



JUL 14 2010

PHOENIX LAW ENFORCEMENT ASSOCIATION

The Professional Association of Phoenix Police Officers Since 1975

July 13, 2010

Mr. David Cavazos, City Manager
City of Phoenix
200 W. Washington St.
Phoenix AZ, 85003

1. Jack Harris did not file a suit
2. No case was taken on litigation
3. PSYC CCR
4. met w/ Jack Harris to discuss

PUBLIC RECORDS
Released pursuant to
A.R.S. 39-121, Et. Seq.
To:

Dear David:

A matter of significant concern was recently brought to the attention of PLEA regarding the involvement of a city official in the current and ongoing litigation surrounding the recent passage of SB-1070, safe neighborhoods bill, that was signed into law on April 23, 2010 by Governor Jan Brewer.

During the late April-early May 2010 time frame, the Phoenix City Council met and the issue of entering into litigation against the state to oppose SB 1070 was discussed. The consensus from the council at this time was that the city of Phoenix should not get embroiled in costly litigation. It is our understanding that the council voted not to sue, essentially taking a neutral stance on the issue. Mayor Gordon then stated his intent to enter into litigation as a solo plaintiff regardless of council support. This in turn caused the council to seek a legal opinion on the matter from the city attorney's office. On May 3, 2010, City Attorney Gary Verburg issued legal opinion 2010-001; Authority to file lawsuits on behalf of the city. Mr. Verburg, in his opinion stated that after reviewing the City Charter he was of the opinion that **"Only the City Council has the power to authorize the filing of civil actions."**

On June 25, 2010, Jack Harris in his capacity as Chief of Police/Deputy City Manager actively joined in the ongoing lawsuits against SB 1070 by filing a declaration in US District Court taking an active stance against SB 1070. As a result of Harris' actions, PLEA believes the following:

1. This action is in direct contradiction to the stated position of the Phoenix City Council as well as the legal opinion issued by City Attorney Gary Verburg.
2. Chief Harris may have violated city ordinances, or personnel rules.
3. Chief Harris may have violated police department policies and
4. Most importantly, PLEA believes that Harris as a Deputy City Manager, by affirmatively declaring that he is the police chief of the 5th largest city in the nation, while in the same document, taking an opposing stance on SB 1070, has in effect, committed the city to a position on the issue.

Review

It is important to note that a rank and file Phoenix Police Officer was recently investigated for making and allowing a video detailing his personal views on SB 1070 to be posted on the internet. The officer was not in uniform and clearly stated he was not speaking on behalf of the department. The end result was that the officer was sustained on, and now faces discipline on, two allegations of misconduct.

This situation raises questions in several areas:

1. Did Chief Harris in filing his declaration in US District Court, act with or without the permission of his superiors in city government?
2. If permission was given, who was it given by?
3. If permission was given, why was it given, based on the previous decision rendered by the City Council as well as the legal opinion issued on May 3, 2010, by City attorney Gary Verburg?
4. Why was a city of Phoenix department head allowed to take an open and public stance on the issue by filing records in US District court which are now public record, when it had been previously determined that no stance would be taken either way without city council approval?
5. What investigative and or disciplinary action if any is being taken against Chief Harris for the filing of this declaration?

PLEA would request the following:

1. That the city council convene in executive session as soon as possible for the purposes of determining how and why this situation was allowed to occur.
2. An investigation by the city to determine whether city policies and or ordinances were violated.
3. A separate investigation by the Police Department's Professional Standards Bureau to determine if police department policies were violated.
4. Requiring Chief Harris to pull or rescind his declaration from the SB 1070 suit if it can be shown that city policies or ordinances were violated or that internal police department policies were violated.
5. Assigning the appropriate level of discipline for any policies, regulations, or ordinances violated.
6. PLEA would request the same permission that was granted to Chief Harris to utilize our police position and authority granted to us by the city of Phoenix to be able to communicate the Association's concerns regarding SB 1070.

It is of great concern to PLEA that Chief Harris, as the top law enforcement official for the city, is allowed to become embroiled in political/legislative issues while operating under the mantle of his position as Chief of Police/Deputy City Manager in direct contradiction to previous direction laid out by the council. If the Mayor of the city was directed in a legal opinion by the city attorney that he could not act in this matter without council approval why then would Harris as a lesser ranking city official be permitted to become publicly involved in the matter without council approval?

