



# Yavapai County Attorney

255 East Gurley Street  
Prescott, AZ 86301  
(928) 771-3344 (Criminal & Civil)  
Facsimile (928) 771-3110

**SHEILA POLK**  
Yavapai County Attorney

August 24, 2015

General Mark Brnovich  
Arizona Attorney General  
1275 W. Washington  
Phoenix, AZ 85007

Dear General Brnovich:

I write to request an Attorney General's Opinion on the following questions:

## **I. QUESTIONS PRESENTED**

Question: Does the Yavapai County Board of Supervisors ("BOS") have the authority to withdraw consent for previously approved cartography and property title personnel positions within the County Assessor's office and assign those positions to a newly formed department that reports to the BOS?

Question: Does the BOS usurp the County Assessor's authority in the following situations?

1. By transferring cartography functions previously performed by the County Assessor to a county department that reports to the BOS?
  - a. May the County Assessor rely upon cartography services provided by a county department to fulfill her statutory duties or is the Assessor required to perform her own cartography functions or otherwise supervise those functions?
  - b. Does the assignment of Assessor parcel numbers to parcels of property pursuant to the Arizona Department of Revenue ("ADOR") guidelines by a county department usurp the authority of the County Assessor?
  - c. Does the assignment of tax area codes to parcels of property by a county department usurp the authority of the Assessor?
2. By transferring property title functions previously performed by the County Assessor to a county department that reports to the BOS?

- a. May the County Assessor rely upon property title functions provided by a county department to fulfill her statutory duties or is the Assessor required to perform her own property title functions or otherwise supervise those functions?
  - b. May a county department enter affidavit of value information into the County Assessor's database without usurping the County Assessor's statutory duties when such entry is a verbatim account of the affidavit information?
  - c. Is there a usurpation of authority when affidavit of value information has been interpreted, adjusted or classified by the county department prior to entry into the County Assessor's database? Is there a usurpation if such data entry is done with the input of the County Assessor?
  - d. May a county department that reports to the BOS determine title and ownership of real property parcels or process splits and combination of parcels without usurping the Assessor's statutory duties?
3. If a usurpation of authority has been found in numbers 1 or 2 above, does the County Assessor's ultimate ability to review and override any data entered into the Assessor's database by a county department change the analysis?

## **II. Overview**

The information produced by the county's employees charged with mapping and title services is used by a wide variety of county departments and by the general public. County departments using this information include elected officers such as the County Assessor, School Superintendent, County Treasurer, County Attorney and Sheriff. Other county departments under the direct control of the Board of Supervisors also use the information, such as the County Engineer, Development Services (Planning and Zoning), Public Works and Elections. Special taxing districts under the control of the Board of Supervisors, such as the Yavapai County Flood Control District, several road improvement districts and a sanitary district, use the information as well.

Until recently, the county's mapping functions and services were provided through one of three divisions—the Geographic Information Systems ("GIS") division, the Cartography division and the Title division.

The Geographic Information Systems ("GIS") division was organized under the authority of the Management Information Systems ("MIS") department which reported directly to the Yavapai County Board of Supervisors ("BOS"). The GIS division consisted of four GIS

programmer/analysts whose primary duties were to develop, program, implement and support GIS mapping software applications, industry standard tools and applications, as well as provide some mapping functions, including creation of maps, for use within the county. The GIS division custom programmed tools for particular spatial data needs and maintained and modified the county's ArcMap computer program into which the county's spatial and cadastral data was maintained and accessed.

The other two divisions were Cartography and Title sub-divisions of the County Assessor's office. Much of the data produced by the cartography and title personnel is entered into the County Assessor's RealWare system which is a database interface that collects property information including ownership, valuation data, classification, and taxing jurisdiction data for purposes of preparing the Assessor's assessment roll and aiding the Assessor in the assessment process.

The Cartography division had five cartographers whose primary duties were to perform GIS parcel and cadastral mapping functions and to update or create associated parcel information on the county's GIS parcel layer. This included, among other things, the assignment of Assessor parcel numbers and verifying acreage and ownership. Cartographers reviewed legal descriptions and modified maps to reflect parcel splits and combinations based upon recorded documents. Prior to 1999 the cartography department was under the authority of the MIS department but had been under the Assessor's office since that time.

