CSA Policy Summit
October 7 – 9, 2024

Arizona County Clerks Association
ACCA Annual Conference

Harrah's Ak-Chin Resort and Conference Center
15406 N Maricopa Road
Maricopa, AZ 85139

AGENDA

Monday, October 7, 2024

10:00 AM Tour Departure: University of Arizona Agricultural Center MAC 11:00 – 4:00
10:00 AM Tour Departure: Caywood Farms 10:30 – 12:30 and Lucid 1:00 – 3:30
04:00 PM Tours Conclusion
05:30 PM CSA Welcome Reception/Dinner

Tuesday, October 8, 2024

Professional Development Training Location "Laurel Lounge"

08:00 AM **Round Table Discussion: Let's get our Agenda in order**! (Natasha Kennedy, Clerk of the Board, Pinal County) Understanding our role is not just to support the new board members but to excel in our duties, setting a high standard for productivity and professionalism. By staying proactive and committed to continuous improvement, we can navigate these changes smoothly and create a positive, efficient working environment that benefits both the board and the community we serve.

09:10 AM **Tax Deeded Property A.R.S. 42-18303 (**Kevin Costello, Deputy County Attorney, Pinal County)

10:15 AM **Open Meeting Law and Public Records (**Danee Garone, Senior Staff Attorney, Arizona Ombudsman Citizens' Aide)

12:20 PM **CSA Hosted Lunch**

01:30 PM **Arizona Liquor License Law (**Risa Williams, Investigations Lieutenant, Arizona Department of Liquor License and Control)

02:35 PM **ACCA Business Meeting**

- Roll Call
- Discussion and possible action Minutes of April 5, 2024
- Discussion and possible action Treasurer's Report
- Discussion and possible action regarding appointment of new board members
- Good of the Order/Comments, Suggestions or Input

03:00 PM **Round Table Discussion:** Step Up Your Game, Clerks Corner! (Natasha Kennedy, Clerk of the Board, Pinal County) To provide an in-depth understanding of the key responsibilities of Clerks of the Board in Arizona, with a focus on Board of Equalization duties, essential statutes, and the distinctions between various types of board documents.

03:30 PM **Adjourn**

05:00 PM **Pinal County Hosted Reception/Dinner at 6:00 PM *"Night At The Rodeo"***

Wednesday, October 9, 2024

09:00 AM **CSA Legislative Work Sessions**

12:00 PM **Adjournment**

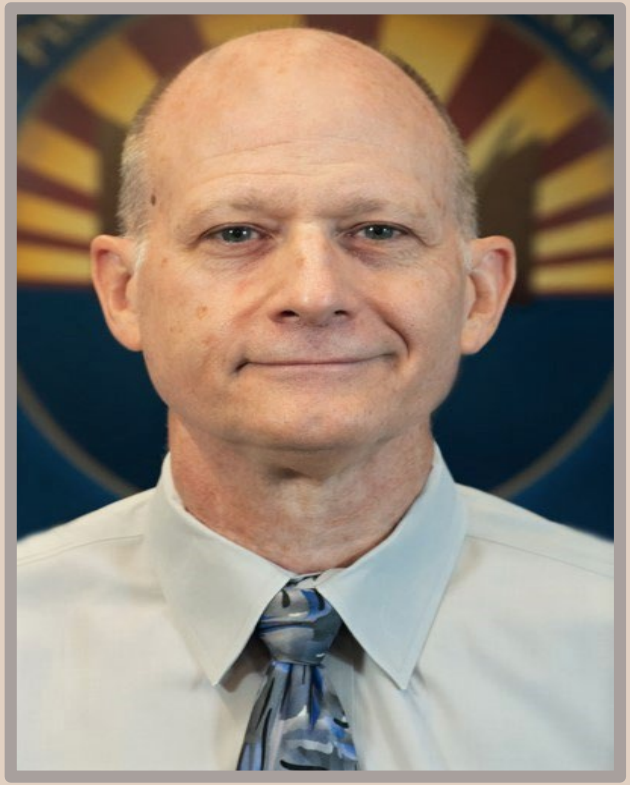
IIMC POINTS: (EPP) = 5.5 Hours, 1.4 CMC Points or 1.4 MMC Points with a completed assessment. Due Monday, November 17, 2024 by email to ClerkoftheBoard@pinal.gov

EXCESS PROCEEDS FROM TAX DEEDED LAND SALE

Arizona Clerks Association Conference
October 8, 2024

Kevin S. Costello

Pinal County
Deputy County Attorney



DISCLAIMER:

The information presented is strictly for information / educational purposes and is not intended as legal advice.

Tax Lien Sale Process

- A.R.S.§ 42-18112 Sale of Tax Liens
- A.R.S.§ 42-18113 Assignment to State if no bidders
- A.R.S.§ 42-18114 – Successful Purchaser
- A.R.S.§ 42-18122 – Resale of Tax Liens assigned to the State
- A.R.S.§ 42-18123 – Distribution of Monies

DEEDING PROPERTY TO THE STATE

- A.R.S.§ 42-18261 – Application for Treasurer's Deed
- A.R.S.§ 42-18267 – Issuance of Treasurer's Deed

SALE OF LAND HELD UNDER TAX DEED

- A.R.S.§ 42- 18303– Auction & Sale of land held by state under tax deed; disposition of proceeds

Dispossessed Property Owner Analysis

- Legislative History for SB 1099
- Existing movement to protect homeowners
- Nature of the States interest

2020 Ariz. Legis. Serv. Ch. 70 (S.B. 1099) (WEST)

ARIZONA 2020 LEGISLATIVE SERVICE

Second Regular Session of the Fifty-Fourth Legislature

Additions are indicated by **Text**; deletions by Text.
Vetoes are indicated by Text ;
stricken material by ~~Text~~.

CHAPTER 70
S.B. 1099

AN ACT AMENDING SECTION 42–18303, ARIZONA REVISED STATUTES; RELATING TO TAX DEEDS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42–18303, Arizona Revised Statutes, is amended to read:

<< AZ ST § 42–18303 >>

§ 42–18303. Auction and sale of land held by state under tax deed; disposition of proceeds

A. After advertisement, pursuant to section 42–18302, the board of supervisors may sell the real property in the county held by the state by tax deed to the highest bidder for cash except as provided in subsections E and F of this section. The property may also be posted on the treasurer's website. The sale may include a live auction or an online bidding process in which the board receives bids electronically over the internet in a real-time, competitive bidding event.

B. On selling the property, the board **of supervisors** shall execute and deliver to the purchaser, at the purchaser's cost, a deed conveying the title of the state in and to the parcel purchased. The deed shall be acknowledged by the chairman and clerk of the board.

C. The purchase money shall be paid to the county treasurer. After deducting and distributing interest, penalties, fees and costs charged against the parcel, the treasurer shall apportion ~~the remainder~~ **monies** to the funds of the various taxing authorities in proportion to their current share of the taxes charged against real property. **Any balance remaining with the treasurer after payment of the taxes, interest, penalties, fees and costs shall be paid to the owner of the property who was dispossessed by the sale.**

D. If the property is not sold before the time for the next succeeding notice of sale, the board **of supervisors** may omit it from the notice.

E. The board of supervisors may accept an offer from, and sell real property held by this state by tax deed to, the county or a city, town or special taxing district in the county for a public purpose related to transportation or flood control. The board of supervisors shall convey the deed and apportion the monies received in the transaction in the manner prescribed by this section.

F. The board of supervisors may sell real property in the county held by the state by tax deed to the owner of contiguous real

MOVEMENT TO PROTECT TAXPAYORS

The Washington Post

Public Safety

D.C. to pay $1 million to settle families' claims for homes taken by tax-lien program

By Spencer S. Hsu
January 10, 2017

The District government has agreed to pay about $1 million to settle a federal class-action lawsuit brought by homeowners to stop tax-lien investors from taking homes in the city through foreclosure, attorneys for both sides said.

