



MEMORANDUM

Date: April 7, 2021

To: The Honorable Matt Heinz, Member
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Pima County Transportation Advisory Committee**

Attached is an April 2, 2021 memorandum from Deputy County Attorney Kell Olson that addresses the issues raised by your office.

In addition, based on our recent conversation, the Pima County Transportation Advisory Committee (PCTAC) can advise the County, Board of Supervisors and Transportation Director on any number of transportation related activities. PCTAC is not confined to recommendations related solely to the road repair program however, they have certainly been essential in making recommendations to the Board regarding the program. However, they are also free to make other recommendations to the Board, particularly as it relates to future transportation initiatives, funding sources or any other matter relating to transportation mobility.

CHH/anc

Attachment

c: Julie Castañeda, Clerk of the Board of Supervisors
Carmine DeBonis, Jr., Deputy County Administrator for Public Works



**ATTORNEY/CLIENT PRIVILEGED
M E M O R A N D U M**

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To: C.H. Huckelberry, County Administrator
Julie Castañeda, Clerk of the Board

From: Kell Olson, Deputy County Attorney

Date: April 2, 2021

Subject: Pima County Transportation Advisory Committee, term limits and employee membership

Good afternoon. This memorandum is in response to your March 23, 2021, communication asking the following questions:

- 1) Is there a conflict of interest created when a County employee serves on an advisory committee to the Board of Supervisors, such as the Pima County Transportation Advisory Committee (PCTAC)?
- 2) Whether the PCTAC's interpretation of their bylaws regarding the term of the current Chair is correct. More specifically, does the Chair's term expire in January 2022?

1. There is no conflict of interest created by the mere membership of a County employee on an advisory committee established by the Board of Supervisors.

[Please Note: Our office is treating this inquiry as an informal request for clarification, and not as a formal request for an opinion concerning a violation of conflict of interest law under A.R.S § 38-507.]

PCTAC is an “advisory committee,” as that term is defined in A.R.S. § 38-431(1), because it was officially established on motion of the Pima County Board of Supervisors and its members are appointed for the specific purpose of making recommendations concerning decisions to be made or a course of conduct to be taken or considered by the public body. [Agenda Material for 6/20/17 Meeting, item 8](#). This means that PCTAC is a “public body” that must comply with Arizona’s open meeting and conflict-of-interest provisions. A.R.S. § 38-431(6). And members of such advisory boards are “appointed public officers” subject to the provisions of the conflict of interest statutes. Op.Atty.Gen. No. I82-105, [1982 WL 43876](#).

But the committee is not an independent commission. As an advisory committee, its interests are aligned with those of Pima County. A person who may benefit from an advisory board recommendation is not precluded from serving as a board member, but they must be aware of and disclose substantial interests to avoid improperly benefitting from their position. Op.Atty.Gen. No. I82-105, [1982 WL 43876](#). A County employee may serve on a County advisory committee but will be subject to the same conflict of interest provisions they follow in their employment and the same conflict of interest provisions followed by the other committee members. For example, they must disclose and refrain from participating in any discussion of matters that could affect any substantial interest they possess. A.R.S. § 38-503. These limits are reflected in the PCTAC Bylaws at Article VI.

2. The PCTAC’s determination that the end of the current Chair’s term is January 2022 is one permissible interpretation of its bylaws.

For purposes of this response, I have made the assumption that the PCTAC has determined that the Chair’s terms ends in January 2022. Because the committee’s bylaws set only term lengths that do not neatly correspond to the timing of the bylaws’ adoption, and do not explicitly set a start date for those terms, there are multiple interpretations that could be legally defended as reasonable. Generally, an agency’s interpretation of its own regulations is given some deference.

The relevant facts are as follows. The Board of Supervisors authorized formation of the PCTAC at its June 20, 2017 meeting. [See BOS Minutes, June 20, 2017](#). The Board outlined the make-up of the committee and scope of its advisory capacity; it did not set term limits for committee members or leadership roles within the committee. *See id.* and [Agenda Material for 6/20/17 Meeting, item 8](#).

The committee first met in August 2017, and Chair and Vice Chair positions were filled at the first meeting. [PCTAC Meeting Minutes, August 1, 2017](#). Lucretia Free was elected to the Chair position at that time. Bylaws setting term limits for members and for the Chair and Vice Chair positions were not adopted until significantly later, on February 26, 2019. [PCTAC Meeting Minutes, February 26, 2019](#). In the [audio recording \(Part 2\)](#) of that

meeting, at approximately the 15:20 mark, Ms. Free noted that the Vice Chair position was vacant and needed to be filled. She then stated that, as the current Chair, she would “continue on in that role and complete the term as defined by the bylaws unless of course there’s somebody else who would like to be in that role.” She then invited discussion on the item, during which a new Vice Chair was elected and no further discussion was held on the issue of the Chair position.

The PCTAC bylaws adopted in February 2019 provide that the Chair and Vice-Chair “shall serve a term of two (2) years,” Article III(2). They also provide that “Officer elections shall be held every two years in January.” Article III(2). The bylaws are silent about when those terms begin for members already serving on the committee when the bylaws are adopted. The setting of January as election month makes a clear interpretation particularly difficult because the bylaws were not adopted in January. There is no reference in the February 2020 PCTAC Minutes or the [January 2020 PCTAC Minutes](#) about whether the PCTAC considered the terms to have started in January 2019 (closest January in time to bylaw adoption), January 2020 (next January to result in a full terms after bylaw adoption), or on some other date.

More than one reasonable interpretation of the Chair’s term could be drawn from the bylaws as applied to the facts above. The committee could have concluded that the Chair’s two-year term under the bylaws began in January 2019, as she was already in the position at that time. Or the committee could have reasonably concluded, as it did, that the term would begin on the next January to allow a full two-year term. It is my opinion that either interpretation could be defended as proper, as long as the terms of all members and positions are interpreted consistently. Based on principles of deference to the body’s interpretation of its own documents, and absent any contrary direction from the Board of Supervisors, I do not see any legal issue presented by the current interpretation.

As always, please let me know if you would like to discuss further or if you have any other questions.

KO

c: Lesley Lukach, Deputy County Attorney