



City of Phoenix

OFFICE OF THE CITY ATTORNEY

JULIE M. KRIEGH
City Attorney

VIA EMAIL ONLY: Joshua.Bendor@azag.gov

May 27, 2025

Joshua Bendor
Solicitor General
OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE
2005 North Central Avenue
Phoenix, Arizona 85004-1592

Re: *Your May 16, 2025, Notice of Submission of Legislator Request for Investigation Pursuant to A.R.S. § 41-194.01 and Request for Response*

Dear Mr. Bendor:

This letter serves as the City of Phoenix's (the "City") response to Representatives David Marshall, Walter Blackman and Quang Nguyen's (collectively the "Legislators") May 14, 2025 "*Request for S.B. 1487 Investigation – City of Phoenix Gift Policy Allowing Department Directors to Make Taxpayer-Funded Donations Up to \$32,000 to Non-Governmental Organizations.*" If you have any questions regarding this response, they can be directed to me or Deryck R. Lavelle, my Chief Assistant.

Procedurally, the City believes the Legislators' request as presented is improperly before the Attorney General. A.R.S. § 41-194.01(A) authorizes the attorney general to investigate whether any local action (by ordinance, regulation, order or other official action adopted or taken by the governing body of the City or any written rule or regulation adopted by any agency, department or other entity of the City) violates state law or the Constitution of Arizona. The Legislators' request, as outlined in more detail below, seeks to challenge (in very broad and non-case specific terms) Phoenix's "Gift Policy", however, no such City policy as that policy is defined by the Legislators has ever been adopted by ordinance, regulation, order, written rule or regulation by the Phoenix City Council or any City department or agency. Accordingly, the Legislators' request, as a matter of law, cannot be brought before the Attorney General for possible investigation if no such policy exists and the City therefore respectfully requests that the Attorney General reject the Legislators' investigative request outright.

I. Introduction

The Legislators' request for an investigation appears to have originated from a flyer for the Arizona Science Center's "Galaxy Gala" held on February 1, 2025, where three City Departments- Aviation, Water and Public Works (along with several other public and private sponsors including Arizona State University) sponsored the Gala event to support the Science Center's STEM educational programs.¹ The Legislators question the legality of the City's support of charitable and non-profit programs. However, in so doing, the Legislators mischaracterize the lawful appropriation or expenditure of public funds for these programs and mistakenly refer to the support as gifts, donations, giveaways, and handouts. They also more broadly allege, based on speculation and conjecture, that 634 other miscellaneous and unrelated identified expenditures by the City over the previous 5 years also suffer from the same legal deficiency.² Accordingly, with regards to answering each of the legal questions that are the subject of the Legislators' request, the City's response will (where appropriate) only discuss the legality of the City's sponsorship of the Galaxy Gala event and not the hundreds of other City expenditures raised by the Legislators.

II. Background

The Legislators' request for an investigation is premised on a "Gift Policy" of the City that purports to illegally give unilateral discretion to 41 City employees including the Phoenix City Manager, Assistant City Managers, Deputy City Managers and all Department Directors to spend taxpayer money through donations of up to \$32,000 to non-governmental organizations.³

The City operates under the authority of the Phoenix City Charter, which was adopted and ratified pursuant to Article 13, Section 2 of the Arizona Constitution. Under the City Charter, the City operates a Council-Manager form of government. See,

¹ A copy of the flyer is attached as Exhibit A to the Representatives' 1487 Request.

² See, Exhibit E to the Representatives' 1487 Request. The City objects to the Legislators use of the 634 expenditures as evidence of the City's "Gift Policy." Not only are the number of expenditures grossly exaggerated, but the Legislators' allegation that many of the expenditures "may have been made illegally" should not by itself be sufficient to warrant an Attorney General investigation. Also, as an aside it is worth noting, that the itemized categories of sponsorships, advertising, marketing and miscellaneous total only \$1.5 million over the 5-year time frame, an average of \$300,000 a year. Much less than the \$28.5 million stated in their letter.

³ The "Gift Policy" described by the Legislators in their request is distinguishable and different from the City's formal gift policy codified in Section 2-52 of the Phoenix City Code in that the City's formal gift policy applies to the **receipt** of gifts by City elected officials, employees, board members and volunteers. This section was cited by the City in answering a question about City sponsorship. Phoenix City Code (PCC), section 2-52 defines a "community event" as "an event, activity, or function located in Arizona and **sponsored** by the City of Phoenix, a nonprofit organization, a professional association, a business association, a charitable organization, a cultural/arts organization, or a community organization." PCC Section 2-52 further allows that a "gift does not mean ...[c]ompensation in the form of admission, food, or beverages received by an elected official, employee, board member, or volunteer to attend a community event." The point of citing to this Code provision was to explain that the staff did not violate the City's gift policy in **receiving** a gift by their attendance at this event, and sponsorship is allowed.

