



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE

MICHAEL S. CATLETT
DEPUTY SOLICITOR GENERAL

October 21, 2021

Michael G. Rankin,
Tucson City Attorney
City Hall
255 W. Alameda
Tucson, AZ 85701
(520) 791-4221
mike.rankin@tucsonaz.gov

VIA EMAIL and First Class Mail

**Re: Legislator Request for Investigation regarding whether Tucson
Administrative Directive 2.03-7 violates A.R.S. § 23-206**

Dear Mike:

Enclosed with this letter is a complete copy of a Legislator Request for Investigation under A.R.S. § 41-194.01 (the "Request") regarding whether the City of Tucson ("Tucson") Administrative Directive 2.03-7 violates A.R.S. § 23-206. With the Request's filing, the Office will now conduct an investigation and prepare a report that, under the statute, must be completed in no later than 30 days. A.R.S. § 41-194.01(A), (B).

In the report, the Attorney General will reach one of three conclusions. *See id.*, § 41-194.01(B). If Tucson has not violated any provision of state law or the Arizona Constitution, the Office will take no further action. *Id.* § 41-194.01(B)(3). If Tucson may have violated a provision of state law or the Arizona Constitution, the Attorney General will file an action in the Arizona Supreme Court. *See id.* § 41-194.01(B)(2); *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017). If Tucson has violated a provision of state law or the Arizona Constitution, the Office will notify Tucson in writing and state that Tucson has 30 days to resolve the identified violation. A.R.S. § 41-194.01(B)(1). If the Attorney General determines that Tucson failed to resolve the violation within 30 days, the Attorney General will notify the State Treasurer, who shall withhold and redistribute from Tucson state shared monies as provided by A.R.S. §§ 42-5029(L) and 43-206(F).

Letter to Mike Rankin
October 21, 2021
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In light of the exigencies of the current circumstances, the Office hereby requests that Tucson voluntarily provide a written response to the Request by 5:00 p.m. on Tuesday, October 26, 2021.

Please feel free to contact me if you have any questions.

Sincerely,

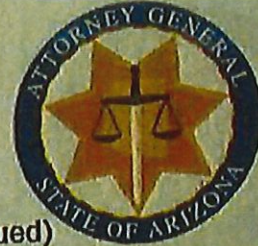


Michael S. Catlett
Deputy Solicitor General
Government Accountability Unit

Enclosure



Office of Arizona Attorney General
Mark Brnovich



Legislator Request for Attorney General Investigation of
 Alleged State-Law Violation by County, City, or Town (Continued)

*Identify the member(s) of the Legislature submitting this request for investigation (attach additional sheet if necessary):

Senator VINCE LEACH

CD11

*Provide a contact person for communications from the Attorney General's Office regarding this request (may be a Legislator listed above or an employee of the Legislature).

*Name: VINCE LEACH

*Email address: VLEACH@AZLeg.gov

*Phone number: 602-926-3106

*Mailing address: AZ State Senate
 1700 W. Washington
 Phoenix, AZ 85007

*The specific question for the Attorney General to investigate is: Is Tucson City Council in violation of ARS 23-206 Section 3

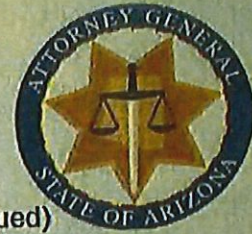
*The name of the county, city, or town that is the subject of this request: City of Tucson

*The specific ordinance, regulation, order, or other official action adopted or taken by the governing body of the county, city, or town and the date thereof: ~~ARS 23-206~~ ADMINISTRATIVE INACTIVE 2.03 - 7 10-19-2

*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts: ARS 23-206 Section 3



Office of Arizona Attorney General
Mark Brnovich



Legislator Request for Attorney General Investigation of
 Alleged State-Law Violation by County, City, or Town (Continued)

*All relevant facts of which you are aware (attach separate sheet if necessary):

SEE ATTACHED Ann. Foster Letter
 to City of Tucson Dated 10-20-21

*All relevant legal authority, including federal and state case law, of which you are aware (attach separate sheet if necessary):

[Empty box for legal authority]

* Any litigation involving this issue of which you are aware (include case name, number, and court where filed):

[Empty box for litigation information]

Check this box if you are attaching supporting documentation.

NOTE: This form and other information submitted to the Attorney General's Office is subject to the public records law, A.R.S. § 39-121 et seq.

