



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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October 4, 2017

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ATTORNEY GENERAL
 EXECUTIVE OFFICE

Hon. Mark Brnovich
 Attorney General
 Office of the Attorney General
 1275 West Washington
 Phoenix, AZ 85007

Dear General Brnovich:

On September 25, 2017, an organization by the name of Arizonans for Wildlife filed an application with the Secretary of State to proceed with an initiative petition to prevent the hunting of mountain lions, bobcats, jaguars, ocelots and lynx.¹ In response to this petition, the Game and Fish Department faces substantial pressure to take a position in opposition to the petition and act to defeat the measure if it makes it to the ballot.

Arizona law imposes restrictions on the Game and Fish Director and Department employees from using their positions or public resources to actively support or oppose the measure. For instance, A.R.S. § 17-213 prohibits the Director and Department employees from participating in a political campaign or using the Director's office to influence the outcome of an election. The full statute provides that:

"Neither the director nor any employee of the department shall take active part in a political campaign nor use his office to influence in any way an election or the results thereof. Failure to abide by the provisions of this section shall constitute grounds for dismissal of the director or any employee."

I am writing to request a formal legal opinion interpreting A.R.S. § 17-213 and the statute's applicability to actions the Director and agency employees may take that occur during personal time and do not involve public resources. I have two questions that relate to the proposed ballot measure and whether A.R.S. § 17-213 prohibits the Director or Department employees from taking unofficial actions in response to the ballot measure.

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¹ The hunting of jaguars, ocelots and lynx is already illegal in Arizona.

SOLICITOR GENERAL'S OFFICE

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First, does the term "use his office" refer only to the use of official governmental power using public resources to affect an election? Given that public officials and employees have certain free speech rights, does the phrase prohibit the Director or Department employees from expressing an opinion or taking actions to support or defeat the proposed ballot measure when such actions do not involve the use of public resources or the exercise of governmental power.

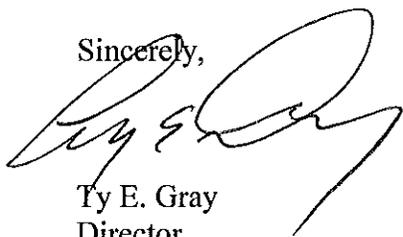
Second, if A.R.S. § 17-213 prohibits activities that occur on personal time and do not involve the exercise of governmental power or use of public resources, does this create a conflict with the activities permitted under A.R.S. § 41-752?

If this ballot measure passes, it will have significant impact on the Department's wildlife management authority. As Director, I want to make sure that any actions I take in response to this proposed ballot measure are consistent with the law. Due to severe consequences for failing to comply with A.R.S. § 17-213, a formal Attorney General opinion on these questions is essential to clarify the scope of statutory restrictions in the statute.

Your interpretation will provide the necessary guidance to a sizeable number of employees in the agency who are uncertain they can ever express an opinion or take any action without violating the law. As such, any effort from your office to answer these questions expeditiously would be greatly appreciated.

Thank you for your consideration of this matter, and I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Ty E. Gray", written over a white background.

Ty E. Gray
Director

cc: Arizona Game and Fish Commission
Jim Odenkirk, Assistant Attorney General