Phoenix City Charter, Chapter III, Sec. 1. The City Council appoints the City Manager. *Id.* As the City's Chief Administrative Officer, the City Manager executes the laws and administers the government of the City, including the supervision and administration of all city departments and appoints all administrative officers of the City, including all Assistant City Managers, Deputy City Managers and Department Directors. *Id.* at Sec. 2(B)(1) and (2). The City Manager is responsible for working with City Council to prepare and adopt the City's annual budget. He works closely with all City departments to ensure they stay within their council approved department budgets. See Phoenix City Charter, Chapter XVIII, Sec. 3; and Phoenix City Code Section 2-9. The City Charter also requires that the City budget be prepared in sufficient detail to outline the total City budget amount and the specific financial allocations for each department, office and subdivision of City government. *Id.* at Sec. 5. When City Council adopts the annual budget, it adopts the total budgeted amount for the entire City. It approves the individual financial allocations for each department, office and subdivision within the City.

Given the vast size of the City - both in terms of population and budget - to enhance operational efficiencies, city voters enacted Chapter IV, Section 12 of the Phoenix City Charter, a charter provision that allows public expenditures, up to a predetermined dollar threshold, to proceed without requiring formal approval from the City Council. On November 5, 1985, Phoenix voters approved Proposition 107 which amended this charter provision and raised the appropriation or expenditure amount of any public money that must be approved by ordinance by the Phoenix City Council from \$1,000 to \$5,000 and allowed an adjustment for changes in the cost of living every four years beginning in 1990. Stated differently, after the passage of Proposition 107, any appropriation of public money that equaled or exceeded \$5,000 required approval by the City Council, while any appropriation of less than \$5,000 did not.

As approved in 1985, Chapter IV, Section 12 of the Phoenix City Charter read as follows:

When actions to be taken by ordinance.

"Actions providing for any specific improvement, for the appropriation or expenditure of any public money, except sums less than five thousand (\$5,000) dollars, which amount may be adjusted by the council every four years beginning in 1990 to account for changes in the cost of living, for the appropriation, acquisition, sale or lease of public property, for the levying of any tax or assessment, for establishing or changing fire limits, or for the imposing of any penalty, shall be taken by ordinance; provided, that such exception be observed as may be called for in cases where the council takes action in pursuance of a general law of the State."

To codify this Charter authority in City Code and allow the City Manager, or his designee(s), to appropriate and expend funds up to the identified limit without further City Council approval (and to account for the cost-of-living adjustment), the City Council enacted each of the following ordinances to amend Section 2-4(B) of the Phoenix City Code:

- Ordinance G-2908 passed on July 23, 1986, amount set to \$5,000;
- Ordinance G-3286 passed on December 6, 1989, amount increased to \$5,700;
- Ordinance G-4796 passed on May 10, 2006, amount increased to \$8,600; and
- Ordinance G-7126 passed on June 28, 2023, amount increased to \$32,000

Section 2-4(B) of the Phoenix City Code currently provides that:

“The City Manager of the City of Phoenix shall be authorized to appropriate and expend any public money for the City of Phoenix to settle all *claims* against the City which the sum is less than \$32,000.” (italics added)

The Legislators in their request materials give the term “*claims*” a much narrower reading (limiting it solely to legal claims) than what was intended. Historically, however, the term “*claims*” has been interpreted much more broadly to encompass **all** requests for payment or claims identified in Chapter IV, Section 12, of the Phoenix City Charter. See, Ordinance G-892 passed by the Phoenix City Council on November 26, 1968 attached as Exhibit A. As Ordinance G-892 makes clear, it is in the best interests of the City of Phoenix that the City Manager has authority to exercise his discretion in the payment of all claims of public money referenced in Chapter IV, Section 12 of the Phoenix City Charter without presenting them to the City Council in the form of an ordinance.

III. The City’s Response to the Legislators’ Legal Questions

- A. Does Phoenix’s “Gift Policy” violate A.R.S. § 9-499.01 and/or Article XIII, § 2 of the Arizona Constitution because it violates the City of Phoenix Charter and is not authorized by any Ordinance or state law?

Brief Answer: No.

First, as stated earlier the City has no such “Gift Policy.”

Second, Chapter IV, Section 12 of the Phoenix City Charter explicitly authorizes payment of public expenditures up to \$32,000 without requiring formal approval from the City Council and Ordinance G-7126 designates the City Manager as the City representative authorized to expend those funds.