The Phoenix Police Department has always closely monitored the rules and regulations involving public speech and political activity of its employees. On October 26, 2009, Executive Assistant Chief Joe Yahner sent a formal letter addressed to PLEA President Mark Spencer reminding him that neither he nor other PLEA officials were allowed to make public comment, engage in political activity or comment to the media while in uniform unless prior advance permission had been obtained. The reason is to clearly delineate the difference between whether one is

advocating as a police official, union official, or a citizen. Clearly, upper level police management is aware of the rules and regulations regarding political and public speech. This then, begs the question; Wouldn't Chief Harris be required to obtain prior approval before making a public declaration in a legal document opposing SB 1070 where he identifies himself as the police chief no less than five times?

Based on Mr. Verburg's legal opinion stating that "*Only the City Council has the power to authorize the filing of civil actions.*" it would stand to reason that this direction would also extend to the filing of declarations in support of or against civil actions.

The present circumstances would seem to indicate that certain officials can violate the rules and directions with impunity while lower ranking employees are investigated and sustained on allegations of misconduct for engaging in similar activity.

PLEA respectfully requests a written response on the issues of concern enumerated above.

Sincerely,



KEN CRANE
PLEA Secretary

Attachments:

1. Page 1 of legal opinion issued by City Attorney Gary Verburg on May 3, 2010.
2. Letter sent October 26, 2009 to PLEA President Mark Spencer from Executive Assistant Chief Joe Yahner.

cc:

Governor Jan Brewer
Arizona State Senator Russell Pearce
Mayor Phil Gordon
Vice Mayor Michael Nowakowski
Assistant City Manager Ed Zuercher
Councilwoman Thelda Williams
Councilwoman Peggy Neely
Councilman Bill Gates
Councilman Claude Mattox
Councilman Sal DiCiccio
Councilman Michael Johnson



City of Phoenix

OFFICE OF THE CITY ATTORNEY

GARY VERBURG
City Attorney

May 3, 2010

David Cavazos
City Manager
200 West Washington, 12th Floor
Phoenix, Arizona 85003-1611

Re: **Legal Opinion 2010-001**
Authority to File Lawsuits on Behalf of the City

Mr. Cavazos:

Question Presented

You have asked our office to provide you with an opinion related to Charter authority to file lawsuits on behalf of the City. Specifically, the question presented relates to whether the Mayor of the City of Phoenix has the authority to file a civil complaint bringing a civil action on behalf of the City without City Council approval.

Summary Answer

Upon review of the Charter, taken as whole, I am of the opinion that only the City Council has the power to authorize the filing of civil actions.¹

Background

The State of Arizona recently passed legislation (SB 1070) which authorizes local law enforcement agencies to enforce federal immigration laws. Serious legal issues have been raised with respect to the validity of this recently enacted legislation. The Mayor of the City of Phoenix has asserted that he has the authority to challenge the validity of this legislation without City Council approval based upon Chapter V, Section 3 of the City Charter of the City of Phoenix.

¹ This opinion does not address the Charter authority of the City Attorney to file criminal cases nor his authority to attend to lawsuits in which the City has an interest.



City of Phoenix
OFFICE OF THE POLICE CHIEF

October 26, 2009

Mark Spencer, President
Phoenix Law Enforcement Association
1102 West Adams
Phoenix, AZ 85007

Dear Mark,

The purpose of this letter is to follow up on an issue I briefly discussed with Joe Clure at the State Capitol on Wednesday before the press conference requesting a special session of the State Legislature. We appreciate the fact that you recognized that this was not a venue appropriate for you to appear in police uniform.

I would like to take this opportunity to remind you that all PLEA board members and PLEA officials in full time release positions are to abide by City and Police Department policies. These include appearances at the State Legislature and in the media. Moreover, to avoid possible confusion by the public on whether you are speaking on behalf of the City or PLEA, when you speak to the media or lobby the legislature on behalf of PLEA, it cannot be done in uniform without receiving advance approval from the Police Department. Please feel free to contact me with such approval requests.