In a proposed settlement made public in court Tuesday, the District agreed to pay up to 65 percent of a property's assessed value to homeowners or surviving relatives whose residences were taken by an often-abusive tax-collection system in which even small tax debts triggered property sales, said class attorney Bill Isaacson of the Boies, Schiller & Flexner law firm.

The agreement calls for average payments of tens of thousands of dollars each to 21 known class members, 13 of whom have been found, Isaacson said, including lead plaintiff Bennie Coleman, an 81-year-old veteran who lost his home over a $134 bill. Owners of blighted properties who did not reside in the homes that were sold would receive 35 percent of assessed value.

"It is a pretty momentous occasion . . . especially for those affected," said U.S. District Judge Emmet G. Sullivan, who would need to approve the expected motion to settle the case.

Officials in the office of D.C. Attorney General Karl A. Racine (D) confirmed the deal and said it is expected that Mayor Muriel E. Bowser (D) will sign off on it. Her approval is needed because the settlement exceeds $1 million.

The lawsuit was brought after a 2013 Washington Post investigation identified problems in a city program that imposed liens on properties when homeowners failed to pay their tax bills. The liens then were sold at public auctions to private investors who drew a profit by charging owners interest on top of the tax debt until the money was repaid.

The Post found that some investors also demanded thousands in fees from homeowners that far exceeded the owner's original tax debts and then took homes when owners couldn't pay. About 500 properties were lost since 2005, The Post found, most in the city's poorest neighborhoods and about one-third from owners who owed less than $1,000.

NATURE OF THE STATE'S INTEREST

The state, in taking title to the property for the nonpayment of the taxes, acted solely in aid of the taxing authorities in collecting taxes against the property and for that purpose took the title to the property in its governmental capacity, and not as proprietor . Christmas Copper Corp. v Kennedy, 58 Ariz. 216, 118P.2d 1110 As is said in Longview Co. v Cowlitz County, 1 Wash. 2d 64, 95 P.2d 376, 379 "*** when the county becomes the purchaser of land at a general tax foreclosure sale for want of other bidders, the county, upon the deed being issued to it pursuant to such sale, acquires title to such property in fee, as against the owner. However, the title thereby acquired becomes vested in the county, not in its proprietary capacity, but in trust for the state and for the other taxing municipalities within which the land is situated, with power and obligation on the part of the county to sell the land and fairly apportion the proceeds to the state, municipal, and other funds entitled thereto. ***"

Pinal Cnty. V. Pomeroy, 60 Ariz. 448, 455, 139 P.2d 451, 454 (1943)

SUBSEQUENT DEVELOPMENTS SUPPORTING INTERPRETATION

- Tyler v Hennepin County 143S. Ct 1369, 598U.S. 631(2023)

- SB 1431

PROCESS FOR PROVIDING PAYMENT

- Determine owner entitled to excess.
- Send letter to owner with W-9 Form.
- After receipt of W-9, get check from Treasurer and send to owner.
- County Finance Department keeps a spreadsheet of all properties with excessand payments made.

REQUIREMENTS FOR NOTICE TO OWNER

- A.R.S. § 42-18303 requires transfer of excess proceeds to property owner, but does not specify requirements for locating owner.

- Related statutes requiring notice to the property owner may be used as a guide:

A.R.S. §§ 42-1510, 42-18202

WHAT HAPPENS IF THE OWNER CANNOT BE LOCATED?

If owner cannot be located to claim any excess proceeds, the proceeds become unclaimed property subject to possible escheat to the State.

A.R.S. §§ 44-302, 44-304, 44-307 & 44-308

Questions?

Arizona's Open Meeting Law

Danee Garone
Senior Staff Attorney
Arizona Ombudsman-Citizens Aide

Role of the State Ombudsman

- Our Office
  - Investigates administrative acts of state agencies
- Public Access Program
  - Investigate complaints about public access laws.
  - Train public officials and educate the public on the rights of the public under the public access laws.
  - Prepares materials and training on public access laws
  - A.R.S. § 41-1376.01

What is the open meeting law?

Set of laws that were intended to:

- Maximize public access to the governmental process.
- Open deliberations and proceedings to the public.
- Prevent public bodies from making decisions in secret.
  - Found at A.R.S. §§ 38-431 through -431.09.

Who Must comply?

- "Public Bodies" – A.R.S. § 38-431(6)
  - All councils, boards, commissions of the state or political subdivisions
  - Multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions
  - Includes corporations or other instrumentalities whose boards of directors are appointed or elected by state or political subdivision

The definition also includes…

Standing committees

Special committees

Advisory committees

Subcommittees

- of or appointed by the public body

Advisory committees and subcommittees are defined as…

- Any entity, **however designated**
- Officially established
  - on motion or order of the public body
  - **or** by presiding officer of the public body
- For purpose of making a recommendation concerning a decision to be made or a course of conduct to be taken by the public body

Statutory Requirements

- Secretary of State, Clerk of the County Board of Supervisors, and City/Town clerks must conspicuously post open meeting law materials prepared and approved by the Attorney General's Office on their website.
  - Chapter 7 of the Arizona Agency Handbook
  - Revised 2018.
- All persons elected or appointed to a public body must review the materials at least one day before taking office.
- May be other requirements elsewhere in law or in a public body's governing documents. E.g., A.R.S. 48-803(H) for fire districts.

Enforcement Authority

- Arizona Attorney General's Open Meeting Law Enforcement Team (OMLET)
  - Investigate complaints
  - Enforcement authority
  - Arizona Agency Handbook, Chapter 7 (Revised 2018)
    - Available online: www.azag.gov
  - **Only entity that can commence suit against individual for open meeting law violations.**
- County Attorney's Office
- The Courts

What Must a Public Body Do?

- Provide standing and meetings notice
- Have an agenda
- Meet in public
- Permit public to attend
  - Exception: authorized executive sessions
- Take all action in public
- Create/ prepare meeting minutes or a recording.

What is a Meeting?

- A.R.S. § 38-431(4)
- "Meeting" is a **gathering**, in person or through technological devices
- of a **quorum** of a public body
  - Discuss
  - Propose
  - Deliberate
  - Take legal action

What is a meeting? (Cont'd)

- A.R.S. § 38-431(4)(b) - Includes:
  - "(i) A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action."
  - "(ii) An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action."

Quorum?

Majority of the public body – A.R.S. § 1-216(B)

- (unless specific statutory provision specifies a different number)

- 7 members – quorum =4
- 5 persons – quorum = 3
- 3 persons – quorum = 2

Remote Meetings

- Permitted by the open meeting law
- Board members and public must be able to hear
- Suggestion: Provide information in minutes
- AG Opinion I20-002

The Initial Notice (Disclosure statement)

- A.R.S. § 38-431.02
- Tells public where individual meeting notices will be posted (must include both physical and electronic locations).
- Must be posted on public body's website.
  - Cities and Town may use association of cities and towns website.
  - Special districts may file it with the County Clerk.

Notice of Meetings
A.R.S. § 38-431.02(C)

Provided 24 hours in advance of meeting

- To all members of the public body
- To the general public
- 24 hours may include Saturdays IF the public has access to the physical posting location. May not include Sundays or other legal holidays prescribed under A.R.S. § 1-301

Exceptions:

- Recess and resume
- Actual emergencies

Contents of Notice

- The name of the public body
- Date, Time, and Place
  - Address and room number
- Must include an agenda OR inform the public how to obtain a copy of the agenda

Posting the Notice

- Must be posted in all location identified in the initial notice (disclosure statement). This must be a location where the public has access.
- Must post it on website (see exception for special districts).
- Must give additional notice that is reasonable and practicable.

A few tips on posting notices

- Make sure it can't be removed.
- Make sure front and back can be read.
- Document when the notice/agenda was posted
  - Need a regular, routine business practice
  - Clerk marks time of posting with initials
  - Date / time stamp at exact time of posting

Recess and Resume

- A public body may recess and resume a properly noticed meeting to a later time or date by making an announcement at the meeting what agenda items will be covered.

