



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>INVESTIGATIVE REPORT</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>September 20, 2023</p>	<p>No. 23-003</p> <p>Re: Whether Phoenix Ordinance S-50010 providing for the donation of firearms to Ukraine violates state law</p>
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To: The Honorable Katie Hobbs, Governor of Arizona  
The Honorable Warren Petersen, President of the Arizona State Senate  
The Honorable Ben Toma, Speaker of the Arizona House of Representatives  
The Honorable Quang Nguyen, Member of the Arizona Legislature  
The Honorable Selina Bliss, Member of the Arizona Legislature  
The Honorable Adrian Fontes, Secretary of State of Arizona

**I. Summary**

Pursuant to A.R.S. § 41-194.01, the Attorney General's Office (the "Office") has investigated whether Phoenix Ordinance S-50010 (the "Ordinance") violates A.R.S. §§ 12-943, 12-945, and/or 13-3108. The Ordinance, adopted June 28, 2023, authorized the City of Phoenix ("Phoenix" or "City") to donate approximately 500-600 unclaimed firearms to the National Police of Ukraine via a private export company. The Office concludes that notwithstanding the City's commendable intent, the Ordinance violates A.R.S. §§ 12-943, 12-945, and 13-3108(A).

The Arizona legislature declared over twenty years ago that it considered firearms regulation a matter of statewide concern and that it wished to limit the ability of state political subdivisions to regulate firearms. As relevant here, the legislature subsequently enacted A.R.S. § 12-945(B), which provides that local agencies must dispose of unclaimed firearms by selling them

in a two-step process; A.R.S. § 13-3108(A), which prohibits cities from enacting firearms ordinances unless pursuant to state law; and A.R.S. § 12-943, which provides that cities must dispose of firearms in accordance with A.R.S. §§ 12-940 to -945.

In 2017, the Arizona Supreme Court considered whether a Tucson ordinance providing for the destruction of firearms could coexist with an Arizona statute barring firearms destruction. *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017) (“*Tucson*”). The Court held that firearms regulation is a matter of statewide concern, thereby precluding cities from enacting firearms ordinances that conflict with state law. *Id.* at 601, ¶ 51. That decision is controlling here. Arizona law requires cities to dispose of unclaimed firearms by selling them in the manner provided by statute, yet the Ordinance provides for Phoenix to dispose of its unclaimed firearms by donating them to Ukraine via an export company. Because a “donation” is not a “sale”—and because the Ordinance conflicts with A.R.S. § 12-945 in other related respects—it violates that statute, and therefore also violates A.R.S. § 13-3108(A) and A.R.S. § 12-943.

## **II. Nature of the Office’s investigation**

Arizona law provides that “[a]t the request of one or more members of the legislature, the attorney general shall investigate any ordinance . . . or other official action adopted or taken by the governing body of a . . . city . . . that the member alleges violates state law or the Constitution of Arizona.” A.R.S. § 41-194.01(A). Upon completing its investigation, the Office must “make a written report of findings and conclusions” determining that the challenged ordinance “[v]iolates” state law or the Arizona Constitution, “[m]ay violate” state law or the Constitution, or “[d]oes not violate” state law or the Constitution. *Id.* at § 41-194.01(B).

On August 21, 2023, Representatives Quang Nguyen and Selina Bliss requested that the Office investigate whether Phoenix’s Ordinance violates A.R.S. §§ 12-943, 12-945, and/or 13-

3108.<sup>1</sup> In accordance with its statutory duty, the Office undertook an investigation in which it analyzed the Ordinance, the City’s contract with exporter D.T. Gruelle, controlling Arizona statutes and case law, and correspondence between the City and Representatives Nguyen and Bliss.

### **III. Background and factual findings**

#### **A. Phoenix passes an ordinance authorizing the City to donate firearms to Ukraine through an export company.**

On June 28, 2023, the Phoenix City Council approved the Ordinance, which provides for the City to donate unclaimed firearms to Ukraine, as follows:

The City has selected approximately 500-600 unclaimed firearms to transfer through [D.T.] Gruelle, a private company which provides export and import services. Gruelle will transfer [the firearms] to the National Police of Ukraine. Only 9mm, 45mm, 39mm and 12-gauge firearms will be sent. Firearms are unclaimed when there has been no owner contact after a thirty-day notice, in which case the City can dispose of them.

