

**MINUTES**  
**LEAGUE OF ARIZONA CITIES AND TOWNS**  
**EXECUTIVE COMMITTEE MEETING**

Thursday, September 10, 2020

Zoom

**MEMBERS**

**President**

Cathy Carlat, Mayor, Peoria

**Vice President**

Douglas Nicholls, Mayor, Yuma

**Treasurer**

Greg Mengarelli, Mayor, Prescott

Tom Brady, Mayor, Bullhead City  
Craig McFarland, Mayor, Casa Grande  
Kevin Hartke, Mayor, Chandler  
Doug Von Gausig, Mayor, Clarkdale  
Coral Evans, Mayor, Flagstaff  
Jerry Weiers, Mayor, Glendale  
Georgia Lord, Mayor, Goodyear  
Thomas L. Schoaf, Mayor, Litchfield Park  
Ed Honea, Mayor, Marana  
Christian Price, Mayor, Maricopa

John Giles, Mayor, Mesa  
Kate Gallego, Mayor, Phoenix  
Gail Barney, Mayor, Queen Creek  
W.J. "Jim" Lane, Mayor, Scottsdale\*  
Sandy Moriarty, Mayor, Sedona  
Daryl Seymore, Mayor, Show Low  
Rick Mueller, Mayor, Sierra Vista  
Bob Rivera, Mayor, Thatcher  
Anna Tovar, Mayor, Tolleson  
Regina Romero, Mayor, Tucson

\*not in attendance

President Cathy Carlat called the meeting to order at 10:03 a.m. She then led the Executive Committee in the Pledge of Allegiance.

President Cathy Carlat congratulated Mayor Doug Nicholls who is now the Vice President and Mayor Greg Mengarelli who is now the Treasurer. Additionally, President Carlat congratulated the Executive Committee members who were reappointed, Mayor Craig McFarland, Mayor Kevin Hartke, Mayor Doug Von Gausig, Mayor Coral Evans, Mayor Jerry Weiers, Mayor Jim Lane, Mayor Anna Tovar and Mayor Regina Romero. Finally, she welcomed Mayor Kate Gallego as the newest member of the Executive Committee. President Carlat also recognized Mayor Von Gausig for long tenure on the executive committee.

Mayor Doug Von Gausig gave words of appreciation regarding his service on the executive committee with the League.

**1. REVIEW AND ADOPTION OF MINUTES**

President Cathy Carlat requested a motion on the adoption of the minutes. Mayor Craig McFarland moved to approve the minutes of the May 29, 2020 Executive Committee Meeting; Mayor Kevin Hartke seconded the motion and it carried unanimously.

## **2. STATE AND FEDERAL LEGISLATIVE UPDATE**

League President Cathy Carlat welcomed League Legislative Director Nick Ponder to provide the legislative policy update.

Legislative Director Nick Ponder let the Executive Committee know that the biggest question moving into 2021 is what the legislature will look like following the November 3 election. In general the Republicans will be defending a number of seats this legislative cycle in both the House and Senate. The House Republicans have the potential of one pick-up in district four; the House Democrats have the ambition of multiple pick-ups, in districts six, 20, and 21, needing two pick-ups in the three districts to take majority. In the Senate, Democrats also have several potential pick-ups that the Republicans are defending.

Next year the legislative focus from the League's Resolutions Committee will be: newspaper publications with respects to paper being printed and published in municipalities; low income housing tax credits; blight, which was a resolution last year, and short-term rentals, for a total of six items. Although these six items will be the main focus, many different issues will be addressed in 2021, one major issue being policing. Federally, Republicans are trying to receive a vote on a new COVID relief bill. Several provision include liability relief, insurance continuation, payroll protecting, postal service support, \$105 billion dollars for back-to-school programs, and an extended deadline when money can be spent from the relief fund.. This bill does not include state or local assistance, payroll tax cut, or stimulus checks.

President Cathy Carlat asked Legislative Director Nick Ponder in regards to policing if there is any precedent with local control and public safety.

Legislative Director Nick Ponder let President Carlat know at the Federal level, they were trying to incentivize certain behavior by directing money to local government. Mr. Ponder will go back through the letter to see if it was mandated at just the state level or also the local level and provide an update in November.

## **3. LEGAL UPDATE**

President Cathy Carlat called upon League General Counsel Christina Estes-Werther to provide a legal update.

General Counsel Christina Estes-Werther reminded the Executive Board of the process of an amicus brief. General Counsel Estes-Werther is contacted by city/town attorneys for a request for the League to weigh in with an amicus brief, which happens at the appellate level. The request is first discussed to make sure it is an issue that would widely affect most cities and towns. Then it is taken over to the amicus committee comprised of city/town attorneys who then review all the materials and make a recommendation to move forward with the amicus or not.