Emergency Meetings

- In case of "actual emergency," law permits the board to meet (including in executive session), discuss and decide matters with less than 24 hours notice.
- What constitutes an "actual emergency"?
  - Due to unforeseen circumstances, immediate board action is necessary to avoid a serious consequence that would result from waiting until proper notice could be provided.
- A.R.S. § 38-431.02(D) and Agency Handbook section 7.7.9

Emergency Meeting Requirements

- Aside from the 24-hour notice requirement, all Open Meeting Law requirements still apply
- Provide notice as soon as possible
- Announce in public the reasons necessitating emergency action
- Include reasons in the meeting minutes
- Post a notice (including agenda) stating the emergency session occurred and providing the information required on a normal agenda within 24 hours after the meeting

Social Events & Seminars

- You might consider posting a "courtesy agenda" announcing event and explain that a quorum might be present
- Identify date, time, and purpose (location details will vary depending on event)
- State that no business of the public body will be discussed and no legal action will be proposed or taken
- Members must be scrupulous to avoid improper discussion

The Agenda
A.R.S. § 38-431.02(H)

- Must list the specific matters to be **discussed, considered, or decided**
- Must include information reasonably necessary to inform the public
- All discussion must be reasonably related to an adequately described agenda item.
- **"Except for a meeting through technological devices, the agenda shall also include notice of the time that the public will have physical access to the meeting place."**
  - In effect as of 10/30/2023.

Common Agenda Problems

- Using language a regular person would not understand
  - Legalese
  - Acronyms (without first spelling it out)
  - Agency slang
- Using general categories without details
  - "New Business"
  - "Old Business"
  - "Personnel"
  - "Reports"

Current Events – A.R.S. § 38-431.02(K)

- Chief administrator, presiding officer or a member of a public body may present a **brief** summary of **current events** without listing in the agenda the specific matters to be summarized
- **provided that**
- "Current Events" is an **agenda item**
- & public body does not propose, discuss, deliberate or take legal action

If it's not on the agenda…

- You cannot discuss it!
- New items must wait for a future meeting.

Meeting Location Pitfalls

- Inaccessible
- Inaudible
- Not enough room – Recent legislation
  - **"<u>Schools, school boards, executive boards and municipalities</u> shall provide for an amount of seating sufficient to accommodate the reasonably anticipated attendance of all persons desiring to attend the deliberations and proceedings, when feasible. This section does not require a public body to relocate a meeting outside of the largest regular meeting room." A.R.S. §38-431.01.**
  - In effect as of 10/30/2023.
- Unreasonable times (very subjective)

Public's Rights

- Attend
- Listen
- Tape record
- Videotape

Public has NO Right to:

- Speak
- Disrupt

Practical Pointer:

- make a good record of warnings

Calls to the Public

A.R.S. § 38-431.01(H)

- Optional (unless required by other laws)
- Time, manner, place restrictions
  - Can limit time (egg timer)
  - Ban Repetition
    - May require speakers on the same side with no new comments to select spokesperson
  - prohibit disruptive behavior

Common Pitfall of Calls to the Public

- Discussing matters not listed on the agenda.
- If it's not an agenda item, public body's response is limited to:
  - Direct staff to study the matter
  - Ask that a matter be placed on a future agenda
  - Respond to criticism

  Note: These three responses must take place at the **conclusion** of the call to the public!

Meeting Etiquette

- Asking for trouble:
  - Passing notes, texting, e-mailing (even if it's about when to order lunch)
  - Whispering to fellow board members
  - Quorum talking with individuals before the meeting officially starts or after the meeting officially ends.

Executive Sessions

- Public excluded
- Only permitted for specific matters
  - A.R.S. §§ 38-431.03(A)(1) through (9)
- Must include possibility of executive session in the meeting notice and agenda
- Must vote to enter executive session
- Discussion is confidential
- No action permitted!
- Must have minutes or recording

Executive Sessions

- Just because you CAN have one, should you?
- Public suspicion vs. actual need

Executive Session Notice/Agenda

- Notice must include the statutory section authorizing the executive session
- Agenda must provide a general description of the matters to be discussed or considered
  - Needs to be more than a statutory citation
  - Need not contain information that would:
    - Defeat the purpose of the executive session
    - Compromise the legitimate privacy interests of a public officer, appointee, or employee
    - Compromise the attorney-client privilege

Who may attend executive sessions?

- Members of public body
- Persons subject to a personnel discussion
- Auditor general
- Individuals **whose presence is reasonably necessary** in order for the public body to carry out its executive session responsibilities
  - Clerk to take minutes/run tape
  - Attorney to give legal advice
- A.R.S. § 38-431(2)

Tip: Put on the record why individuals attending are reasonably necessary.

Executive Session Pitfalls

- Inappropriate disclosure
  - What happens in executive session stays in executive session!
  - Chair must remind members about the confidentiality requirement every time.
    - A.R.S. § 38-431.03(C)
- Taking legal action.
  - All votes must take place in public!

Personnel Matters

- May discuss and consider employment, assignment, appointment, promotion, demotion, dismissal, salaries, discipline or resignation
- Of an officer, appointee, or employee of the Board
  - Must be able to identify a specific individual

More considerations regarding Personnel Matters

- If the matter is noticed for a possible executive session, separate written notice to employee at least 24 hours before meeting.
- Employee may require meeting be held in public (does not include individual salary discussions).
- Employee does not have the right to attend executive session, but may. (Regardless, employee has access to portion of executive session meeting minutes.)

Common Questions

Q: *May you conduct personnel evaluations in executive session?*

A: Yes. See Ariz. Att'y Gen. Op. I96-012

Q: *May a board interview applicants in executive session?*

A: Yes, if position is one appointed by the board. See Ariz. Att'y Gen. Op. I83-050.

Note: Must vote for appointment in public session

Confidential Information

- Discussion or consideration of records exempt by law from public inspection
- Can receive and discuss information and testimony that state or federal law requires to be maintained as confidential
- Discussion may occur in open session when confidential information is adequately safeguarded (i.e. use initial for medical patients)

Legal Advice

- Discussion or consultation for legal advice with attorneys **for the public body**
- Exchange of communication between lawyer and client
- Members may not discuss among themselves the merits or what action to take:
  - **Debate** over what action to take,
  - **pros and cons, or**
  - **policy implications** of competing alternative courses of action.

Other Possible Reasons for Executive Session

- Discuss and consult with attorneys to consider litigation, contract negotiations, and settlement. Can instruct attorney regarding public body's position.
- Discussion or consultation with designated representatives regarding negotiation with employee organizations about salary. Can instruct representatives regarding public body's position.
- International, Interstate, and Tribal Negotiations.
- Discussion or consultations with designated representatives regarding negotiations for the purchase, sale, or lease of real property. Can instruct representatives about public body's position.

Two New Possible Reasons for Executive Session

- "Discussion or consideration of matters relating to school safety operations or school safety plans or programs."
- "Discussions or consultations with designated representatives of the public body in order to discuss security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body. Records, documentation, notes, or other materials made by, or provided to, the representatives pursuant to this paragraph are confidential and exempt from public disclosure under this chapter and title 39, chapter 1."
- Both added by Legislature in 2020.