The Title division consisted of a title examiner and four Assessor clerk positions. The title examiner researched legal titles to determine legal ownership of properties, verified legal descriptions and reviewed and supervised the work of Assessor clerks who processed affidavits of value. The title examiner also worked with the cartographers to ensure compliance with parcel splits, combinations, and meets and bounds.

By law, when real property is sold, the buyer and seller jointly create an affidavit of value which provides details of the sale including sales price. The Assessor clerks in this division worked with affidavits of value by entering the data into the Assessor's RealWare system, assigning codes to sales of property which determined how property was classified for assessment purposes. They also evaluated whether the sale was an arm's length transaction or a commercial sale involving the transfer of other assets in addition to the real property.

Contributions from all three divisions along with data from other county departments and outside sources goes into Yavapai County's GIS system, called ArcMap, to create a comprehensive interactive mapping system. This system tracks multiple layers of information about real property in the County such as Assessor's parcel numbers, ownership, property

boundaries, taxing jurisdictions, political subdivision and judicial district boundaries, geological surveys, aerial imagery and historic imagery, roads, points of interest, game and fish units, municipal and county zoning, flood plains and watersheds, topography, etc. As such, the ArcMap program proved to be a useful tool for a wide variety of county officials, departments, taxing districts and the general public in addition to the Assessor's office.

#### **A. Concerns of the Yavapai County Board of Supervisors**

During the BOS's budgeting study sessions, it was suggested by the MIS director that combining the GIS and Cartography divisions would yield better overall efficiency and be an effective use of county resources, as well as better serve all county departments and residents which used mapping and spatial services. It was also suggested that the GIS division was over-utilized while the cartography division, which was performing similar functions, was under-utilized. The MIS Director also suggested that combining the divisions would result in greater security and control of ArcMap, the mapping software system. The Assessor objected to the proposal to combine the divisions.

Subsequently, at a May 4, 2015 meeting of the BOS, the BOS formally withdrew its consent for the positions staffing Cartography and Title divisions within the Assessor's office. The Board then formally created a separate GIS Department within county government ("GIS Department"), assigned the positions formerly staffed by the GIS, Cartography and Title divisions to the GIS Department, and appointed a director. The new GIS Department has 15 employees including the director who reports to the BOS. There are 53 employees remaining under the direct control of the Assessor.

#### **B. The newly formed GIS Department.**

The staff of the new GIS Department performs all of the tasks that the three independent divisions previously performed. However, it is the position of the GIS Department director that those tasks are now done in a more efficient manner, provide an improved overall product, and allow for one-stop shopping for cartography, spatial data and title as needed by county departments and the public.

The GIS programmer/analysts of the GIS Department continue to perform functions similar to those performed in the previous GIS division, but also are able to collaborate more closely with Cartography and Title personnel now that they are in one department.

The cartographers at the GIS Department enter into the ArcMap software the polygons (parcel boundaries) which represent the legal descriptions in property-related documents

recorded with the County Recorder. They also verify that a previously existing polygon matches a recorded document's legal description. The cartographers input tax area codes for parcels and assign Assessor parcel numbers. This information is entered into the RealWare software.

It should be noted that there is somewhat of a symbiotic relationship between the RealWare and ArcMap software in that each program will import certain information from the other in order to provide complete information about a parcel of property in their respective databases.

The Title personnel at the GIS Department review legal descriptions and chains of title and input data into the ArcMap and RealWare software. The Title personnel also review affidavits of value that are provided by the Recorder and input information from those affidavits into the RealWare system. That information can include title, sales price, title transfers, title validation, classification, splits and subdivisions. Title personnel may send follow-up letters to property owners if there is information on an affidavit of value that needs clarification or may send affidavits of value back to the buyer/seller to be reworked. Title personnel also compare values on the affidavit of values with comparable sales information from such sources as the Multiple Listing Service and online commercial sources such as zillow.com and consult with the Assessor's office on such matters. The affidavits of value are forwarded on to the Assessor.

