



MEMORANDUM

Date: January 13, 2021

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

From: C.H. Huckelberry
County Administrator *CHH*

Re: **Attorney General's Opinion on Political Contributions from County Employees**

Background

On December 21, 2020, I forwarded to the Board a copy of the Attorney General's Opinion that Pima County's policy prohibiting County employees from making political contributions to campaigns for County elected office violates employees' constitutional rights. This prohibition is found in Board of Supervisors (BOS) Policy No. D23.9 and Personnel Policy No.8-119(Z)(9) (Attached). The opinion was requested by Senator Vince Leach and issued on December 17, 2020. This memorandum provides a policy response, as well as three possible options for the Board to consider. Chief Civil Deputy County Attorney Andrew Flagg will advise the Board on the legal issues during an Executive Session scheduled for the Board's January 19th meeting.

History of the Prohibition on County Employee Contributions

The first employee merit system was adopted by the Board in 1970 and 1971 specifically for law enforcement employees, presumably in response to the investigation and indictment of the Sheriff, Under Sheriff, two captains and three lieutenants for essentially job selling or allowing individuals to buy jobs and promotions for contributions. The first merit system for all County employees was adopted in 1974 and 1975, first by resolution and then in more detail by ordinance. In the minutes of the April 21, 1975 meeting where the ordinance was adopted, reference is made to the federal Hatch Act. The Hatch Act is a federal act enacted in 1939 to prohibit federal civil service employees from engaging in some forms of political activity. Section 22 of the County's ordinance appears to have been informed by the Hatch Act as it included different prohibitions on political activity based on if a County employee's position was federally funded or not. Non-federally funded employees were prohibited from giving money or other items for partisan political purposes to any other public officer or employee (no mention of county office only) but not political parties. In 1984, reference to political activities was moved from the ordinance into the body of the Merit System Rules.

In January 1990, the Board created a Commission on Ethics and Operations of Pima County Government, which was in response to criticism from the public and certain Supervisors regarding Board interference in County operations and interference in the hiring of unclassified

staff. The Commission met between February and April, and produced a report titled Enhancing the Effectiveness of County Government. Recommendations included defining and observing appropriate roles for the Board versus the County Manager; improving professionalism in the appointment of personnel, including strengthening the merit system and no interference by Board in hiring; developing and adopting a code of ethics; improving internal communication; increasing citizen understanding of county government; importance of following county code/law; and lobbying the state to allow County charter government.

The Board met twice in October 1990, to discuss a code of ethics proposal from the Commission. Meeting minutes reference the issue of political campaign contributions to County supervisorial campaigns, and suggest that the federal agencies, the State of Arizona, and the City of Tucson had versions of the Hatch Act that protected employees from political abuse, but the County did not. The Board adopted two resolutions and an ordinance, clarifying the role of county administrator, prohibiting interference between Board members and employees, and adopting a code of ethics for the Board of Supervisors, employees, boards and commissions. The Board specifically directed that the following language be added: "County employees shall not a) make a political contribution or b) solicit or collect political contributions for any candidate for the office of County Supervisor." Overall, the perception seemed to be that the Hatch Act (Federal, State and City versions) were at the time far more restrictive than the County prohibition on employee contributions.

The Board also discussed and acted upon this issue at Board meetings in 1991 and 1992, expanding the prohibition to campaigns for all County elected office, not just campaigns for County Supervisor, and to correct text in policies that had not been correctly translated from the 1990 Board action. The Attorney General's Opinion cites the 1992 action; however, the discussion at that meeting was much more limited than during the 1990 meetings.

Options

The Board has at least three options with regard to the Attorney General's Opinion. Mr. Flagg will brief the Board on the legal issues concerning the Opinion and these options.

1. Do nothing. The Board is not required to change the policy based on this legal opinion, nor the legal opinion of our own County Attorney. The policy is not currently the subject of any legal challenge.
2. Repeal the policies.
3. Change the policies.

Regarding option 3, the Board could consider changing the policy to allow employees to make political contributions not to exceed a certain dollar amount per election cycle, per campaign for County elected office. A review of campaign finance reports from the November 4, 2020 general election for county elected offices shows that the most common individual campaign contributions were \$25, \$50 and \$100. If County employees were limited to a maximum contribution of \$50 per election cycle (the primary and general are considered two separate

cycles), this would limit county employee contributions to \$100 in total per candidate. This enables County employees to participate by contributing at an amount that is unlikely to buy influence. This is in comparison to the State contribution limits of \$6,250 per election cycle or \$12,500 per candidate for a primary and general campaign, and if married could be up to \$25,000.

