




**ATTORNEY/CLIENT PRIVILEGE
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This is a privileged attorney-client communication and should not be disclosed to persons other than Pima County officials and employees involved in the matter that is the subject of the communication. The privilege is held by Pima County and can be waived only by an official action of the Board of Supervisors.

To: Hon. Sharon Bronson, Chair, Pima County Board of Supervisors

From: Andrew L. Flagg, Chief Civil Deputy County Attorney 

Date: August 17, 2017

Subject: Applicability of Board of Supervisors Policy C 2.1 to Supervisor Miller's Facebook comment

At the request of a constituent, you asked whether Board of Supervisors Policy C 2.1 applies to a recent comment Supervisor Miller made on Facebook (a copy of the request is attached). It is my understanding that Supervisor Miller used her personal Facebook account to comment on a story shared by another Facebook user. The comment—which read “I’m sick and tired of being hit for being white....It is all about making us feel like we need to apologize. I am WHITE-and proud of it! No apologies necessary.”—appears to be an expression of her personal opinion.

While the constituent's question could raise several potential legal issues,¹ in my opinion it is sufficient to answer that Board of Supervisors Policy C 2.1 applies to workplace conduct, and Supervisor Miller's comment was not workplace conduct.

There are several instances of limiting language in the policy demonstrating that it applies only to an employee's conduct in the exercise of County duties. For example, as noted by the constituent, it provides: “*While acting in their official capacities and in the discharge of their duties*, County employees are expected to be professional, respectful, fair, unbiased, honest, civic-minded, service-oriented, and fiscally responsible *at all times*.” (Emphasis added.) Though the constituent

¹For example, the policy refers to “employees.” I do not need to address whether the policy applies to elected officials, though, because even if it does, it would not apply in this instance. Nor do I need to address any potential First Amendment implications.

emphasized the language “at all times,” in context that language refers to “all times” that the person is engaged in County duties. In addition, there are several other examples of limiting language in the policy—“in the conduct of County business,” “behavior in the workplace,” “ethical workplace behavior,” etc.—indicating that the policy applies to workplace conduct.

It is my understanding that Supervisor Miller’s comment was posted on a Saturday from her personal Facebook account. It appears to be an expression of her personal opinion. Therefore, Board of Supervisors Policy C 2.1 does not apply.

cc: Hon. Ally Miller, Pima County Supervisor, District 1
Hon. Ramón Valadez, Pima County Supervisor, District 2
Hon. Steve Christy, Pima County Supervisor, District 4
Hon. Richard Elías, Pima County Supervisor, District 5
C.H. Huckelberry, County Administrator

Andrew Flagg

From: Sharon Bronson <Sharon.Bronson@pima.gov>
Sent: Monday, August 14, 2017 2:16 PM
To: Chuck Huckelberry; Jan Leshner; Mark B. Evans (Communications)
Cc: Andrew Flagg
Subject: Fwd: Supervisor Ally Miller

I believe this requires a response from the county attorney so could we get one thanks

Sent from my iPhone

Begin forwarded message:

From: District3 <District.3@pima.gov>
Date: August 14, 2017 at 12:19:34 PM MST
To: Sharon Bronson <Sharon.Bronson@pima.gov>
Cc: Maria Klucarova <Maria.Klucarova@pima.gov>, Anissa Ramirez <Anissa.Ramirez@pima.gov>
Subject: FW: Supervisor Ally Miller

*Jenn Cabrera
Sr. Special Staff Assistant
District 3
Pima County Supervisor Sharon Bronson
724-8051*

Check out our [Facebook page](#)

From: John Milbauer [<mailto:john.milbauer@yahoo.com>]
Sent: Monday, August 14, 2017 8:52 AM
To: DIST2 <DIST.2@pima.gov>; District3 <District.3@pima.gov>; District4 <District4@pima.gov>; District5 <District5@pima.gov>
Subject: Supervisor Ally Miller

Dear Pima County Supervisors Valadez, Bronson, Christy, and Elias:

Below please find the email I sent yesterday to Supervisor Ally Miller's office regarding her comments on a public Facebook thread in response to the events in Charlottesville over the weekend. I find them to be in violation of Pima County Board of Supervisors Policy C 2.1 (excerpted below) and ask for censure of her activity by the Board. While the offending comment was made from her private Facebook account, it nonetheless reflects poorly on Pima County through her unprofessional, disrespectful, biased, and anti-civic-minded remarks.

I look forward to your responses, in particular regarding the indistinct line between "in their official capacities" and "at all times." How can her public comments not reflect poorly on the county and negatively impact our societal and economic well being? Her remarks betray a pronounced racial bias that is incompatible with the effective supervision of any county, in particular one with a significant non-white population.

Policy: It is the policy of the Board of Supervisors to attain a balance that encourages good conduct through effective leadership, clear and comprehensive standards, education and appropriate enforcement mechanisms. All employees of Pima County shall maintain the highest ethical standards in the conduct of County business and avoid circumstances that may create an appearance of impropriety or cause members of the public to have a negative opinion of the County. **While acting in their official capacities and in the discharge of their duties, County employees are expected to be professional, respectful, fair, unbiased, honest, civic-minded, service-oriented, and fiscally responsible at all times.**

Here is her public comment: "I'm sick and tired of being hit for being white....It is all about making us feel like we need to apologize. I am WHITE - and proud of it! No apologies necessary."

Sincerely,

Dr. John Milbauer
Catalina Foothills
85718

On Sunday, August 13, 2017 10:15 PM, John Milbauer <john.milbauer@yahoo.com> wrote:

I am dismayed by Supervisor Miller's comment with regard to Charlottesville. This was an extraordinarily obtuse and offensive remark from an elected public servant (private FB account notwithstanding), a comment that betrayed an egregious misunderstanding of the gravity of what transpired in Charlottesville, and one that gives one no confidence in her ability to execute any supervisory role in Pima County, a county that according to 2010 Census figures is comprised of more than 30% Latino, 3.5% Asian, 3.5% Black, and 2.5% American Indian inhabitants. If she does not resign, I will do everything I can to ensure that she is not reelected.

I would appreciate a response from Supervisor Miller's office regarding her comment.

Sincerely,

Dr. John Milbauer
Catalina Foothills/Tucson
85718