The director of the GIS Department states that the County Assessor ultimately has final say on assessment, valuation and classification questions and that the Assessor's office is ultimately advised of the final resolution of any questioned property. The GIS Department director also states that the department follows the guidelines produced by the Arizona Department of Revenue ("ADOR") as it relates to any data which may affect the needs of the Assessor.

In addition to the above, the GIS Department enters into the ArcMap software such information as aerial photography which not only produces two-dimensional imagery, but also captures topographical contours. The GIS Department obtains and enters additional data such as imagery from the State of Arizona or commercial vendors. Other county departments also provide data in the form of flood plains, permits, road signage, surveys, and addressing—as each newly built structure is assigned a street address by the county Public Works department. This addressing scheme is then applied to road segments so that, for example, a certain portion of "Main Street" can be associated with building numbers 1001-2000. This information can then be associated with latitude and longitude coordinates to aid in reverse look-ups for cell phone 911 calls.

### **C. Concerns of the County Assessor**

The concerns of the County Assessor are that her personnel, who have been trained to perform cartography and title work for the Assessor, have been removed from her office and assigned to the newly created GIS Department. Furthermore, the Assessor believes the authority of the County Assessor is being usurped because those re-assigned cartography and title personnel are performing tasks that the Assessor believes are closely related to the assessment function and should be performed by personnel under her direction and control. Furthermore, because the Assessor lacks any oversight over the personnel, she feels she cannot rely upon the work they are producing. The Assessor has also expressed concern about the BOS's authority to create a GIS Department.

The Assessor points to the processing of affidavits of value as an area of concern. While the entering of information contained on the affidavit of value may appear to be a ministerial act performed by the GIS Department, the Assessor maintains that there is a degree of "art" and discretion that is associated with the information contained in the affidavits. As an example, a determination needs to be made if the transaction as set out in the affidavit of value is truly an arm's-length transaction and reflective of actual market value or if there is some other component, such as a forced sale or intra-family transfer, which may call into question the true sales price of the transaction.

The Assessor has similar concerns with the GIS Department's input of data from affidavits of value for commercial property whose sales price may contain such things as personal property or good will in addition to the real property and improvements being transferred. The GIS Department also determines the classification (use) of properties such as vacant, owner occupied, commercial, etc., which affects the property's assessed valuation. (*See* A.R.S. §§ 42-12001 et seq. and 42-15001 et seq.) The Assessor maintains interpretation of commercial affidavits of value and determining classification of property require a degree of discretion that should be performed by the Assessor's staff, but are now being done by the GIS Department without full input, according to the Assessor, from the appraisers in the Assessor's department.

The Assessor is also concerned about the titling of property as it affects qualification for certain exemptions depending upon ownership. As an example, a property which has been incorrectly titled in the name of an individual may be ineligible for a tax exemption if it actually is owned by a museum. During the titling process, the GIS Department also enters the tax area code for parcels and assigns Assessor parcel numbers. The GIS Department has also made decisions on whether to include a property within a taxing district.

When such issues have arisen, it appears that the GIS Department has sought or received some input from the Assessor and that input has been followed. However, the level and quality of the communication between the Assessor and the GIS Department differs in the opinions of the Assessor and the GIS Department director.

It should be noted that the Assessor, ultimately has the authority and ability to override any value entered into the RealWare software regardless of which department entered the data. Therefore if the Assessor disagreed with any information entered by the GIS Department, she could ultimately change it. The Assessor ultimately transmits any data derived from affidavits of value to the Arizona Department of Revenue.

Finally, the Assessor is concerned with her ability to certify the assessment roll if she lacks supervisory control over the GIS Department and the accuracy of information that is being entered by the department.

#### **D. General observations and concerns.**

As many county departments rely upon the data in the ArcMap and RealWare programs and the maps produced from that data, it is in the best interests of the county to ensure the accuracy of the information entered into the system. To the extent there are concerns by the Assessor about the trustworthiness of the data, those concerns are faced by all departments. It is therefore incumbent upon the GIS Department to be accurate when entering data as any error would affect more than just the Assessor. Additionally, any errors which may occur in this process are often discovered by the property owners themselves who report them back to county government either directly, by way of applications for exemptions or through the administrative and judicial assessment appeals processes. Additionally, the Assessor is required to make an on-site inspection of each property every four years.

