



NEWS RELEASE

Arizona House of Representatives
Representative Jacqueline Parker (R-15)
Representative Austin Smith (R-29)
1700 West Washington • Phoenix, Arizona • 85007

Monday, April 15, 2024

FOR IMMEDIATE RELEASE

House Executive Oversight Committee Calls for Attorney General to Take Legal Action Against Phoenix Over Unlawful Firearms Transfer

STATE CAPITOL, PHOENIX – State Representative Jacqueline Parker, Chairwoman of the House Ad Hoc Committee on Executive Oversight (CEO), and Vice Chairman Austin Smith sent a letter today to Attorney General Kris Mayes urging her to initiate a quo warranto action against the City of Phoenix for violations of state law stemming from a [2023 investigation](#) which concluded that the City’s ordinance facilitating the transfer of firearms to Ukraine was in breach of three specific state statutes. Despite being alerted to the ordinance’s violation of state law, the City of Phoenix proceeded with the transfer.

In today’s letter, CEO Chairwoman Parker expressed the necessity for Attorney General Mayes to act decisively to address these breaches of law. According to [recent testimony](#) from former Arizona Supreme Court Justice Andrew Gould before the Committee, such actions fall squarely within the scope of a quo warranto action, a legal procedure used to resolve issues of authority misuse. The City of Phoenix’s actions represent a clear case of operating beyond legal bounds, thus justifying this approach.

Chairwoman Parker and Vice Chairman Smith have requested that Attorney General Mayes take all necessary steps to hold the City accountable, including seeking financial compensation for revenues that the City failed to generate due to its noncompliance with the law.

They once again invited Attorney General Mayes to address these concerns at the upcoming CEO hearing on [April 17](#), or to provide a detailed written response. She has indicated publicly a reluctance to cooperate despite multiple records requests and letters from the CEO Committee seeking additional information.

A copy of today’s letter is attached below.

Jacqueline Parker is a Republican member of the Arizona House of Representatives serving Legislative District 15, which includes East Mesa, Queen Creek, and San Tan Valley. She serves as Chairwoman of the House Municipal Oversight and Elections Committee. Follow her on X/Twitter at @electjacqparker.

Austin Smith is a Republican member of the Arizona House of Representatives serving Legislative District 29 in Goodyear, Surprise, El Mirage, Youngtown, Wittmann, Morristown, and Allah. He serves as Vice Chairman of the House Natural Resources, Energy & Water Committee and is also a member of the Municipal Oversight & Elections, and Ways & Means Committees. Follow him on X/Twitter at @azaustinsmith.

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Arizona House of Representatives
Phoenix, Arizona 85007

April 15, 2024

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

Re: Violation of State Law by the City of Phoenix; Quo Warranto Action

Dear Attorney General Mayes:

We write to you today in our official capacity, as the Chair and Vice Chair of the Ad Hoc Committee on Executive Oversight ("CEO"), to request that you perform your duty to hold the City of Phoenix accountable for its violations of state law.

Last year, at the request of Representatives Quang Nguyen and Selena Bliss, you released an investigative report concluding that the City of Phoenix's ordinance authorizing a transfer of guns to Ukraine violated three state laws: A.R.S. §§ 12-943, 12-945, 13-3108(A).¹ Unfortunately, your report came too late to stop the City of Phoenix from violating the law. Although the Representatives notified the City of Phoenix on July 3, 2023 that the ordinance passed days earlier was "plainly unlawful,"² the City of Phoenix still executed the contract to carry out the unlawful action on August 4, 2023.³

After the City of Phoenix confirmed that it planned to violate state law, on August 21, 2023, Representatives Nguyen and Bliss asked you to investigate.⁴ Even though time was of the essence, before you took any action, the City of Phoenix "disclosed [on September 8, 2023] that the City ha[d] already completed the firearms transfer contemplated by the Ordinance and the Agreement."⁵

You should have immediately acted to stop the City of Phoenix's unlawful action, and once they broke the law, you should have immediately sought to hold the City of Phoenix accountable. But when Representatives Nguyen and Bliss pressed you to describe the "steps you have taken to

¹ Investigative Report No. 23-003, *Whether Phoenix Ordinance S-50010 providing for the donation of firearms to Ukraine violates state law*, Attorney General Kris Mayes (Sept. 20, 2023) ("Investigative Report No. 23-003"), 1, at https://www.azag.gov/sites/default/files/2023-09/Investigative%20Report%20No.%2023-003_0.pdf.

² *Id.* at 3.

³ *Id.* at 4.

⁴ Letter from Rep. Quang Nguyen and Rep. Selina Bliss to Attorney General Kris Mayes, *Request for Investigation of City of Phoenix Ordinance S-50010 Authorizing Donation of Unclaimed Firearms to Ukraine in Violation of Arizona Laws*, Aug. 21, 2023, at <https://www.azleg.gov/press/house/56LEG/1R/230821NGUYENBLISS1487.pdf>.

