Board of Supervisors Memorandum

December 15, 2015

Resolution 2015 - ____
Recommended Legislative Agenda for 2016

Introduction

Attached is proposed Resolution 2015 - ____ setting forth Pima County's State Legislative Agenda for 2016. The continuing challenges faced by all levels of government as a result of the economic downturn were substantial and, in Arizona, unprecedented. As was the case for the past five years, the 2016 legislative session will likely be dominated by budget-related discussions, issues and activities. It is imperative Pima County continue to work to minimize and reverse the many cost and program shifts, revenue reductions and fund sweeps enacted by the State Legislature that negatively affect our County. These maneuvers by the State have reduced County services and prevented more substantial property tax relief at the local level.

This year, there are 11 major themes for the County's Legislative Agenda, which are as follows:

1. One Percent Cap Shift for Additional State Aid to Education Imposed on Pima County.

   Departing from a 35-year history, the State Legislature in the last session enacted constitutionally flawed legislation that shifts former State financial obligation for the past 35 years to local governments. This cost shift is now the subject of litigation in Maricopa County Superior Court. The litigation can be negated by the Legislature by repealing this unconstitutional cost shift and enacting comprehensive legislation that will deal fairly and equitably with the 1980 Constitutional amendment limiting primary property taxes to one percent of the value for owner occupied properties.

   In 1981, the Legislature was unable to determine such a method and instead provided that any overage would be subtracted from the local school district's levy and the State would then compensate the district for the shortage. The law remained unchanged for 35 years until the last session. This new State law transfers up to $17.4 million of cost to Pima County for the next fiscal year; resulting in additional property taxes paid by the owners of real property who do not live in nor vote for those political taxing subdivisions causing the one percent exceedance. This legislation is particularly punitive to Pima County. The cuts in state education funding, and continued reliance on local school district property taxes, exacerbates the problem.

   The Legislature will inevitably have to address this issue because property tax rates will rise in the future much faster than they have in the past due to constitutionally enacted limitations on the growth in assessed value. In order to achieve a levy to operate, jurisdictions will be increasing property tax rates more quickly than they have in the past; hence, many jurisdictions and counties in Arizona will face the dilemma now largely transferred only to

Pima and Pinal Counties. Comprehensive legislative reform to appropriately implement this 1980 Constitutional amendment is necessary, and I recommend the Board urge the Legislature to initiate such a process, as well as repeal the current unconstitutional property tax transfer imposed on Pima County. Transferring property taxes from County residents living in Marana, Oro Valley, the Catalina Foothills and Green Valley essentially to the Tucson Unified School District is unfair tax policy.

2. Property Tax Reduction.

State-mandated programs in Indigent Health, Long Term Care, Mental Health, Courts Judicial Positions and Criminal Justice, such as Restoration to Competency and Sexually Violent Persons, directly result in increased property taxes levied by counties. This is particularly true in Pima County, since we have no County sales tax to offset these expenses and thereby reduce our property tax rates like all other counties in Arizona. State-mandated transfer payments for the Arizona Long Term Care System (ALTCS), Arizona Health Care Cost Containment System (AHCCCS), mental health, Courts Judicial Positions, Restoration to Competency and sexually violent persons amounted to nearly $83.6 million last year; equivalent to $1.1396 of our primary property tax rate. Based on State cost shifts to Pima County this year, these costs increase to approximately $104.4 million, or a $1.4232 impact on the current primary property tax rate.

Unlike Maricopa County and most other counties that have a sales tax to offset their adult and juvenile detention or jail costs, Pima County spends $72,600,838 on this function, which is equivalent to $0.9897 of our primary property tax rate. Maricopa County pays for its hospital through a secondary property tax provided by special legislation approved by the Arizona Legislature. If Pima County did not have to pay for mandated State transfer payments, including the current year's State budget cost shifts and indigent health and was afforded the same opportunity to pay for its hospital costs with secondary property taxes and to offset partially or entirely our jail costs as most other counties do through a sales tax, our combined total primary property tax rate would be $1.7935, which is 59 percent lower than the current rate.

The County must be provided the legislative tools and flexibility to lower our property tax rate. Currently, such legislation either does not exist or prevents Pima County from providing these property tax reductions to our residents and taxpayers.

The Legislature should enact legislation that implements a half-cent sales tax with a provision that all proceeds are used to lower the property tax and appropriate adjustments are made to the county's tax rate and tax levy limit to ensure the proceeds of such a sales tax cannot be used to expand the expenditure authority of any county.

