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Douglas R. Clark
Executive Director

ARIZONA CORPORATION COMMISSION

October 9, 2026

The Honorable Kris Mayes Arizona Attorney General
 Attn: Opinions
 2005 North Central Avenue
 Phoenix, Arizona 85004

Re: Request for Opinion pursuant to A.R.S. § 41-193(A)(7) — Personnel Status of Arizona Corporation Commission Policy Advisors and Personnel Authority of the Executive Director

Dear Attorney General Mayes:

Pursuant to A.R.S. § 41-193(A)(7), which directs the Attorney General, on demand of any public officer of this state, to render a written opinion on any question of law relating to the officer's office, I respectfully request your opinion on the questions set out below concerning the employment of policy advisors at the Arizona Corporation Commission ("Commission"). I am a publicly elected statewide officer and the current chairman of the Commission.

BACKGROUND

The Commission is a constitutionally created body. Ariz. Const. art. 15, §§ 1–3. The Commissioners have, by virtue of the State Constitution, administrative, executive, legislative and adjudicative powers, depending on the tasks at hand.

By statute, the Commission "shall appoint an executive director" subject to title 41, chapter 4, article 4 (the state personnel system), and, if directed by the Commission, the Executive Director supervises and administers the Commission's divisions and employees and employs the personnel necessary to perform the Commission's duties, subject to the state personnel system. A.R.S. § 40-105(A), (B)(2)–(3).

For as long back as we can find, the Commission has had a delegated executive administrator, previously called the Executive Secretary, and today called the Executive Director. That chief executive has traditionally exercised the ultimate hiring and firing authority for agency personnel.

Under A.R.S. § 41-742(A)(1), all state employees hired on or after September 29, 2012 are at-will, uncovered employees. I am well aware that "at-will" does not mean any reason that would be illegal. State law, section 41-742(D), excludes certain officers and entities from the state personnel system; it excludes elected state officers but expressly does not extend that exclusion to their employees "unless expressly provided," and it does not list Commission staff.

Section 41-742(F)(2) separately removes employees of offices of elected officials who report directly to the elected official, or whose primary duty is to determine or publicly advocate substantive program policy, from only certain merit-system principles: open competition, performance-based retention, and the political-affiliation provision of A.R.S. § 41-742(B)(5). But I do not see any removal from other aspects of our state laws governing personnel.

Each Commissioner employs one or more policy advisors who report directly to that Commissioner. Questions have arisen regarding which personnel rules govern these positions, who holds authority to take employment actions concerning them, and what legal limits apply to their discharge.

QUESTIONS PRESENTED

1. Are policy advisors employed by the Commission completely exempt from the state personnel system, A.R.S. title 41, chapter 4, article 4, and the State Personnel Rules, A.A.C. title 2, chapter 5A? If not, why not, and to what extent do A.R.S. §§ 41-742(D) and 41-742(F)(2) modify the application of those provisions to such advisors?
2. Is the Commission's Executive Director the "agency head" vested with final authority to approve hiring, discipline, termination, and other employment actions, including salary increases and bonuses, for Commission employees (including Commissioners' policy advisors) under A.R.S. § 40-105 and the state personnel system, unless and until the Commission, acting as a body under its constitutional and statutory authority, directs otherwise? Relatedly, may an individual Commissioner take such actions as to that Commissioner's own policy advisors without action of the Commission as a whole? For example, assume a Commissioner wants to fire a policy advisor who came out as gay, or got pregnant, or turned age 50. Can the Commissioner unilaterally do so, and are the Commissioner's reasons exempt from other laws that would prohibit such employment practices?
3. Assume a policy advisor created a hostile work environment for other employees. Further assume that the Commissioner who employed that policy advisor was not interested, unable, unsure or otherwise unwilling to take employment action against their own policy advisor. Who then is able to take corrective personnel action if not the Executive Director?
4. As at-will employees, may Commission policy advisors be terminated for any reason whatsoever, or do state and federal laws governing conditions of employment and protected status nonetheless limit their discharge? This question includes, without limitation, the application of:
 - a. the Arizona Employment Protection Act, A.R.S. § 23-1501;
 - b. the state employee whistleblower protections, A.R.S. § 38-531 et seq.;

- c. the Arizona Civil Rights Act, A.R.S. § 41-1461 et seq.;
- d. Title VII of the Civil Rights Act of 1964, including the exclusion of elected officials' personal staff and policymaking appointees under 42 U.S.C. § 2000e(f), and the Government Employee Rights Act, 42 U.S.C. § 2000e-16c;
- e. the Age Discrimination in Employment Act, 29 U.S.C. § 630(f), the Americans with Disabilities Act, and the Family and Medical Leave Act; and
- f. First Amendment limits on politically motivated discharge. *Elrod v. Burns*, 427 U.S. 347 (1976); *Branti v. Finkel*, 445 U.S. 507 (1980).

REQUEST

Because these questions bear directly on the Commission's ongoing personnel administration, I respectfully request that your Office give this matter timely consideration. Please contact my office if additional information would assist your review.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Myers", with a stylized flourish extending from the end.

Nick Myers, Chairman
Arizona Corporation Commission