Minutes

- Minutes **or** recording required
  - Record retention note: For recordings created/used to transcribe written minutes, must retain for at least 3 months "[a]fter date of meeting and after minutes transcribed or summarized and approved."
- A.R.S. § 38-431.01(B)

Content of Public Meeting Minutes

1. Date, time and place of meeting
2. Members present & absent
3. General description of matters considered
4. Accurate description of "all legal actions proposed, discussed or taken"
5. A record of how each member voted
6. Names of members who propose each motion
7. Names of persons, as given, making statements or presenting material to the public body; and
8. A reference to the legal action about which they made statements or presented material

A.R.S. § 38–431.01(B)

Access to Public Meeting Minutes

- Minutes or a recording shall be open to public inspection **3 working days** after the meeting
- NOT AFTER APPROVAL
- A.R.S. § 38-431.01(E)

Additional Post Meeting Requirements for Cities and Towns

- Cities and towns with population of more than 2,500 shall:
  - Post legal actions taken or any recording on its website within 3 working days
  - Post approved meeting minutes from city or town council meetings on its website within two working days following approval
- Posting must remain on website for one year
- A.R.S. § 38-431.01(E)

Cities and Towns: Sub- and Advisory Committees

- Subcommittees and advisory committees must:
  - Take written minutes or record all meetings, including executive sessions
  - Within 10 working days of the meeting, **subcommittee or advisory committee of a city or town with a population of 2,500 or more** must:
    - Post a statement describing any legal action or
    - Post any recording of a public meeting
- A.R.S. § 38-431(6), 38-431.01(B) and (E)(3)

Licensing Authority Recordings

- A.R.S. § 32-4801 – Additional meeting-related requirements for licensing authorities BUT located outside of Title 38 Open Meeting Law.
- Each "licensing authority," as defined in A.R.S. § 31-4701, must comply with open meeting law requirements *and* make a "digital recording" of all public licensing authority meetings.
  - Not executive sessions.
- Must post digital records on its website no later than five days after meeting and keep it there for "at least" three years.
- "Except as prescribed by sections 32-3214 and 41-1092.09, post on its website all final decisions, orders and actions the licensing authority takes not later than five days after the meeting and retain this information on its website for at least three years but not more than five years."

Executive Session Meeting Minutes

- Shall have written minutes or a recording
  - Burden of proof – *Fisher* case
- Shall include the following:
  - Date, time and place of meeting
  - Members present & absent
  - General description of matters considered
  - An accurate description of all instructions given
  - Such other matters as deemed appropriate by the public body
- Shall be kept confidential
- A.R.S. § 38-431.03(B)

Access to Executive Session Meeting Minutes

- Meeting minutes of executive session shall only be released to:
  - Members of the public body
  - Officers, appointees, or employees who were the subject of discussion or consideration (only that portion)
  - Auditor general in connection with an audit
  - County attorney, attorney general or ombudsman when investigating alleged violations

Circumvention

- Cannot use any device to circumvent the law.
- "Splintering the quorum":
  - Serial communications (verbal, written, electronic, etc.)
  - Meeting with individual members and then reporting what others said with enough to constitute a quorum
- Polling the members

Non-verbal Serial Communications

- Letters - series of **letters** from one member to the next would violate OML
- E-mail – occurring at different times will still constitute a "meeting" in violation of the OML
  - Simultaneity is not required for there to be a "meeting"

Electronic Communications

- Electronic communications are treated the same as any other form of communication between board members.
- Electronic communications exchanged among a quorum of the Board that involve discussion, deliberations, or taking legal action on matters that may come before the Board constitute a meeting and thus violate the open meeting law.
- Attorney General Opinion I05-004

For example:

- You have a 5-member board
- One member sends an e-mail to 2 members and there's a response shared among all 3
- You now have a discussion among three members = a quorum
- Violation

Board might consider…

- a statement on e-mails that says:

  "To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the Board. Members of the Board may reply to this message, but they should not send a copy of their reply to other members."

Staff E-mail

- Staff may send e-mail to board members.
- Passive receipt of information from staff, without more, does not violate the open meeting law.

  Example: board packets

Prohibited 1-Way Communication

- A single board member may violate the OML if they propose legal action among a quorum outside a properly noticed meeting
- "Propose" – means "to put forward for consideration, discussion, or adoption."
- It only takes 1 person to propose legal action
- CANNOT propose legal actions outside of a noticed meeting

Proposing an Agenda Item?

- Proposing an item for the agenda does not propose legal action
- **"without more"**
- Be cautious:
  - communicate the TOPIC only
  - NOT the legal action you want the board to take

"Propose" – EXAMPLES in the Opinion

- "We should discuss safety at First and Main"
  - Does NOT propose legal action
- "We should install a crosswalk at First and Main"
  - Does propose legal action
  - It's more than a topic for the agenda because it urges or suggests an outcome

Staff & Other Persons

- Cannot knowingly direct staff to communicate in violation of the open meeting law – A.R.S. § 38-431.01(I)
- Sanctions may be imposed upon any person who knowingly aids, agrees to aid or attempts to aid another person in violating this article – A.R.S. § 38-431.07(A).

Communications with the Public

- Members may express opinions and discuss issues with the public at a venue other than a public meeting, personally, through the media or other public broadcast so long as it is not intended to circumvent the open meeting law

What does that mean?

- Discussion or opinion must not be principally directed at or directly given to other board members
- There is no plan to engage in collective deliberation to take legal action.
- Review these resources:
  - A.R.S. § 38-431.09(B)
  - Attorney General Opinion I07-013

When in Doubt?

- RESOLVE ALL DOUBTS IN FAVOR OF OPENNESS. A.R.S. § 38-431.09.
- Legal action taken during a meeting held in violation of any provision of the open meeting law may be null and void unless ratified. A.R.S. § 38-431.05(A).

What to do when you learn that a potential OML violation has occurred.

- If in the thick of things = Recess/Assess
- Can you resolve the issue and continue?
- Does the particular OML violation taint your whole meeting? Maybe not – AG Opinion I08-001

After the meeting…

- Determine if you need to ratify any actions
- Provide refresher training to staff involved
- If you receive a complaint: Be candid; respond promptly
- Provide materials that help you: minutes, ratification materials, videotapes, etc.

Ratification

- Within 30 days after discovery of the violation or when should have been discovered with reasonable diligence
  - ***Tanque Verde Unified School Dist. v. Bernini,*** 206 Ariz. 200, 76 P.3d 874 (App. 2003) (30 days after court ruling OK)
- A.R.S. § 38-431.05

Ratification Continued…

- Notice 72 hours before the meeting. Notice must include:
  - Description of action to be ratified
  - Clear statement that the body proposes to ratify a prior action
  - Information on how to obtain detailed written description of the action.
- Body must make available to public a written description of action to be ratified and all of the preceding deliberations, consultations and decisions that preceded and are related to the action
  - Must be available 72 hours in advance.
  - Must be included in minutes of ratification meeting

Penalties

- Individual members who violate and any persons who aid, attempt, or agree to aid – must be "knowingly"
  - **Civil penalty (paid by individual) up to $500 second violation.**
  - **Up to $2,500 penalty for third violation and on**.
  - Such equitable relief as the court deems appropriate
  - Reasonable attorneys' fee
- Public body may not pay or reimburse for penalty imposed on individual
- **Only AG can commence suit against individual**.
- **If person who is otherwise liable "objected to the action of the public body and the objection is noted on a public record, the court may choose not to impose a civil penalty on that person."**
- A.R.S. § 38-431.07(A)

Penalties

- If "knowingly" violated "with intent to deprive the public of information" –
  - Court may remove public officer from office and
  - Charge officer and any person that aided, agreed to aid, or attempted to aid, all the costs and attorney's fees

Legislation

- HB2481 – Would require a public body to allow public comment on each item before the body makes a final decision on the item. Would also expand the section 38-431.01(B) sufficient seating requirement to apply to all public bodies. Would also make open calls to the public mandatory. Would also expand the section 38-431.01(F) web-posting requirements concerning minutes, videos, and/or summaries of legal actions to cover all public bodies. Would change notice and agenda posting requirements from 24 hours to 48 hours. Would require agendas be made publicly available online and include supporting documentation. Last, would remove open meeting law exemptions for legislative entities.
- SB1731 – Would amend section 38-431.01 to permit members of a public body to discuss matters raised by speakers during an open call to the public.