If the remedy to the Assessor's concerns about quality is for the Assessor to have direct control over those employees inputting the cartography and title data, then it raises the issue of whether other elected officials and county departments, who have statutory mapping and title duties, are also required to have direct control over mapping and titling functions for their departments as well. This would result in many redundant cartography and title positions throughout the county and additional expense for the county's taxpayers. To a certain extent, direct control over all mapping, cartography and title information is illusory in that some of the information relied upon for assessment often comes from sources outside of the control the Assessor—such as aerial photography, topography maps, flood plain maps, etc. Even the recorded documents themselves are ultimately directly controlled by the County Recorder and not the County Assessor. Nonetheless, such information is depended upon as being inherently reliable and may be used or referred to in the assessment process. It should also be noted, the

affidavits of value are verified under oath by both the buyer and seller as to the accuracy of the affidavit's information.

On the other hand, there are concerns about the incursions upon the Assessor's purview when the new GIS Department is exercising discretion and judgment in interpreting data that is ultimately entered into the Assessor's RealWare software. There are reasons to argue that such actions could be ministerial in nature and arguments that they are part of the core functions of the Assessor. Such arguments must be considered in the context that the consolidation of GIS services might be somewhat similar to other traditional county consolidated support departments like fleet management, human resources, finance and facilities departments that typically support all of a county's elected officials' offices.

With respect to the Assessor's ability to certify the assessment roll, it should be noted that no statute addresses what exactly is the scope of the Assessor's certification. The assessment roll contains not only real property but also personal property, which is self-identified by the property owner, and centrally valued property, which is assessed by the ADOR, not the County Assessor. As such, it does not appear that certification requires the Assessor's personal knowledge of the assessment of all of the property on the tax roll but the Assessor is required to certify something.

### **III. RELEVANT LEGAL AUTHORITY**

In order to aid in the review of this matter, the following is a comprehensive, but not exhaustive, summary of various statutes and cases which may be relevant to this matter.

#### **A. Overview of the County Assessor's duties and authority as they relate to cartography and title examination.**

The County Assessor has numerous responsibilities which relate to cartography and title examination. Many of them are discussed below.

##### **1. County Assessor responsibilities for identifying property.**

Per A.R.S. § 42-13051 the Assessor has the duty to "identify by diligent inquiry and examination all real property in the county that is subject to taxation." In identifying property pursuant to this section, "the Assessor shall use aerial photography, applicable department of revenue records, building permits and other documentary sources and technology." A.R.S. § 42-13051(C).

Additionally, in compiling a list of property the Assessor may demand a correct report under oath or affirmation of all property in the county that a person, firm, corporation or

association owns, claims or possesses or controls, or merely request that information. A.R.S. § 42-15052(1 & 2). Once such a list is requested, the Assessor is entitled to rely on the list furnished by the taxpayer. *First Interstate Bank of Arizona v. State Dep't of Revenue*, 178 Ariz. 242, 244, 871 P.2d 1178, 1180 (Ariz. Tax Ct. 1994) *aff'd*, 185 Ariz. 433, 916 P.2d 1149 (App.1995). The failure to comply with the Assessor's request may result in further investigation by the Assessor and could result in civil and criminal penalties. A.R.S. §§ 42-15054 and 42-15055.

In identifying property, the Assessor may also examine "maps, drawings, books, invoices and papers and summon witnesses to appear and compel them to provide information. A.R.S. § 42-15052 (3 & 4).

The County Assessor must take the initial step in ascertaining and valuing the assessable property of his county. Indeed, the duty is solely his. *Arizona Copper Co. v. State*, 15 Ariz. 9, 14-15, 137 P.417, 419-420 (1913). However, the lack of a description, a misdescription or irregularity in the description of the property on the assessment roll does not invalidate an assessment if it can be ascertained or proved what property is intended. A.R.S. § 42-1108. That there may some uncertainty in a property valuation is further buttressed by A.R.S. § 42-11053(B) which allows the Arizona Department of Revenue to "estimate valuation" when refused entrance to a property. Moreover, the valuation or classification as approved by the Assessor is presumed to be lawful and correct. A.R.S. § 42-16212.

