



Arizona House of Representatives
Phoenix, Arizona 85007

May 14, 2025

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004

**Re: 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**

Dear Attorney General Mayes,

Pursuant to A.R.S. § 41-194.01, and as current members of the Arizona House of Representatives, we respectfully request an investigation of the City of Phoenix's Policy that illegally gives unilateral discretion to 41 city employees—Phoenix's City Manager, Assistant City Manager, Deputy City Managers, and Department Directors—to spend taxpayer money through donations up to \$32,000 to non-governmental organizations ("NGOs") (hereafter, "Gift Policy").

These chronic and ongoing misappropriations of public resources are facially violative of constitutional and statutory provisions that prohibit city officials from acting outside the scope of authority conferred by a statute, charter provision, or ordinance and from gifting of tax dollars to private entities.

Specifically, we request an investigation of the following legal questions:

1. 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's Charter and is not authorized by any Ordinance or state law?
2. Does Phoenix's Gift Policy violate A.R.S. § 9-303(B) because the City's Ordinance No. G-4796 only authorizes the City Manager to settle claims against the City of Phoenix up to \$32,000 and does not authorize the Gift Policy?
3. Does Phoenix's Gift Policy violate article 9, § 7 of the Arizona Constitution (the Gift Clause)?

Phoenix's unlawful Gift Policy only recently came to light through an extensive legislative investigation. Enclosed are a series of letters exchanged between House Public Safety & Law Enforcement Chairman David Marshall and the City Attorney dated February 25, March 14, March 26, and April 14 (see Exhibits A-D). Below is a summary of the legislative investigation and relevant legal authorities to guide your office in conducting the statutorily required investigation under A.R.S. § 41-194.01.

As you know, this is not the first time the Phoenix City Council has knowingly violated state law through an unlawful "donation" policy. See Investigative Report No. 23-003 (Sept. 20, 2023) (finding that the City of Phoenix's Ordinance allowing "Phoenix to dispose of its unclaimed firearms by donating them to Ukraine via an export company" violates A.R.S. §§ 12-945, 13-3108(A), and 12-943 because, among other things, "Arizona law requires cities to dispose of unclaimed firearms by selling them in the manner provided by statute" and "a 'donation' is not a 'sale'").

We look forward to your investigative report.

Background

In late February 2025, Chairman Marshall wrote to Mayor Gallego and the Phoenix City Councilmembers to inquire about "the City of Phoenix's approval process for giving taxpayer-funded monetary donations to nonprofit organizations." (Exhibit A.)

In the City's initial response, the City described its Gift Policy as follows:

- "Department directors have discretion within the approved operating budget" to make donations to nonprofit organizations "for amounts below \$32,000."
- "The responsibility for deciding which organizations to support lies with department directors and the City Manager's Office. The factors considered in making these decisions include alignment with the department's goals, Council priorities, and the potential educational or community benefits of the event or organization."

(Exhibit B.)

When Chairman Marshall asked for the City's approval process or the written policy governing monetary donations, gifts, and other expenditures for nonprofit organizations or events, the City initially cited Phoenix City Code Section 2-52 as "allow[ing] for the sponsorship of community events by the City." (Exhibit B.) But Section 2-52 is the City's general "ethics and gift policies"; it does not even mention, let alone justify, the Gift Policy as described above, which authorizes every Department Director to unilaterally give away up to \$32,000 of taxpayer money to as many organizations or individuals as the Director sees fit without City Council approval.

Chairman Marshall continued pressing for answers and asked for the Ordinances passed by the City Council that purportedly justified this Gift Policy. (Exhibit C.) In response, the City provided a cursory letter and finally supplied three Ordinances that amended Phoenix City Code Section 2-4(B) in 1989, 2006, and 2023, respectively. (Exhibit D.)

These ordinances merely increased the monetary limit for the City Manager “to **appropriate and expend any public money for the City of Phoenix to settle all claims against the City**” from \$5,000 to \$5,700 in 1989 and to \$8,600 in 2006. (Exhibit D, Ordinances No. G3286 and G-4796 (emphasis added).) In June 2023, the Phoenix City Council nearly quadrupled this “claims” threshold to \$32,000. (Exhibit D, Ordinance G-7126.) As the plain wording of these Ordinances makes clear, none of the Ordinances supply legal authority for the City’s Gift Policy.

