



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

January 26, 2021

Mr. Robert Yen
Yen Pilch Robaina Kresin PLC
6017 N. 15th Street
Phoenix, Arizona 85014

Re: Your January 6, 2021 Letter Regarding On-Call Pay for Members of the Public Safety Personnel Retirement System

Dear Mr. Yen:

As indicated in my initial response to you, I reviewed the practices of other counties, consulted with the Pima County Attorney and discussed this matter with representatives of the Public Safety Personnel Retirement System (PSPRS).

Based on this review, we will not be including on-call pay in the report of compensation sent to the PSPRS.

If you have any further questions on this matter, please contact our Chief Civil Deputy County Attorney Andrew Flagg.

Sincerely,


C.H. Huckelberry
County Administrator

Enclosure

c: The Honorable Chair and Members, Pima County Board of Supervisors
The Honorable Chris Nanos, Pima County Sheriff
Andrew Flagg, Chief Civil Deputy County Attorney
Jan Leshner, Chief Deputy County Administrator
Michelle Campagne, Director, Finance and Risk Management



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C.H. HUCKELBERRY
County Administrator

January 12, 2021

Mr. Robert Yen
Yen Pilch Robaina Kresin PLC
6017 N. 15th Street
Phoenix, Arizona 85014

Re: **Your January 6, 2021 Letter Regarding On-call Pay; Pima County's Obligation to Report to PSPRS**

Dear Mr. Yen:

Thank you for your letter; we are researching the issues. As I recall, Pima County stopped transmitting this information as we had the understanding that a number of other counties were also not reporting this information, including Maricopa County.

I have asked our Finance and Risk Management Director to further research this matter. Once we find what all other counties are doing in this matter, we will contact you.

Sincerely,

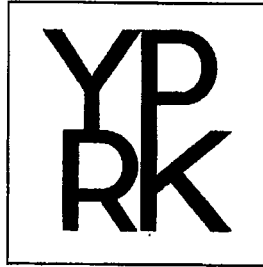
A handwritten signature in black ink, appearing to read "C.H. Huckelberry". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

C.H. Huckelberry
County Administrator

Enclosure

c: Michelle Campagne, Director, Finance and Risk Management

6017 N. 15th Street
Phoenix, Arizona 85014-2481
Fax: 602-682-6455
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YEN PILCH ROBAINA KRESIN
PLC

Robert E. Yen
Tel: 602-682-6450
rey@yprklaw.com

JAN 11 3:01 PM

January 6, 2021

Via U.S. Mail

Mr. C.H. Huckelberry, Pima County Administrator
130 W. Congress St., 10th Floor
Tucson, Arizona 85701

Re: On-Call Pay; Pima County's obligation to report to PSPRS

Dear County Administrator Huckelberry:

This law firm represents the Arizona Fraternal Order of Police, Arizona Labor Council ("FOP/ALC"), which counts among its members sworn law-enforcement officers employed by the Pima County Sheriff's Department.

Dating back to at least 2016, Pima County has included on-call pay in Sheriff's Department employees' pensionable "compensation," and has reported such pay to the Public Safety Personnel Retirement System ("PSPRS") for its use in computing those members' pension benefits. According to the County's on-call summary reports for the years 2016 to 2020, 481 Sheriff's Department employees received on-call pay, with a total of \$5,300,591.93 paid to those members and reported to PSPRS for calculation of their respective pensions.

Obviously, the inclusion of such on-call pay increased many Sheriff's Department employees' pensions. In 2020, for example, the County's records show that \$470,779.22 in on-call pay was paid to 271 Sheriff's Department employees, for an average of \$1,737.19 per member. Excluding such compensation from the calculation of a member's pension diminishes the amount of their annual pension by several hundred dollars. Over the course of a 30- or 40-year retirement, the effect could be significant. If a member retires with a pension equal to 50% of their compensation, and more than \$1,700.00 of compensation is excluded from that calculation, the member would lose at least \$850.00 in annual pension benefits. Over a 40-year retirement, the member would lose \$34,000.00 in pension benefits, not accounting for lost interest. Applied to 271 members, the total loss to that class of employees would exceed \$9,214,000.00 in pension benefits.

We have recently learned that, by memorandum dated January 13, 2020, you directed the County's Director of Finance and Risk Management to discontinue reporting on-call pay to PSPRS.

We ask you to reconsider your directive. A proper legal analysis requires the County to report on-call pay to PSPRS for inclusion in the calculation of members' pensions. Arizona's PSPRS statutes, at A.R.S. § 38-842(12), define pensionable "compensation" as follows:

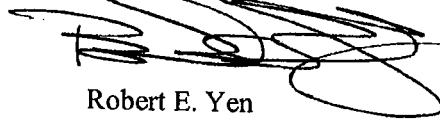
"Compensation" means, for the purpose of computing retirement benefits, base salary, overtime pay, shift differential pay, military differential wage pay, compensatory time used by an employee in lieu of overtime not otherwise paid by an employer and holiday pay paid to an employee by the employer for the employee's performance of services in an eligible group on a regular monthly, semimonthly or biweekly payroll basis and longevity pay paid to an employee at least every six months for which contributions are made to the system pursuant to section 38-843, subsection D. Compensation does not include, for the purpose of computing retirement benefits, payment for unused sick leave, payment in lieu of vacation, payment for unused compensatory time or payment for any fringe benefits. In addition, compensation does not include, for the purpose of computing retirement benefits, payments made directly or indirectly by the employer to the employee for work performed for a third party on a contracted basis or any other type of agreement under which the third party pays or reimburses the employer for the work performed by the employee for that third party, except for third party contracts between public agencies for law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management activities or where the employer supervises the employee's performance of law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management activities. For the purposes of this paragraph, "base salary" means the amount of compensation each employee is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, longevity pay, fringe benefit pay and similar extra payments.

Notably, this statute does not exclude on-call pay from the definition of compensation. Indeed, this statute actually includes on-call pay in the definition of compensation, since such payments are for an employee's performance of services; are made on a regular, payroll basis; and are subject to contributions by the County. Furthermore, Article 29 of the Arizona Constitution clearly states that membership in a public retirement system (such as PSPRS) is a contractual relationship, and that public retirement system benefits shall not be diminished or impaired. By failing or refusing to report on-call pay to PSPRS, the County may violate both Arizona's PSPRS statutes and the Pension Clause of the Arizona Constitution.

Accordingly, we reiterate our request that you reconsider your directive to discontinue reporting on-call pay to PSPRS. Please provide us with written confirmation that the County will report on-call pay to PSPRS, including any such pay earned on or after January 13, 2020. Should the County continue to refuse to report on-call pay to PSPRS, we are prepared to bring claims against the County on behalf of the class of Sheriff's Department employees affected by this directive.

Under the circumstances, we ask that we receive your confirmation within 15 calendar days from the date of this letter. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert E. Yen', with a large, stylized flourish at the end.

Robert E. Yen

REY:sg

Cc:

Pima County Board of Supervisors
Rex Scott, District 1
Matt Heinz, District 2
Sharon Bronson, Chair - District 3
Steve Christy, District 4
Adelita Grijalva, District 5
130 West Congress Street
Tucson, Arizona 85701