An Assessor is required to make an on-site inspection and appraise all properties within every four years. A.R.S. § 42-12158. The Assessor is also required to report to the ADOR each parcel of property that has not been appraised during the preceding three years and the reasons for failing to appraise the property. A.R.S. § 42-13003.

The Assessor and her sureties are liable for all taxes on taxable property within the county which, through the neglect of the Assessor, remain unassessed. A.R.S. § 11-543.

Copies of affidavits of value are transmitted by the county recorder to the County Assessor who then must transmit the data contained within the affidavit to the ADOR. A.R.S. § 11-1135. Failing to provide or knowingly falsifying information required to be in the affidavit of value is a class two misdemeanor. A.R.S. § 11-1137.

## **2. Maintenance of maps and cartographic information.**

The ADOR Assessment Procedures Manual, Part 6 - Mapping, Chapter 1- Assessment Mapping and Parceling Standards, states:

As computerized mapping has moved into the mainstream, the sharing of geographic data between all levels of government, and with the public, has enhanced our ability to analyze spatial data. The sharing of this data allows different users to simultaneously and selectively retrieve layers of digital parcel

information to produce maps geared to their specific needs. Sharing can also reduce the duplication of costs and effort.

The County Assessor's principle responsibilities include the location, inventorying and appraisal of all locally assessable property within their jurisdictions. The performance of these important functions requires a complete set of maps. Maps aid in determining the location of property, indicate the size and shape of each parcel, and can spatially reveal geographic relationships that contribute either negatively or positively to appraised values. In addition to the Assessors, many other governmental agencies, the general real estate community and the public rely on accurate maps. Computerized or digital mapping provides an accurate and cost effective method to map tax areas, appraisal maintenance areas and appraisal market areas.

*Id.* at page 6.1.2

Although there are no specific statutes that state that a County Assessor shall be the custodian of maps and cartographic information or shall otherwise exercise supervisory authority over personnel who create and maintain such information, A.R.S. § 42-13002(A)(3) does state that the Arizona Department of Revenue ("ADOR") has the responsibility of assisting the County Assessor in "maintaining uniform maps and records." Additionally, A.R.S. § 42-17257 requires a taxing district to file with the County Assessor information relating to the boundaries of the taxing jurisdiction.

Part 6 of the ADOR Assessment Manual includes the International Association of Assessing Officers "Standard of Digital Cadastral Maps and Unique Parcel Identifiers, July 2003." Those standards describe detailed suggestions on the contents of a digital mapping system to include map layers for assessing jurisdictions, topography, parcel map identifiers and ownership. *Id.* at page 6.1.17-18. The ADOR Assessment Procedure Manual recommends that Assessors should "coordinate mapping efforts with other county agencies." *Id.* at 6.1.19.

The ADOR Assessment Procedure Manual also sets out a scheme for assigning "property identification codes" or "Assessor's parcel numbers" to property and tax area codes and indicates that "the Tax Area Codes are controlled by each County Assessor's mapping section." *Id.* at 6.1.13 through 6.1.16.

The data processing equipment and systems used by the County Assessor may be either prescribed by the ADOR or compatible with the ADOR system. A.R.S. § 42-13004(A). The County Assessor may rely upon a private supplier, another political subdivision or the ADOR to provide equipment or services necessary to meet the requirements of ADOR. A.R.S. § 42-13004 (B & C).

Arizona Revised Statutes § 42-12052(A) states that the Assessor may rely on information from ADOR in determining property that may be rented while classified as class three property owner occupied property. The Assessor also makes use of building permits issued by cities, towns, county and other governmental entities. A.R.S. § 42-15057. Early Arizona case law recognizes that the County Assessor may rely upon information outside of her control in creating the assessment roll.

This [assessment] roll, as it is transmitted to and acted on by the board of supervisors, may be the result of the independent investigations of the Assessor, or suggestions and information given him by third parties, or of a legal order of the board of tax survey, or the state tax commission, or of all three; but the final result itself, however reached, is the assessment roll of the County Assessor, and it is valid as certified by him until it is changed in some legal manner.

