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March 1, 2023

Via Email & By Certified Mail, Return Receipt Requested

Cochise County Board of Supervisors
1415 Melody Lane, Building G
Bisbee, AZ 85603
board@cochise.az.gov

Re: Open Meeting Law Inquiry regarding the Work Session on February 23, 2023, and the Regular Board Meeting on February 28, 2023

Board Members:

On February 23, 2023, the Attorney General's Office sent you a letter regarding complaints the Office received which alleged that the Cochise County Board of Supervisors (the "Board") had violated Arizona's Open Meeting Law.

Since then, other possible violations have come to our attention.

Board Work Session of February 23, 2023

On February 23, 2023, the Board met in a "Work Session." The only posted agenda item stated: "Discussion and direction on election integrity and security, election processes, and possible changes we want to pursue in Cochise County." The agenda also advised: "Work Sessions are a time for County staff to inform and discuss agenda items with the Board of Supervisors and public comments will not be taken."

Despite the limited scope of a Work Session, Supervisor Tom Crosby asked the other supervisors whether there was "consensus" that the Board should vote on issues related to voting machines and whether to instruct the County Recorder to take certain action. The Board's counsel objected several times, advising that it was a violation of the Open Meeting Law to solicit a vote during a Work Session. But Supervisor Crosby continued asking whether there was a "consensus."

Regular Board Meeting of February 28, 2023

On February 28, 2023, the Board met in a publicly noticed meeting. One of the agenda items stated: “Approve Agreement with the Cochise County Recorder (Recorder) for Election Services.” A draft Agreement was posted in connection with that agenda item. But during the Board’s discussion about the Agreement, members referred to different versions of the draft (the “Crosby” version and the “Stevens” version), and members discussed language and “amendments” that did not appear to be reflected in the draft Agreement posted for the public. Supervisor Ann English indicated that the public was not aware of certain amendments that had been made since the draft Agreement was publicly posted.

Under A.R.S. § 28-431.02(H), publicly posted agendas must “list the specific matters to be discussed,” and the Board may not “discuss, consider or make decisions” on other matters. The agenda did not indicate that the Board would consider amendments subsequently made to the posted draft Agreement. And it is not clear when, how, or with whom the referenced amendments were made and the various drafts produced, nor whether those discussions and deliberations should have occurred during a publicly noticed regular meeting.

By March 15, 2023, please provide a written response regarding these events during the Work Session of February 23, 2023, and the regular Board Meeting of February 28, 2023. *See* A.R.S. § 38-431.06(C). By the same deadline, you must respond with any objections to this inquiry or reasons for not complying. Failure to timely respond to this letter may result in the finding of other violations and the imposition of appropriate remedies.

Sincerely,

/s/ Luci D. Davis

Luci D. Davis
Assistant Attorney General
Open Meeting Law Enforcement Team

cc: Brian McIntyre, Cochise County Attorney