⁵ Investigative Report No. 23-003, at 5.

ensure that the Phoenix City Council will be held accountable for its egregious actions in connection with the illegal ordinance,”⁶ you denied that any action could or should be taken.⁷ Because the City of Phoenix already transferred the firearms to Ukraine, you proclaimed that you did not have the authority or the obligation “to take punitive action against a city for a past violation that has been cured and is not ongoing.”⁸ After all, in your view, “[a]ny time a city or other subdivision passes a law that is later found to violate state law, the subdivision will likely have acted under that law in the intervening time.”⁹ Thus, you claimed that you and your office have “no further role in this matter.”¹⁰ This is incorrect.

The City of Phoenix’s unlawful action supports your filing of a quo warranto action. As former Supreme Court Justice Andrew Gould recently testified to the CEO, “a quo warranto action is, at bottom, an action where a government official is acting outside his or her authority.”¹¹ When an Arizona government official is acting outside of his or her authority, Arizona law requires you to bring a quo warranto action: “[t]he attorney general *shall bring the action* when he has reason to believe that any such office or franchise is being usurped, intruded into or unlawfully held or exercised.” A.R.S. § 12-2041(B) (emphasis added). The law’s use of “exercise” presumably “contemplates the unlawful exercise of an office or franchise by an otherwise legitimate office holder.” *State v. Arizona Bd. of Regents*, 253 Ariz. 6, 11 ¶ 14 (2022).

To support a quo warranto action, the Attorney General must “identify a law that has been violated and allege a relevant, ultra vires act.” *Id.* at 11 ¶ 18. You already have identified three state laws that the City of Phoenix violated.¹² In addition, you determined that A.R.S. § 41-194.01(B)(1) applied because you found an actual violation of state law.¹³ According to the Arizona Supreme Court, subsection (B)(1) “allows a ‘does violate’ determination only when existing law clearly and unambiguously compels that conclusion.” *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 595 ¶ 25 (2017).¹⁴ You echoed this language in your finding that the City of Phoenix violated state law: “the Office believes that controlling legal authorities compel this conclusion.”¹⁵ Thus, you have established the quo warranto requirement to identify a law that has been violated.

You also have already established the other quo warranto requirement of alleging a relevant, ultra vires act. Your report documented that the City of Phoenix used the unlawful ordinance to transfer the firearms to Ukraine.¹⁶ This was an ultra vires act.

⁶ Letter from Rep. Quang Nguyen and Rep. Selina Bliss to Attorney General Kris Mayes, *Investigative Report No. 23-003; City of Phoenix’s Violation of State Law*, Jan. 5, 2024.

⁷ Letter from Attorney General Kris Mayes to Rep. Quang Nguyen and Rep. Selina Bliss, *Investigative Report No. 23-003 re City of Phoenix’s Ordinance S-50010*, Jan. 23, 2024 (“Jan. 23, 2024 Mayes letter”).

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Arizona House of Representatives Ad Hoc Committee on Executive Oversight, Apr. 4, 2024 hearing, 13:11, at <https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2024041004>.

¹² *Investigative Report No. 23-003*, at 1.

¹³ Jan. 23, 2024 Mayes letter, at 1.

¹⁴ Had you determined that the ordinance “may violate” state law, you would have been obligated to file a special action in the Supreme Court. A.R.S. § 41-194.01(B)(2); *see also City of Tucson*, 242 Ariz. at 595 ¶¶ 24-25.

¹⁵ *Investigative Report No. 23-003*, at 12.

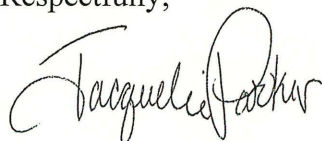
¹⁶ *See id.* at 5.

Filing a quo warranto action allows you to seek compensation for the City of Phoenix's unlawful, ultra vires act. When ultra vires acts are at issue, courts "have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it." *McQueen v. First Nat. Bank*, 36 Ariz. 74, 82 (1929) (quoting *Cent. Transp. Co. v. Pullman's Palace Car Co.*, 139 U.S. 24, 60 (1891)). If the City of Phoenix had sold the firearms as required by state law, the sales would have generated revenue for the City of Phoenix's general fund, and in turn, reduced the financial burden on the State's general fund.¹⁷ In your role as Attorney General, you should bring a quo warranto action to recover the funds that the City of Phoenix otherwise would have generated by following state law, and such other relief as a court deems just and appropriate.

Because you already have concluded that the City of Phoenix violated state law, and that violation resulted in an ultra vires act that cost the City of Phoenix revenue, we respectfully request that you file a quo warranto action against the City of Phoenix.

Please let us know by 5:00 p.m. tomorrow if you would like to testify at our upcoming meeting on April 17, 2024. In lieu of testimony, we respectfully request your written response to be submitted by April 26, 2024, explaining whether you intend to hold the City of Phoenix accountable through a quo warranto action.

Respectfully,



Jacqueline Parker
Chair, Committee on Executive Oversight



Austin Smith
Vice-Chair, Committee on Executive Oversight

¹⁷ *Id.* at 8, 10 (citing A.R.S. § 12-945).