On August 3, 2009, City Manager Frank Fairbanks sent a letter reminding you and other unions of your obligation to adhere to the city policies related to political activity. This letter serves as notice to abide by those same policies and our Operations Orders. I also would like to remind you and other full time release employees of the Memorandum of Understanding, Article 1-3.G.4, where it is agreed, all full time release employees are bound by the Police Department's rules and regulations.

It is not my intent to prevent you from speaking on behalf of PLEA. It is permissible for you to speak to the media on behalf of PLEA without approval from the Police Chief, as long as it is not done in uniform. If the appearance is done in uniform, please obtain advance approval from the Police Department.

If you have any questions, concerns or require further information please call me at (602) 262-7005.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Yahner".

JOSEPH YAHNER
Executive Assistant Chief

C: PLEA Board

Hal Dekeyser/PCC/PHX
07/14/2010 02:08 PM

To david.cavazos@phoenix.gov
cc
bcc
Subject Declaration by Chief Haris

History:

✉ This message has been replied to.

David Cavazos
July 14, 2010

Per our conversation today, I believe that the recent declaration of Phoenix Police Chief Jack Harris in the civil action United States vs. State of Arizona regarding Arizona's recently enacted immigration law known as SB 1070 violates city policy. The City Council has taken no position on the Arizona law, and Chief Harris' comments make it appear as if the Council and the city are opposed to it.

We would like you to look into this action by the chief and determine if policy was broken and bring the issue before a City Council executive session as soon as possible.

Councilman Sal DiCiccio
District 6

Sent by:

Hal DeKeyser
Chief of staff
Phoenix City Council District 6
602-262-7491

JUL 16 2010

**City of Phoenix**
OFFICE OF THE CITY ATTORNEY

To: Ed Zuercher
Assistant City Manager

Date: July 16, 2010

From: Gary Verburg
City Attorney

A handwritten signature in black ink, appearing to read "Gary Verburg", written over a horizontal line.

Subject: Public Safety Manager Jack Harris Declaration

You have asked me to review PLEA's letter dated July 13, 2010, and respond to the legal issues raised therein. With respect to the first concern raised by PLEA, does the declaration provided by Public Safety Manager Harris violate City Attorney Opinion No. 2010-01 - the answer is no. The City Attorney Opinion only addressed whether the Mayor of the City of Phoenix has the authority to file lawsuits on the City's behalf without City Council approval. The opinion does not address when an employee of the City may be a fact witness in a lawsuit.

PLEA confuses a declaration with the filing of a lawsuit. The filing of a lawsuit is accomplished by filing a complaint with the Court. Fed. R. Civ. P. 3. In contrast, a declaration is a form of written testimony. It is a form of document used to present evidence in a legal proceeding. See, 28 U.S.C. § 1746. It serves the same function in legal proceedings as deposition testimony, which could have easily been obtained from Public Safety Manager Harris by subpoena. In addition, the statement of facts in the Harris declaration is similar to the information provided to Council in prior City Council Reports which could have been obtained by a public records request. In summary, providing a declaration is not the same thing as filing a lawsuit.

You have also asked us if the submittal of the declaration violates any personnel policy or procedure. Our Department has reviewed the personnel policies and procedures and we are unaware of any personnel policy being implicated by the submission of the declaration. As you know, City employees are often times called upon to provide factual testimony in legal proceedings, and it would be difficult to even craft a policy which precludes City employees from being witnesses in legal proceedings.

If you have any further questions, please let me know.



Ed Zuercher/MGR/PHX
07/19/2010 11:44 AM

To Xandon Keating/PCC/PHX@PHXENT
cc David Cavazos/MGR/PHX@PHXENT
bcc
Subject Re: Jack Harris comments 

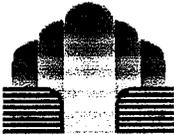
Yes - we are preparing something and will have this afternoon. Thanks, Ed

Phoenix *Ed Zuercher*



Assistant City Manager
602-262-7915 (office)
602-261-8327 (fax)
ed.zuercher@phoenix.gov

Xandon Keating/PCC/PHX



Xandon Keating/PCC/PHX
07/19/2010 09:30 AM

To Ed Zuercher/MGR/PHX@PHXENT
cc David Cavazos/MGR/PHX@PHXENT
Subject Jack Harris comments

Hi Ed,

We are getting a lot of emails regarding Jack Harris' statement on SB 1070. I am guessing the issue is ongoing but we would like a statement to use as a reply. Could you help us with this?