3. State Cost Transfers should be Reduced Providing Property Tax Relief.

State cost shifts began decades ago with simply sharing the cost of indigent health services. Today, these cost shifts are for a wide variety of State-mandated programs that were initiated by the State and are a State responsibility. Over time, these cost transfers have increased substantially and today are $104.4 million, or approximately one-third of Pima County's primary property tax levy.

In recent years, State cost transfers have generally increased more quickly than any other cost incurred by the County. This previous year alone, State cost transfers increased nearly 25 percent. The State should consider reducing and/or eliminating inefficient organizations or departments within State government and using the proceeds to pay former State obligations that have been transferred to the counties. This would include the Arizona Department of Juvenile Corrections. This department should be eliminated and the cost savings reapportioned to the counties that bear the burden of providing services.

The State should also consider paying for State programs they have partially or fully transferred to counties over the past few years. Such would include restoration to competency, sexually violent persons, additional State aid to education, State juvenile detention cost shifts, paying a portion of operating the Arizona Department of Revenue and the Presidential Preference Election.

These more recent cost transfers from the State to the counties could easily be paid with State revenues, which would lessen the financial burden on counties. Such would reduce needed local property taxes by $24.2 million (additional state aid education $17.3 million, restoration to competency $1.7 million, sexually violent persons $1.2 million, State juvenile detention $1.8 million, Arizona Department of Revenue $1.1 million, and Presidential Preference Election $1.1 million). If once again paid by the State, Pima County would agree to reduce our primary property tax rate by an equivalent amount (35 cents, or eight percent) of our primary property tax rate.

4. Fully Fund New State Programs that Directly or Indirectly Shift Costs to Counties.

The major role of counties in the criminal justice system means certain State policies, programs or initiatives can have significant adverse fiscal impacts to counties; for example, the presently considered border strike force. The Department of Public Safety (DPS) would be augmented to provide assistance to county Sheriffs for border enforcement even though this activity is primarily the responsibility of the federal government. If the State were to fund such a program by providing additional revenues to the DPS, the actions of law enforcement officers of the State would likely have adverse financial implications on county criminal justice systems. Those arrested would be housed in a county pretrial detention system, prosecuted by a county attorney, very likely be defended by a county public defender and tried in a county court. These are additional and significant cost burdens incurred by

counties as a direct result of a new State initiative. The State should carefully review any additional State funding initiatives and consider funding all costs associated with them, including direct and indirect cost to counties as a result of the State program or initiative.

5. Adequate Funding for Transportation.

The statewide gas tax dedicated to transportation is $0.18 per gallon and has not been increased since 1991. The gas tax should be increased at least $0.10 per gallon to offset the significant loss of purchasing power due to changes in the Consumer Price Index and reduced fuel consumption resulting from more fuel efficient vehicles.

Previously, the Arizona Legislature, faced with the need to adequately fund transportation, did so by raising the gas tax nine separate times between 1960 and 1990. This was due in large part to population growth in Arizona, which increased by 180 percent during this period. In the last 23 years, Arizona's population has grown by 81 percent, but the Arizona Legislature has not addressed the issue of transportation revenues. Between 1990 and 2013, vehicle miles traveled in Arizona increased by 70 percent; and the average passenger car gas mileage increased from 24.3 miles per gallon to 35.6 miles per gallon, a 46 percent increase in fuel efficiency. This means less gasoline purchased and less gas tax collected.

During these 24 years of increased population and the use of more fuel efficient vehicles, the Legislature has failed to adequately fund our transportation needs. The County should support any act by the Legislature to increase transportation revenues allocated to the Highway User Revenue Fund (HURF). Increasing the gas tax by up to $0.10 per gallon or referring a measure to do so to the voters would be a good start.

In lieu of increasing the gas tax by $0.10 per gallon, discontinuing the present fuel tax on a per gallon basis should be considered, with the substitution of a direct sales tax on the sale of gasoline or diesel fuel at 10 percent of the value of the sale. Such would streamline the collection and distribution of fuel taxes and require that drivers of fuel efficient vehicles pay their fair share. In addition, there should be a surcharge on the vehicle license tax for electric vehicles equivalent to a $0.30 per gallon fuel tax.

6. Protecting Transportation Funding from Diversion.

Over the past decade, the Arizona Legislature has diverted nearly $1.2 billion of HURF to balance the State budget.

The Arizona Legislature needs to act to prohibit HURF diversions or refer a ballot measure to the voters that would constitutionally protect HURF from future diversions. This year, the State continues to divert approximately $106 million HURF for State purposes other than highways.