There have been five briefs that have been or will be filed. First, is with the Town of Florence regarding a zoning ordinance. It was filed with the Court of Appeals since they lost at the trial court level. The Town wanted to enforce their zoning ordinance and the trial court dismissed the zoning ordinance and relied instead on information that Florence Copper brought forward. The biggest concern for the League had to do with the attorney fees. Because Florence Copper brought forward tangential documents outside of the zoning process, the court now saw this as a contract issue. This meant that instead of a cap being placed on attorney fees for a statutory amount, the court awarded 1.7

million dollars to Florence Copper, which is a big hit to the Town. When the amicus brief was filed in April, this issue was a large focus because it will have a chilling affect on cities and towns trying to enforce their zoning ordinance. In June oral arguments were heard and now a decision is pending.

Next, is the *State of Arizona v. Arizona Board of Regents*. This has to do with a tuition case that the Attorney General brought against the Board of Regents stating that the tuition rate was unconstitutionally too high. It was dismissed based on a case known as *McFate* from the 1960s. The decision states that it does not allow the Attorney General in absences of specific statutory power to initiate an original proceeding. A petition was filed from the Attorney General with the court to overturn the *McFate* case. The Board of Regents reached out to the League for assistance. The League joined a current amicus being written by the chamber and other groups since we shared the same interests. The concern for the League is that if the Attorney General is not narrowed to the specific statutes of what actions he can bring, it is a 1487 on everything meaning they could bring an action on any city or town for any issue. The brief was filed in March, oral arguments were heard in April, and a decision is pending.

The third amicus brief is *Phoenix v. Brnovich*. This was the 1487 case, which dealt with prop 126; what was really covered when they meant taxes and fees and whether or not state or local government could increase or impose fees on ride shares. The court unanimously said that the Phoenix ordinance was constitutional. The fees are not transactions under that prop 126 provision because the fees were not based on the transaction between rider and driver but instead on using the airport property for commercial purpose. This will be helpful going forward on constructing user fees. They touched briefly on the bond issue, which they did not rule as unconstitutional but said they would not enforce it until the legislature makes some changes. Lastly, the attorney fees issue with this case, \$372,000 were the attorney fees incurred and the Attorney General objected to this amount because the rates were too high and said that any pre-litigation costs in this case should not be considered, which was concerning. But, the court came back and said it was standard to include the pre-litigation costs and the Attorney General did not include any evidence of the rates being too high so, they got the full amount which the Attorney General will be paying to the city.

The next two cases have not yet been filed and are pending. The first is *Schires v. Carlat*, which has been going on for several years. The City of Peoria was sued by Goldwater, alleging that the development economic agreement violated the gift clause. There are two factors to determine violation of a gift clause, the first is seeing if there is public purpose and second if there is adequate consideration. Goldwater wants to prevent the public body from being able to determine public purpose and the League is argue against it. Also, for the consideration aspect, Goldwater feels there is zero consideration for economic development, which is being argued against as well. An amicus brief had been filed with the court of appeals where the City of Peoria won in January but Goldwater has filed a Petition for Review with the Supreme Court. If the Petition is granted another amicus brief will be filed.

The fifth amicus brief to review is *Humphrey v. State of Arizona*, which has been going on for over a decade. This has to do with a fatal car crash when a vehicle crossed the median on the I-10. The League's involvement has to do with the notice of claim provision. The plaintiff filed a claim within the six-month period but never filed the actual lawsuit. A couple years later they filed a new notice of claim to try and trigger the process again. The League highlights several problems with this such as retention schedules, turnover of municipal staff and availability of resources. The court agreed that the notice of claim by the plaintiff was deficient and threw out the case. On July 1 the plaintiffs have filed a petition with the Supreme Court. If the Supreme Court does accept, an amicus brief will be filed.

President Cathy Carlat asked if the award of \$372,000 in attorney fees on the 1487 case would be a deterrent in the future.

General Counsel Christina Estes-Werther said that it could be going forward but hopes that because of the decision the Attorney General in the future will take a step back.

#### **4. UPCOMING ELECTION**

President Cathy Carlat invited League General Counsel Christina Estes-Werther to provide a review of ballot measures in the upcoming election.