Key Resources

- Arizona Agency Handbook, Chapter 7, https://www.azag.gov/outreach/publications/agency-handbook
- Ombudsman Publications https://www.azoca.gov/about/publications/
- Ombudsman website www.azoca.gov
- Department of Library, Archives, and Public Records https://www.azlibrary.gov/
- Case law
- Attorney General Opinions www.azag.gov or http://azmemory.lib.az.us/

Questions?

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WHAT YOU NEED TO KNOW ABOUT ARIZONA'S PUBLIC RECORDS LAW

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Senior Staff Attorney
Arizona Ombudsman – Citizens' Aide (AZOCA)

ARIZONA PUBLIC RECORDS LAW

A.R.S. §§ 39 -121 to -171

- "Public records and other matters in the custody of a public body or public officer shall promptly be made available to any person for inspection and copying"

ARIZONA'S PUBLIC POLICY

Why Public Records Laws?

- Increase the public's access to and knowledge of government
- Make government accountable

WHO IS COVERED?

Public Bodies

- The state, any county, city, town, school district, or political subdivision
- Any branch, department, board, bureau, commission, council, or committee of the above
- Any public organization or agency that receives money from or expends money provided by the state or a political subdivision of the state

A.R.S. § 39-121.01(A)(2)

ANALYSIS FOR HANDLING A REQUEST

- Is the record a public record or "other matter"?
  - If not: no legal requirement to disclose
  - If so: *presumption* in favor of disclosure
- If so, do any exceptions apply?
  - If so: provide the record (unless . . .)

WHAT IS A PUBLIC RECORD?

- Everything created or received by a public body or public officer that relates to public business or is created or received in the course of conducting public business (even if on personal computers)
  - Pursuance of a duty
  - Legally required to be maintained
  - Records of official transactions

"OTHER MATTERS"

- Other matters
  - Items not legally required to be kept by government but are held in an official capacity and are related to public matters
- Only public matters
- Treated exactly the same as public records

INCLUDES RECORDS AS DEFINED UNDER ARS § 41-151

- all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics … made or received by any governmental agency in connection with the transaction of public business and preserved or appropriate for preservation…

ELECTRONIC RECORDS INCLUDE:

- Documents
- Web Pages
- Databases
- Email, Texts, VoIP Messages
- Social Network Posts
- Metadata

METADATA

- "Data about data"
- Generally not visible in print, image, PDF
- Authors, editors, dates
- File type, storage, location
- Track changes
- Formulas, table layouts, data dictionaries

LAKE V. CITY OF PHOENIX

222 Ariz. 547, 218 P.3d 1004 (2009)

- Metadata is part of an electronic record and subject to disclosure

LAKE OPINION (AZ SUPREME COURT)

- Subject to Disclosure:
  - If a record is kept in electronic format, the electronic version, including metadata
  - Unfinished police reports are public records

PERSONNEL AND DISCIPLINARY RECORDS

- A public body must maintain disciplinary records for all employees
- Disciplinary records are subject to disclosure unless it is specifically prohibited by another statute

A.R.S. § 39-128

WHAT IS NOT A PUBLIC RECORD?

- Extra copies
- Multiples of blank forms
- Post-it notes
- Commercially available software
- Articles, periodicals, materials needed only for reference
- Private papers (including purely personal electronic communications)

GRIFFIS V. PINAL COUNTY

215 Ariz. 1, 156 P.3d 418 (2007)

- Nature and purpose of document determines its status, not its location or the use of government property
- "Substantial nexus" to government activity
- Purely personal e-mails generated or maintained on a government e-mail system are not public
- *In camera* review

RECORDS SENT/RECEIVED ON PERSONAL DEVICES OR ACCOUNTS

- AG Opinion No. 117-004
  - Records sent or received by public officials or government employees on private electronic devices or accounts are not public records

RECORDS SENT/RECEIVED ON PERSONAL DEVICES OR ACCOUNTS [2]

- "Messages sent or received by a private electronic device or through a private social media account implicate the public official's duty to provide a reasonable account of official conduct, but do not themselves harbor public records."

- Public records law still obligates public officials to "record their work and otherwise maintain records" that are related to official government activities.

BUT…

LUNNEY V. STATE

- Phone records for a private phone may be subject to disclosure if it is used for public business
- Using your phone during work hours is not enough to make a public record
- Look at the nature of the information, not its location

RECORDS MANAGEMENT

- Make and maintain appropriate records
- Have a records management program
- Preserve records
- Adhere to retention schedules
- Properly destroy records
- www.azlibrary.gov

DUTY TO MAINTAIN APPROPRIATE RECORDS

- A.R.S. § 39-121.01(B)
  - "All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state."

DUTY TO MAKE AND MAINTAIN APPROPRIATE RECORDS

- A.R.S. § 41-151.14(A)(2)
  - Public bodies have a duty to make records containing adequate and proper documentation of the agency's:
    - Organization
    - Functions
    - Policies
    - Decisions
    - Procedures
    - Essential transactions

DUTY TO HAVE A RECORDS MANAGEMENT PROGRAM

- A.R.S. § 41-151.14(A)
  - A public body has a duty to establish and maintain an active and continuing program for economical and efficient management of public records

DUTY TO PRESERVE RECORDS

- A.R.S. § 39-121.01(C)
  - A public body must protect records from:
    - deterioration
    - mutilation
    - loss
    - destruction

GENERAL RETENTION SCHEDULES

- https://azlibrary.gov/arm/retention-schedules
  - You will also find forms, standards, guidance, FAQs, and training

DUTY TO SUBMIT A CUSTOM RETENTION SCHEDULE

- To the Director of the Arizona State Library, Archives, and Public Records (SLAPR)
  - For records not covered in the general schedules
  - Or if there is a valid reason to retain for a different retention period

COUNTIES, MUNICIPALITIES, AND OTHER POLITICAL SUBDIVISIONS

- A.R.S. § 41-151.14(B)
  - "The governing body of each county, city, town or other political subdivision shall promote the principles of efficient record management for local public records. The governing body, as far as practicable, shall follow the program established for managing state records. The director, on request of the governing body, shall provide advice and assistance in establishing a local public records management program."

OVERLOOKED TYPES OF RECORDS – MUST BE INCLUDED

- Voice mail
- E-mail and Social Media
  - E-mail and Social Media Guidelines on the SLAPR website

RETENTION OF E-MAIL:

- E-mail does not have a special retention schedule
- Many e-mail messages are transitory communications without retention value
- Others require retention
  - Evidence of official policies, actions, decisions, or transactions

DESTRUCTION OF PUBLIC RECORDS

- Comply with statutes, retention schedule, and other legal obligations
- Only if Director of Library & Archives determines records have no further value:
  - administrative
  - legal
  - fiscal
  - research
  - historical

IDENTITY THEFT PREVENTION

- A.R.S. § 44-7601
- Do not discard a record containing the first name or initial and a last name without redacting:
  - Social security number
  - Credit card, charge card, or debit card number
  - Retirement account number
  - Savings, checking, or securities entitlement account number
  - Driver license or non-operating identification number

CLASS 4 (OFFICERS) OR CLASS 6 (EMPLOYEES) FELONY

- A.R.S. § 38-421
- It is a felony to:
  - Steal
  - Destroy
  - Mutilate
  - Deface
  - Alter
  - Falsify
  - Remove
  - Secret

KEEPING RECORDS TOO LONG

- Finding records and responding to a request
- Storage space and costs
- If the public body has the records, they are subject to disclosure

FOR ASSISTANCE

- Arizona State Library, Archives & Public Records- Record Management Division
  - Main number: 602-926-3720
  - Email (webform): http://www.azlibrary.gov/contact/Records-Management-Center

HANDLING PUBLIC RECORD REQUESTS

- Requestors do not need to:
  - Identify themselves (unless required by a statute)
  - Give a reason for the request (except commercial purposes)
- Arizona law does not require written requests
- Requestor must say whether or not it is for a commercial purpose
  - Commercial requests must include a statement of intended purpose

CUSTODY

- A.R.S § 39-121
  - In the ***custody*** of any officer
- Includes records under the **control** of the officer, even when:
  - Stored at a warehouse
  - Transported to another office
  - Received from another public body
  - They are copies - originals are with or controlled by someone else

PUBLIC RECORDS POINT OF CONTACT

- A.R.S. § 39-171 (2022)
  - Must post online:
    - Name of point of contact (person or dept.)
    - Email address
    - Phone number
  - The designated person or department must acknowledge receipt of a request within 5 work days. §39-171(B)

MAILING RECORDS IN RESPONSE TO REQUEST

- A.R.S. § 39-121.01
  - May request a mailed copy of any public record not available on its web site
  - Can require requestor to pay in advance for any copying and postage charges

PROMPTLY FURNISH

- A.R.S. § 39-121.01(D) and (E)
  - "Promptly" is not defined by statute
  - Reasonable under the circumstances
  - Acknowledge and communicate
  - Deemed denied if you fail to promptly respond
  - How long would it take if you wanted it?