Thanks,

Xandon Keating
Office of Councilwoman Thelda Williams
200 West Washington 11th Floor
Phoenix, AZ 85003
Office: 602-262-4831



Ed Zuercher/MGR/PHX
07/19/2010 05:39 PM

To Judy Lorch/PCC/PHX@PHXENT, Sarah
Dobbins/PCC/PHX@PHXENT, Alma
Hernandez/PCC/PHX@PHXENT, Greg
cc David Cavazos/MGR/PHX@PHXENT, Dave
Harvey/MGR/PHX@PHXENT

bcc

Subject Inquiries on Jack Harris

To all -

Many of you have been receiving email inquiries about Jack Harris and the federal lawsuit. Today, we delivered a copy of memos from me, the city manager and city attorney discussing this. Feel free to use the following short version if you'd like in response to your inquiries.

The City Manager's Office and City Attorney have reviewed the concerns raised by the Phoenix Law Enforcement Association about Jack Harris's involvement in the federal lawsuit over SB1070. The City Attorney has stated that Jack Harris did not violate any city policies, personnel rules, procedures, ordinances or previous opinions. It is important to note that Jack Harris submitted a declaration in the lawsuit at the request of the US Attorney, as did six other Arizona chiefs of police. A declaration is similar to a deposition, providing information and testimony. The information provided by the public safety manager gave information on the impacts of the law on the operations of the police department, not a position on the law itself. The public safety manager has the authority to describe and discuss the operations of the police department. The law will be enforced.

Jack Harris and the Phoenix Police Department will enforce this and other state laws and are making full preparation for officers to enforce the law when it takes effect. Significant training resources are being expended right now to prepare Phoenix Police officers for the implementation of the law. The new operations order, issued by the chief, details how the law will be enforced and begins with the following statement: "The Phoenix Police Department shall conduct all immigration enforcement activities in a manner consistent with Federal and State laws regulating immigration and protecting civil rights, privileges and immunities of all persons."

If you have any further questions, please let me know.

Thanks,
Ed

Phoenix Ed Zuercher
 **Assistant City Manager**
602-262-7915 (office)
602-261-8327 (fax)
2009 ed.zuercher@phoenix.gov



Ed Zuercher/MGR/PHX

07/19/2010 05:39 PM

To Judy Lorch/PCC/PHX@PHXENT, Sarah
Dobbins/PCC/PHX@PHXENT, Alma
Hernandez/PCC/PHX@PHXENT, Greg
cc David Cavazos/MGR/PHX@PHXENT, Dave
Harvey/MGR/PHX@PHXENT

bcc

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The City Manager's Office and City Attorney have reviewed the concerns raised by the Phoenix Law Enforcement Association about Jack Harris's involvement in the federal lawsuit over SB1070. The City Attorney has stated that Jack Harris did not violate any city policies, personnel rules, procedures, ordinances or previous opinions. It is important to note that Jack Harris submitted a declaration in the lawsuit at the request of the US Attorney, as did six other Arizona chiefs of police. A declaration is similar to a deposition, providing information and testimony. The information provided by the public safety manager gave information on the impacts of the law on the operations of the police department, not a position on the law itself. The public safety manager has the authority to describe and discuss the operations of the police department. The law will be enforced.

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If you have any further questions, please let me know.

Thanks,
Ed

Phoenix Ed Zuercher
 Assistant City Manager
602-262-7915 (office)
602-261-8327 (fax)
2009 ed.zuercher@phoenix.gov



City of Phoenix

To: David Cavazos
City Manager

Date: July 19, 2010

From: Ed Zuercher 
Assistant City Manager

Subject: PUBLIC SAFETY MANAGER PARTICIPATION IN DECLARATION

On July 14, we received a letter from the Phoenix Law Enforcement Association with several questions about the involvement of Public Safety Manager Jack Harris in litigation of the immigration law that goes into effect in Arizona on July 29.