Ordinance S-50010 (June 28, 2023).<sup>2</sup> The Ordinance authorized the Phoenix City Manager or his designee to execute a contract with Gruelle to effect the donation. (*Id.*)

#### **B. Two legislators contend that the Ordinance violates Arizona law.**

Representatives Nguyen and Bliss challenged the Ordinance’s legality in a July 3, 2023 letter to Phoenix Mayor Kate Gallego and the Phoenix City Council. (7/3/23 Q. Nguyen and S. Bliss letter.<sup>3</sup>) Characterizing the Ordinance as “plainly unlawful,” the legislators alleged that, under A.R.S. § 12-945, “[u]nclaimed firearms may *only* be sold—not donated—and the buyer

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<sup>1</sup> Available at <https://www.azag.gov/sites/default/files/docs/complaints/sb1487/23-003/Letter%20Requesting%201487%20Investigation%20-%20Phoenix%208.21.23.pdf>.

<sup>2</sup> Available at <https://apps-secure.phoenix.gov/PublicRecordsSearch/Home/RenderPDF/?id=iRQ5/dn7CmpvHtlacvfjnNQHZalAS3q0WU+B26jCFX4=>. The request for investigation attached the City Council’s report summarizing the Ordinance, not the Ordinance itself. The report is materially identical to the Ordinance. See <https://www.azag.gov/sites/default/files/docs/complaints/sb1487/23-003/Ordinance%20S50010.pdf>.

<sup>3</sup> Available at <https://www.azag.gov/sites/default/files/docs/complaints/sb1487/23003/Letter%20to%20Phx%20City%20Council%207.3.23.pdf>.

must be a ‘business that is authorized to receive and dispose of the firearm under federal and state law and that shall sell the firearm to the public according to federal and state law. . . .’” (*Id.*). The letter also alleged violations of A.R.S. § 13-3108(A) and A.R.S. § 12-943. (*Id.*)

On August 16, the City responded that it “view[ed] this transfer as similar to previous transfers of firearms made to local law enforcement agencies,” such as the “donations ‘of surplus bulletproof vests and armor’ to Ukraine” that former Governor Ducey announced in 2022. (8/16/23 J. Kriegh letter.<sup>4</sup>) The City did not address the alleged statutory violations or otherwise provide legal authority supporting its position.

### **C. Phoenix executes the contract with Gruelle.**

The City executed its contract with Gruelle (the “Agreement”), effective August 4, 2023, in the period after it received the legislators’ July 3 letter and before its August 16 response. While the Ordinance provided that firearms would be transferred to the National Police of Ukraine, the Agreement provides more broadly that Gruelle will transfer the firearms to a Ukrainian nonprofit organization that, through an affiliate, has

the goal of supplying . . . [the] International Defense Fund of Ukraine, the Ukrainian citizens, Ukrainian police forces, and Ukrainian territorial defense forces with goods—including firearms—as a means to defend Ukraine against Russian aggression and the purported war crimes committed by the Russian military forces.

(Agreement at 1.<sup>5</sup>) The Agreement runs for a one-year term (not two years, as stated in the Ordinance) and is terminable at will by either party with thirty-days’ notice.<sup>6</sup> (*Id.* at 7.) The

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<sup>4</sup> Available at <https://www.azag.gov/sites/default/files/docs/complaints/sb1487/23003/City%20Response%20to%20July%203%20letter%20from%20Legislature%20re%20Firearms%20Transfer.pdf>.

<sup>5</sup> Available at <https://www.azag.gov/sites/default/files/docs/complaints/sb1487/23003/City%20of%20Phoenix%20Contract%20with%20Gruelle.pdf>.

<sup>6</sup> Because the Ordinance and Agreement otherwise provide for a single donation, the precise term of the Agreement (whether one year or two years) is immaterial.

Agreement is governed by Arizona law and specifically provides that the firearms transfer is a “donation” for which the City will receive “no monetary value in return.” (*Id.* at 3, 8.)

**D. Phoenix terminates the contract with Gruelle.**

On September 8, the City’s counsel informed the Office that the City intended to terminate the Agreement pursuant to the provision permitting termination on thirty-days’ notice. The City’s counsel also disclosed that the City has already completed the firearms transfer contemplated by the Ordinance and the Agreement.

On September 11, the City terminated the Agreement by written notice and urged the Office to find that this action mooted the investigation. However, because the complaining legislators specifically challenged the Ordinance—and A.R.S. § 41-194.01 provides for the Office to investigate whether “any ordinance” is unlawful—the Office concluded that its investigation had not been mooted.<sup>7</sup> On September 14, the City’s counsel informed the Office that the City would consider whether to repeal the Ordinance at the next Council meeting on September 20. The Office issued this report only after learning that the Ordinance had not successfully been repealed.

