies it deems necessary.

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Should you have any further questions, please feel free to contact me at the address or phone number listed on this letter.

Sincerely,



Kevin R. Smith
Assistant Attorney General

Cc: Complainant

PHX-#3853278

The Cochise County Board of Supervisors acknowledges the violations of the Open Meeting Law listed above and its Members agree to resolve the matter pursuant to the terms set forth in this letter, and are authorized to enter into this letter agreement.

By _____
Chairman/President

Date

Member

Date

Member

Date