It is important to clarify the record as presented in the letter. First, the City Council has not voted in any manner about litigating the law. More importantly, Jack Harris did not "actively join" a lawsuit nor take a position on the law. He, along with at least six police chiefs in Arizona, submitted a declaration. According to the City Attorney, a declaration is a form of written testimony used to present evidence in a legal proceeding and it functions in legal proceedings like deposition testimony. The Public Safety Manager was requested by the US Attorney to provide this declaration.

The declaration provides information about potential impacts on the department and individual police officers as well as possible costs and resource allocation concerns. Some of the information contained in the declaration was also contained in a City Council Report presented to the Public Safety and Veterans Issues Subcommittee in June.

The City Attorney reviewed the letter and found the following:

- The declaration provided by Jack Harris does not violate City Attorney Opinion 2010-01 about filing lawsuits.
- The declaration does not violate any city ordinances, personnel policies, department policies, or procedures.

As Public Safety Manager, Jack Harris directs the Phoenix Police Department and is committed to enforcing this and all laws of the state of Arizona. Operations Order 4.48 details immigration enforcement policy and is the policy set forth by Jack Harris for the department. Its opening sentence states: "The Phoenix Police Department shall conduct all immigration enforcement activities in a manner consistent with Federal and State laws regulating immigration and protecting civil rights, privileges and immunities of all persons."

The Phoenix Police Department, under the direction of Jack Harris, is fully training Phoenix police officers in the implementation of this new law. All Phoenix police officers

are receiving training prior to July 29 in the revised operations order, including a 90 minute video produced by Arizona Police Officer Standards and Training board and full briefings by the department's legal team.

I have talked extensively with Public Safety Manager Harris on this issue, before and since the bill has been signed into law. He is fully committed to open communication with the City Manager's Office and the City Council. Chief Harris has not sought publicity in this matter. In fact, he has recently turned down offers to speak publicly about the immigration law.

As the chief of the Phoenix Police Department, the Public Safety Manager is allowed to speak about the operations of the Police Department. The declaration in this issue provides testimony about the impacts of a law on the operations of the Phoenix Police Department. With this information, I am fully confident that Jack Harris has not violated City policies or procedures and has acted appropriately in accordance with his duties as Public Safety Manager.

Attachments:

City Attorney Memo of 7/16/2010

Report to City Council Public Safety and Veterans Issues Subcommittee of June 2010



City of Phoenix

OFFICE OF THE CITY MANAGER

Phoenix 2009



July 19, 2010

Mr. Ken Crane
PLEA Secretary
1102 West Adams Street
Phoenix, Arizona 85007

Dear Ken,

This letter is in response to your July 13, 2010 letter outlining concerns related to Public Safety Manager Jack Harris' declaration on June 25, 2010. City Attorney Gary Verburg's legal opinion is attached to this letter.

Gary Verburg's opinion concludes that no violation of city ordinances or personnel rules has occurred. I have also attached a memo from Ed Zuercher, Assistant City Manager who oversees the Police Department, regarding this issue and the Police Department's plans for SB 1070. I have asked Ed Zuercher to set-up a meeting with you, Mark Spencer, Gary Verburg and me to discuss any follow-up concerns you may have after receiving the attached materials.

I look forward to meeting with the Phoenix Law Enforcement Association at your convenience.

Sincerely,

David Cavazos
City Manager

cc: Governor Jan Brewer
Arizona State Senator Russell Pearce
Mayor Phil Gordon
Vice Mayor Michael Nowakowski
Councilwoman Thelda Williams
Councilwoman Peggy Neely
Councilman Bill Gates
Councilman Tom Simplot
Councilman Claude Mattox
Councilman Sal DiCiccio
Councilman Michael Johnson
Mark Spencer
Ed Zuercher
Gary Verburg
Jack Harris

Enclosures

CITY COUNCIL REPORT

TO: Ed Zuercher
Assistant City Manager

FROM: Jack F. Harris
Public Safety Manager

SUBJECT: IMPLEMENTATION OF ARIZONA'S NEW IMMIGRATION LAW – UPDATE
ON TRAINING AND THE COSTS OF IMPLEMENTATION

The purpose of this report is to provide updated information to the Public Safety and Veterans Subcommittee regarding the Police Department's efforts to prepare for enforcing Arizona's new immigration law when it goes into effect on July 29.

