



MEMORANDUM

Date: September 24, 2014

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

From: C.H. Huckelberry
County Administrator 

Re: **Open Meeting Law Violation by the Election Integrity Commission**

Attached is a September 17, 2014 letter I received from the Assistant Attorney General regarding an Election Integrity Commission (EIC) Open Meeting Law violation. The conclusion of the Attorney General is the EIC did violate the Open Meeting Law. Appropriate remedial training was provided to the EIC prior to the Attorney General's finding, and staff will continue to remind the EIC they must strictly comply with Open Meeting Law requirements and procedures.

Also enclosed is my original letter to the Attorney General for your reference. The violation occurred during a Call to the Audience item, when dialog occurred between individuals supporting the Sunnyside Unified School District Governing Board recall election and members of the EIC.

CHH/anc

Attachments

c: Ellen Wheeler, Assistant County Administrator
Brad Nelson, Director, Elections Department



CD
file

TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CIVIL DIVISION/EDUCATION AND HEALTH SECTION

DEBRA STERLING
ASSISTANT ATTORNEY
GENERAL
DIRECT: (602) 542-8892
DEBRA.STERLING@AZAG.GOV

September 17, 2014

Mr. C.J. Huckelberry.
County Administrator
Pima County Governmental Center
130 W. Congress, Floor 10
Tucson, AZ 85701

Re: Open Meeting Law (OML) Complaint filed May 21, 2014, regarding Election Integrity Commission of Pima County received on September 5, 2014

Dear Mr. Huckelberry:

I have attached a copy of the closing letter that was sent to the attorney representing the Election Integrity Commission.

Thank you for your interest in the Open Meeting Law.

Please contact me if you have any questions.

Thank you.

Sincerely,

Debra Sterling
Assistant Attorney General

Enclosure: Closing Letter to Ms. Aversa

CC: Ms. Donna Aversa, attorney representing the
EIC.



TOM HORNE
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL
CIVIL DIVISION/EDUCATION AND HEALTH SECTION**

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September 17, 2014

Ms. Donna M. Aversa, Esq.
Sidney Lex Felker, P.C.
Leonard & Felker, P.L.C.
7440 North Oracle Road Building #2
Tucson, AZ 85704
Counsel for Election Integrity Commission of Pima County

Re: Open Meeting Law (OML) Complaint filed May 21, 2014, regarding Election Integrity Commission of Pima County received on September 5, 2014

Dear Ms. Aversa:

Thank you very much for your well-written response to the above-referenced Open Meeting Law complaint. The complaint, your response, and any additional documents were reviewed and discussed at a recent meeting of the Open Meeting Law Enforcement Team.

After reviewing all of the information, we determined that the Election Integrity Commission of Pima County (the "EIC") did violate the Open Meeting Law at its public meeting on May 9, 2014 during the Call to the Public. As you acknowledge in your response, the Open Meeting Law does not allow a public body to discuss matters brought up at a Call to the Public if that matter is not otherwise on the agenda. A.R.S. § 38-431.01(H). The violation occurred when members of the EIC participated and directed a discussion concerning an election procedure, a matter that was not otherwise noted on the agenda. The speaker at the Call to the Public was seeking specific information concerning the counting of ballots for a specific upcoming election; not simply criticizing an existing practice. This discussion was more than a direct response to a criticism; it was a substantive discussion of the EIC's authority, purpose and function, election procedures and potential changes in a procedure. The fact that some of the information was provided by a staff member, as specifically directed by a Commissioner, does not change the analysis.

However, as your response clearly shows, the EIC recognized that there may have been an issue with the manner in which the Call to the Public was handled. While your response indicates that the EIC had not received any Open Meeting Law training since

2009, the EIC received Open Meeting Law training at its June 20, 2014 meeting. You also indicate that the training was scheduled prior to the instant Complaint being filed. Your response also indicated that the EIC has taken additional steps to ensure that future Calls to the Public are handled appropriately.

As the EIC has taken appropriate steps to remediate the violation, this Office will be closing its file with no further action. However, we recommend that the EIC obtain annual training on the Open Meeting Law requirements.

Please contact me if you have any questions.

Thank you.

Sincerely,



Debra Sterling
Assistant Attorney General



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

May 20, 2014

The Honorable Tom Horne, Attorney General
Arizona Office of the Attorney General
1275 W. Washington Street
Phoenix, Arizona 85007-2926

Re: Violation of State of Arizona Open Meeting Laws by the Election Integrity Commission Appointed by the Pima County Board of Supervisors

Dear Mr. Horne:

Pima County takes seriously the Open Meeting Laws of Arizona. We believe they protect the integrity of an open and transparent government. We highly value this openness and transparency and believe the Open Meeting Laws should be strictly adhered to by every agency, committee, or commission of the County.

Recently, the Elections Integrity Commission (EIC) of Pima County, which contains members appointed by the duly elected Board of Supervisors, conducted a public meeting and under Call to the Audience may have violated the Open Meeting Law. Enclosed is a CD containing a video recorded by Americans United for Democracy Integrity and Transparency in Arizona (AUDITAZ) that clearly shows direct interaction between the appointed members of the EIC and the audience during a Call to the Audience item. This item was not on the agenda and was openly discussed by the various members of the EIC as the video posted on the internet documents.