I, a current member of the Legislature, verify that I and the other Legislators listed on the previous page (if any) are submitting this request for investigation under A.R.S. § 41-194.01.

*First Name: Vince Leach *Last Name: LEACH

*Signature: Vince Leach *Date: 10-21-21

Please submit the completed form to:
 Arizona Attorney General's Office
 Attn: Appeals and Constitutional Litigation/A.R.S. 41-194.01
 2005 North Central Avenue
 Phoenix, AZ 85004
governmentaccountability@azagov



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

October 20, 2021

Mike G. Rankin
City Attorney
City of Tucson
P.O. Box 27210
Tucson, AZ 85726

Via email mike.rankin@tucsonaz.gov and U.S. Mail

Dear Mr. Rankin,

I write to bring information to your attention regarding the recent Tucson City Council study session held on October 19, 2021 and more specifically agenda item 8, *Proposed Revisions to Administrative Directive 2.03-7 Relating to Vaccination Requirements for City Employees; Discipline for Failure to Comply; and Other Mitigation Measures and Administrative Requirements.*

As part of agenda item 8 a memo from City Manager Michael Ortega to the Mayor and City Council outlines that a majority of employees who are being considered for termination under the City's mandatory vaccine policy requested exemptions or accommodations and were denied. Additionally, the Legal Considerations section on page 4 states:

At this time, the City can in fact enforce the requirements described in this Memorandum and can establish additional consequences and penalties for City employees who fail to come into compliance with the vaccination policy. The state law (A.R.S. Sec. 36-681) that was adopted by the Legislature under Senate Bill 1824 and that would otherwise prohibit the City from requiring any person to be vaccinated against COVID-19 has been declared void and unenforceable by order of the Maricopa County Superior Court. The appeal from this order is now pending in front of the Arizona Supreme Court, with oral arguments scheduled for November 2, 2021.

Although the information concerning A.R.S. § 36-681 and the pending litigation at the Arizona Supreme Court is correct, there is relevant information that is missing from these legal considerations that affects the city's ability to take action under such a policy.

First, only sections 12 and 13 of Senate Bill 1824 were deemed unconstitutional. Section 3 is still in effect and establishes A.R.S. § 23-206, which states:

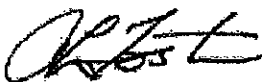
If an employer receives notice from an employee that the employee's sincerely held religious beliefs, practices or observances prevent the employee from taking the COVID-19 vaccination, the employer shall provide a reasonable accommodation unless the accommodation would pose an undue hardship and more than a de minimus cost to the operation of the employer's business.

This statute does not say when the employee must provide a notice of a sincerely held religious belief, practice or observance, only that if provided, an employer is required to provide a reasonable accommodation. Based on the documentation from the City Council meeting, it is unclear if the Mayor and Council were made aware of this new legal requirement that became effective on the general effective date, whether any denials of exemptions or accommodations violated this provision or whether City of Tucson employees were made aware of this new legal provision. Additionally, Tucson Administrative Directive 2.03-7, *Mandatory COVID-19 Vaccination*, violates this new law by stating that an employee may "request" a religious accommodation rather than the notice provision that A.R.S. 23-206 provides. Further, Directive 2.03-7, states that an "interactive process" will be engaged in to "determine precise limitations." However, no such process exists under A.R.S. § 23-206 as it only requires an employee to provide notice. Unlike other laws in the employment context, this statute does not provide for an employer to question the employee's "sincerely held religious beliefs, practices or observances" prior to providing the accommodation from a COVID-19 vaccine. It merely requires notice to the employer. Finally, as it seems that the City has clearly provided some accommodations for religious and disability reasons, it is unclear how there would be any "undue hardship" for others that provided notice under A.R.S. § 23-206.

In addition to A.R.S. § 23-206, it also seems that the Council was not notified of section 3 of Executive Order 2021-19, which was issued on October 7, 2021. This section states, "No person shall be required by this state, or any city, town or county to obtain a COVID-19 vaccine but a health care institution licensed pursuant to A.R.S. Title 36, Chapter 4 may require the institution's employees to be vaccinated."

This provision would apply to all employees, not just those that requested an accommodation. Thus, it seems based on the documentation publicly available, this information was not presented to the Mayor and Council and would have been relevant to their discussion prior to action being considered or taken. As you, the Mayor and Council are well aware, violation of state law implicates A.R.S. § 41-194.01 and violation of an executive order issued under the authority of an emergency declaration carries a criminal penalty.

Sincerely,



Anni L. Foster
General Counsel