Meanwhile, City officials and employees have been giving away taxpayer money—under the guise of its most recent “claims” Ordinance G-7126—to various individuals and NGOs since at least 2020 (although we do not know precisely when the City implemented the illegal Gift Policy). Chairman Marshall specifically asked the City for “a list of all donations and expenditures under \$32,000 that any City Department or Director has made to any person, event, or organization since January 2023.” (Exhibit C.) But the City refused to provide that information, instead directing Chairman Marshall to a website, <https://phoenixaz.opengov.com/transparency>. (See Exhibit D.)

Accordingly, we collected data from the City’s accounting system and have identified **at least 634 expenditures to various individuals and NGOs from City Departments since 2020 that may have been made illegally under the Gift Policy, although there is strong reason to believe that the City’s itemizations are incomplete.** (Exhibit E.) For example, one \$2,500 sponsorship to the Arizona Science Center is classified as an expenditure for “advertising services” for the City’s Aviation Department. (Exhibit E, Entry No. 93.) But that characterization is false because it contradicts the City’s own description of that expenditure as a “table sponsorship.” (See Exhibit B).

Moreover, it is highly unlikely that the City paid any nonprofit organizations for “advertising services.” Nonprofit organizations can accept non-taxable “sponsorship payments,” which are defined as donations in “which there is no arrangement or expectation that such [donor] will receive any substantial return benefit other than the use or acknowledgement of the name or logo.” 26 U.S.C. § 513(i)(2)(A). By contrast, because revenues from sales of actual advertising are often taxable, *see id.* § 513(c), nonprofit organizations typically do not sell advertising opportunities.

Thus, it is evident that the City is not accurately reporting the true character of each Departments’ expenditures in its accounting system. To be clear, we do not believe that your legal investigation requires further factual development because our request for a S.B. 1487 investigation simply asks whether the Gift Policy facially violates Arizona laws and the Arizona Constitution. But as the spreadsheet of expenditures (Exhibit E) demonstrates, the City’s illegal Gift Policy has been widely implemented and must be repealed immediately to prevent further violations of Arizona’s misuse-of-public-monies statutes. *See A.R.S. § 35-211 et seq.*

Legal Authorities

City officials' *ultra vires* transfers of taxpayer funds to NGOs contravenes Arizona law in at least three respects.

1. The Gift Policy Violates the Arizona Constitution, Article XIII, § 2, and A.R.S. § 9-499.01

First, any City of Phoenix officer or employee who acts without, or in excess of, expressly delegated authority has violated Article XIII, § 2 of the Arizona Constitution and A.R.S. § 9-499.01. Municipalities have no inherent authority. Rather, “[t]hese subordinate bodies are created by virtue of the sovereignty resting in the state; they draw all their powers from that sovereignty, and are created for the sole purpose of exercising the limited part of sovereignty delegated to them.” *City of Bisbee v. Coochise Cnty.*, 52 Ariz. 1, 12-13 (1938) (emphasis in original); *see also City of Scottsdale v. Superior Court in and for Maricopa Cnty.*, 103 Ariz. 204, 205 (1968) (“The cities and towns of this state are municipal corporations created by the state and possessory of no greater powers than those delegated to them by the constitution and general laws of the state.”).

A city or its agents thus can lawfully act only pursuant to an affirmative grant of authority found either in state law or, in the case of cities with charter governments, a charter provision or implementing ordinance. *See* Ariz. Const. art. XIII, § 2; A.R.S. § 9-499.01 (charter cities are “vested with all the powers of incorporated towns as set forth in this title, in addition to all powers vested in them pursuant to their respective charters, or other provisions of law relating to cities and towns.”); *Williams v. Parrack*, 83 Ariz. 227, 230 (1957) (“[T]he city council has only such powers as are vested in it by the provisions of the City Charter.”).¹ A corollary is that any municipal action that has not been authorized by an applicable state law or by a charter provision (either directly or through an implementing ordinance) is inconsistent with A.R.S. § 9-499.01 and Article XIII, § 2. *See also Paddock v. Brisbois*, 35 Ariz. 214, 222 (1929) (city commission acted unlawfully when it exceeded city charter’s limitations on its powers).