Since Pima County takes Open Meeting Law compliance very seriously, we are voluntarily reporting to you and request you conduct an investigation to determine if a violation of the Arizona Open Meeting Law has occurred.

I have not made this request to the Pima County Attorney, since her office has already provided multiple Open Meeting Law trainings to the EIC in the past. It would be best if

The Honorable Tom Horne

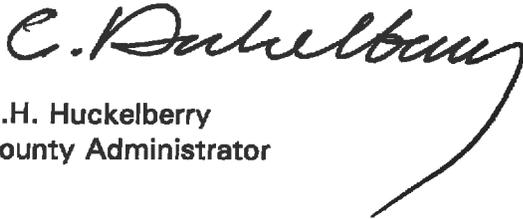
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Appointed by the Pima County Board of Supervisors**

May 20, 2014

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the Attorney General would determine whether a violation has occurred, despite these past educational efforts, and what the appropriate consequences should be.

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

CHH/anc

Enclosure

c: Ellen Wheeler, Assistant County Administrator
Brad Nelson, Director, Elections Department



MEMORANDUM

Date: May 14, 2014

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

From: C.H. Huckelberry
County Administrator

Re: **Vote Tabulations for the Sunnyside Recall Election**

At the May 9, 2014 Election Integrity Commission (EIC) meeting under Call to the Audience, a number of citizens addressed the EIC to request the Sunnyside Unified School District (SUSD) Recall Election ballots not be tabulated until Tuesday, May 20, 2014 – the day of the election.

It should be noted the election official for this recall election is the Superintendent of Schools, and we will closely coordinate with the Superintendent.

When to Count Ballots

Customary practice is that vote tabulation begins based on the receipt of early ballots, before Election Day. The SUSD Recall Election is an all-mail ballot. A number of ballots have been received and signatures verified by the Recorder (as of this date, 3,300 ballots) and these ballots are available for tabulation. However, this recall election is not a typical election where the number of ballots cast approaches several hundred thousand. A fraction of this amount will be received for tabulation. Hence, ballot tabulation can, for this election only, occur on Election Day.

Given the concerns expressed by certain members of the recall committee and others, I previously asked the Elections Director to postpone vote tabulation until Election Day, Tuesday, May 20, 2014. The Elections Director is now planning to begin tabulation after 1:00 P.M on May 20, 2014. This new date and time for election tabulation has been posted to the Elections Department's website.

I can unequivocally state that the concern expressed by certain members of the SUSD Recall Committee regarding County knowledge of vote tabulation prior to release of election data is completely inaccurate. Tabulation occurs under observation, and strict rules prohibit such activity.

Other issues raised relate to tabulation observation and observation and ballot replacement at the drop-off centers.

The Honorable Chair and Members, Pima County Board of Supervisors
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Tabulation Observation

Any member of the public or other interested parties are free to observe the tabulation at the Tabulation Center located at 6550 S. Country Club Road by gaining access to the Public Observation Window, which allows the public and interested observers to observe the ballot tabulation process.

The Accuracy Certification Board, consisting of two members who shall not be of the same political party, are the only observers allowed inside the actual counting center. For this election, the Accuracy Certification Board members are Mr. Benny White for the Republican Party and Ms. Barbara Tellman for the Democratic Party.

I have attached an excerpt from the Arizona Elections Procedures Manual that defines who is permitted in the Counting Room.

Observation and Ballot Replacement and Drop-off Centers

Since this is an all-mail election, there are no polling places. There are locations where ballots can be replaced if they have been lost or spoiled by a registered voter in SUSD. Ballots may also be dropped off at these centers on Election Day. Once dropped off, the ballots are secured in a locked ballot box. This drop-off process is subject to the same security, scrutiny and observation from the drop-off center to the tabulation center.

Since the ballot replacement and drop-off centers are operated by the voter registration function, the rules regarding observers at these locations are made by the Recorder. We have contacted the Recorder and learned observers will be allowed into two of the three locations: the Recorder's downtown office and the Tabulation Center at 6550 S. Country Club Road. The third location is Apollo Middle School, where classes will be in session. The Recorder will be responsible for ensuring the security of this site, which is in a classroom building, and has determined observers cannot be accommodated there.

CHH/mjk

Attachment

c: The Honorable Dr. Linda Arzoumanian, Superintendent of Schools
The Honorable F. Ann Rodriguez, Recorder
Ellen Wheeler, Assistant County Administrator
Brad Nelson, Elections Director

Limited Access to Central Counting Place – Observers

The computer operating area shall be in a separate room or in an area of a larger room which is clearly marked as the computer operating area. Only members of the central counting place board and the accuracy certification board may be permitted in the immediate computer operating area. Other observers may be permitted to observe the operations of these boards and the computer, from a designated location, but must not interfere with the conduct of the operations. The “snag” board may enter the computer operating area to resolve any discrepancy.

Except for a County Recorder whose name is not on the ballot and who is carrying out official duties, no public officer serving in an elective office, or any candidate for an elective public office at the election shall be permitted to enter:

- the central counting place,
- any other operational area where ballots are being processed or tallied,
- any area where a board has been convened, or
- any area where decisions about ballots are being made.