



## COUNTY ADMINISTRATOR'S OFFICE

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C.H. HUCKELBERRY  
County Administrator

February 23, 2018

Georgia Brousseau, Chair  
Merit System Commission/Law Enforcement Merit System Council

Re: **Merit System Commission/Law Enforcement Merit System Council Meeting to Discuss Steve Portell's Claim and Now Lawsuit**

Dear Ms. Brousseau:

I understand Mr. Steve Portell, who represents several deputies and perhaps the Pima County Deputy Sheriff Association and the Pima County Corrections Officers' Association, has requested a time to present his claim against the County to the Law Enforcement Merit System Council (LEMSC). Obviously, the LEMSC can choose to meet and discuss matters that fall within your jurisdiction; however, I would like to remind the LEMSC of the following:

1. Mr. Portell's request for a public meeting indicates authority to *"meet and confer with LEMSC."* As confirmed by your attorney in a letter dated February 16, 2018 to Human Resources Director Allyn Bulzomi, neither Associations have a right to meet and confer pursuant to County Code.
2. Most importantly, the LEMSC has no role in, and cannot settle, a claim or lawsuit against the County.
3. There is no recognized or filed specific employee appeal before the LEMSC that would warrant the discussion requested by Mr. Portell.

As you know, Pima County Law Enforcement Merit System Rule XIII-4 APPEALS, A. MATTERS WHICH MAY BE APPEALED, #1 states:

*"A permanent employee, except as otherwise provided in these Rules, may appeal a dismissal, demotion, suspension or termination as set forth in Law Enforcement Merit System Rule XI-10 B and C..."*

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Lack of a pay increase is not an appealable matter.

4. There is no rule or proposed changes to a rule of the merit system before the LEMSC related to this matter.
5. The Sheriff has not proposed any specific changes to a compensation plan, or any specific changes to any annual compensation adjustment. Therefore, there is no actual detailed plan upon which the LEMSC could make a recommendation to the Board.
6. This is not about a classification plan or compensation plan; it is about a specific pay for individual law enforcement officers regardless of classification. Mr. Portell tips his hand in his communication with the Council when he complains of, *"No distinction between the role of detective and patrol."* This is clearly an effort to revise the classification plan. Current rules state:

Pima County Law Enforcement Merit System Rule IX-1 NATURE OF PLAN:

*"The Classification Plan as approved and adopted by the Law Enforcement Merit System Council, upon recommendation of the Director of Human Resources, shall include for each class of positions an appropriate title and a class specification... The Law Enforcement Merit System Council may establish new classifications and divide, combine, alter, or abolish existing classifications based upon the recommendation of the Director of Human Resources."*

The Human Resources Director has made no new recommendations regarding a classification plan.

In addition, Rule IX-2 INTERPRETATION OF CLASS SPECIFICATIONS, A. Nature and Interpretation of Class Specifications:

*"Class specifications are descriptive and explanatory and are not restrictive. The language of class specifications is not to be construed as limiting or modifying the authority which the Sheriff has to add or delete duties and responsibilities, so long as such changes fall within the general guidelines of the classification of the position involved."*

Whether law enforcement personnel are assigned as a detective or patrol is a matter for the Sheriff.

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Clearly, the LEMSC has the authority to make recommendations related to a compensation plan defined by the Sheriff. Pima County Law Enforcement Merit System Rule XVI-1 PURPOSE, which states:

*"The Law Enforcement Merit System Council shall recommend to the Board of Supervisors schedules of salary and other compensation payable for each Officer classification."*

However, Pima County Personnel Policies set forth the basic pay plan of the County that applies to all classifications. The appropriate Personnel Policy 8-117, A. Basic Pay Plan, which states:

*"The basic pay plan may consist of salary grades, open salary ranges and step plans. Each classification in the Classification System is assigned a grade/open salary range, except some classifications which are assigned a flat rate of pay. The grade/open salary range designation is determined by considering the relative level of duties and responsibilities of various classifications, rates paid for comparable classifications elsewhere, the County's financial resources and other relevant factors."*

Obviously, the basic pay plan must be approved by the Board of Supervisors based on a number of factors, including fiscal reality. In addition, the pay plan has always been subject to annual budget appropriation, as set forth in Pima County Personnel Policy 8-117, M. Merit Increase, which states:

*"When the Board of Supervisors appropriates funds for a merit increase..."*

The annual appropriation process is further reinforced in Pima County Personnel Policy 8-117, P. Anniversary Increases, which states:

*"When the Board of Supervisors appropriates funds for an anniversary increase..."*

Clearly, pay increases by an anniversary or merit increase are annual events based on specific budget appropriation.

### Summary

I believe your most important consideration is that there is a legal claim and now lawsuit pending against the County that relates to the discussions that you may have with the claimants or their legal representative. I believe this is inappropriate until the litigation has been resolved.

