



MEMORANDUM

Date: August 31, 2017

To: The Honorable Bill Staples
Pima County Assessor

From: C.H. Huckelberry
County Administrator

The Honorable Toni Hellon
Clerk of the Court

The Honorable F. Ann Rodriguez
Pima County Recorder

The Honorable Beth Ford
Pima County Treasurer

Re: **Board of Supervisors Policy D27.2 Information Technology Lifecycle Management Plan**

Thank you for providing me with a copy of your August 29, 2017 memorandum to the Board of Supervisors regarding this subject.

I note from your memorandum this proposed policy is in conflict with "our present policy."

To allow the Board to have a clear understanding of differences that may exist between the proposed Lifecycle Management Plan, as Board of Supervisors Policy D.27.2, please forward a copy of your policies to me or to the Board directly, if you prefer.

CHH/anc

Attachment

c: The Honorable Chair and Members, Pima County Board of Supervisors
Julie Castaneda, Clerk of the Board of Supervisors



PIMA COUNTY TREASURER'S OFFICE

Beth Ford, CPA
Pima County Treasurer

240 North Stone Avenue
Tucson, AZ 85701-1199
(520) 724-8341

Aug. 29, 2017

To: Ally Miller, Supervisor District 1
Ramon Valadez, Supervisor District 2
Sharon Bronson, Supervisor District 3
Steve Christy, Supervisor District 4
Richard Elias, Supervisor District 5

From: Bill Staples, Assessor
Toni Hellon, Clerk of the Court
F. Ann Rodriguez, Recorder
 Beth Ford, Treasurer

Re: Draft of Board of Supervisors Policy D27.2 Lifecycle Management Plan

Although we agree with the need for the county to have a lifecycle management plan for its technology, we oppose the draft presented as it applies to Elected Officials. The policy as written usurps the decision making authority of the Elected Official by the County Administrator and or ITD and or Finance Directors.

Prior legal opinions (Opinion No. 2004-02) and clarifications (see attached) affirm, "There is no provision in Title 11 which permits delegation of the board of supervisors' fiscal oversight of other elected officials" (page 3). In addition, "Arizona courts have defined the limits of the fiscal oversight of county boards of supervisors. Elected officers have the inherent power to expend public funds to carry out the constitutional and statutory mandates and necessary duties of their respective offices" (Opinion No. 2004-02, page 3).). The courts have clearly held that the Board of Supervisors and it's designee may not be involved in the operations and decisions of the other elected officials, see Hounshell v. White, 220 Ariz. 1 (2008).

Specifically, Policy D27.2 item no. 3, "at the end of lifecycle, the equipment proposed for replacement will be analyzed to determine the specific reason for replacement, and a lifecycle replacement justification report will be prepared by the Chief Information Officer (CIO) and approved by the County Administrator before the equipment is replaced" has the CIO determining the need for replacement of the Elected Officials equipment/software rather than the Elected Official. We currently have policies in place that require three to five year replacements. The proposed five to seven-year lifecycle is a faux constraint which is currently in conflict with our present policy. We see this policy as overreach into our office operations. One size does not fit all.

CLERK'S NOTE:
COPY TO SUPERVISORS
COUNTY ADMINISTRATOR

DATE 9/30/17 ARB

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Under the Procurement and Acquisition section no. 3, "The County Administrator will be responsible for identifying the business needs..." clearly usurps the decision making authority of the Elected Officials as each official has the responsibility to determine the business needs of their department. This is clearly supported by Pima County Attorney Opinion No. 2004-02 attached.

Some of the Elected Officials have funding resources available outside the Pima County General Fund. Statutorily, only the Elected Official has authority to determine the manner in which those funds are expended. Neither the County Administrator nor ITD Director has authority to determine how to expend those funds.

When possible we follow ITD guidelines, such as with productivity software. Our systems are designed for specific functionality and require expertise in design, development, and scale that are not in the experience of the Pima County ITD department. These special use systems are designed for the offices they serve and have no counterpart in Pima County ITD experience. It is not possible to include these special use systems in any discussion of software required to operate and manage the offices of independently elected officials. Pima County ITD has no vested interest nor expertise in the operations of the Elected Officials systems and servers as long as those systems and servers do NOT interfere with the county network. Pima County ITD is not qualified to rule on the needs of the Elected Officials and their statutory requirements.