The County would prefer the Legislature refer to the voters a constitutional amendment prohibiting using HURF to balance the State budget and to restrict the use of HURF to highway or transportation purposes. We would prefer this referral be made now even if the Legislature fails to increase HURF revenues.

7. Sales Tax Funding for Roadway Repair.

With the failure of Bond Proposition 425, the only option available to the County to significantly accelerate roadway repair has been removed. I recommend the Board consider asking the Legislature to allow the Regional Transportation Authority, by election, to enact a half-cent sales tax for pavement preservation and road repair purposes. The additional half-cent sales tax, if authorized by voters, should be limited to a 10-year period. Proceeds from the countywide half-cent sales tax would be distributed to member jurisdictions and the County in proportion to their most recent percentage of their population to the total population of the County as determined by the most recent Decennial Census. The legislation should also require the sales tax proceeds be spent on pavement repair, preservation or maintenance and that funds not be used for any other purpose, such as engineering, design, administration overhead, insurance, etc. Further, all proceeds would only be spent by contracting for said pavement repair or preservation using privately-owned companies.

Finally, the annual proceeds of this sales tax would be required to be spent annually, and bonding or debt financing of the revenue stream would be prohibited. This would ensure that every dollar raised by such a sales tax would be spent on pavement repair and preservation.

8. Election Integrity.

Arizona's elections laws are at least two decades behind election technology. Current election laws do not take into account significant advances that have occurred in ballot tabulations, scanning and sorting; nor have they kept pace with the dramatic shift from Election Day voting to early mail-in ballot voting. The entire series of election laws in Arizona needs to be revamped by the Secretary of State; but until that occurs, there are a number of significant modifications to existing election laws that can improve voter confidence in reported election results. Pima County has been a leading proponent of improved election integrity and is the only county in Arizona that has an Election Integrity Commission. The County also continues the tradition of checks and balances by dividing election responsibilities between the County Recorder and County Administration, similar to most other counties in Arizona.

The County has been significantly constrained in our ability to provide voters with the transparency needed to reassure the integrity of election results. On numerous occasions, we have asked the County Attorney for legal opinions regarding the flexibility of the County to address modern day election integrity issues. The most recent example was the legal

inability to hand count a local County election. The response received from the Secretary of State, as well as the Attorney General, did not confirm the County has the legal authority to hand count local county election results even though they both concurred the idea was sound.

In addition, the County has desired to scan and post scanned ballots as a public record so any interested citizen can count ballots to verify the electronic results. Attached is an opinion from the County Attorney's Office dated April 10, 2008 indicating the County lacks the authority to scan voter ballots and post the scanned images on the internet. These legal obstacles to the County's election integrity initiatives need to be removed, and election laws in Arizona should be modernized to reflect the current technology in election processing and tabulation. Therefore, I recommend the Board endorse the following election integrity modifications to State election laws:

A. Modify any State law that prevents or precludes hand count or automated audits of local county elections.

B. Allow the County, in conducting an election, to scan and sort ballot images for auditing election results.

C. Allow the County to perform tabulation audits using independent software to process ballot images.

D. Provide authority for the County, at the County's option, to conduct their elections by mail.

E. Declare as public records, ballots cast in any election if the ballots have been scanned as electronic images. If an electronic image of a ballot has been created, the electronic image can be treated as a public record and be available for public inspection upon request.

9. Economy Recovery and Job Creation.

Pima County has been actively engaged in economic expansion and job creation activities. The Board has adopted and implemented a number of economic development initiatives, all related to our Pima County Economic Development Plan - 2015 to 2017. It is this plan that will lead to the adequate buffering of Raytheon for possible expansion, the region's largest private employer and a major property taxpayer in Pima County. The plan discusses a number of strategies, ranging from primary employment expansion to job training and workforce investment, as well as enhancing tourism and trade with Mexico, Canada, East Asia and South Korea.

As has been borne out by the HomeGoods Distribution Center, location incentives are essential to ensure that Arizona is economically competitive. The County will support

expansion of incentives that can be offered by the Arizona Commerce Authority to primary export-based employers that choose to locate to Arizona or expand their existing operations in Arizona.

Furthermore, the County would support any legislation that provides flexibility and local economic development incentives that retain an existing employment base and allows for its expansion and incentivizes relocation of employers to Pima County.

Numerous legislative initiatives may be pursued to promote economic recovery and job creation. Such efforts need to benefit the entire state, including the local economy in Pima County, and do so in efficient ways that are likely to produce tangible results in our community.