*Ogleby v. Chandler*, 37 Ariz. 1,19, 288 P.1034, 1041 (1930) (interpreting Chapter 75 of the Arizona Revised Code of 1928).

### **3. Assessor responsibility for determining title to property.**

The Assessor shall “[d]etermine the names of all persons who own, claim, possess or control the property.” A.R.S. § 42-13051(B)(1). Each year the Assessor is required to attach to the completed assessment roll a cross-index of all property listed on the roll showing ownership of the property. A.R.S. §§ 42-15153(A) and 42-17251.

One benefit of determining ownership of a parcel of property is that each year the Assessor shall notify each owner of record of property that is valued by the Assessor as to the property’s full cash value and limited property value or changes thereto. A.R.S. §§ 42-15101, 42-15105. However, such direct notice is not actually required as property owners are charged with knowledge of the annual assessment, valuation and collection process or have the authority to inquire as to such information. *Seafirst Corp. v. Arizona Dep’t. of Revenue*, 172 Ariz. 54, 58-59, 833 P.2d 725, 729-30 (Ariz. Tax Ct. 1992). *Cf.* A.R.S. § 42-18051 (notice of payment of tax is done by publication by the treasurer and no other demand for taxes is necessary.)

Determination of ownership is not essential for inclusion of a property on the assessment roll. Arizona Revised Statutes § 15152(A) requires all property to be placed on the roll “regardless of ownership or by whom it is claimed.” *See State v. Watts*, 21 Ariz. 93, 1-4-105, 185 P.934, 937-38 (1919) (Assessor may safely assess property where ownership is unknown). *See also* A.R.S. § 42-15054(A) allowing the Assessor to assess property to “unknown owners.”

The Assessor also has other obligations with respect to providing notice or requests for information to a taxpayer or owner, such as A.R.S. § 42-17310 which requires notice to taxpayers claiming a deferral, and A.R.S. § 42-12052(C) which requires notice to owners of property classified as class three property.

The Assessor shall also identify common areas for valuation as required by A.R.S. § 42-13402. However, the identification of such property may be brought to the Assessor's attention by the taxpayer. As a condition for valuation as common area, a subdivider, community or homeowners' association that owns the common area shall provide a copy of the restriction with the County Assessor or may provide a one-time list of common area tracts by parcel number to the Assessor for consolidation purposes. A.R.S. § 42-1304(A & C).

#### **4. Assessor's responsibilities in certifying the assessment roll.**

On December 20<sup>th</sup> of each year, the Assessor is required to deliver to the clerk of the board of supervisors an assessment roll and attach the Assessor's certificate to the roll with a cross-index of all property listed in the roll, showing the ownership of the property and all assessment lists from which the roll was compiled. A.R.S. § 42-15153(A).

Neither the legislature nor ADOR has prescribed what exactly the Assessor is to certify. However, early Arizona case law seems to suggest that such certification may be as minimal as certifying that "this is the Assessor's assessment roll" as opposed to something verifying the truth an accuracy of the assessment roll. *See Wallapai Mining & Dev. Co. v. Territory*, 9 Ariz. 373, 380, 84 P.85, 87 (1906) (failure of the Assessor to certify the assessment roll is a mere irregularity which does not affect the validity of the tax), *Olgleby v. Chandler*, 37 Ariz. 1,19, 288 P.1034, 1041 (1930) (however results of assessment roll are obtained, it is the assessment roll of the County Assessor and is valid as certified by the Assessor). Moreover, the Assessor includes centrally valued property on the assessment roll. The Assessor does not have direct control over those persons who review and assess centrally valued property, yet it includes such property on the assessment roll. Title 42, Chapter 14. 42-14001, et seq.

#### **5. Reliance on Assessor cartography and title information.**

In numerous instances, the Arizona Legislature has directed third parties to the ownership or mapping records of the County Assessor. For example, the purchaser of a tax lien is required to send notice of right to redeem to the property owner according to the records of the County Assessor, as well as the records of the County Recorder and Treasurer. A.R.S. § 42-18202. When the Board of Supervisors receives a petition for creation of a special taxing district, the petition bearing the names of property owners within the district is sent to the Assessor for verification of whether the petition contains more than one-half of the property owners in the area of the proposed district and to determine the total assessed value of property owned by them. A.R.S. § 48-266(J). The Assessor does the same verification for the dissolution of a fire district pursuant to A.R.S. § 48-815.02(H).

