STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL October 30, 2006	No. I06-004 (R06-008) Re: County Meet-and-Confer Ordinances

To: The Honorable Phil Lopes
Arizona House of Representatives

Questions Presented

You have requested a formal opinion answering the following questions regarding the ability of a county board of supervisors to establish a formal meet-and-confer process by which the board would obtain advice on county personnel policies from county management and an authorized employee representative:

1. May a county ordinance allow county employees to elect an authorized employee representative and require the elected authorized employee representative and county management to meet in an effort to resolve differences, address working conditions and other issues of interest to employees, and present proposals to the board of supervisors for the board's possible action?

2. Must the process be purely advisory and not result in any collective bargaining agreement or binding contract such that where employees and county

management agreed on policy proposals, they submit the issues to the board of supervisors for action?

3. Can participation in this formal process be restricted to the elected authorized employee representative as long as the process allows individual employees to remain entirely free to communicate with county management outside that formal process?

Summary Answers

1. A county may enact a meet-and-confer[1] ordinance provided that the ordinance does not extend beyond the scope of the statutory mandate of county authority, and that the ordinance does not deprive the county of policy-making authority.

2. The meet-and-confer process must not result in any binding collective bargaining agreement or contract because such an agreement would be an unlawful delegation of legislative authority.

3. A county may restrict the formal meet-and-confer process to the elected authorized employee representative as long as individual county employees are allowed to communicate freely with county management and the board of supervisors on employment and personnel issues.

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[1] The opinion's use of the term "meet and confer" accords with the definition expressed in *City of Phoenix v. Phoenix Employment Relations Board*, 145 Ariz. 92, 94-95, 699 P.2d 1323, 1325-26 (App. 1985). The term "meet and confer" in the realm of public employment denotes a process by which public employer and the authorized employee representative meet and confer in good faith with respect to certain topics, which may include wages, hours, and other terms of employment. *Id*. at 94, 699 P.2d at 1325. Although a memorandum of understanding may result from the process, no binding agreement may be the product of such negotiation; final decision-making authority is necessarily reserved to the public employer. *Id.* at 95, 699 P.2d at 1326.

Analysis

A. Validity of County Meet-and-Confer Ordinances.

A county may pass a meet-and-confer ordinance provided that the ordinance is drafted in a manner that does not extend beyond the scope of the statutory mandate of county authority and also does not deprive the county of policy-making authority.

County authority is necessarily limited. Counties are created by the Legislature to exercise part of the general governmental power in a specific location. *Marsoner v. Pima County*, 166 Ariz.195, 196, 801 P.2d 430, 431 (Ariz. App. 1990), *vacated on other grounds by Marsoner v. Pima County*, 166 Ariz. 486, 803 P.2d 897 (1991); *Maricopa County v. Black*, 19 Ariz. App. 239, 241, 506 P.2d 279, 281 (1973). The boards of supervisors of the various counties have only such powers as have been expressly or

> by necessary implication, delegated to them by the state legislature. Implied powers do not exist independently of the grant of express powers and the only function of an implied power is to aid in carrying into effect a power expressly granted. Therefore, unless there has been an express grant of power by the legislature to the board to enact the ordinance here involved, it must be held to be invalid, regardless of whether the subject of said ordinance is of local or state-wide concern.

Associated Dairy Producers Co. v. Page, 68 Ariz. 393, 395-96, 206 P.2d 1041, 1043 (1949) (citations omitted); *see also Maricopa County v. Maricopa County Mun. Water Conservation Dist. No. 1*, 171 Ariz. 325, 328, 830 P.2d 846, 849 (App. 1991); *Shaffer v. Allt*, 25 Ariz. App. 565, 570, 545 P.2d 76, 81 (1976). A county "must act not only within the limits of the power granted it by the legislature, but must also comply with the statutory requirements prescribed by the Legislature." *Mohave County v. Mohave-Kingman Estates, Inc.*, 120 Ariz. 417, 420, 586 P. 2d 978, 981(1978).

In Ariz. Att'y Gen. Op. 74-11, this Office answered a question very similar to the one presented here. In that opinion, the question posed was whether a county could enter

into an agreement to meet and discuss wages, terms of employment, and working conditions with a public employee union. This Office determined that a county could enter into such an agreement. Ariz. Att'y Gen. Op. 74-11 at 6-7. The question at issue here asks if the county may enact an ordinance requiring such a meeting between county management and an authorized employee representative.

Given the analysis in Ariz. Att'y Gen. Op. 74-11 and the statutory grants of county authority to set wages, benefits, and terms of employment,[2] it follows that the county not only has the authority to engage in these types of discussions with employee unions, but also to require itself to do so through a meet-and-confer ordinance. A meet-and-confer ordinance is not prohibited by any statutory provision and does not extend beyond the scope of statutory grants of county power.