10. Exchange of Legal Services.

Although public entities now have the ability to exchange legal services with one another under A.R.S. § 11-532(E) in order to save outside-counsel fees, the requirement of a formal intergovernmental agreement (IGA) has impeded the effective utilization of this option. Legal advice is typically needed more quickly than the formal IGA process can accommodate. Therefore, legislation should be pursued that would remove the IGA requirement and allow general counsel for the public entities to exchange services on an as-needed basis. This would reduce the cost to the county for outside civil legal counsel in cases involving conflicts of interest.

11. Incompetent/Dangerous Criminals – Title 36 Accountability.

When a violent and dangerous criminal defendant is found mentally incompetent by the criminal court and cannot be restored to competency through education or treatment, that defendant cannot be tried for his crimes because he is unable to assist in his own defense. Under state law, he must then be released into the community, free to commit violent crimes again. Other states, as well as the federal government, have different laws and provide for involuntary commitment in a hospital for these violent and dangerous defendants.

Legislation should be adopted in Arizona to provide for the involuntary commitment in the State Hospital for treatment of these violent offenders if a court finds that the defendant presents a danger to the community because of his/her mental illness or defect until the person is no longer dangerous, has been restored to competency or has been in the State Hospital for as long as the criminal sentence would have lasted if there were a criminal conviction.

Legislation also should be adopted to enable greater oversight by courts in cases where criminal defendants who have been civilly committed for mental health treatment. These

persons are kept in the hospital for a period of days until stabilized on medication and then are released for outpatient treatment. They sometimes stop showing up for treatment and stop taking their medication, but there is no communication from their treatment provider to the court that committed them, nor to law enforcement. No one is informed they are out of compliance with court-ordered treatment and likely decompensating mentally. The treatment provider should have to report to the court and law enforcement when someone who is court ordered for treatment is non-compliant with that court order.

A murder committed in Pima County last year was the result of a former incompetent/nonrestorable criminal defendant who was allowed by her treatment provider to go missing, and thus out of compliance with treatment, and without notice being given to the court, prosecutors or law enforcement. Had these proposed legislative changes been in effect, we may have been able to save an innocent victim from a brutal death.

These gaps in our system pose a significant threat to public safety and must be addressed.

Finally, as has been the case in recent years, we anticipate numerous bills will be introduced to inappropriately micromanage the operation of counties and disenfranchise county supervisors from the constituents to whom they are accountable. Such legislation must be opposed.

This recommendation is intended only as a starting point for the coming legislative session. Additional issues may be brought to the Board for consideration as they arise.

Recommendation

I recommend the Board of Supervisors approve Resolution No. 2015-___ setting forth Pima County's State Legislative Agenda for 2016.

Respectfully submitted,

C. Huckelberry

C.H. Huckelberry
County Administrator

CHH/dr (December 2, 2015)

Attachments

2016 Legislative Agenda

PIMA COUNTY

RESOLUTION NO. 2015 - _____

A RESOLUTION OF THE BOARD OF SUPERVISORS IN PIMA COUNTY, ARIZONA ADOPTING A PIMA COUNTY LEGISLATIVE PROGRAM FOR 2016

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, AS FOLLOWS:

Section 1

That those persons authorized by Pima County to lobby on its behalf and registered as such with the Secretary of State of the State of Arizona pursuant to Arizona Revised Statutes § 41-1231 et.seq. (the "County Lobbyists") are hereby authorized and directed, subject to the continuing supervision of the Pima County Administrator and this Board, to represent and pursue the legislative interests of Pima County by supporting legislation that embodies any of the following basic principles:

A. Empowers Pima County with sufficient flexibility to address an expanding and changing variety of local needs and conditions.

B. Establishes appropriate means to adequately compensate Pima County for the costs of complying with state mandated requirements.

C. Provides Pima County with the means to cope with inflationary cost increases, population growth and escalating service requirements.

D. Enables Pima County to provide public services in a more responsive, efficient and cost-effective manner.

E. Defines appropriate fiscal and administrative responsibilities within various State/County and City/County joint programs.

Conversely, legislation that is inconsistent with any of these basic principles should be opposed or appropriate amendments pursued.

Section 2

That, in addition to those basic principles set forth in Section 1, the County Lobbyists are authorized and directed to pursue the following specific objectives:

A. State Budget Legislation

Repeal recent state budget legislation shifting additional state aid to education costs to Pima County as result of a 1980 constitutional amendment capping homeowner property tax liability.