**IV. Legal analysis**

**A. Firearms regulation is a matter of statewide concern.**

Under Arizona’s Constitution, any city with a population over 3,500 “may frame a charter for its own government consistent with, and subject to, the Constitution and the laws of the state.”

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<sup>7</sup> Nor, for the same reasons, did the City’s completion of the firearms transfer moot the investigation. However, because A.R.S. § 41-194.01 provides a mechanism only for the Office to encourage state subdivisions to cure ongoing violations—not for the Office to punish past violations—the firearms transfer does not deprive the City of the ability to cure the violation by repealing the ordinance. *See* A.R.S. § 41-194.01(B)(1) (providing that a city may lose funding if it fails to cure a violation within thirty days); *Tucson*, 242 Ariz. at 591-92, ¶¶ 3-5 (analyzing legality of Tucson firearms ordinance without regard for city’s past actions under the ordinance).

Ariz. Const. art. XIII, § 2. Charter cities have “the power to frame [their] own organic law” and are “independent of the state Legislature as to all subjects of strictly local municipal concern.” *City of Tucson v. State*, 229 Ariz. 172, 173-74, ¶¶ 1, 10 (2012) (quotation marks omitted). Whether local law displaces state law therefore hinges “on whether the subject matter is characterized as of statewide or purely local interest.” *Id.* at 176, ¶ 20. But “[t]he concepts of ‘local’ versus ‘statewide’ interest do not have self-evident definitions.” *Id.*

In 2000, the Arizona legislature amended the State’s firearms regulation laws, stating that because “[f]irearms regulation is of statewide concern . . . the legislature intends to limit the ability of any political subdivision of this state to regulate firearms and ammunition.” 2000 Ariz. Sess. Laws, ch. 6, § 4 (2d. Reg. Sess.). Consistent with its policy declaration, the legislature enacted each of the statutes pertinent to this investigation in 2000 or thereafter.<sup>8</sup>

While Arizona courts “respect the legislature’s statements” regarding legislative intent, “whether state law prevails over conflicting charter provisions . . . is a question of constitutional interpretation.” *Tucson*, 242 Ariz. at 598, ¶ 37 (internal quotation marks omitted). In *Tucson*, the Arizona Supreme Court had occasion to provide this constitutional interpretation in relation to competing local and state firearms laws. Section 13-3108(F), enacted in 2013, prohibits the State, its political subdivisions, and its agencies from “facilitat[ing] the destruction of a firearm or purchas[ing] or otherwise acquir[ing] a firearm for the purpose of destroying” it. Notwithstanding this statute, a Tucson ordinance “provide[d] that the City’s police department ‘shall dispose’ of

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<sup>8</sup> See 2000 Ariz. Sess. Laws, ch. 376, § 2 (2d. Reg. Sess.) (amending A.R.S. § 13-3108(A) to provide that political subdivisions generally cannot enact ordinances relating to firearms); 2013 Ariz. Sess. Laws, ch. 145, § 3 (1st Reg. Sess.) (enacting A.R.S. § 12-943 to provide that firearms must be disposed of pursuant to A.R.S. §§ 12-940 to -945); 2012 Ariz. Sess. Laws ch. 173, § 1 (2d Reg. Sess.) and 2013 Ariz. Sess. Laws, ch. 145, § 5 (1st Reg. Sess.) (enacting and amending A.R.S. § 12-945(B) to provide that agencies must generally dispose of unclaimed firearms by selling them to a business that resells them to the public).

unclaimed and forfeited firearms ‘by destroying’ them.” *Tucson*, 242 Ariz. at 597, ¶ 36 (citing Tucson Code § 2-142). Responding to a legislator’s investigation request, Attorney General Brnovich concluded that the Tucson ordinance “may violate” state law and therefore filed a special action in the Supreme Court pursuant to A.R.S. § 41-194.01 to resolve this question. *Id.* at 592, ¶¶ 5-10.