PROMPTNESS CONSIDERATIONS

- Agency's resources
- Nature of the request
- Content of the records
- Location of the records
- Inconvenience is not a valid reason for delay

COURT CASES ON "PROMPTLY"

- AZ Supreme Court
  - Dictionary definition
  - Agency's burden to prove promptness
  - Must communicate/explain delays

ON-GOING REQUESTS

- Presumption is disclosure
- Does not require separate requests for successive records when records are:
  - Easily defined
  - Identifiable category
  - Regularly generated

THE EXCEPTIONS

- Reasons to Withhold Records:
  - Confidential by law
  - Privacy
  - Best Interest of the State

CONFIDENTIALITY

- Made confidential by statute, rule, or a recognized privilege
  - Constitution (U.S. or Az)
  - Statute (state and federal)
  - State or federal rule or regulation
  - Court Rule (Az Supreme Court Rule 123)

EXAMPLES OF CONFIDENTIAL RECORDS

- Tax returns
- Student education records
- Medical records
- Vital records

STATUTORY EXEMPTIONS IN TITLE 39

- A.R.S. §§ 39-123 and 124 protect the home address and home telephone number of "eligible persons"
  - "Eligible Person" defined: A.R.S. § 39-123 (F)(4)
- Protects photographs of police officers, with some exceptions

CRIMINAL PENALTIES

- A.R.S. § 39-124
  - Class 6 felony
  - Knowingly release home address or telephone number with intent to:
    - Hinder an investigation
    - Cause physical injury to the protected person or their immediate family
    - Cause property damage to the protected person or their immediate family

PRIVACY

- Constitutionally-protected
  - Arizona Constitution, art. II, § 8
  - NOT in the U.S. Constitution
- Standard:
  - Disclosure would invade privacy and
  - Private interest outweighs the public's right to know
- Note: Embarrassment does not preclude disclosure.

PRIVACY CASES

A.H. Belo Corp. v. Mesa Police Dept., 202 Ariz. 184, 42 P.3d 615 (App. 2002)

- Family's interest in privacy outweighed public interest in 911 tape that recorded child's crying because transcript provided sufficient information.
- Government met burden of putting forth interest that justified withholding access.

Scottsdale Unified School Dist. v. KPNX, 191 Ariz. 297, 955 P.2d 297 (1998)

- Teacher's privacy interest in birth dates outweighed public interest in conducting criminal background checks.

PRIVACY CASES CONT'D

Smith v. Town of Marana, 524 P.3d 254 (App. 2022).

- Court of Appeals held that the privacy interests of an individual connected to a criminal investigation do not overcome the Public Record Law's presumption of disclosure.
- In this case, Marana law enforcement investigated a shooting. Prosecutors did not charge the shooter with a crime because of self-defense considerations. The man who was shot requested records from the town. The agency provided records but withheld the names and "images" of both individuals. The requestor filed suit. The trial court ruled in the requestor's favor, and the town appealed.
- The Court said that, "outside of the context of past alleged criminal activity, the Town has not specifically demonstrated why the shooter's right to privacy in his actions taken in public outweighs the presumption of openness in public records."
- Essentially, the town failed to persuade the Court that tangible harm would come to the shooter should the shooter's name be disclosed by the town and that the harm outweighed the public's right to the relevant records.

BEST INTERESTS OF THE STATE

- Standard: Must show that the public body would be seriously impaired in the performance of its duties
- Balancing test: adverse impact on government against the public right to be informed about operations of government
- Fear of litigation is not enough
- Embarrassment is not a reason

BEST INTEREST CASE

- *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 35 P.3d 105 (App. 2001)
  - Best interests includes the overall interests of the government and the people
  - Must consider whether release would adversely affect the agency's mission.
  - Must prove specifically how this adverse affect outweighs the presumption of disclosure.
- Examples:
  - Police investigations
  - Overly burdensome

REDACTION

- Redact protected information and release the rest
  - Use black out rather than white out
  - Photocopy after marking
- Cannot charge fees for redacting.
- Practice Tip: Ideally agencies should keep confidential information in one record and public information in another.

PROPER ANALYSIS: RECAP

- Is there a question whether the document is a public record or "other matter"?
- If yes, does an exception apply?
- If not, disclose

INDEX OF WITHHELD RECORDS

- A.R.S. § 39-121.01(D)(2)
- Only applies to state agencies, not other public bodies
- If requested, provide an index of records or categories of what was withheld and why

APPEAL RIGHTS

- A.R.S. § 39-121.02
  - If denied access, any person may file a special action in Superior Court.
  - Remember: Access is also deemed denied if a custodian fails to promptly respond

WHAT IF YOU GET SUED AND LOSE?

- If a public entity gets sued, and the person filing the action "**substantially prevails**," the public body may have to pay:
  - Costs
  - Attorney Fees

A.R.S. § 39-121.02(B)

ARPAIO V. CITIZEN PUBLISHING CO.

221 Ariz. 130, 211 P.3d 8 (Ariz. App. Div. 2, 2008)

- *Citizen* sought correspondence between PCAO and Arpaio's office concerning transfer of forfeiture case from Attorney General's Office to PCAO.
- Pima County Attorney filed declaratory relief action against *Citizen* and Arpaio, after Arpaio objected to PCAO's release of public records to *Citizen*.
- Trial court found that Arpaio's privilege claims lacked merit, ordered disclosure, and awarded $25,241 in fees to *Citizen* as the substantially prevailing party.
- Appellate court affirmed, rejected Arpaio's argument that fees could only be assessed against the "custodian," and granted *Citizen*'s request for fees on appeal.

PROMISES OF CONFIDENTIALITY

- A promise to keep confidential is not enough
  - Includes settlement agreements
- The law controls the character of the document, not the stamp.
  - Confidential, Top Secret
  - Rubber stamps give a false sense of security.

E-MAIL ISSUES

- Not a secure medium unless encrypted
- Once sent, you lose control
  - It is a public record if it relates to public business
  - If it's on a government computer, someone else may review it and decide whether it should be released
- Pitfalls
  - Failure to retain or retaining too long
  - Use of home computers

FEES

- May impose a copying fee which includes:
  - Time
  - Equipment
  - Personnel for reproducing the copies (per page cost)
- May not charge for search time
- May charge for postage if mailed
- Fees for copies of electronic records

FEES FOR ELECTRONIC RECORDS?

- No distinction in statute between paper, physical digital media, and electronic transmission.
- Takeaway: You can charge for electronically provided records, but you need to be reasonable and be able to explain the cost.
- What is likely not ok?
  - Per page costs.
  - Fees equal to paper or physical digital media.
- Providing hours of video on DVDs versus emailing a single page memo.

