GILA COUNTY ATTORNEY

Bradley D. Beauchamp

Re: County Attorney's Office approval of IGA pursuant to A.R.S. § 11-952(D).

To whom it may concern:

The County Attorney's Office has reviewed the Intergovernmental Agreement attached to this agenda item and has determined that it is in its "proper form" and "is within the powers and authority granted under the laws of this state to such public agency or public procurement unit" pursuant to A.R.S. § 11-952(D).

Explanation of the Gila County Attorney's Office Intergovernmental Agreement (IGA) Review

A.R.S. § 11-952(D) requires that

> every agreement or contract involving any public agency or public procurement unit of this state . . . before its execution, shall be submitted to the attorney for each such public agency or public procurement unit, who shall determine whether the agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.

In performing this review, the County Attorney's Office reviews IGAs to see that they are in "proper form" prior to their execution. "Proper form" means that the contract conforms to fundamental contract law, conforms to specific legislative requirements, and is within the powers and authority granted to the public agency. It does not mean that the County Attorney's Office approves of or supports the policy objectives contained in the IGA. That approval is solely the province of the public agency through its elected body.

Likewise, this approval is not a certification that the IGA has been properly executed. Proper execution can only be determined after all the entities entering into the IGA have taken legal action to approve the IGA. There is no statutory requirement for the County Attorney's Office to certify that IGAs are properly executed.

Nonetheless, it is imperative for each public agency to ensure that each IGA is properly executed because A.R.S. § 11-952(F) requires that "[a]ppropriate action ... applicable to the governing bodies of the participating agencies approving or extending the duration of the ... contract shall be necessary before any such agreement, contract or extension may be filed or become effective." This can be done by ensuring that the governing body gives the public proper notice of the meeting wherein action will be taken to approve the IGA, that the item is adequately described in the agenda accompanying the notice, and that the governing body takes such action. Any questions regarding whether the IGA has been properly executed may be directed to the County Attorney's Office.

Proper execution of IGAs is important because A.R.S. § 11-952(H) provides that "[p]ayment for services under this section shall not be made unless pursuant to a fully approved written contract." Additionally, A.R.S. § 11-952(I) provides that "[a] person who authorizes payment of any monies in violation of this section is liable for the monies paid plus twenty per cent of such amount and legal interest from the date of payment."

The public agency or department submitting the IGA for review has the responsibility to read and understand the IGA in order to completely understand its obligations under the IGA if it is ultimately approved by the public entity's board. This is because while the County Attorney's Office can approve the IGA as to form, the office may not have any idea whether the public agency has the capacity to actually comply with its contractual obligations. Also, the County Attorney's Office does not monitor IGA compliance. Hence the public entity or submitting department will need to be prepared to monitor their own compliance. A thorough knowledge of the provisions of the IGA will be necessary to monitor compliance.

Before determining whether an IGA contract "is in proper form," the County Attorney's Office will answer any questions or concerns the public agency has about the contract. It is the responsibility of the public agency or department submitting the IGA for review to ask any specific questions or address any concerns it has about the IGA to the County Attorney's Office at the same time they submit the IGA for review. Making such an inquiry also helps improve the County Attorney's Office review of the IGA because it will help focus the review on specific issues that are of greatest concern to the public agency. Failing to make such an inquiry when the agency does have issues or concerns will decrease the ability of the County Attorney's Office to meaningfully review the IGA.