MEMORANDUM

Date: December 26, 2017

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Employment of Outside Counsel for Anti-Racketeering Funds Review**

Attached is a December 22, 2017 memorandum from the County Attorney in response to Board of Supervisors Chair Sharon Bronson regarding use of RICO funds to pay legal fees for outside counsel.

As you can see, the County Attorney declined the authorization based on the Maricopa County Attorney's Office belief that the statute does not allow for such an expenditure. The County Attorney has offered to request an opinion from the Attorney General on this matter if the Board desires.

The attached memorandum and my previous memorandum from December 18, 2017 will be placed on the January 2, 2018 Board of Supervisors Agenda for appropriate direction.

CHH/anc

Attachments

c: Julie Castañeda, Clerk of the Board

Pima County Attorney's Office
Barbara LaWall, Pima County Attorney

32 N. Stone Avenue
Suite 1400
Tucson, AZ 85701
520-724-5600
www.pcao.pima.gov

To: Hon. Sharon Bronson, Chair, Pima County Board of Supervisors

From: Barbara LaWall, Pima County Attorney

Date: December 22, 2017

Re: Use of RICO funds to pay legal fees for outside counsel

This memorandum responds to your December 14, 2017 request that I consent to the use of funds from the Pima County Attorney's Office Anti-Racketeering Revolving Fund (ARRF) subaccount to pay for outside counsel retained by the Board.

I respectfully submit that the recently revised version of §13-2314.03 does not authorize the use of the County Attorney's Office's ARRF funds to be used for the purpose of paying for outside legal counsel expenses for the Board of Supervisors, and I believe that I lack legal authority to consent to the use of ARRF funds for that purpose.

As you know, the various City/County law-enforcement agencies have subaccounts in the ARRF, and they are required to seek approval from the County Attorney to spend those funds for purposes authorized by law. The recent statutory change now requires the Board of Supervisors to review County Attorney requests to expend funds for the purposes authorized by law from the County Attorney's ARRF subaccount. Section 13-2314.03(F) was also amended to allow ARRF funds to be spent on "the costs of the reports and application and expenditure reviews and approvals *that are required* by this section." A Board of Supervisor's outside legal counsel review of County Attorney's requests for expenditures is not required under §13-2314.03; rather, it is *permitted.*

The statute nowhere expressly authorizes a law-enforcement agency (the Pima County Attorney's Office) to authorize the use of funds in its ARRF subaccount for expenses incurred by an outside entity such as the Board, which is not a law-enforcement agency with an ARRF subaccount. Had the Legislature intended to allow a county attorney to authorize funds in its ARRF subaccount to be used to pay for expenditures at the direction of another entity such as the Board, I would have expected it to say so expressly.

After you raised this question, I also conferred with the Maricopa County Attorney's Office (the only other Arizona county attorney's office that has directly confronted this question). That Office confirmed that the Maricopa County Attorney shares my interpretation—the statute *does not* authorize the use of funds from a county attorney's office's ARRF subaccount to pay for outside counsel retained by a board of supervisors.

As I am sure you can understand, I do not feel comfortable consenting to the Board's expenditure of ARRF funds when the statute does not clearly authorize it, especially given that the Maricopa County Attorney's Office believes the statute does *not* allow the expenditure, and given the fact that their Board of Supervisors has agreed and is paying for their retained outside legal counsel from other fund sources.

However, I understand that reasonable minds can differ regarding statutory interpretation. Therefore, you may want to request guidance from your outside legal counsel regarding this specific issue. Because this is an issue of statewide importance, I am also willing to request an opinion from the Attorney General on this particular issue. Please let me know if the Board requests me to seek an Attorney General opinion on this subject.

Cc: Chuck Huckelberry, County Administrator
Amelia Cramer, Chief Deputy
Andrew Flagg, Chief Civil Deputy

PIMA COUNTY

MEMORANDUM

Date: December 14, 2017

To: The Honorable Barbara LaWall
Pima County Attorney

From: Sharon Bronson SB
Chair, Pima County Board of Supervisors

Re: Use of RICO funds to pay legal fees for outside counsel as it relates to RICO expenditures

As you are aware, in this past legislative session ARS § 13-2314.03 was amended. As a consequence, the Boards of Supervisors from each of Arizona's fifteen counties must begin oversight and approve that County Attorney's RICO expenditures. This legislation gave Boards the authority to hire outside legal counsel to assure that these expenditures comply with the appropriate state and federal regulations. This language was included in the amended state statute to avoid any conflict of interest on the part of the County Attorney's office.

At the Board of Supervisors meeting of November 7, 2017, the Board directed the County Administrator to employ outside counsel. Such counsel will be employed. This statute also authorized the use of RICO funds to pay outside counsel's fees. Since this expenditure technically requires your approval, on Tuesday, December 12, 2017, the Pima County Board of Supervisors directed me to secure your consent without delay.

While recognizing this is an unfunded mandated from the state, should you not consent, Pima County's general fund will be required to absorb that expense to the detriment of local taxpayers. Given that this is the holiday season, I respectfully request your response prior to the Board of Supervisors meeting of January 2, 2018. If your approval is withheld, please provide a detailed factual and legal explanation for your decision.

cc: Chuck Huckelberry, County Administrator
Amelia Craig Cramer, Chief Deputy Pima County Attorney
Andy Flagg, Deputy County Attorney

MEMORANDUM

Date: December 18, 2017

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Outside Counsel Review of RICO Funds**

Please see the attached December 15, 2017 letter I received from Attorney J. Arthur Eaves. Mr. Eaves letter is in response to the Board of Supervisors direction to employ outside counsel for this issue. Please note the letter discusses a process in which to develop a contract for the review of RICO funds. This process is outlined in the Third Paragraph of the letter.