Here, the Phoenix City Charter does not, by its own terms, directly empower any city official to independently give away municipal funds to NGOs. And even assuming that the City could adopt an ordinance conferring such authority, it has not done so. When pressed to produce a legal predicate for these handouts, the City could muster only a citation to City Code § 2-52. But that provision governs City officials’ and employees’ receipt of gifts from outside sources; it does not even contemplate (let alone authorize) the gifting of the City’s own assets and taxpayer money to third parties. Although § 2-52(3) alludes to the notion of the City sponsoring its own community events, nothing in that clause authorizes subsidies for third parties’ events.

Because it is not premised on any applicable statute, charter provision, or city code provision, the Gift Policy constitutes a usurpation of undelegated authority, in violation of Article XIII, § 2 and A.R.S. § 9-499.01.

¹ Charter provisions are, however, superseded by the Arizona Constitution and by state laws with respect to matters of statewide concern. *See State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 600 ¶ 47 (2017).

2. The Gift Policy Violates A.R.S. § 9-303(B)

Second, and relatedly, the Gift Policy transgresses A.R.S. § 9-303(B), which confers on the Phoenix City Manager only such powers “as shall be specified by the ordinance creating the office of city or town manager” or the Phoenix City Charter. The City’s sole cited authority for the Gift Policy is City Code § 2-4, as amended by Ordinance G-7126. But that enactment only allows the City Manager to “settle all claims against the City,” up to a \$32,000 maximum. A gratuitous gift of public funds to a NGO is not a “settlement,” and the City does not (and presumably cannot) contend that any of the recipients had ever asserted or threatened a “claim” against the City.

3. The Gift Policy Violates the Arizona Constitution, Article IX, § 7 (the Gift Clause)

Third, even if the Gift Policy had been properly adopted pursuant to a valid delegation of authority, the Arizona Constitution independently forbids the state or a political subdivision from “ever giv[ing] or loan[ing] its credit in the aid of, or mak[ing] any donation or grant, by subsidy or otherwise, to any” individual or entity. Ariz. Const. art. IX, § 7. 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.” *Schires v. Carlat*, 250 Ariz. 371, 375 ¶ 7 (2021). Importantly, courts will “not give deference to the public entity’s assessment of value,” *id.* at 378 ¶ 23, and any ostensible “indirect benefits enjoyed by” the City are not cognizable consideration, *Turken v. Gordon*, 223 Ariz. 342, 352 ¶ 49 (2010).

It is difficult to conceive of *any* public purpose served by the City’s Gift Policy that gives unilateral discretion to dozens of City employees to give away money to NGOs with no accountability or transparency. The City implemented this illegal policy in the dark, without City Council approval, and without any legal authority to do so. *See supra*, Section 1. The City should not be permitted to retroactively manufacture a public purpose for its Gift Policy now.²

But even assuming (without conceding) that the City’s gifts, sponsorships, and other grants to NGOs advanced some “public purpose,” the City seemingly did not obtain *any* return consideration, let alone proportionate value. As noted above, nonprofit organizations generally do not sell “advertising” services at market rates. While the City may have received public expressions of thanks from NGOs for its sponsorships, such token gestures are not bargained-for consideration, *see* 26 U.S.C. § 513(i)(2)(A), and certainly do not carry a value commensurate with the millions of dollars of taxpayer funds that City has showered on the NGOs.

² Notably, the City has donated significant sums of money to NGOs that have no apparent connection to the Phoenix community or its residents. *See, e.g.*, Exhibit E, Entry No. 161 (\$10,000 “sponsorship” to Alliance for Regenerative Medicine, an international advocacy organization based in Washington, D.C.); Entry No. 447 (\$5,000 sponsorship to Alzheimers Disease and Related Disorders, Inc., a non-profit corporation based in Chicago, Illinois); Entry Nos. 39, 40, 41, 44, 67, 76, 112, 115, 129, 132, 135, 148, 168, 254, 257, 265, 268, 271, 291, 292, 314, 371, 420, 421, 439, 448, 450, 453, 495, 496, and 497 (a total of \$111,500 in “sponsorships” and “marketing services” to the National Forum for Black Public Administrators, a national organization).

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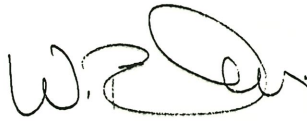
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Please answer the legal questions identified above and issue a written report within 30 days as required by A.R.S. § 41-194.01(B).

Respectfully,



David Marshall
Chairman, Public Safety
& Law Enforcement Committee



Walter Blackman
Chairman, Government
Committee



Quang Nguyen
Chairman, Judiciary
Committee