One of the purposes of a Lifecycle Management Policy is to prevent equipment failures that may occur due to outdated equipment. Most of our downtime (Internet access, e-mail, telephone and infrastructure) occurs as a result of the failure of ITD to maintain their equipment and not as a result of our failure to maintain ours.

We recognize the need for the county to have a policy regarding replacement of technology equipment and software due to the detrimental impact obsolete equipment has on the ability of the county departments to carry-out their responsibilities to the public. It is the responsibility of each Elected Official to determine what the appropriate replacement lifecycle is for their department, not the County Administrator or ITD Director.

Attachment: Pima County Attorney Opinion No. 2004-02

Cc: C.H. Huckelberry, County Administrator



OFFICE OF THE

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Civil Division**

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Barbara LaWall
PIMA COUNTY ATTORNEY

**FORMAL COUNTY ATTORNEY OPINION
OPINION NO. (2004-02)**

To: Rick Lyons, Pima County Assessor

From: Katharina Richter, Chief Civil Deputy *K. Richter*

Date: May 24, 2004

Re: Authority of County Administrator to Enforce Pima County's Administrative Policy Regarding Acquisition of Computer Equipment and Software Against Elected Officials

Background

Pima County Administrative Policy 3-24 establishes the requirements to be followed by "all County departments" prior to procuring any computer software or hardware. The policy is attached to this memorandum as Exhibit 1.

The policy requires a department to submit a Computer Equipment and Software Acquisition Authorization Request to the County Administrator for review and approval prior to acquisition of any such products. Acquisitions not consistent with the department's automation plan, or the department's approved budget require detailed justification by the department and a waiver of the policy by the County Administrator before any item may be purchased.

On March 16, 2004, the Board of Supervisors adopted Board of Supervisor's Policy C3.9 (Exhibit 2), which establishes procedures for purchasing and managing software products. The policy requires that all software purchase requests be directed to and approved by the County Administrator, and applies to all County elected officials and department heads. In adopting Policy C3.9, the Board directed staff to bring back a revision of the software products Policy to include hardware purchases and to incorporate an appeal to the Board of Supervisors for elected officials and the courts.

Question(s) Presented

You have asked this office to answer the following questions:

1. Can the County Administrator's Administrative Procedure 3-24 [Pima County Computer Equipment and Software Acquisition Review Procedure] be enforced against departments headed by elected officials?

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2. Absent misfeasance, malfeasance or other cause sufficient to invoke its oversight powers, does the Board of Supervisors, or its delegate, the County Administrator, have authority to administer policy in other departments headed by an elected official?

Answer

Legal Framework:

County elected officials are constitutionally created officers. Ariz. Const. article 12 § 3 created the offices of Sheriff, County Attorney, Recorder, Treasurer, Assessor, Superintendent of Schools and County Supervisors as co-equals:¹

“There are hereby created in and for each organized County of the State the following officers who shall be elected by the qualified electors thereof: a Sheriff, a County Attorney, a Recorder, a Treasurer, an Assessor, a Superintendent of Schools and at least three Supervisors, each of whom shall be elected and hold his office for a term of four (4) years beginning on the first of January next after his election, which number of Supervisors is subject to increase by law”

Under A.R.S. § 11.201(A)(6), a county board of supervisors has the power to “[d]etermine the budgets of all elected and appointed county officers enumerated under section 11-401 by action of the Board of Supervisors” A.R.S. § 11-251(1) gives boards of supervisors certain limited fiscal oversight powers over county elected officers:

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

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

¹ Justices of the Peace are also constitutionally created County officers pursuant to Article 6, §§ 1 and 32

There is no provision in Title 11 which permits delegation of a board of supervisors' fiscal oversight of other elected officials. Arizona courts have defined the limits of the fiscal oversight powers of county boards of supervisors. Elected County officers have the inherent power to expend public funds to carry out the constitutional and statutory mandates and necessary duties of their respective offices. *Maricopa County v. Biaett*, 21 Ariz. App. 286, 518 P.2d 1003 (Ct. App. 1974) (Legal fees incurred by the county recorder were a necessary expense in the conduct of the office and must be processed as any other claim against the county.) See also *Riley, Hoggatt & Suagee, P.C. v. English*, 177 Ariz. 10, 864 P.2d 1042 (1993). Absent a clear showing that an elected official acted unreasonably, arbitrarily or capriciously in approving an expenditure or failing to follow an established county procedure, a court will not overturn the decision of the elected county official if the expenditure was reasonably necessary for the functions of the office. *Id.* See also *Maricopa County v. Dann*, 157 Ariz. 396, 758 P.2d 1298 (1988) and *Broomfield v. Pima County*, 112 Ariz. 564, 544 P.2d 1080 (1975)².