B. Property Tax Reduction

Facilitate property tax reduction by creating and implementing a sales or excise tax to lower county property taxes.

C. Recently Enacted State Cost Transfers

Eliminate certain recently enacted state cost transfers in order to provide for local county property tax relief.

D. New State Programs

Oppose any new state programs that increase direct or indirect costs to counties without full reimbursement of those costs from the new or expanded state programs.

E. Transportation Funding

Increase state funding for transportation by increasing the gasoline tax.

F. Highway User Revenue Funds

Refer a constitutional amendment to the voters to prohibit the diversion of Highway User Revenue Funds for any purpose other than transportation.

G. Regional Transportation Authority

Allow a Regional Transportation Authority to enact an additional half-cent sales or excise tax for roadway repair.

H. Election Law Reform

Enact comprehensive election law reform to conform laws to current election technology.

I. Local Economic Recovery

Ensure that State legislation intended to promote economic recovery and job creation will benefit our region and employ efficient, effective strategies that will produce tangible, local results.

J. Exchange of Legal Services

Remove the intergovernmental agreement statutory requirement and allow general counsel for public entities to exchange legal services on an as-needed basis.

K. Incompetent/Dangerous Criminals – Title 36 Accountability

Improve public safety by providing for the involuntary commitment in the State Hospital for treatment of violent offenders if a court finds that the defendant presents a danger to the community because of his/her mental illness.

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2015 by the Board of Supervisors of Pima County.

_____
Chair of the Board of Supervisors

ATTEST:

_____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

_____
Deputy County Attorney

REGINA NASSEN

April 10, 2008
County Attorney Memorandum

OFFICE OF THE
Pima County Attorney
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Barbara LaWall
PIMA COUNTY ATTORNEY

OPINION NO. 08-01

To: C.H. Huckelberry, County Administrator

From: Daniel Jurkowitz, Deputy County Attorney

Date: April 10, 2008

Re: *Authority to Scan Voted Ballots and to Post the Ballot Images on the Internet*

Question Presented:

You have asked whether ballots cast in an election may be electronically scanned and posted on the Internet by the County or if this requires authorizing legislation. For the purposes of this opinion, it is assumed that after a voted ballot has been counted, it would be run through an additional scanner to produce an electronic image which could then be posted on the Internet.[1]

Answer:

The County currently lacks enabling authority to scan voted ballots and post the scanned images on the Internet.

Discussion:

In order to ensure the integrity of elections, the Legislature has mandated uniform election practices among jurisdictions conducting elections. This uniformity is dictated either by statute or through delegated authority to the Secretary of State to promulgate common election rules. Specifically, the Legislature has instructed the Secretary of State to prescribe procedures for "...counting, tabulating and storing ballots." A.R.S. § 16-452(A). The rules promulgated by the Secretary of State are to be published in an official instructions and procedures manual. A.R.S. § 16-452(B). This manual has the force of law, A.R.S. § 16-452(C), and violations of the manual are Class 2 misdemeanors.[2] Accordingly, as the Secretary of State correctly notes in

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1 This procedure would require no modification of approved tabulating software or hardware of voting equipment. Modifying such hardware and software without receiving prior approval of the Secretary of State is a Class 5 felony. A.R.S. § 16-1004(B).

2 Punishable by up to four months in jail and a fine of seven hundred fifty dollars.

her letter to you dated January 17, 2008, it would be unlawful for the County to establish its own procedures for ". . . counting, tabulating and storing" ballots, and actions taken in furtherance of such unilateral procedures could result in criminal liability.

Therefore the first step of the inquiry is to determine whether or not the act of scanning an already voted ballot and posting the resulting electronic copy of the ballot on the Internet falls within the definitions of "counting, tabulating and storing." The Secretary of State's January 17, 2008 letter assumes that such acts fall within those definitions. We respectfully disagree.

Words of a statute are to be given their commonly accepted meaning unless those terms have been specifically defined. *State v. Martinez*, 202 Ariz. 507 ¶ 15, 47 P.3d 1145, 1148 (App. 2002). Neither the statutes nor the Secretary of State's manual provide specific definitions for these terms. Under the County's proposed procedure, the official acts of "counting" and "tabulating," which determine the results of the election, would proceed in accordance with the rules established by the Secretary of State. While the purpose of producing the electronic copy may be to allow the electorate to review and corroborate election results, the County would not use the scanned images to verify or separately total the number of votes cast, nor would such actions constitute a valid or legal method for determining official results. Therefore, the scanning and posting of ballots *after* they have been "counted" or "tabulated" using the methods approved by the Secretary of State, would not fall within the definitions of "counting" and "tabulating."

