MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE

August 31, 2018

Anthony W. Contente-Cuomo
Cantelme & Brown PLC
2020 South McClintock Drive, Suite 109
Tempe, AZ 85282

Re: Opinion Request R18-016 / Issued Opinion I18-011

Dear Mr. Contente-Cuomo:

You have asked whether the Quartzsite Elementary School District No. 4 ("District") would violate A.R.S. § 15-511 if it were to use District resources to issue a cease and desist letter demanding that one or more public office candidates stop using the District's logo in connection with their online campaign. It appears that time is of the essence for your desired response. However, as you may be aware, our formal opinion process necessarily involves several layers of review and is not conducive to a speedy turnaround. Furthermore, A.R.S. § 15-511(K) does not authorize or mandate the issuance of a formal opinion. For these reasons, we offer the following informal opinion regarding the question presented.

Arizona Revised Statutes § 15-511(A) prohibits the use of public resources "for the purpose of influencing the outcomes of elections." Section 15-511(M)(2) defines "influencing the outcomes of elections" as:

> [S]upporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral.

Read together, these two provisions of A.R.S. § 15-511 essentially prohibit the use of public resources for the purpose of supporting or opposing a candidate, ballot measure or related petitions in any manner that is not impartial or neutral.

A 2015 Attorney General Opinion on A.R.S. § 11-410, a sister statute of A.R.S. § 15-511, emphasizes the need for a two-part, objective test to assess whether the statute has been violated: first, whether there has been a use of public resources; and second, whether *the purpose* of the expenditure was to support or oppose a candidate, ballot measure or related petition. Ariz. Atty. Gen. Op. I15-002, at 17 (Amended) (2015). We emphasized that, in the absence of express advocacy or outright contributions of things of value to a campaign, the latter test was likely to be highly fact-intensive—hinging on time, manner and place considerations aimed at assessing the impartiality and neutrality of the use of public resources. *Id.* at 10-14.

Applied here, the public resources expended in drafting and issuing the cease and desist letter likely qualify as a use of public resources. The personnel, material and funds allocated to the contemplated effort would clearly have value and derive from public sources. The first element of our recognized test for prohibited public resource electioneering would be met.

Nevertheless, it is our informal opinion that the circumstances of the issuance of the contemplated cease and desist letter would not meet the second part of our test of prohibited public resource electioneering if: (1) the District's logo is not merely descriptive and has acquired a secondary meaning; (2) the District has a content-neutral and uniformly-applied policy of issuing cease and desist orders to stop the unauthorized use of its logo; (3) the cease and desist letter is written in terms that impartially and neutrally apply that policy; and (4) the cease and desist letter is sent without publicity calling specific attention to the candidate or the candidate's alleged conduct if the letter is sent during an election cycle.

We base our opinion, in part, on precedent indicating that the names and logos of public bodies can acquire the status of legally-protected intellectual property. *See, e.g., Bd. of Supervisors for Louisiana State Univ. Agric. and Mech. College v. Smack Apparel Co.*, 550 F.3d 465 (5th Cir. 2008). Furthermore, Arizona's prohibition on the impersonation of public servants under A.R.S. § 13-2406 would not preempt the contemplated cease and desist letter. *See generally State v. McLamb*, 188 Ariz. 1, 4 (App. 1996). Taken together, the District could very well have a legitimate and lawful interest in issuing the contemplated cease and desist letter. We cannot, however, offer a more detailed opinion in the absence of an opportunity to review the contemplated cease and desist letter, the underlying facts and policies justifying it, and the circumstances of its issuance.

Sincerely,

Dominic Draye
Solicitor General

DD/smp