Rejecting Tucson’s argument that its firearms policy was “solely a matter of local concern,” *id.* at 598, ¶ 38, the Supreme Court held that “[r]egulation of firearms, including their preservation or destruction . . . involves the state’s police power and is of statewide concern.” *Id.* at 601, ¶ 51 (quotation marks omitted). Further, “the lack of any evidence of a gun shortage in Tucson” was irrelevant because whether a law is “of statewide or purely local interest” hinges on its “*subject matter*,” not its policy specifics. *Id.* ¶ 52 (internal quotation marks omitted). State law therefore “displace[d] the City’s inconsistent [o]rdinance.” *Id.* at 604, ¶ 65.

The subject matter here—Phoenix’s disposition of unclaimed firearms—falls within the scope of the *Tucson* decision. *Tucson* therefore forecloses any argument that Phoenix’s firearms Ordinance concerns a matter of purely local concern that can survive a conflicting state law.

**B. The Ordinance conflicts with state law and is therefore unlawful.**

The Phoenix Ordinance provides for the donation of firearms, not their destruction (as in *Tucson*). While no statute affirmatively bars donations, the Phoenix Ordinance is nonetheless unlawful to the extent it conflicts with state law mandating how cities must dispose of firearms. Representatives Nguyen and Bliss asked the Office to investigate potential violations of A.R.S. §§

12-943, 12-945, and/or 13-3108(A), in particular, and the Office agrees that those are the relevant statutes.<sup>9</sup>

**1. The Ordinance violates A.R.S. § 12-945.**

Section 12-945(B) provides that an agency in possession of an unclaimed firearm “shall sell the firearm to any business that is authorized to receive and dispose of the firearm under federal and state law and that shall sell the firearm to the public according to federal and state law, unless the firearm is otherwise prohibited from being sold under federal and state law.” And then the proceeds from the sale of the unclaimed property “shall be paid to the general fund of the jurisdiction from which the unclaimed property was received.” A.R.S. § 12-945(A).

Phoenix’s Ordinance violates these provisions because it provides for unclaimed firearms to be donated to Ukrainian citizens and law enforcement via Gruelle, not sold to a business that will then sell the firearms to the public.

Notwithstanding the apparently obvious facial conflict between the Ordinance and A.R.S. § 12-945, the Office carefully considered whether there is any colorable basis to argue that they may be harmonized. In this regard, the Office observes that the terms “sell” and “public” are not statutorily defined, inviting scrutiny of whether the Ordinance (as supplemented by the Agreement) might conceivably fall within the ambit of these terms.

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<sup>9</sup> The investigation request letter also references A.R.S. § 13-3108(H), which provides that “[a]ny ordinance . . . that is enacted by a political subdivision in violation of this section is invalid and subject to a permanent injunction against the political subdivision from enforcing the ordinance . . . .” While this provision establishes potential consequences arising from an unlawful ordinance, it does not appear to be a provision that can itself be independently violated. Because issuing an injunction is outside the scope of the Office’s authority under A.R.S. § 41-194.01, the Office makes no finding about the application of this provision.



One dictionary definition of the word “sell” is “to give up (property) to another for *something of value* (such as money).”<sup>10</sup> While Phoenix receives no monetary value for the firearms, it arguably receives consideration—i.e., something of value—in the form of Gruelle’s collection, storage, and transport of them, as well as Gruelle’s agreement to broadly indemnify the City in the transaction. (Agreement at 3, 6.) Additionally, the Agreement provides for the parties to be bound by Arizona law, specifically including article 7 of the Uniform Commercial Code (“U.C.C.”) (*id.* at 7), which establishes remedies for “buyers” and “sellers.” *See* A.R.S. §§ 47-2701 to -2725. Phoenix may therefore have a nonfrivolous argument that its “donation” could fall within the broadest conception of a “sale.” Likewise, dictionary definitions of the term “public” include “the people as a whole,” “the people constituting a community, state, or nation,” and “a particular group of people with a common interest, aim, etc.”<sup>11</sup> Under these definitions, members of Ukrainian law enforcement—and just about any other group anywhere in the world—might be considered members of the “public.”

Although these arguments might be nonfrivolous, they are not meritorious. The starting point for statutory construction is that courts “will give words their plain meaning unless it is impossible to do so or absurd consequences will result.” *Marsoner v. Pima Cnty.*, 166 Ariz. 486, 488 (1991). The natural, plain English understanding of the terms “sell” and “sale” does not encompass a donation, and this plain meaning invites no absurdity. Further, the U.C.C. defines “sale” as the “passing of title from the seller to the buyer *for a price*,” and the U.C.C. applies to transactions only when there is “sale of goods.” A.R.S. § 47-2106(A) (emphasis added). Although

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<sup>10</sup> *See* Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/sell> (emphasis added).