Likewise, posting an electronic *copy* of a ballot on the Internet would not fall within the definition of "storing" a ballot. Consistent with A.R.S. § 16-624, the ballots would be delivered into the custody of the County Treasurer after the audit has been completed as required and the original voted ballot would be stored in accordance with the rules established by the Secretary of State. Therefore, the County's proposed procedure would not violate the Secretary of State's elections procedures manual or A.R.S. § 16-452.

The next step of the inquiry, however, is to determine whether or not there is enabling authority, under both federal and state law, for the County to make an electronic copy of a voted ballot and post that copy on the Internet for all to see. As an initial matter, because Arizona is a covered jurisdiction, Pima County must submit an attempt to change any "...practice or procedure with respect to voting..." for preclearance to the U.S. Department of Justice under Section 5 of the Voting Rights Act or file a declaratory judgment action in the U.S. District Court for the District of Columbia. 42 U.S.C. § 1973c. Scanning and posting voted ballots would surely constitute a change of "practice or procedure with respect to voting" and would, therefore, need to be submitted for preclearance before taking such actions. The U.S. Attorney General would want to ensure that the actions would not abridge the right to vote on account of race or color by discouraging protected individuals from voting.

Assuming there is no federal objection to these actions, the Board must also have authority under Arizona law. Generally, "[t]he only powers possessed by boards of supervisors are those expressly conferred by statute or necessarily implied therefrom." *Bd. of Supervisors of Apache County v. Udall*, 38 Ariz. 497, 506, 1 P.2d 343, 347 (1931); *Hounshell v. White*, 522 Ariz. Adv. Rep. 27, ¶ 19, 175 P.3d 65, 69 (App. 2008). The Board of Supervisors has the express authority, under such limitations and restrictions as prescribed by law, to canvass election returns and

declare election results. A.R.S. § 11-251(3). Those official actions to "canvass returns" and "declare results" would not encompass making electronic copies of voted ballots. Those actions are expressly dictated by statute and lawfully promulgated rules of the Secretary of State. Nor, could it be necessarily implied as this procedure has never been implemented before and there is no evidence to suggest the Legislature contemplated making copies of ballots other than to replace damaged original ballots. See A.R.S. § 16-621(A). Where the Legislature has specifically used a term in certain places, but not in others, that term should not be read into a section in which it did not appear. *Reinke v. Alliance Towing*, 207 Ariz. 542 ¶ 19, 88 P.3d 1154, 1157 (App. 2004).

Further, in the absence of enabling authority, it could be argued that there might be criminal statutes that could apply to such actions. For example, A.R.S. § 16-1018(A)(4) prohibits showing a voted ballot in such a manner as to reveal its contents. Each act of showing a voted ballot in violation of the statute would constitute a Class 2 misdemeanor. Posting a copy of a voted ballot on the Internet, and therefore revealing its contents, could potentially constitute a violation of this statute. Additionally, A.R.S. § 16-1016(A)(9) prohibits knowingly "detaining" a ballot. "Detaining" is defined as including delaying or holding. BLACK'S LAW DICTIONARY 449 (6TH ed. 1990). County elections officials are specifically authorized to have custody of ballots for express purposes such as "...performing any required hand counts..." A.R.S. § 16-602(I). It could conceivably be argued that holding the progression of voted ballots for an unauthorized purpose, such as scanning, could constitute "detaining." Each violation of that statute is a Class 5 felony.[3] Other criminal election provisions make exceptions for elections officials. These provisions do not.

Consequently, as there does not at this time appear to be any express authorization for the Board of Supervisors to make electronic copies of voted ballots and post those copies on the Internet, and as such actions could potentially result in criminal consequences, it would be advisable to seek legislative authority if the Board wishes to pursue such actions. We note that just such authority in the form of a bill is pending in the current legislative session. See SB1395, Forty-eighth Leg., Second Reg. Sess. If the authority for such actions already existed, then there would be no need for the current bill. See *Daou v. Harris*, 139 Ariz. 353, 357, 678 P.2d 938 (1984) (legislature presumed to be aware of existing law when passing new legislation).

Respectfully submitted,

BARBARA LAWALL
PIMA COUNTY ATTORNEY,

Daniel Jurkowitz
Deputy County Attorney

APPROVED:

Christopher Straub
Chief Civil Deputy

3 Punishable by up to two years in prison and a fine of one hundred fifty thousand dollars.