The courts also recognize, however, that "[a]n orderly fiscal policy is a governmental necessity" and a decision of an independent public official that would increase expenditures above budgeted limits might be found to be unreasonable, arbitrary and capricious. *Reinhold v. Board of Supervisors of Navajo County*, 139 Ariz. 227, 232, 677 P.2d 1332 (Ct. App. 1984). The *Reinhold* court held that the inherent power of a constitutional office to perform its necessary functions should only be exercised when there is no established method to discuss and allow for deviations from established policy. Similarly, in *Maricopa County v. Dann*, 157 Ariz. at 399, the court found that the presiding judge was unreasonable in refusing to follow the hiring policies established by the board of supervisors during a financial crisis: "The policy decision, right or wrong, to use the fiscal measures adopted by the board is one which belongs to that branch of government. The power and responsibility for producing a balanced budget rest with the board of supervisors."

Can the County Administrator's Administrative Procedure 3-24 [Pima County Computer Equipment and Software Acquisition Review Procedure] be enforced against departments headed by elected officials?

No. Administrative Policy 3-24 was promulgated by the County Administrator, not the Board of Supervisors in their fiscal oversight capacity. The Policy can apply only to the departments under the supervision of the County Administrator.

² Most of the Arizona cases on this subject arose in the context of a dispute between a county board of supervisors and the superior and justice courts. However, both elected county offices and the courts are constitutionally created offices, and the same legal analysis would apply to both.

Opinion No. 2004-02

May 24, 2004

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Absent misfeasance, malfeasance or other cause sufficient to invoke its oversight powers, does the Board of Supervisors, or its delegate, the County Administrator, have authority to administer policy in other departments headed by an elected official?

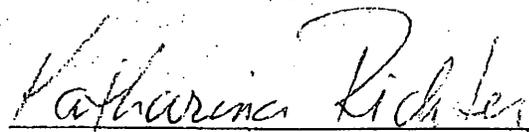
Under Arizona law, the board of supervisors can adopt policies and procedures for the purchase of computer hardware equipment and software programs that apply to elected officials,

provided that the policies and procedures the elected officials from carrying out the constitutional and statutory mandates and necessary duties of their respective offices. *Maricopa County v. Dann*, 157 Ariz. 396, 758 P.2d 1298 (1988). However, where particular piece of computer equipment or software program is necessary to carry out an elected official's constitutional and statutory duties, the board of supervisors cannot override that elected official's decision, unless the decision is unreasonable, arbitrary or capricious. What a court would find necessary or unreasonable, arbitrary or capricious will depend on the specific facts and circumstances involved.

Board of Supervisor's Policy C3.9, although adopted by the Board of Supervisors attempts to delegate the Board's discretionary powers of fiscal oversight to a subordinate administrative officer, the County Administrator. The Arizona Attorney General has opined that powers granted to a governing body cannot be subdelegated, or transferred from the heads of agencies to their subordinates, unless specifically authorized by legislation. The statutorily established fiscal oversight power of boards of supervisors over the fiscal conduct of elected public officials is a discretionary power, which cannot be delegated, unless the delegated duties are purely ministerial or administrative in nature. 1987 Op. Atty. Gen. Ariz. 187-119. A "ministerial act leaves nothing to discretion for the duty and manner of performance are described with certainty. [sic]" *Id.* Policy C3.9 does not contain standards or guidelines for the County Administrator to apply in order to determine whether a particular purchase may be disapproved. The Policy is further defective because it does not provide for a reasonable and timely method or forum to discuss or allow for deviations from the Policy, as noted by the courts. *Reinhold v. Board of Supervisors of Navajo County*, 139 Ariz at 232; *Maricopa County v. Dann*, 157 Ariz. at 399

Respectfully submitted,

BARBARA LAWALL
PIMA COUNTY ATTORNEY



Katharina Richter, Chief Civil Deputy
Pima County Attorney's Office