

Yavapai County Attorney

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SHEILA POLK
Yavapai County Attorney

May 20, 2014

Mingus Union High School District #4
Dr. Paul Tighe, Superintendent
1801 E. Fir St.
Cottonwood, AZ 86326

Re: Agreement for the provision of bus transportation services in declared emergency situations

Dear Superintendent Tighe:

This letter follows preliminary discussions between Yavapai County Emergency Management and the School District regarding an agreement for the provision of school bus transportation services during declared emergencies.

I have been asked by Yavapai County to assist in the drafting and review of the above referenced Agreement (Mutual Aid Agreement or "MAA"), between Yavapai County and the School District. As you may know, the Yavapai County Attorney is authorized by statute to provide legal advice to all of the School Districts operating in the County, and periodically does so. I understand that your School District frequently uses independent counsel and I have been informed that the District plans to use independent counsel to review the proposed agreement with the County. Nevertheless, by statute, the various School Districts are clients of the Yavapai County Attorney.

Like all other attorneys and law offices, the Yavapai County Attorney's Office is subject to the rules of professional conduct which include directives as to when an attorney may provide legal representation to a client, if at all, when that representation may conflict with the current or prior representation of another client. In some circumstances, a lawyer may proceed with representation if all affected parties provide written waivers of the conflict of interest after being informed of the consequences of such a waiver.

Representation of Yavapai County as a party to the above agreement will require the County Attorney's Office to determine, among other things, that the agreement is within the powers and authority granted under the laws of the State of Arizona.

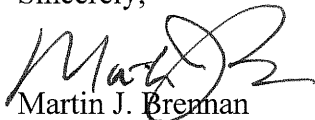
In addition, our office owes a duty of loyalty, confidentiality and advocacy to each client that we represent. Because our office provides legal advice to both parties, there is a risk that we may be limited in our ability to recommend or advocate all possible positions that one party may take, because of a duty of loyalty to the other party. Any such conflict may foreclose alternatives that may otherwise be available to one or both of the parties to the agreement. In fact, there are likely to be issues present in the agreement that are subject to negotiation thru a give and take process of advocating for the rights of one party or the other. In such a situation, one party may want to pursue a term in the agreement that is directly contrary to the interests of the other party. If that type of situation arises, it may be difficult to fulfill a duty of loyalty and advocacy to each client, when both parties to the agreement are identified statutorily as clients. It is even possible that these limitations could force our office to withdraw from representation, if disputes arise regarding the agreement.

Another concern is the waiver of the attorney-client privilege. The proposed agreement could be construed as a common representation agreement to which the attorney-client privilege may not attach.

If you feel you understand the above conflict concerns and are comfortable waiving those conflicts, I ask that you pass an appropriate motion or resolution waving the conflict and sign and return the attached waiver. I will be asking the County Board of Supervisors for a similar waiver. Upon receipt of waivers from both parties, I will review and forward a draft of the proposed agreement for the provision of bus services.

Please feel free to contact me with any questions or concerns.

Sincerely,


Martin J. Brennan
Deputy County Attorney

Enc.

WAIVER OF CONFLICT OF INTEREST

Mingus Union High School District #4, has reviewed the conflict of interest letter dated May 20, 2014, from Deputy County Attorney Martin J. Brennan and fully understands the implications of waiving the conflict of interest of the Yavapai County Attorney's Office between Yavapai County and the School District.

The School District hereby approves the waiver of the conflict of interest and authorizes the Yavapai County Attorney's Office to proceed with the proposed agreement between Yavapai County and the School District for the provision of bus transportation services in declared emergency situations.

Dated this _____ day of _____, 2014

District Governing Board

By _____
President