General Counsel Christina Estes-Werther let the Executive Board know she will start with the Smart and Safe Arizona Act, Prop 207, which has to do with recreational marijuana. Generally this act permits anyone 21 years or older to transport, use, possess, and cultivate marijuana one ounce or less without penalty. Additionally, a resident can have up to six marijuana plants. Marijuana cannot be consumed in public places and if anyone is impaired, the individual may still be subject to violations, but most penalties have been dropped and it is now a petty offense. Marijuana establishments can be created, which are licensed by the Department of Health Services, DHS. The marijuana testing facility is the DHS itself testing the potency of marijuana and for any harmful substances. The marijuana establishments and testing facilities are regulated by cities and towns through zoning. These regulations include specific areas where they can be built, the number of facilities, as well as the option to outright prohibit them. They can regulate the time and place of these and prohibit delivery in the jurisdiction. The delivery will be prohibited until DHS establishes rules. A city or town cannot prohibit transportation of marijuana on public roads or enact an ordinance that is more restrictive. There are also provisions that employers still have rights to maintain a drug free work place. The state licensing will accept applications starting January of next year. DHS cannot establish more than one license per ten facilities. Expungement is also a provision in the act. If someone has on his or her record something that is now lawful they can have it expunged or set aside. The Department of Revenue will be able to collect a 16% excise tax on all marijuana products sold to consumers by establishment. A city or town cannot collect additional taxes on top of that. 31.4% will go to public safety and 25.4% will go to HURF.

Mayor Coral Evans asked if they have clearly defined what a reasonable standard is for cities and towns.

General Counsel Christina Estes-Werther answered that it has not yet been clearly defined. Right now it is looked at how cities and towns regulate medical marijuana for guidance and it cannot be more restrictive than that. Currently, an attorney work group is drafting a model city ordinance to help with this guidance and the draft will be sent out in the upcoming months.

Mayor Coral Evans also stated in Arizona you cannot expunge anything, only set aside and asked how the previous charges will get expunged as stated in the act and if it is a process people will have to go through or if it is automatic.

General Counsel Christina Estes-Werther agreed that yes, it will be a process and some of the money in this new fund will go to non-profits to help people go through this process. Ms. Estes-Werther is not sure if the court is going to look at this as a new process and now allow expungements or fit it into current standards and do set asides.

Mayor Craig McFarland asked if the tax portion of 16% allows for sales tax on top of that.

General Counsel Christina Estes-Werther said that cities and towns cannot charge an additional tax on the sale of marijuana or the products in addition to what the department is doing but it is tangible personal property subject to the TPT.

Tax Policy Analyst Lee Grafstrom added that the retail rate will still apply but you cannot create a higher rate for marijuana than the retail rate. But if your retail rate increases than it will also increase for the sales of marijuana.

Invest for Ed is the second proposition, Prop 208. This is providing funding to advance public education by establishing a 3.5% surplus on taxable income in excess of \$250,000 in a taxable year for a single or filing separately or excess of \$500,000 filing jointly. These are deposited into a new Student Support and Safety Fund. These are then distributed by grants for teacher and classroom support as well as career training and workforce. Additionally, funds would go towards the Arizona Teacher Academy in the form of scholarships.

When asked if the Proposition will pass, Legislative Director Nick Ponder added that the polling that the League has heard of up to this point is that it is likely to pass.

President Cathy Carlat asked that if these funds coming in would not have limitations that currently guide schools policies.

General Counsel Christina Estes-Werther agreed and said the funds are not going to be considered local revenues, which currently provide the limitations.

Mayor Ed Honea said that the amount raised from this proposition is not enough.

Nick Ponder answered that there is commentary out there that this isn't the right way to address the issue, but the League is not going to take any positions.

## **5. EXECUTIVE DIRECTOR EVALUATION**

President Cathy Carlat explained to the Executive Board the new process for this year's League Executive Director evaluation. This survey will focus on leadership qualities and the League's operations. The survey will be sent out to mayors, managers, the Executive Committee, outside agencies, legislative leadership, and League staff. The survey will be distributed by the Arizona Risk Retention Pool and will be reviewed at November meeting.

Executive Director Tom Belshe mentioned that Legislative Director Nick Ponder had something to add regarding body cameras.

Legislative Director Nick Ponder shared with the Executive Board that the letter the Senate and House Democrats sent to the Governor's office requested all police officers be required to wear body cameras. This is a big budgetary issue for cities and towns if they do try and proceed with that.

Executive Director Tom Belshe let the Executive Board know that there are a number of vacancies that need to be filled on the commission for model city tax code. If there is interest, he requested they reach out to Executive Director Belshe directly.

President Cathy Carlat adjourned the Executive Committee Meeting at 11:06 am.

*C. Thomas Belshe*  
EXECUTIVE DIRECTOR

*Cathy Carlat*  
PRESIDENT