A.R.S. § 39-127
FREE COPIES

- Victim of a Part I crime has right to one free copy of the police report
  - Part I Crimes include: homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson
- On request of the victim, the court must provide a free copy of a case transcript to the victim for purposes of litigation or representation of a victims' right
- SB1371 will amend the statute to also entitle victims of "a domestic violence offense or a sexual offense" to a free copy of police video recordings.

A.R.S. § 39-129
FEES FOR POLICE VIDEOS

- County, city, town, or political subdivision law enforcement
- May establish a onetime fee per copy
  - Maximum $46/video-hour reviewed
- Considerations:
  - Reasonable cost of reviewing, transmitting, copying, redacting
  - "Other relevant information"

COMMERCIAL PURPOSE

- A.R.S. § 39-121.03
- 'The use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.'

WHAT IS A COMMERCIAL PURPOSE?

- **Use of a public record** for the purpose of sale or resale or
- **Obtaining names and addresses** from public records for the purpose of **solicitation** or
- **Sale of names and addresses** to another for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record.

COURT OF APPEALS CLARIFIED "COMMERCIAL PURPOSE"

- The phrase: "for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record"
  - Not an independent fourth section
  - Not a "catch-all"
  - Modifies the sale of names and addresses to another

WHAT IS NOT A COMMERCIAL PURPOSE?

- Journalism

  Star Publishing Company v. Parks, 178 Ariz. 604, 875 P.2d 837 (App. 1993)

- Political consulting firm's use of voter information in furtherance of its business

  Primary Consultants, LLC v. Maricopa County Recorder, 210 Ariz. 393, 111 P.3d 435 (App. 2005)

COMMERCIAL PURPOSE FEE

- A.R.S. § 39-121.03(A)
  - Reasonable fee for cost of time, materials, equipment and personnel in reproducing
  - Portion of the cost to the public body for obtaining the record
  - Value of the reproduction on the commercial market as best determined by the public body

RECORDS DUMP

- Dumping/shredding records after request or subpoena comes in
- **DON'T DO IT!**
- Litigation hold

DEALING WITH FREQUENT REQUESTORS

- Frequent requestors are still entitled to records

ADDITIONAL RESOURCES

- Ombudsman website www.azoca.gov
- SLAPR website www.azlibrary.gov
- Title 2, Chapter 3, Article 3 of the Arizona Administrative Code (A.A.C. R2-3-301 et seq.)
- Attorney General Opinions www.azag.gov or http://azmemory.lib.az.us/ (for older opinions)
- Arizona Agency Handbook, Chapter 6, www.azag.gov

QUESTIONS?

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Arizona County Clerk's Association (ACCA)
Virtual Meeting – DRAFT Minutes
April 5, 2024

The Arizona County Clerk's Association held a virtual meeting via Zoom software.

CALL TO ORDER: Friday, April 5, 2024

Vice President Leah Thomas called the meeting to order at 12:06 p.m.

Executive Officers Present were:
Vacant, ACCA President.
Leah Thomas, ACCA Vice President/Navajo County.
Vacant, ACCA Just Past President.
Bianca Castaneda, ACCA Treasurer/Greenlee County.
Lindsay Daley, ACCA Secretary/Coconino County.

Members Present were:
Jayme Rush, Clerk Yavapai County
Juanita Garza, Clerk Maricopa County
Melissa Buckley, Clerk Navajo County
Natasha Kennedy, Clerk Pinal County
Melissa Manriquez, Clerk Pima County
Samantha Trimble, Deputy Clerk Gila County
Sharon Gilman, Interim Clerk/Deputy County Administrator Coshise County
Katrina Martinez, Deputy Clerk Pima County
Kelsey Pickard, Deputy Clerk Pinal County
Laurie Thornbury, Clerk La Paz County

M**embers Excused were:**
Hannah Duderstadt, Deputy Clerk Graham County
Amy Loper, Deputy Clerk Maricopa County
Dustin Welker, Clerk Graham County
Valerie Webber, Deputy Clerk Coconino County
Lara Loewenheim, Deputy Clerk Cochise County
Desarae Doten, Executive Assistant/Deputy Clerk Yuma County
Beth Bond, Clerk Apache County
Alma Schultz, Clerk Santa Cruz County
Christy Isbell, Deputy Clerk Yuma County
Lizbeth Tolano Huerta, Deputy Clerk Santa Cruz County

BUSINESS MEETING

Action Items

1. Discussion and possible action Re: Appointment of ACCA President and Past President.

Vice President Leah Thomas explained that with Ginny Anderson leaving her position as Clerk for Mohave County, the Association will need to elect a new President for the Association. She went over the requirements to be President of the Association. She asked if there were any nominations for President.

Melissa Buckley asked if anyone is interested in serving as President. She stated that Leah Thomas is currently serving as Vice President, Bianca Castaneda is serving as Treasurer, and Lindsay Daley is serving as Secretary.

No members volunteered or commented that they would like to step into the position of President.

Natasha Kennedy made a recommendation that Jayme Rush be the President.

Jayme Rush explained that having just become the Clerk for Yavapai County, she is at capacity and in need of hiring staff so is not able to step into the President position at this time.

Melissa Buckley stated that she would like to nominate Natasha Kennedy to be the President if Natasha is willing.

Natasha Kennedy explained that she is involved with the Arizona Municipal Clerks Association at this time, however, is willing to accept the role of President with the Association.

MOTION (MELISSA BUCKLEY/JAYME RUSH): Nominate Natasha Kennedy from Pinal County as President of the Association.

VOICE VOTE: The motion carried unanimously of the members present.

The members discussed the position of Past President being vacant with Kim Kapin leaving her position as Clerk with Yavapai County. The members determined they would leave the Past President position vacant at this time.

2. Discussion and possible action Re: Approval of Minutes.

Upon query by Vice President Leah Thomas, the minutes were approved as follows.

MOTION (JUANITA GARZA/MELISSA BUCKLEY): Approve the minutes as presented, changing the wording "three assistant deputy clerks to one assistant deputy clerk on page 4," under Maricopa County's report.

VOICE VOTE: The motion carried unanimously of the members present.

3. Discussion and possible action Re: Clerk's Distribution List.

Vice President Leah Thomas explained that Christy Isbell has been maintaining the clerk distribution list; however, because Christy is retiring in the next month someone else will need to maintain the list.

Natasha Kennedy stated that she thought it should be part of the duties of the Secretary position. Secretary Lindsay Daley agreed.

MOTION (NATASHA KENNEDY/LINDSAY DALEY): Maintenance of the Clerk Distribution List be assigned as a duty of the Secretary position.

VOICE VOTE: The motion carried unanimously of the members present.

4. Recognition of Christy Isbell's Retirement on May 1, 2024.

Melissa Buckley spoke about getting a retirement gift for Christy Isbell with her retirement coming up.

Discussion Items

1. Discussion on holding an ACCA Certified Professional County Clerk Program Certification.

Vice President Leah Thomas explained that a request has been made to have an ACCA training this year and asked members if they think a certified professional training can be done this year for people to become certified as Arizona County Clerk's under the ACCA.

President Natasha Kennedy stated that the Association should plan for next year and some training can be included in what is offered to the association members when they meet in October for the County Supervisors Association Legislative Summit.

Sharon Gilman of Cochise County stated she is interested in the certification training and Juanita Garza of Maricopa County stated she and Amy Loper are also interested in the training for certification.

Vice President Leah Thomas stated that the ACCA certified professional training can be worked on to offer for next year.

2. Discussion regarding Clerk's Training/Business Meeting at the 2024 CSA Legislative Summit in Pinal County.

President Natasha Kennedy explained that the CSA Legislative Summit in October will be hosted by Pinal County. She stated there will be training provided for clerks during that time and some of the topics will include open meeting law, public records and liquor licenses. She requested that members email her with any topics they may like training on.

Melissa Buckley stated that record retention is an issue for her right now and she noted another topic can include legislation coming out of this session. She also noted that any information on how counties are using Docusign would be helpful as well as what resources counties are using for record retention such as rolling cabinets. Melissa Buckley also stated she is interested in learning whether other counites are codifying their ordinances.

