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September 24, 2014

Satish I. Hiremath, Mayor
Town of Oro Valley
11000 N. La Cañada Dr.
Oro Valley, Arizona 85737

Re: Oro Valley Council Member Brendan Burns

Dear Mayor Hiremath:

I write in response to your letter of July 11, 2014, wherein you requested that my office conduct an investigation into whether Oro Valley Council Member Brendan Burns vacated his office when he moved outside the jurisdictional limits of the town earlier this year. You made that request pursuant to A.R.S. § 9-323(D), which provides in pertinent part:

D. If a member of the council, at any time during the member's term of office, ceases . . . to reside in the city or town, the council seat held by the member is deemed vacant. . . . On request, the county attorney for the county in which the city or town is located shall investigate and determine whether a vacancy exists pursuant to this subsection.

In reviewing the legislative history of this provision, we found nothing that indicates a clear intention by the Legislature that this statute should be interpreted any differently from the residency requirements for office holders set forth in A.R.S. § 38-291. That statute provides that a vacancy in office occurs when "the person holding the office ceas[es] to be a resident of the . . . district, county, city, town or precinct for which he was elected, or within which the duties of his office are required to be discharged." A "resident" is defined in A.R.S. §§ 16-101(B) as "an individual who has actual physical presence in . . . the political subdivision, combined with an intent to remain." That statute also provides "[a] temporary absence does not result in a loss of residence if the individual has and intent to return following his absence." *Id.* Although the term "temporary absence" is not defined in the statutes, it includes absences for an indefinite amount of time. *See e.g.* 1979 Op. Ariz. Att'y Gen. 179-261 (An officeholder who temporarily moves outside of the jurisdiction to await the construction of a new home within the jurisdiction remains a resident and is entitled to retain his office.)

My office conducted a thorough investigation of this matter. During the investigation, Mr. Burns provided evidence that he is currently residing within the town limits of Oro Valley. We did not find conclusive evidence that Mr. Burns'

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absence from Oro Valley was anything other than a "temporary absence" allowed by the Arizona Revised Statutes. Accordingly, we will not be taking any action to remove Council Member Burns from his office.

Thank you for bringing this important matter to our attention.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a horizontal line extending to the right.

Amelia Cramer
Chief Deputy
Pima County Attorney

cc: Brendan Burns, Oro Valley Council Member