THE ISSUE

On Friday, April 23, 2010, Arizona Governor Jan Brewer signed Senate Bill 1070 into law. On Friday, April 30, 2010, Governor Brewer signed House Bill 2162 into law, a trailer bill which clarifies the state's position that the new law will not allow racial profiling. In conjunction with these bills, Governor Brewer issued Executive Order 2010-09 which stipulates, among other things, that the Arizona Peace Officer Standards and Training Board (Board) shall prescribe a minimum course of training for law enforcement officers in the state to implement Senate Bill 1070.

OTHER INFORMATION

The Arizona Peace Officer Standards and Training Board established a committee with representation from several law enforcement agencies that is charged with interpreting the statute and assisting the Board with the development of a training protocol for all peace officers in the state. Independent of this committee, the Police Department established an Immigration Steering Committee which meets weekly and whose members are focused on the development of policy, requisite training, and community outreach. The Steering Committee will ensure all sworn personnel are equipped with the tools necessary to effectively enforce the law.

The AZ POST Board plans to have uniform training standards developed by June 30, 2010. This training will be distributed to all statewide law enforcement agencies in a digital media format along with corresponding support documentation that agencies can print and distribute to their personnel. The Police Department has identified supervisors in all bureaus and precincts that will deliver the established training to sworn personnel prior to the bill's implementation date on July 29, 2010. A four hour train-the-trainer session has been scheduled for July 7, 2010, with department wide training following immediately thereafter.

In anticipation of the bill's implementation, the Police Department has taken the extra step of releasing a "six minute briefing" training focusing on reasonable suspicion and probable

cause. This training will serve as a refresher for all departmental employees prior to receiving the immigration training.

Estimated Costs

At its May 25, 2010 meeting, the Public Safety and Veterans Subcommittee requested estimated costs for enforcing the new law. Since the training guidelines have yet to be released, it is difficult to estimate the associated cost of training department personnel. Similarly, we can anticipate some increase in the cost of booking additional subjects under the provisions of this legislation. However, we do not have estimates on how many additional bookings we will encounter.

During calendar year 2009, 45,426 adult arrests/bookings by the Phoenix Police Department were recorded by the Maricopa County Sheriff's Office (MCSO). We do not pay for felony bookings, but we do pay an initial booking fee of \$192.26 and a housing fee of \$71.66 per day for misdemeanors. Using these rates, every additional 1,000 arrests will cost the city \$192,260 for the initial booking alone.

Federal Immigration and Customs Enforcement Training

The Public Safety and Veterans Subcommittee also asked for additional information on federal 287(g) training. The 287(g) program trains local officers to enforce immigration law pursuant to a Memorandum of Agreement (MOA), as authorized through section 287(g) of the Immigration and Nationality Act. Immigration and Customs Enforcement (ICE) provides the training instruction and related materials, but local law enforcement agencies are required to pay their officers' salaries. The training is four weeks long and is conducted by certified instructors at the Federal Law Enforcement Training Center (FLETC) ICE Academy (ICEA) in Charleston, South Carolina.

The Police Department's MOA was signed on March 10, 2008. Nine members of the Department have completed the training and are 287(g) certified. Per the MOA, ICE has the option to stop paying for the training at any time. Police Department staff met with federal officials during the week of June 14, 2010 to begin discussing the potential implications of the new Arizona immigration law on the 287(g) program. Follow-up information will be provided at the Public Safety and Veterans Subcommittee meeting.

RECOMMENDATION

This report is for informational purposes only.



PHOENIX LAW ENFORCEMENT ASSOCIATION

The Professional Association of Phoenix Police Officers Since 1975

RECEIVED

AUG - 3 2010

July 30, 2010

Mr. Ed Zuercher, Assistant City Manager
City of Phoenix
200 W. Washington St.
Phoenix AZ, 85003

Dear Ed,

On July 13, 2010, a letter was sent from PLEA to your office expressing concerns regarding Chief Jack Harris' actions with regard to filing a declaration in US District Court expressing his views on and essentially taking a position in opposition to SB-1070.

On July 19, 2010, PLEA received your response stating that City Attorney Gary Verburg had concluded that no violation of city ordinances or personnel rules occurred.

