



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
APPEALS & CONSTITUTIONAL LITIGATION DIVISION
GOVERNMENT ACCOUNTABILITY UNIT

KEENA PATEL
ASSISTANT ATTORNEY GENERAL
KEENA.PATEL@AZAG.GOV

February 18, 2020

By Certified Mail, Return Receipt Requested and E-Mail

Bullhead City Council
Bullhead City Manager, Toby Cotter
c/o Christopher W. Kramer and Paul G. Johnson
Jennings, Strouss & Salmon, P.L.C.
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
ckramer@jsslaw.com; pjohanson@jsslaw.com

Re: Alleged use of city resources to influence an election

Councilmembers and Mr. Cotter:

As you are aware, the Office of the Arizona Attorney General (“Office”) received complaints alleging that city resources were used in violation of A.R.S. § 9-500.14 to influence the November 2019 ballot initiative regarding issuance of debt to acquire EPCOR’s water system (“Proposition 415”). The Office has reviewed the information provided in response to our initial inquiry letter. Based on this information, the Office has concluded that the use of local billboards to display electioneering messages in favor of Proposition 415 violated A.R.S. § 9-500.14.

Under A.R.S. § 9-500.14, a civil penalty not to exceed five thousand dollars for each violation plus any amount of misused funds may be assessed against individual persons responsible for the violations. The statute prohibits city funds or insurance payments to pay any penalties or misused funds. *See* A.R.S. § 9-500.14(F). Here, it appears that City Manager Toby Cotter authorized the content and execution of the digital billboard advertisements.

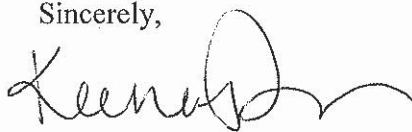
In relevant part, A.R.S. § 9-500.14(A) states, “A city [] shall not spend or use its resources ... or any other thing of value of the city [], for the purpose of influencing the outcome of elections.” The statute defines “influencing the outcomes of elections” as supporting or opposing in any manner that is not impartial or neutral. Attorney General Opinion No. I15-002 (R15-002) provides further elaboration. In analyzing a statute identical to A.R.S. § 9-500.14, this Office determined that a two-part test applies: (1) whether public resources were used; and (2) if so, whether the public resources were used “for the purpose of influencing the outcome of elections.” The standard for determining whether something has the purpose of influencing an election is an objective one that requires a fact-specific, case-by-case evaluation. *Ariz. Atty. Gen. Op. I00-020.*

The Office concludes public resources were used in displaying two messages related to Proposition 415 on three local billboards. Specifically, the messages, "Our City, Our Water, Our Rates" and "Local Control = Local Benefit" appeared on two billboards owned by Lamar Advertising and one billboard owned by Riverside Casino. These messages were displayed pursuant to the City's agreement with the billboard owners for daily advertising time as compensation for billboard placement on City property. The use of billboard advertising time provided to the City therefore is a public resource.

Under Arizona law, a public communication that in context can have no reasonable meaning other than to advocate for a position is "for the purpose of influencing the outcome of an election." *Comm. for Justice & Fairness v. Ariz. Sec'y of State's Office*, 235 Ariz. 347 (App. 2014). Proposition 415 was clearly identified on the billboards to the general populace as it was the only ballot proposition regarding city owned water service. In context, the messages appear to have no reasonable meaning other than to advocate for passage of Proposition 415. The messages presented Proposition 415 in a favorable light by equating a "benefit" with local control and indicating local ownership as a positive outcome. The messages targeted all of Bullhead City's electorate and ran immediately following the City Council's vote to place Proposition 415 on the ballot. *See id.* Accordingly, the Office concludes that the billboard messages were used for the purpose of influencing the outcome of Proposition 415 by expressly advocating for its passage.

As the Office considers next steps in this matter, the Office strongly advises Mr. Cotter, or legal counsel if represented, to contact the Office within thirty (30) days of receiving this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keena Patel", with a long, sweeping horizontal flourish extending to the right.

Keena Patel
Assistant Attorney General