Ms. Brousseau

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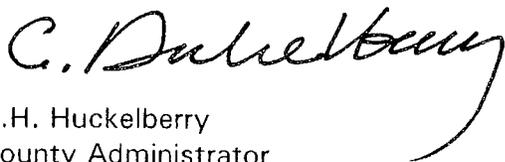
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Given the dramatically changing retirement structure for law enforcement officers, it is clear that the pay plan model is obsolete and in need of significant revision if the County is to attract new law enforcement officers into service. Such is appropriate succession planning that must be driven by the Sheriff and the Human Resources Department of the County, with ultimate approval authority by the Board of Supervisors after a specific recommendation from the Council.

Any meeting with Mr. Portell to discuss this matter is premature and should not occur until this litigation has been completed, which may be several years.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/anc

Enclosure

- c: Pima County Law Enforcement Merit System Council Members  
The Honorable Chairman and Members, Pima County Board of Supervisors  
The Honorable Mark Napier, Pima County Sheriff  
Barry M. Corey, Attorney at Law, DeConcini McDonald Yetwin & Lacy  
Tom Burke, Deputy County Administrator for Administration  
Andrew Flagg, Chief Civil Deputy County Attorney  
Allyn Bulzomi, Director, Human Resources



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February 16, 2018

PLEASE REPLY TO TUCSON  
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Director  
Pima County Human Resources  
150 West Congress, 4th Floor  
Tucson, AZ 85701

RE: Formal request to the PCMSC/LEMSC for a public hearing from the Portell Law Firm

Dear Mr. Bulzomi:

This letter is in response to your February 2, 2018, letter to me in which you inquired about the meeting which may be scheduled by the Pima County Law Enforcement Merit System Council ("LEMSC" or the "Council") to address issues concerning a classification system for law enforcement officers and to adopt a recommendation to the Pima County Board of Supervisors for compensation payable for the officer classifications. The questions you addressed to me were:

1. What authority, Merit System, or State Statute allows an outside agency ("the Pima County Deputy Sheriffs' Association and the Pima County Correctional Officers") the authority to request such a meeting; and
2. What authority, Merit Rule, or State Statute gives the Commission/Council the authority to hold such a meeting?

I will address each of these questions individually.

1. **What authority, Merit System, or State Statute allows an outside agency ("the Pima County Deputy Sheriffs' Association and the Pima County Correctional Officers") the authority to request such a meeting?**

**Short Answer**

The Council does not have the authority or duty to engage in a formal meet and confer process, nor can it exclude other employees from presenting views and information to be considered on the topics upon which it must take action. The statutory mandate set forth in A.R.S. § 38-1003 implies the authority to conduct hearings for the purpose of acquiring information needed to

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perform its statutory duties. Further, the Council may adopt rules consistent with its statutory duties that would specifically permit it to meet with law enforcement officers, as defined in A.R.S. § 38-1001, and other interested parties, and/or with an association that represents law enforcement officers, in order to obtain information regarding classification of law enforcement positions, the fixing of standards and qualifications for all such positions classified by the Council, and making recommendations of salary schedules and other compensation of law enforcement officers. Such meetings must take place in compliance with the Arizona open meeting laws.

**Analysis**

The LEMSC is a statutory agency established pursuant to A.R.S. § 38-1001, et seq. Pursuant to A.R.S. § 38-1006.B, the functions of the LEMSC are administered by the Pima County Merit System Commission (“In the event a County adopts by resolution a merit system for all of its employees, then the provisions of this Article as it pertains to County employees shall be administered by the County Employee Merit System Commission”).

A.R.S. § 38-1003 provides in pertinent part, as follows:

Pursuant to A.R.S. § 38-1003, the Council shall “from time to time”:

1. Classify or reclassify all positions occupied by law enforcement officers within the branch of government employing the officer and recommend schedules of salary and other compensation payable for the officer classification.
2. Fix and refix standards and qualifications of all positions so classified.

\* \* \*

5. Adopt rules necessary for the orderly administration of the provisions of this article.

As defined in A.R.S. § 38-1001, the chapter relating to the law enforcement officers merit system, provides as follows:

“Law enforcement officer” means:

- (a) A regularly employed and paid deputy sheriff of a county.
- (b) A regularly employed police officer in a city or town.

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Pursuant to A.R.S. § 38-1002(A), members of the Council are specifically prohibited from delegating their authority

Pima County has adopted an ordinance providing for a meet and confer process for County employees. *See* Pima County Code, Chapter 2.20. This process contemplates that the parties to a meet and confer process shall be representatives of an elected employee organization and representatives of county management. Individual employees or representatives of other employee groups may also communicate with county management and the Board of Supervisors regarding personnel issues. The goal of the meet and confer process is to “develop mutual recommendations in the form of a memorandum of understanding for submittal” to the Board of Supervisors. Ordinance section 2.20.050 provides that “the meet and confer process may include discussions of work issues including wages, benefits, merit system rules, personnel policies or other terms and conditions of employment.” Section 2.20.070 extends application of the meet and confer provisions to law enforcement officers.

