



KRIS MAYES
Attorney General

Office of the Attorney General
EXECUTIVE OFFICE

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Via Email and Regular Mail

June 7, 2024

Honorable Dr. Joe Shirley, Jr., Hon. Alton Joe Shepherd, Hon. Nelson Davis
Apache County Board of Supervisors
75 W. Cleveland Street
St. Johns, Arizona 85936

Re: Apache County Attorney's Office

Dear Supervisors:

As part of an ongoing investigation into the alleged misuse of public monies and threatening and intimidating a political opponent, my office served a warrant on the Apache County Attorney's Office on Tuesday, June 3, 2024. Seeking and executing a warrant on a County Attorney's office was a significant decision that I did not take lightly. Since serving the search warrant, County Attorney Michael Whiting has not returned to the office, and attorneys from the office are now calling on him to resign. As the State's chief law enforcement officer, I made the determination that serving a warrant at this time was in the best interest of the state of Arizona and the Apache County Attorney's Office. Now, I want to ensure the office continues operations as normal.

As the Attorney General, I am vested with exercising "supervisory powers over county attorneys of the several counties in matters pertaining to that office and require reports relating to the public business thereof." A.R.S. § 41-193(A)(4). And "[a]t the direction of the governor, or if deemed necessary, assist the county attorney of any county in the discharge of the county attorney's duties." A.R.S. § 41-193(A)(5).

Our Supreme Court has recognized these statutes ensure "state government [is] equipped with sufficient power to protect public rights and redress public injuries throughout the entire state." *Westover v. State*, 66 Ariz. 145, 151-52 (1947) (quoting *State v. Bowles*, 79 P. 726, 728 (Kan. 1918)). I thus have "full authority to use all the means afforded by the law to meet the requirements of any situation and fully protect the interests of the state." *Id.* (quoting *Bowles*, 79 P. At 728). In doing so, I can "take charge of the conditions," be "clothed with all the authority of the local officers," and "take any steps necessary to institute any proceeding, or carry the same on to a final determination, notwithstanding the local officials might refuse to do so." *Id.* (quoting *Bowles*, 79 P. At 728).

“Circumstances sometimes demand that there shall not only be a supervisory action, but an assistance to an inferior official as well, to the end that justice may be more certainly attained.” *State ex rel. Nolan v. Dist. Ct. of First Jud. Dist.*, 22 Mont. 25, 55 (1899). Accordingly, I have the discretion to determine whether assistance for a county attorney is “deemed necessary,” and Arizona courts “will not unduly hinder the administration of justice in this state by requiring” justification on a case-by-case basis. *State v. Duran*, 118 Ariz. 239, 243 (App. 1978).

To that end, I have an obligation to protect the Apache County Attorney’s Office and the functioning of the State’s criminal justice system in Apache County. Therefore, I deem it necessary to exercise my supervisory powers and will assist the Apache County Attorney’s Office for 90 days as follows:

- (1) The Chief Deputy has full authority to make decisions as if the Chief Deputy were the county attorney in the absence of County Attorney Whiting.
- (2) The Chief Deputy has full authority to preserve any and all evidence necessary for the Attorney General’s investigation.
- (3) The Apache County Attorney’s Office must provide monthly expenditure reports to the Criminal Division of my office.
- (4) Should County Attorney Whiting return to the Apache County Attorney’s Office, the County Attorney shall obtain approval from the Criminal Division Chief of my office before making personnel decisions or expending more than \$200.
- (5) The Criminal Division of my Office will assist the Chief Deputy as needed.

The exercise of my supervisory authority is intended to assist the Apache County Attorney’s Office, not control it. Nor is it intended to interfere with the Board of Supervisor’s authority over County Offices, including its authority under A.R.S. §§ 11-251 and 38-291.

Respectfully,



Kris Mayes
Arizona Attorney General

Apache County Board of Supervisors

June 7, 2024

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CC: Celeste Robertson, Chief Deputy County Attorney; Hon. Judge Michael Latham, Presiding Superior Court Judge of Apache County; Ryan Patterson, Apache County Manager