PLEA takes exception to this finding. City of Phoenix Administrative Regulation 2.16 dealing with political activity under the section titled Public Policy states:

"It is the public policy of the City, reflected in this AR, that:

- ***City programs be administered in an unbiased manner and without favoritism for or against any political party or group or any member in order to promote public confidence in government, governmental integrity, and the efficient delivery of governmental services;***
- ***All employees be free from express or implied requirement or any political or other pressure of any kind to engage or not engage in any activity permitted by this AR;***
- ***Employees not engage in activities that are inconsistent, incompatible, in conflict with, or are harmful to their duties as City employees."***

Based on the language cited above, it appears that there is a violation of the AR. As stated in our previous communication to you, the City Council came to a consensus that the city not become actively involved in the SB-1070 litigation in essence taking a neutral position on the issue. This was backed up by a legal opinion from the City Attorney stating ***"Only the City Council has the power to authorize the filing of civil actions."***

PLEA is quite cognizant of the fact that Harris did not file a lawsuit and is also very aware of the difference between a lawsuit and a declarative statement. The issue as PLEA sees it is that Harris gave the statement voluntarily and to our knowledge was not under court order to give any

type of statement. By offering up this voluntary statement, without council approval it would appear that Harris did in fact violate that provision of the AR which states that "Employees not engage in activities that are inconsistent, incompatible, in conflict with, or are harmful to their duties as city employees."

While City Attorney Gary Verburg in his written communication to Asst. City Manager Ed Zuercher accuses PLEA of being "confused" over the difference between the filing of a declaration and a lawsuit, it would appear that Mr. Verburg is the one who is confused since PLEA never alleged that Harris filed a lawsuit, nor was this the crux of our complaint. If Harris had been under subpoena there may not be an issue. Based on your response to our first communication we now know there was no subpoena and therefore Harris took it upon himself to voluntarily sign a declaration.

Based on the previous position taken by the City Council, Harris' actions appear to constitute an activity that is inconsistent, incompatible, or in conflict with his duty as a city employee as outlined in AR 2.16, considering that the action clearly runs contrary to the position taken by the City Council.

PLEA understands that the role of a City Attorney is to craft arguments and responses to protect the City from liability. The answer crafted and sent back to us, while artfully done, is nothing more than a smoke and mirrors response to our original complaint letter in that it addresses issues not raised by us and fails to answer the questions we did raise. The response given to PLEA was ludicrous to the point of being insulting.

Our initial letter to you posed five questions. Only one, (no. 5), was answered in an indirect manner. The questions were as follows:

1. Did Chief Harris in filing his declaration in US District Court, act with or without the permission of his superiors in city government?
2. If permission was given, who was it given by?
3. If permission was given, why was it given, based on the previous decision rendered by the City Council as well as the legal opinion issued on May 3, 2010, by City attorney Gary Verburg?
4. Why was a city of Phoenix department head allowed to take an open and public stance on the issue by filing records in US District court which are now public record, when it had been previously determined that no stance would be taken either way without city council approval?
5. What investigative and or disciplinary action if any is being taken against Chief Harris for the filing of this declaration?

PLEA is again requesting a written response addressing the questions listed above.

Based on the inadequate response provided, this communication will also be forwarded to PLEA's attorneys and attorneys from Judicial watch for their review.

Sincerely,



KEN CRANE
PLEA Secretary

cc:

PLEA Attorney Michael Napier
Judicial Watch Legal Counsel Paul Orfanedes
Governor Jan Brewer
Arizona State Senator Russell Pearce
Mayor Phil Gordon
Vice Mayor Michael Nowakowski
City Manager David Cavazos
Councilwoman Thelda Williams
Councilwoman Peggy Neely
Councilman Bill Gates
Councilman Tom Simplot
Councilman Claude Mattox
Councilman Sal DiCiccio
Councilman Michael Johnson



Ed Zuercher/MGR/PHX
08/04/2010 04:07 PM

To kcrane@azplea.com
cc
bcc
Subject Letter

Dear Ken -

I received the letters you sent to me and David, cc:Council, yesterday afternoon about your exceptions to my letter from late July. David and Gary Verburg are on well-deserved vacations, so we will respond to you as soon as they return.

Thanks,
Ed



Phoenix Ed Zuercher
Assistant City Manager
602-262-7915 (office)
602-261-8327 (fax)
ed.zuercher@phoenix.gov