There are no provisions in the ordinance that include the LEMSC in the meet and confer process established by the County. As noted above, however, the Council does have the duty and authority to “classify or reclassify all positions occupied by law enforcement officers” and to “fix and refix standards and qualifications” as well as to “recommend schedules of such other compensation” for such positions and to “adopt rules necessary for the orderly administration of the provisions of this article.” In order to perform its statutory duties, the Council will need to acquire sufficient information from representatives of law enforcement officers and others regarding these issues, as appropriate for the orderly administration of its duties. The Council could adopt rules allowing for hearings to acquire such input, but it is our opinion that the authority to have hearings for these purposes is implied by the statutory mandate with or without such a rule.

Input from a variety of sources, including representative of law enforcement officers, could be submitted for consideration by the Council during an open meeting because there is no statutorily authorized executive session for consideration or discussion of such input. A.R.S. § 38-431(A)(5) allows for:

Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of *employees of the public body*. (emphasis added).

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However, because law enforcement officers are not employees *of the Council*, this exception to the general rule requiring that all business of a public body be discussed in an open meeting would not apply.

Further, the Council may not restrict input to come only from an employee organization elected pursuant to the County meet and confer process; as discussed in Arizona Attorney General Opinion Nos. 74-11 (R-24) and 106-004 (R-06-008) such information should be entertained from individual law enforcement officers or other employee groups representing law enforcement officers and others. (See below)

Finally, the Council has no authority with respect to classifications, recommendations regarding compensation, or the fixation of standards and qualifications for correctional officers. Accordingly, it would not be appropriate *to seek* input from the Pima County Correctional Officers or anyone else regarding personnel matters involving correctional officers, noting, however, that Arizona Attorney General Opinion Nos. 74-11 (R-24) posits that “[a]ll citizens be they public employees or not have the right to . . . present their views to any public body.”

**2. What authority, Merit Rule, or State Statute gives the Commission/Council the authority to hold such a meeting?**

It must be reiterated, as pointed out above, that Correctional Officers do not fall within the jurisdiction of the LEMSC; accordingly the Pima County Correctional Officers’ Association, while the LEMSC may chose to hear information from that Association that the LEMSC deems relevant to the LEMSC’s statutory duties, it would not be obligated to hear information that is not relevant to the classification, compensation and standards applicable to law enforcement officers. What the Correctional Officers Association may offer, representing correctional officers in the County, may not fall within the jurisdiction of the LEMSC.

Mr. Portell’s assertion, as you stated in your letter, that the Pima County Correctional Officers’ Association has “obtained the right to ‘meet and confer’ with the Law Enforcement Merit System Council,” is, in our opinion, incorrect. It is our opinion that the Pima County Correctional Officers’ Association has no unqualified right to participate in any discussions, whether designated “meet and confer” or otherwise, with respect to classification or compensation issues that may be addressed by the LEMSC, except to the extent it can demonstrate relevance to the decisions and/or recommendations that the LEMSC may make.

The language contained in A.R.S. § 38-1003 makes it clear that the sole power to classify or reclassify law enforcement officers rests in the LEMSC. In *Klein vs. Pima County Law Enforcement Merit System Council*, 119 Ariz. 69, 579 P.2d 573 (1978), the Arizona Court of Appeals held specifically that:

Sole power to classify or reclassify all positions occupied by law enforcement officers rested solely in the Pima County Law

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Enforcement Merit System Council and not in the County personnel office or [the] Sheriff. . .”

Ariz. 119 at 72, 579 P.2d at 576

That being the case, Pima County’s LEMSC has the statutory duty to classify or reclassify these positions, and must secure information which would permit it to comply with its statutory duties.

The LEMSC Chair, Georgia Brousseau, has indicated her intention, subject to objection by her fellow Commissioners, to conduct hearings at which all interested persons and/or groups would be permitted to provide assistance and information which would assist the LEMSC in performing these duties. While these hearings would not constitute a “meet and confer” process, as indicated above, the Council, in performing its statutory duties, would likely need assistance from the Sheriff, the law enforcement officers who would be affected, as well as human resources offices in both the Sheriff’s Department and Pima County Human Resources Offices.

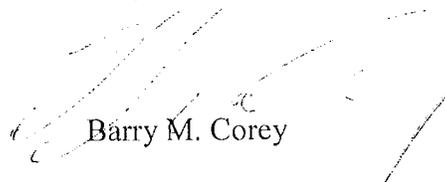
In our opinion, the authority to conduct these hearings would be implicit with or without a new rule or rules specifically authorizing such hearings in the performance of the Council’s duties, since it can only acquire information in public meetings, pursuant to the Open Meeting Law.

Thus, although it is our opinion that, while individuals and the group or groups in question have no right to “meet and confer” with the LEMSC as that phrase is utilized in the Pima County Code, it is our understanding that they will be given the right to present relevant information for the LEMSC’s consideration in complying with its statutory duties as described above.

Please feel free to contact me if you have any further questions relating to this matter.

Thank you for the opportunity to be of service.

Very truly yours,



Barry M. Corey

BMC/tag

cc: Pima County Law Enforcement Merit System Council Members