Secretary Lindsay Daley and Jayme Rush stated they would also be interested in learning about codification of county ordinances.

President Natasha Kennedy noted that she went through a codification process for ordinances of Pinal County and would send out information on that.

Vice President Leah Thomas adjourned the meeting at 12:29 p.m.

BY-LAWS OF THE
ARIZONA COUNTY CLERKS ASSOCIATION

Arizona County Clerks are appointed County Officers pursuant to Article 12 of the Arizona Constitution and Arizona Revised Statutes §11-241.

ARTICLE I – MISSION

Preserve the public trust through improved access to public records, adherence to statutory functions as stated in Arizona law and protection of the integrity of the public meeting process.

ARTICLE II – NAME

The Organization shall be known as the Arizona County Clerks Association (ACCA)

ARTICLE III – OBJECTIVES AND GOALS

The objectives and goals of the organization are to:

A. Enhance the professional development of the Clerks of the Boards of Supervisors and the Clerks' staff.

B. Conduct systematic and periodic review of recently enacted legislation affecting Boards of Supervisors and Clerks of the Boards of Supervisors for the purposes of ensuring compliance with statutory requirements and the developing effective methods for achieving compliance.

C. Develop and advocate for legislation beneficial to the Boards of Supervisors and Clerks operations in promoting service to the public.

D. Keep the membership informed of legislation being proposed which may affect Boards of Supervisors and Clerk of Board responsibilities and duties.

E. Coordinate with the County Supervisors Association's Legislative Planning Committee to develop an official position as an Association regarding proposed legislation.

F. Uphold the Arizona County Clerks Association Code of Ethics.

ARTICLE IV – MEMBERSHIP

A. The membership of this Association shall be comprised of the County Clerks of the Boards of Supervisors and duly appointed Deputy Clerks of the Boards of Supervisors in all Arizona Counties if dues are current. On voting matters, each county shall have only one vote. Voting by email is authorized.

B. Clerks Emeritus:
Honorary Clerks Emeritus shall:

a) Have served as Clerk of Board or Deputy Clerk for no less than 5 years;
b) Have attended at least two (2) previous Clerks Conferences;
c) Be non-voting members for which membership dues are waived.
d) Be responsible for any expenses related to attendance at Clerks conferences.

ARTICLE V – OFFICERS

Section 1, Number

There shall be four officers of the organization; a President, a Vice- President, Secretary, and a Treasurer. With the immediately past-president serving as a member for 2 years.

Section 2, Election and Term of Office

The officers of the Association shall be elected in the second half of even-numbered years, to take office on January 1st of the following year, by a majority vote of the membership counties**.** Each officer shall hold office for a term of two consecutive years or until the successor(s) shall have been duly elected or appointed according to Article V, Section 3.

Any officer may be removed by a majority vote of the membership counties.

Section 3, Vacancy

A vacancy shall be filled by the ACCA Membership.

Section 4, Duties

A. President

The President or designee shall:

a) be the executive officer of the Association;
b) preside at all meetings;
c) have the general supervision of all business of the Association;
d) coordinate meetings, set the agenda, and give appropriate meeting notice;
e) sign all documents which the Association has authorized;
f) poll the membership regarding attendance at meetings and call for proxies as necessary.

B. Vice-President

The Vice-President shall

a) act in the absence of the President;
b) responsible for the website and addition of resource material
c) be responsible for such other duties as assigned by the President of the Association.
d) shall record and keep certification and continuing education hours

C. Secretary

The Secretary shall

a) perform all duties incident to the Office of the Secretary;
b) responsible for Minutes, Bylaws, and Agendas
c) be responsible for keeping minutes of this Association and submitting the minutes to the President for distribution.

D. Treasurer

The Treasurer shall:

a) Insure the treasury books are open to the full Association membership.
b) have charge, custody of, and be responsible for, all financial records and funds of this Association;
c) receive, deposit and account for all dues, assessments, donations or earnings of the association;
d) pay all bills of the association as approved by the executive board;
e) perform all duties incident to the Office of Treasurer;
f) be responsible for such other duties as may be assigned by the President of the Association.

Section 5, Board Member Requirement

A Board member will be required to be a Clerk or the Deputy Clerk Acting as a Clerk, the Board Member must be an active ACCA Member and have attended at least one (1) ACCA Conference (training session and business meeting the prior year).

ARITCLE VI – DUES

Each County that wishes to be a member of the Association shall pay dues of $200.00 annually. Dues are due by July 15th of each year.

ARTICLE VII – EXECUTIVE BOARD

A. The Executive Board shall be composed of five (5) members: the President, the Vice-President, the Secretary, the Treasurer and the immediately past President.

B. The function of the Executive Board is to transact such business of this Association as may require its attention between the meetings. Business transacted by the Executive Board shall be submitted for consideration and approval by this Association at its next official meeting.

ARTICLE VIII – LEGISLATIVE COMMITTEE

A. The ACCA may, from time to time, activate by a majority vote of the member counties a legislative committee within the following guidelines:

B. The Legislative Committee shall be composed of three (3) members elected by the membership.

C. The responsibility of the Legislative Committee shall be to
   a) prepare legislation for consideration by the membership;
   b) alert the membership of legislation which affects Boards of Supervisors and Clerks of Boards of Supervisors;
   c) coordinate with the County Supervisors Association's Legislative Planning Committee regarding the Association's official position on legislation;
   d) draft position letters and distribute such letters to the membership prior to transmittal to the legislature.

D. The Legislative Committee shall develop guidelines for its conduct for approval by the membership.

ARTICLE IX – MEETINGS

A. The Association shall not exceed the amount of $4,000 for annual conference; and to host one Clerk's meeting in conjunction with AACo and CSA meetings and to have the Board approve expenditures including retirement gifts, with a member coordinating a gift on volunteer basis with approval by membership.

B. A special meeting may be called by the President or by a majority of the membership Counties.

C. All official business of the Association, with the exception of the Executive Board and the Legislative Committee (if convened), shall be decided by a majority of the membership counties, either in person, by email, or by proxy.

D. Invitations may be extended to Clerks Emeritus as defined under Article IV-Membership (B).

E. Minutes shall include notes first day of conference – from meet and greet all the way through when the membership is gathered; with minutes at actual meeting. Minutes of conference shall include attendance; brief statement of current events from the Clerks and summary regular minutes on the other items; enough information to know we voted and amend bylaws to reflect these changes.

These IX Articles constitute the by-laws of the Arizona County Clerks Association as amended.

Amended October 28, 2019.

Natasha Kennedy, President

Other Essential Items Approved by the ACCA Membership:

Certified Professional County Clerk Program

Conference Registration Fee: Fee for the membership of $100 - $150 as needed.

Exhibitors and Sponsorship: Allow vendors to attend the Arizona County Clerks Association Conferences. The hosting county would locate a meeting room and determine preliminary costs for clerks only and clerks with vendor participation, to share with the Board, the Board would then share the numbers with the membership and the hosting County would put the event together. The Board will make the final decision to include vendors after the Board shared the information with the membership.

Continuing Education: 1 (ONE) TO 2 (TWO) PAGE REPORT ON A TOPIC RELATING TO CLERK'S RESPONSIBILITIES TO THE RESOURCE PAGE ON THE ACCA WEBSITE OR THE OPTION TO ATTEND 1 (ONE) ARIZONA COUNTY CLERKS ASSOCIATION CONFERENCE PER YEAR TO MAINTAIN PROFESSIONAL COUNTY CLERK CERTIFICATION STATUS;

ACCA Logo

Meeting Minutes: Include names of those in attendance in person/video/telephonic; create a brief statement of current events from each county; create summary minutes that include enough information on each agenda item to show why a decision was made. Include who made the motion, second and what the vote was. “Unanimous” if all voted or list the aye, nay and no votes individually, by name, if not unanimous.