While courts construe implied authority narrowly, the specific articulations of county authority within Arizona statutes suggest that the county may create ordinances to mandate meet-and-confer arrangements with employee representatives. Because Title 11 explicitly grants the authority to implement plans for the compensation of county employees, it follows that a county should be able to create an ordinance that requires a particular plan. A meet-and-confer policy is not an exercise of a new power; it is a procedural device by which a local government entity chooses to exercise the power that it already possesses. *See City of Phoenix v. Phoenix Employment Relations Bd.*, 145

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[2] The Legislature grants counties the authority to provide compensation for county employees. A.R.S. § 11-251(38). The Legislature also authorizes counties to provide for benefits for county employees and to provide for reimbursement to county employees who utilize public transportation to and from work. A.R.S. § 11-251(50), (51) & (53).

Ariz. 92, 97-98, 699 P.2d 1323, 1328-29 (Ariz. App. 1985) (noting ordinance was official procedure by which city determined policy decisions).

B. Binding Agreements Through Collective Bargaining.

In Ariz. Att'y Gen. Op. 74-11, this Office also considered whether public employees could use collective bargaining with the city in the same manner as do private or industrial employees. This Office concluded that public employees may organize and select representatives, but they do not have the authority to force a governmental agency to bargain with the representative through collective action. *Id.* at 6 (citing *Commc'ns Workers of Am. v. Ariz. Bd. of Regents*, 17 Ariz. App. 398, 401, 498 P.2d 472, 475 (1972)). Unlike private industry, the employer-employee relationship in public employment is governed by statutory law and administrative regulation, not by contract. *Id.* at 4 (citing *City of Los Angeles v. Los Angeles Bldg. and Constr. Trades Council*, 94 Cal.App.2d 36, 45, 210 P.2d 305, 310 (1949)); *see also Bd. of Educ. of the Scottsdale High Sch. Dist. No. 212 v. Scottsdale Educ. Ass'n*, 17 Ariz. App. 504, 511, 498 P.2d 578, 585 (1972), *vacated on other grounds by Bd. of Educ. of the Scottsdale High Sch. Dist. No. 212 v. Scottsdale Educ. Ass'n*, 109 Ariz. 342, 509 P.2d 612 (1973). Absent a statutory provision allowing for collective bargaining, a county cannot create an ordinance for anything beyond the scope of meeting and conferring with employee representatives for the purpose of obtaining information and advice in order to make ultimately unilateral decisions. Ariz. Att'y Gen. Op. 74-11 at 6.

C. Exclusivity of Meet-and-Confer Process.

As noted above, a county does not have the power to engage in collective bargaining resulting in binding agreements because its authority to set wages and

employment conditions is delegated to it by the Legislature, and this use of collective bargaining in public employment would constitute an unlawful delegation of legislative authority. The primary difference between collective bargaining in private employment and in public employment "is in the exclusiveness of the bargaining representative." Ariz. Att'y Gen. Op. 74-11 at 2. A county may not regard the employee representative as the exclusive representative of the employees, nor can the meet-and-confer ordinance preclude other negotiations or agreements between county management and individual employees or representatives of other employee groups. *Id.*

The question here is whether the formal meet-and-confer process can be restricted to the authorized employee representative as long as individual employees or representatives of other employee groups remain free to communicate with county management on employment and personnel issues. Because it cannot result in binding agreements, the meet-and-confer process is merely a means to provide information to county management on employment and personnel issues and to aid in informed governmental decision-making. Whether the county gathers that information through the "formal" meet-and-confer process or it is received from individual employees or representatives of other employee groups outside of that process seems to make no legal difference, as long as the flow of information from other sources to county management is not impeded. Therefore, a county may restrict the formal meet-and-confer process to the elected authorized employee representative as long as individual employees or representatives of other employee groups are allowed to communicate freely with county management and the board of supervisors on employment and personnel issues.

Conclusion

A county has the authority to pass a meet-and-confer ordinance so long as such an ordinance does not go beyond the scope of the county's delegated powers and so long as the ordinance does not give up county policy-making authority. An ordinance that allows collective bargaining, as that term is used in private industry, is invalid because an exclusive bargaining agreement would be an unlawful delegation of legislative authority. Furthermore, a county's formal meet-and-confer process can only be limited an to authorized employee group representative on the specific condition that individual employees and representatives of other employee groups are allowed to communicate freely with county management and the board of supervisors on employment and personnel issues.

Terry Goddard
Attorney General

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