Lastly, by relying solely on A.R.S. § 9-499.01 and Article XIII, § 2 of the Arizona Constitution to support their investigative request, the Legislators appear to suggest that municipal action that is inconsistent with the City Charter violates state law. But the statutory and constitutional provisions cited by the Legislators specify the sources of power for charter cities. Nowhere within those legal authorities do they hold that any violation of municipal law becomes a violation of state law. “A charter city has the power to frame its own organic law,” *City of Tucson v. State*, 229 Ariz. 172, 173, ¶ 1 (2012), and that organic law remains municipal law, not state law. If municipal action inconsistent with municipal law became a violation of state law, then § 41-194.01’s scope would cover not only violations of “any provision of state law of the Constitution of Arizona,” but also violations of any provision of municipal law. Nothing in the text, structure, or history of § 41-194.01 or S.B. 1487 indicates that they were intended to reach into alleged violations of municipal law. The Legislators’ references to A.R.S. § 9-499.01 and Article XIII, § 2 are not sufficient to support an investigation under S.B. 1487.

- B. Does Phoenix’s “Gift Policy” violate A.R.S. § 9-303(B) because the City’s Ordinance No. G-4796⁴ only authorizes the City Manager to settle claims against the City of Phoenix up to \$32,000 and does not authorize the “Gift Policy”?

Brief Answer: No.

As with the first legal question in the Legislators’ investigative request, the second question improperly suggests that a violation of *municipal* law (i.e. violating Ordinance G-7216 (not G-4796) – see footnote 4 below) falls within the scope of A.R.S. § 41-194.01. It does not. Even if a municipal policy regarding the City Manager violated a municipal ordinance, that action would not violate a “provision of state law or the Constitution of Arizona.” For example, the Phoenix City Charter requires the City Manager to “attend all Council meetings, unless excused by the City Council.” See, Phoenix City Charter, Chapter III, Section 2(B)(3). If the City Manager violated this provision by skipping a meeting without having been excused by the City Council, that would not mean the City violated a “provision of state law of the Constitution of Arizona” within the meaning of A.R.S. § 41-194.01. Again, as with question 1 above, § 41-194.01 and S.B. 1487 do not cover violations of *municipal* law.

A.R.S. § 9-303(B) confers on the City Manager only powers and duties as shall be specified by ordinance creating the office of City or town manager or the City charter. Notwithstanding the improper scope of their question, the Legislators in the investigative request argue that A.R.S. § 9-303(B) is violated because Section 2-4(B) of the Phoenix City Code, as amended by Ordinance G-7126, only authorizes the City Manager to

⁴ This is a clerical error on the part of the Legislators. Ordinance G-4796 passed by the Phoenix City Council on May 10, 2006, increased the payment amount requiring City Council approval to \$8,600 or above. Ordinance G-7216 passed by the Phoenix City Council on June 28, 2023, increased the payment amount requiring City Council approval to \$32,000 or above.

“settle all claims against the City” up to a \$32,000 maximum and a “gift” is not a “settlement.” As mentioned in Section II *supra*, however, there is no such violation because the term “*settle all claims*” in this context extends beyond the settlement of asserted or threatened claims against the City, and encompasses all items described in Chapter IV, Section 12 of the Phoenix City Charter, including payments to non-profits.

C. Does Phoenix’s “Gift Policy” violate Article IX, §7 of the Arizona Constitution (the Gift Clause)?

Brief Answer: No.

As to whether the “Gift Policy” as that term is defined by the Legislators violates the Gift Clause of the Arizona Constitution, the City takes the position that only a challenged expenditure can violate the Gift Clause, not a policy. For example, consider a hypothetical policy that allowed a government employee to sign checks up to \$20,000. That policy would not facially violate the Gift Clause because it could be used for lawful purposes, including payroll checks, reimbursements, purchases, satisfying judgments, etc. Likewise, to the extent the Legislators challenge the provisions of municipal law authorizing certain City employees to make payments, those provisions do not violate the Gift Clause.

Under traditional Gift Clause analysis, the Gift Clause is violated if either: (1) the challenged expenditure lacks a “public purpose” or (2) the value to be received by the public is far exceeded by the consideration being paid by the public.” *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349 (1984). What constitutes a “public purpose” has proved elusive to define. See *City of Glendale v. White*, 67 Ariz. 231, 236 (1948) (stating that the term “is incapable of exact definition,” changes with the times, and is best elucidated by examples). In general, however, a public purpose promotes public welfare or enjoyment. *Id.* at 237.

Here, as applied to the Galaxy Gala sponsorship, the event that first initiated the Representatives’ request, the expenditures by the City departments served an important public purpose. The Gala provided the City with the opportunity to promote STEM education within the City and encourage young people and adults to explore science, technology, engineering, and mathematics, while helping to build a well-informed and skilled community. It also provided a great platform to highlight City initiatives related to sustainability, smart City technologies, infrastructure and innovation.