I assume process development would be at no cost to Pima County and the County will be billed for specific review of RICO fund requests of the County Attorney. I am confirming this assumption with Mr. Eaves.

In the meantime, I ask your review this letter and place an item providing direction on an upcoming public agenda.

CHH/anc

Attachment

c: The Honorable Barbara LaWall, Pima County
Andrew Flagg, Chief Civil Deputy County Attorney
J. Arthur Eaves, Attorney, Sanders + Parks Attorney at Law

SANDERS
+ PARKS
ATTORNEYS AT LAW

J. Arthur Eaves
P 602.532.5730
F 602.230.5034
Artie.Eaves@sandersparks.com

December 15, 2017

VIA ELECTRONIC MAIL

Mr. Chuck Huckelberry
Pima County Administrator
Pima County
130 West Congress Street, 10th Floor
Tucson, AZ 85701

Re: ***RICO Funds***

Dear Mr. Huckelberry:

It was a pleasure talking to you last month. I look forward to working with you and the Pima County Board of Supervisors in implementing a program for the approval of RICO expenses. I have attached a copy of my CV to this e-mail for your review. Please feel free to disseminate this letter and its attachment as you see fit.

As you and I have discussed, I created and implemented a program for the review of RICO expenditures of the Maricopa County Board of Supervisors. We are now two cycles into implementation of that program and it seems to be working quite well. While I believe that some of the work that I have done for Maricopa County will benefit Pima County, I believe that each county has its own unique issues which will need to be addressed in implementing a program like this.

I propose conducting some preliminary meetings starting with the Board of Supervisors in order to discuss their interests and preferences in implementing a RICO approval program. I will also need to conduct meetings with the County Attorney in order to ask her how RICO funds have been spent in the past and how accounting records are kept relating to those expenses. After conducting those meetings, I will propose a plan to the Board of Supervisors which I believe will efficiently and effectively allow for the submission, analysis and approval of RICO expenditures by the Pima County Attorney's Office. I believe that we will be able to use some of the same forms I have created for Maricopa County; however, I anticipate there will be significant differences between the two systems based on my limited knowledge of the issues at hand.

I would also recommend that the County Attorney submit budgets to me for initial analysis so that I can draft a report to the Board of Supervisors analyzing whether or not I believe the expenditures are appropriate. I think this will cut down on potential conflict between the Board of Supervisors and the County Attorney and I believe it will be a very efficient process for the Board of Supervisors overall. My experience as a prosecutor having forfeited RICO funds over the years and having used RICO funds gives me the ability to understand the needs and utilization of those funds in a practical way. I would recommend that the Board keep me in place for the review of RICO funds for the first several quarters that this plan is implemented. If the Board feels that they can handle the process directly then they should terminate my services any time they see fit.

The foregoing is a general description which would obviously change depending on the needs and priorities of the Board of Supervisors. I look forward to working with you. Please feel free to contact me with any questions.

Very truly yours,

J. Arthur Eaves

J. Arthur Eaves
For the Firm

JAE:ml

J. ARTHUR EAVES

Mr. Eaves concentrates his practice in the defense of physicians, surgeons, hospitals, and other healthcare professionals in malpractice litigation. He is experienced in the presentation of complex scientific evidence relating to medical issues and surgical procedures. Mr. Eaves also defends municipal entities and employees in tort claims, civil rights claims and in administrative matters. Mr. Eaves has represented many of the Valley's police and prosecutorial agencies over the years in matters including serious allegations of police misconduct; road design; bar complaints and public record requests. Mr. Eaves is also honored to serve as a special prosecutor in felony cases. In total, he has taken more than 25 jury trials to verdict and has argued before Arizona's appellate courts on a number of occasions. In 2013 he prosecuted a murder-for-hire case as a special prosecutor for the Maricopa County Attorney's Office resulting in a conviction on all counts. His work has been recognized by his peers. Mr. Eaves is a Fellow of the Litigation Counsel of America, and a recipient of a Commendation from the Chief of the Phoenix Police Department. He has also been recognized as a Super Lawyer Rising Star and was voted one of Arizona's Top Attorneys.

From 1999 to 2002, Mr. Eaves served as a prosecutor in the Maricopa County Attorney's Office which is the fifth largest prosecutorial agency in the United States. There, he gained significant trial experience as lead counsel in the prosecution of serious felony cases. As a member of the Gang Unit, Mr. Eaves directed a number of complex, undercover investigations with the assistance of multiple police agencies. One such investigation culminated in the arrest of 38 gang members and the seizure of four drug houses, one of which was being operated across the street from an elementary school.

Mr. Eaves graduated in the top quarter of his law school class in 1999 and was a member of the Moot Court Board. He was recognized as the best oral advocate in the Benjamin J. Altheimer Annual Moot Court Competition and won top academic honors in a number of subject areas. Mr. Eaves received the Theresa Hoover Volunteer Service Award for creating a team which remodeled seized drug houses so that they could be converted to homes for recovering drug addicts and their families.