

MEMORANDUM

DATE: AUGUST 14, 2001

TO: CHIEF ARTURO MIRANDA

FROM: GLENN GIMBUT, ATTORNEY

RE: AUTHORITY OF FIREMAN TO ISSUE CITATIONS FOR FIRE CODE VIOLATIONS

At present time I cannot approve proposed Ordinance No. 178 as it is presently drafted. While I have no problem with the concept that the Uniform Fire Code authorizes fire safety officials to enforce the code, the problem is that the Arizona State statutes as to who is authorized to make a misdemeanor arrest or issue a citation for a misdemeanor is not clear on whether a fireman who is not certified by the Arizona Peace Officer Standards and Training Board ("POST") can legally perform such acts. ARS §13-3883 gives authority to "peace officers" to make misdemeanor arrests and issue misdemeanor citations. ARS §13-105 defines "peace officer" to mean a person vested by law to make arrests. ARS §41-1822 provides in part that POST shall establish the minimum qualifications and govern the appointment of all peace officers of every political subdivision of this state, notwithstanding any other law.

The issue is whether a firefighter, who is not certified as a peace officer by POST, can issue a misdemeanor citation. Dianna Stabler is the Deputy Attorney General advising POST. She is on vacation until the mid part of next week. I spoke with a certification specialist at POST. He is not an attorney, and could not give a legal opinion. But it is his general understanding that unless the firefighter was POST certified, he could NOT make a misdemeanor arrest or issue a citation for a criminal act. I will consult directly with Dianna Stabler when she is available, but hesitate to approve Ordinance No. 178 until I do so.

Many cities in Arizona have a code enforcement program wherein non-certified persons issue citations. But these are for civil violations, not criminal, and are strictly enforced as fines, not probation, nor possible jail sentences. Right now our City code does not establish a program of civil violations for code infractions. All violations of the Uniform Fire Code are class one misdemeanors. Since they are criminal violations, the citing officer must be legally authorized by State law to make a misdemeanor arrest and issue a misdemeanor citation. (Our police officers are so authorized.)

I want to find out from Dianna Stabler how one properly establishes authority for a firefighter to make a criminal misdemeanor arrest for a violation of the fire code. I need to find out from her if an ordinance such as No. 178 is proper.

We may have to do a major revision of the City codes to establish civil violations for certain code violations, establish a system of civil fines and enforcement procedures, and designate violations of the Uniform Fire Code to be civil violations, not criminal, before we can authorize firefighters to enforce it.

cc: Enrique Castillo, City Manager