Regarding the consideration prong of the Gift Clause analysis, in return for its sponsorship of the Gala event, the City received enhanced community exposure for its STEM-related projects, valued at an amount similar to the value of its sponsorship. With regard to the Aviation Department’s sponsorship of the event, specifically because they are a grant recipient of Federal Aviation Administration funding under federal law, they are legally permitted to make contributions of public money for community or charitable

purposes.⁵ With respect to the City's sponsorship of the Galaxy Gala event, the City asserts that it satisfied both prongs of the Gift Clause analysis and that its expenditures in this matter do not violate Article IX, § 7 of the Arizona Constitution.⁶

IV. Conclusion

The target of the Legislators' request for investigation is a supposed "Gift Policy" that allegedly gives unilateral discretion to dozens of City employees to misappropriate millions of dollars to non-profits in increments of \$32,000 or less, with no accountability or transparency. Such a policy does not exist. Contrary to the picture painted by the Legislators, the City follows best financial and accounting practices and complies with all federal, state and local laws in the appropriation and expenditure of all public money to ensure the best value and return of the taxpayer's dollar. The Legislators' request fails to establish any violation of state law.

Accordingly, the City of Phoenix asks that the Office of the Attorney General, Solicitor General's Office reject Representatives Marshall, Blackman and Nguyen's request for investigation and any other request submitted under A.R.S. § 41-194.01; and refrain from taking any actions described therein.

Sincerely,

/s/ Julie M. Kriegh

Julie M. Kriegh
City Attorney

JK/drl
Encl.

⁵ See, Section V 7718, 7696 Federal Register Vol. 64, No. 30 Tuesday Feb. 16, 1999 attached as Exhibit B.

⁶ And as stated in the City's response, City employees are allowed to sponsor community events without violating the City's gift policy for **receipt** of "gifts." PCC, Section 2-52.

Index of Exhibits

City of Phoenix Response to Request for S.B. 1487 Investigation

City of Phoenix "Gift Policy"

Ordinance G-892 passed by Phoenix City Council 11/26/1968

Exhibit A

7696 Federal Register Vol. 64, No. 30, Tuesday Feb 16, 1999
(7718, Section V)

Exhibit B

EXHIBIT A

ORDINANCE NO. G- 892

AN ORDINANCE AMENDING SECTION 2-4 OF THE CODE OF THE CITY OF PHOENIX, 1962, BY ALLOWING THE CITY MANAGER TO SETTLE CLAIMS IN AMOUNTS OF LESS THAN \$1,000; AND DECLARING AN EMERGENCY.

WHEREAS, Chapter IV, Section 12 of the Charter of the City of Phoenix provides that:

"Actions providing for any specific improvement, for the appropriation or expenditure of any public money, except sums less than one thousand (1000) dollars, for the appropriation, acquisition, sale or lease of public property, for the levying of any tax or assessment, for establishing or changing fire limits, or for the imposing of any penalty, shall be taken by ordinance; provided, that such exception be observed as may be called for in cases where the council takes action in pursuance of a general law of the State."

and

WHEREAS, it is to the best interests of the City of Phoenix that the City Manager shall have authority to exercise his discretion in the payment of these claims without presenting them to the Council in the form of a formal ordinance,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That Section 2-4 of the Code of the City of Phoenix, 1962, be and the same is hereby amended by the addition of the following sentence:

"The City Manager of the City of Phoenix shall be authorized to appropriate and expend any public money for the City of Phoenix to settle all claims against the City which sum is less than One Thousand Dollars (\$1,000).

SECTION 2. WHEREAS, the immediate operation of the provisions of this ordinance is necessary for the preservation

of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the Council, approval by the Mayor and publication and posting as required by law, and is hereby exempted from the referendum clause of the City Charter.

PASSED by the Council of the City of Phoenix this
26 day of NOVEMBER, 1968.

APPROVED by the Mayor this 26 day of NOVEMBER
_____, 1968.

Milton H. Graham
MAYOR

ATTEST:

Harold Jay Smith City Clerk

APPROVED AS TO FORM:

Robert D. Baughman City Attorney

REVIEWED BY:

Robert Hooper City Manager

RECEIVED
NOV 22 AM 8:40
1968

EXHIBIT B

reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a State, political subdivision of a State or authority acting for a State or a political subdivision may not: "(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes."

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as "airport revenue" for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, "Passenger Facility Fees," and 14 CFR Part 158, "Passenger Facility Charges." (For purposes of this policy, the terms "passenger facility fees" and "passenger facility charges" are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, "Monitoring and Compliance," a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V—Permitted Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other

local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a "friends of the airport" committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was \$250.

9. Airport revenue may be used for the capital or operating costs of those