



Arizona House of Representatives
Phoenix, Arizona 85007

January 17, 2023

Via hand-delivery and email

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

Re: S.B. 1487 Investigation No. 22-002

Dear Attorney General Mayes:

As you know, on November 16, 2022, I filed a complaint notifying your office that Tucson City Code § 17-52, as amended by Ordinance No. 11959 (adopted Sept. 27, 2022) (“Ordinance”), is contrary to state law. I was pleased to learn that your office agreed, concluding in its final investigative report that the Ordinance is squarely preempted by Ariz. Rev. Stat. §§ 9-500.09 and 41-1491.06(C). It follows from this finding that the Treasurer must withhold from the City of Tucson (“City”) its state shared monies, unless the City repeals the Ordinance within thirty days of the report’s issuance, i.e., by Friday, January 20, 2023. See Ariz. Rev. Stat. § 41-194.01(B)(1). The City refuses to repeal its ordinance and instead has contrived an indefinite “suspension” of the Ordinance—a previously undiscovered legal status that apparently involves neither repeal nor enforcement (but may permit retroactive enforcement if the Ordinance is later readopted or un-suspended).

It has come to my attention that the City is now attempting to exploit recent personnel changes by lobbying your office to repudiate its own well-reasoned, 21-page report and absolve the City from its responsibility to conform to state law. I hope that you will not indulge this cynical and extra-statutory manipulation of the election cycle. The statutory text authorizing your office to conduct investigations of local ordinances is plain and unambiguous: within 30 days of receiving a so-called S.B. 1487 complaint from a legislator, your office “shall make a written report of findings and conclusions.” Ariz. Rev. Stat. § 41-194.01(B). There is no provision to extend the 30-day deadline or to modify reports that have already issued. Rather, if your office finds that the challenged enactment “[v]iolates any provision of state law or the Constitution of Arizona” and the municipality does not cure the violation within thirty days, your office “**shall** . . . [n]otify the state treasurer who **shall** withhold and redistribute state shared monies from the . . . city.” *Id.* § 41-194.01(B)(1) (emphases added).

In other words, the Attorney General must issue **one** report promulgating his or her final conclusions, and it must issue within 30 days of the complaint.¹ “In Arizona, the Attorney General has no inherent or

¹ Indeed, your own website designates its investigation in this matter as “closed,” and confirms that your office rendered a “final disposition” that the Ordinance “violates state law.” See <https://www.azag.gov/complaints/sb1487-investigations> (last accessed Jan. 16, 2023 at 9:24 a.m.).

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common law authority,” and any asserted authority to undertake any particular action “must be found in statute.” *State ex rel. Brnovich v. Arizona Bd. of Regents*, 250 Ariz. 127, 130, ¶ 8 (2020). There is no statutory mechanism for a municipality to pursue an internal appeal or motion for reconsideration within the Attorney General’s office, and the Legislature has not empowered the Attorney General to withdraw, abrogate or nullify his or her own binding dispositions under Ariz. Rev. Stat. § 41-194.01.

Consistency and predictability are cornerstones of the rule of law. While the political preferences and policy priorities of the Attorney General may vary with the occupant of the office, the laws that she or he is charged with enforcing endure. The Arizona Attorney General—an office that is distinct from and that transcends you as an individual or political actor—has made a final, formal and binding determination that the Ordinance is contrary to state law. It follows that, unless the City repeals the Ordinance by January 20, 2023, your office “shall” notify the Treasurer to withhold state shared revenues. Ariz. Rev. Stat. § 41-194.01(B)(1)(a).

I trust that you will timely, fully and impartially discharge this critical responsibility.

Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ben Toma', with a long horizontal flourish extending to the right.

Ben Toma
Speaker of the Arizona House of Representatives