The Assessor is also involved in providing a detailed list of properties in a proposed special taxing district, or change to an existing district, as set out in A.R.S. §§ 48-261(A)(1) and 48-262(A)(1). The Assessor shall also provide a map and a detailed list of properties for the formation of a noncontiguous county island fire district. A.R.S. 48-851(A)(1).

Ownership for purposes of an election for improvement districts for underground utilities may be determined by the records of the County Assessor or other public records regarding property ownership. A.R.S. § 48-620(B)(2). In certain annexations, notice to railroad property is provided to the address on file with the County Assessor's office for property tax purposes. A.R.S. §11-269.07(1).

**B. Overview of the County Board of Supervisors' duties and authority as they relate to cartography and title examination.**

Like the Assessor, the BOS has its own need for cartography and title examination as it goes about its daily business.

The BOS must divide the county into supervisorial districts (A.R.S. §11-212) or must create, divide and change such other districts and precincts as required by law. A.R.S. § 11-251(2). The BOS establishes, abolishes and changes election precincts and defines their boundaries. A.R.S. §§ 11-251(3), 16-411. It also does this when acting as the board of a special district. A.R.S. § 16-413. The BOS is responsible for the establishment of judicial precincts. A.R.S. § 22-101.

The BOS creates a comprehensive plan for the county (A.R.S. §11-805); enacts zoning ordinances (A.R.S. §11-811); defines election precinct boundaries (ARS §16-411); and engages in the acquisition, maintenance and franchising of public roads and rights of ways (ARS §11-251). The Board of Supervisors may adopt a building code for structures within the unincorporated portions of the county. A.R.S. §11-861.

The BOS is specifically required to prepare maps of special districts, A.R.S. § 11-251.07, as well as flood control district zones. A.R.S. § 48-3605(D). The BOS is also in charge of drawing a map for the creation of vitalization special districts and provides a copy of the map to the Assessor. A.R.S. § 48-6807.

The BOS has the responsibility of identifying owners of property for purposes of filing a "nonpayment of sewage system user fee." A.R.S. § 11-264. Determination of ownership implicitly becomes an issue when the BOS lays out roads and bridges pursuant to A.R.S. § 11-251(4); acts to enter into agreements for acquiring rights of ways and constructing highways pursuant to A.R.S. § 11-251(29); acquires land for roads, drainage or other public purposes pursuant to A.R.S. § 11-261(44 and 45); when it exercises eminent domain for federal-county highways (A.R.S. § 28-6704); or when acting as a county flood control district. A.R.S. § 48-3603(C)(1).

Finally, the BOS enforces its ordinances for removal of rubbish, weeds, filth, etc., by giving notice to the owners of properties that are not in compliance. A.R.S. § 11-268(A)(1).

## **C. Overview of the duties and authority of other county elected officials and departments as they relate to cartography and title examination.**

The Arizona legislature has prescribed responsibilities and duties to other county officials, including elected officials, that also include the need for cartographic and title information.

### **1. Treasurer**

When preparing a treasurer's deed, the County Treasurer shall cause a limited title search to be made to identify all parties with an interest in the subject property. A.R.S. § 42-18263. The Treasurer also must include a description of property when preparing a treasurer's deed. A.R.S. § 42-18205.

### **2. School Superintendent**

The County School Superintendent has a duty to file transcript boundaries of each school district in the county, each newly formed unified school district and each transporting school district with the BOS and the County Assessor. A.R.S. § 15-442(A), 15-448(C) and 15-461(B). The Superintendent shall make appropriate adjustments to the boundaries if the school superintendent and the County Assessor determine the boundaries are in conflict with each other. A.R.S. § 15-442(C).

### **3. County Attorney**

The County Attorney is required to determine ownership of property before bringing a nuisance action. A.R.S. § 12-991(B & J).

### **4. Sheriff**

Although the Sheriff does not have any specific statutory duties related to cartography and title, the Sheriff, like other law enforcement agencies, serves search warrants and often relies, in part, upon cartographic, mapping and title information in preparing requests for such warrants.