<sup>11</sup> *See* Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/public>; Dictionary.com, available at <https://www.dictionary.com/browse/public>.

the parties' incorporation of U.C.C. remedies provisions into the Agreement might at first seem marginally helpful to the City, it can more readily be understood as an acknowledgment that the U.C.C. does not otherwise apply because there is no sale.

Section 12-945(B), moreover, contemplates *two* levels of sales. The firearms must be sold to a “business that is authorized to receive and dispose of” them, and then that business must sell them “to the public according to federal and state law.” A.R.S. § 12-945(B). If it is a stretch to characterize the City’s transfer to Gruelle as a sale, it is a larger leap to apply this characterization to the subsequent donations to a Ukrainian nonprofit organization, Ukrainian citizens, and law enforcement. These non-monetary transfers and donations are also contrary to the requirement that “proceeds” from the sale of unclaimed property must be paid to the general fund. A.R.S. § 12-945(A).<sup>12</sup>

Similarly, reading the term “public” to encompass any group anywhere in the world renders the term essentially meaningless, violating the principle that courts must “try to give meaning to each word, phrase, clause and sentence so that no part of the legislation will be void, inert or trivial.” *Cleckner v. Arizona Dep’t of Health Servs.*, 246 Ariz. 40, 43, ¶ 9 (App. 2019). An interpretation so expansive that it would encompass transfer of the firearms exclusively within a foreign country is also inconsistent with the requirement that they must be sold in accordance with “state and federal law.”

Separately, the Office cannot credit the City’s suggestion that its donation is materially similar to Arizona’s “donations ‘of surplus bulletproof vests and armor’ to Ukraine in 2022.”

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<sup>12</sup> Although subsection B begins, “Notwithstanding subsection A of this section . . .,” the plain and logical import of this clause is that subsection B prescribes a specific procedure for selling firearms (as distinguished from other types of property governed by subsection A)—not that it exempts proceeds from the sale of firearms from payment into the general fund.

(8/16/23 J. Kriegh letter.) While the laudable intent may be similar, “[i]t is not a defense that the political subdivision was acting in good faith.” A.R.S. § 13-3108(H). And even if the nature of the goods involved bears some similarity, the transactions differ materially in substance. As the City has acknowledged, the 2022 donation was comprised of “surplus” protective equipment, not unclaimed firearms. (See 8/16/23 J. Kriegh letter.<sup>13</sup>) And it was carried out at the state level, not by a city. The State’s 2022 donation therefore has no precedential or other bearing on whether the Ordinance violates Arizona law.

**2. The Ordinance also violates A.R.S. §§ 12-943 and 13-3108(A).**

Political subdivisions in Arizona may “not enact any ordinance . . . relating to the transportation, possession . . . sale, transfer, purchase, acquisition, . . . [or] gift . . . of firearms” unless the ordinance is enacted and enforced “pursuant to state law.” A.R.S. § 13-3108(A), (G). And unclaimed property “that is in the possession of a state, county, city or town agency may only be disposed of pursuant to [A.R.S. §§ 12-940 to -945].” A.R.S. § 12-943.

Because the Ordinance provides for the transfer and donation of firearms to Ukraine in violation of A.R.S. § 12-945, it also necessarily violates A.R.S. § 13-3108(A)’s requirement that ordinances be enacted “pursuant to state law” and A.R.S. § 12-943’s requirement that cities dispose of unclaimed property in accordance with A.R.S. §§ 12-940 to -945.

**V. Conclusion**

The Office concludes that the Ordinance **violates** A.R.S. §§ 12-945, 12-943, and 13-3108(A). Pursuant to A.R.S. § 41-194.01(B)(1), the Office will therefore provide notice to the City by certified mail that it has thirty days to resolve the violation.

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<sup>13</sup> See also “Ducey: Arizona Sending surplus military equipment to Ukraine,” Associated Press - AZCentral.com (April 1, 2022), available at <https://www.azcentral.com/story/news/local/arizona/2022/04/01/ducey-arizona-sending-surplus-military-equipment-ukraine/7245507001/>.

While the Office believes that controlling legal authorities compel this conclusion, this report should not be construed as a rebuke of the public spirit underlying the City's desire to aid Ukraine or as an endorsement of the policy underlying Arizona's firearms disposition statutes. Nor should it discourage future support and donations to Ukraine or elsewhere that can be carried out in compliance with Arizona law.

Kris Mayes  
Attorney General