Summary

In summary, the existing policies prohibiting county employees from making contributions to campaigns for county office are in place because of abuses in the past, contrary to the Attorney General's conclusion. These policies are more relevant to county-level campaigns since the funds raised are typically lower than state and federal level campaigns, and have become even more relevant since the State increased individual campaign contribution limits to amounts that could certainly buy influence.

CHH/dr

Attachments

c: Jan Leshar, Chief Deputy County Administrator
Dr. Francisco Garcia, MD, MPH, Deputy County Administrator and Chief Medical Officer,
Health and Community Services
Carmine DeBonis, Deputy County Administrator for Public Works
Andrew Flagg, Chief Civil Deputy County Attorney
Cathy Bohland, Director, Human Resources Department



PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

Subject: PERSONNEL ADMINISTRATION CLASSIFIED SERVICE / UNCLASSIFIED SERVICE POLITICAL AFFILIATION PROTECTION	Policy Number	Page
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PURPOSE

The purpose of this policy is to comply with the regulations applicable to the standards for a merit system of personnel administration as set forth by the Federal Office of Personnel Management and authorized in the Arizona Revised Statutes.

BACKGROUND

Ordinance 1975-36 which established the Pima County Merit System included a very detailed reference to the protection to which employees were entitled while involved in political activities. As time passed, Pima County became more accustomed to merit system principles and the separation of political activities and employment expectations. In 1984, reference to the political activities was moved from the Ordinance into the body of the Merit System Rules.

On October 30, 1990, Resolution 1990-1992, and Policies C.2.1, D.23.3 and D.23.9 were passed that detailed prohibited Political Contribution Activities. On March 17, 1992, language and minutes of the 1990 meeting were revisited for clarification and the changes are now reflected in Policies C.2.1, D.23.3, and D.23.9 and Resolution 1992-46. Board of Supervisor Policy number D.23.9 includes the addition of "Unclassified Service" to subject heading. On April 17, 1992, the Board requested further clarification to the policies and resolution. The last sentences in the policy language are also added.

POLICY

It is the policy of the Board of Supervisors that:

Employees have the right to participate in partisan political activities but those activities cannot influence or interfere with the conduct of official County business or activities. Notwithstanding this provision, County employees shall not a) make a political contribution and/or b) solicit or collect political contributions for any candidates for any elected County office. Nothing in this section shall prohibit Elected County officials from making contributions to political campaigns.

REFERENCES

Ordinance No. 2000-81, 2000;
Title 2 of Pima County Code as amended
Pima County Merit System Rules
Pima County Personnel Policies
Arizona Revised Statutes §11-351, *et seq.*
Board of Supervisors Policy C.2.1 and D.23.9

Effective Date: October 30, 1990
Revised Date: July 7, 2009

Y. Supervisory responsibilities include:

1. Ensuring that employees are informed regarding changes in County policy and working conditions.
2. Administering Pima County Merit System Rules, Personnel Policies and Administrative Procedures in a fair and equitable manner.
3. Ensuring that the work activity of subordinates is performed in an efficient manner and is of high quality.
4. Monitoring employee conduct for compliance with the Merit System Rules and Personnel Policies.

Z. Prohibited conduct - County employees shall not:

1. Hold financial or personal interests that could negatively impact the interest of the County.
2. Use or attempt to use their official positions or confidential information for financial gain or for personal advantage.
3. Permit themselves to be placed under any kind of personal obligation or allow themselves to be put in any kind of situation which could lead any person to expect official or personal favors.
4. Give preferential treatment to any private organization or individual.
5. Engage in any outside employment as defined in Personnel Policy 8-111 or outside activities, including seeking and negotiating for employment, that conflict with official and assigned County duties and responsibilities.
6. Perform any act in a private capacity which could be considered to be an official act.
7. Accept or solicit, directly or indirectly, anything of economic value such as a gift, gratuity, favor, service, entertainment, or loan, which may, or may not, appear to be designed to influence the employee's official conduct. Specific provisions of vendor-related gift policies are set out in Board policies and Administrative Procedures.
8. Directly or indirectly use or allow the use of County property of any kind, including property leased by the County, for other than official or assigned duties.
9. Make a political contribution and/or solicit or collect political contributions for any candidates for any elected County office.