



MEMORANDUM

Date: January 5, 2018

To: The Honorable Barbara LaWall
Pima County Attorney

From: C.H. Huckelberry
County Administrator 

Re: **Legal Opinion from the Attorney General Regarding the use of Anti-Racketeering Funds to Review and Approve County Attorney Anti-Racketeering Fund Expenditures**

As offered in your December 22, 2017 memorandum to Board of Supervisors Chair Sharon Bronson, the Board of Supervisors has asked that you request a legal opinion from the Attorney General regarding this subject.

The applicable statutory language appears to be in ARS 13-2314.03, Paragraph E, which states in part,

"...board of supervisors shall approve the county attorney's use of the monies if the purpose is authorized by this section, section 13-4315 or federal law., and "the board of Supervisors may retain outside counsel, if necessary, to approve, review or ratify the county attorney's use of the monies."

Finally, Paragraph F states,

"Monies in the fund may be used...and for the cost of costs of the reports and application and expenditure reviews and approvals that are required by this section."

If the Attorney General believes that the expenditures the Board of Supervisors would make in employing outside counsel to review County Attorney requested RICO expenditures is not authorized from RICO funds, please request the Attorney General indicate the language deemed necessary to amend the statute to ensure these review and approvals can be funded from the Anti-Racketeering Fund.

CHH/anc

Attachment

c: The Honorable Chair and Members, Pima County Board of Supervisors
Amelia Cramer, Chief Deputy County Attorney
Andrew Flagg, Chief Civil Deputy County Attorney



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

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

From: Barbara LaWall, Pima County Attorney *BL*

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