### **5. County Engineer**

The County Engineer is the custodian of records and property of the county relating to surveying, engineering and road construction, and shall make surveys, maps, plans and specifications as required. A.R.S. § 11-562.

### **6. County Planning and Zoning**

The County Planning and Zoning Commission has a need for mapping when it designates infrastructure service area boundaries pursuant to A.R.S. § 11-808. It also needs to determine owners of property within the boundaries of a specific zoning plan or within 300 feet of the area of a proposed rezoning. A.R.S. §§ 11-807 and 11-814.

## 7. State Land Department

Although not a county agency, the State Land Department is charged with the duty to coordinate the development and maintenance of a geospatial public land survey system and cadastral database with responsible federal, state and local agencies. A.R.S. § 33-173(8).

### D. General authority of the Board of Supervisors

The Board of Supervisors is the legislative authority of the county. A.R.S. §11-251. The BOS may supervise official conduct of all county officers. A.R.S. § 11-251(1). The BOS may make and enforce necessary rules and regulations for the government of its body, the preservation of order and the transaction of business. A.R.S. 11-251(21).

The Board of Supervisors is charged with levying and collecting taxes and managing and maintaining the fiscal integrity of the county. A.R.S. §11-201. The Board of Supervisors determines the budgets of all elected and appointed county officers. A.R.S § 11-201.

As part of the budgetary control of the Board of Supervisors, county officers must obtain the consent of the Board of Supervisors for all appointments of deputies, clerks and assistants. A.R.S. §11-409. The Board of Supervisors sets the salaries of all deputies, clerks and assistants so appointed. A.R.S. §11-409.

The Board of Supervisors (as county officers) may appoint deputies, stenographers, clerks and assistants necessary to conduct the affairs of their offices. A.R.S. §11-409.

The BOS possesses and can exercise such powers, and only such powers, as are expressly conferred on it by the Constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law. *Bone v. Bowen*, 20 Ariz. 592, 598, 185 P. 133, 135 (1919).

The Arizona courts have interpreted issues of delegated powers consistent with the understanding of the framers of the Arizona Constitution. It is well-settled that the legislative powers of counties are very limited. “The law-making powers of the county ... are entirely derivative. The Board of Supervisors can exercise only those powers specifically ceded to it by the legislature.” *Hart v. Bayless Investment & Trading Co.*, 86 Ariz. 379, 384, 346 P.2d 1101, 1105 (1959). A county board of supervisors has only those powers “expressly conferred by statute, or [as] necessarily implied therefrom.” *State ex rel. Pickrell v. Downey*, 102 Ariz. 360, 363, 430 P.2d 122, 125 (1967). County supervisors “may exercise no powers except those specifically granted by statute and in the manner fixed by statute.” *Mohave County v. Mohave–Kingman Estates, Inc.*, 120 Ariz. 417, 420,

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586 P.2d 978, 981 (1978) (citing *State Board of Control v. Buckstegge*, 18 Ariz. 277, 158 P. 837 (1916)).

Actions taken by a board of supervisors by methods unrecognized by statute are “without jurisdiction and wholly void.” *Mohave–Kingman*, 120 Ariz. at 420, 586 P.2d at 981 (quoting *State Board of Control v. Buckstegge*, 18 Ariz. 277, 158 P. 837 (1916)). A governmental body may not do indirectly what a statute does not give it the power to do directly. *Davis v. Hale*, 96 Ariz. 219, 225, 393 P.2d 912, 916 (1964).

The question whether authority exists for the county to act “must be approached from the affirmative, that is, what constitutional or statutory authority can the county rely upon to support its questioned conduct?” *Maricopa County v. Black*, 19 Ariz.App. 239, 241, 506 P.2d 279, 281 (1973). The absence of a statutory prohibition does not mean the county has inherent authority to engage in certain conduct. *Id.*

*Hancock v. McCarroll*, 188 Ariz. 492, 498, 937 P.2d 682, 688 (Ct. App. 1996).

Thank you for consideration of this request.

Very truly yours,



Sheila Sullivan Polk  
Yavapai County Attorney