

## County Attorney's Comment

March 22, 2016

Re: April 19, 2016 Agenda Item No. 3676 (ADEQ delegation agreement)

The purpose of this comment is to explain why the Gila County Attorney's Office cannot approve this agreement as to form.

This agreement is subject to A.R.S. § 11-952 which requires a provision stating how the county will establish and maintain a budget for this undertaking. This is important because if the retained fees are not adequate to cover all enforcement activities, then, county general funds will be implicated.

In its March 8, 2016 letter, the state explained that it replaced the "reference to A.R.S. § 11-952 with A.R.S. § 49-107 because this document is a Delegation Agreement, not an Intergovernmental Agreement for the joint exercise of powers common to the County and ADEQ."

The state cannot so easily remove this agreement from the statutory requirements the Arizona legislature imposed on all intergovernmental agreements (IGA).

I will explain why this agreement is *both* a delegation agreement *and* an intergovernmental agreement (IGA).

First, the IGA statute defines what an IGA is. A.R.S. § 11-952(A) provides:

If authorized by their legislative or other governing bodies, two or more public agencies ... by direct contract or agreement may *contract for services or jointly exercise any powers common to the contracting parties ....*

(Emphasis added.)

The statute expressly states that two public agencies may *contract for services or jointly exercise* common powers. Even if the agreement does not provide for the joint exercise of powers, if it is *a contract for services* then it is an IGA. In the contract, the director of the Arizona Department of Environmental Quality (ADEQ) delegates to the county and the county accepts the delegation of certain functions and duties for wastewater and drinking water including: collection of fees, reporting of fees to ADEQ, maintenance of records, making and submitting reports, being evaluated by ADEQ, initiating enforcement actions, coordinating litigation with ADEQ, depositing civil penalties with the state, conducting hearings, providing representation at the hearings, and complying with administrative time requirements.

The state delegates to the county specific functions and duties, i.e. *services* to be rendered. The county, in turn, agrees to provide those functions and duties, i.e. *services*. Therefore, this is at least a contract for services. And, there is an agreement to coordinate litigation with each other in cases of civil enforcement. Thus, the agreement is IGA.

Second, the fact that it is a delegation agreement doesn't mean that it is not *also* an IGA. To delegate means to give authority to a

**representative to act in one's place. There is no authority for the proposition that an agreement that delegates authority from one public agency to another is an exception to the IGA requirements.**

**Therefore, the requirements of an IGA still apply. A.R.S § 11-952(B)(3) provides:**

**Any such contract or agreement shall *specify* the following:  
... The manner of financing the joint or cooperative undertaking and of establishing and maintain a budget for the undertaking.**

**(Emphasis added.)**

**Therefore, some language is needed to comply with this subsection, i.e. describe how the county will establish and maintain a budget for this undertaking. This is important because, under the agreement, the county is responsible to provide all enforcement activity and representation at all administrative hearings. The county will finance this undertaking through fees generated by enforcement activities. However, civil penalties are collected in the name of the state and deposited into the state general fund. If the retained fees are not adequate to cover all enforcement activities, then, county general funds will be implicated.**