

SUMMARIES OF ATTORNEY GENERAL OPINIONS

The Secretary of State’s Office is required to publish summaries of Attorney General Opinions under A.R.S. § 41-1013(B)(4). The following Attorney General Opinions were issued between July 1 and December 31, 2011. For copies of these opinions, call (602) 542-5025 or view them online at the Attorney General’s web site:

<http://www.azag.gov/opinions/index.html>

Opinion number	Date of opinion	Opinion summary
I11-003	July 7, 2011	<p>Re: Application of Title 16 to Recall Committees</p> <ol style="list-style-type: none">1. Yes. Under current law, corporations and labor unions may not contribute to recall committees. It would, however, be contrary to the United States Supreme Court’s <i>Citizens United</i> decision to enforce this prohibition if the corporation or labor union is contributing to a recall committee that has not coordinated with a potential candidate for the office that is the subject of the recall election. <i>Citizens United v. FEC</i>, 130 S. Ct. 876(2010).2. No. Statutes such as A.R.S. §§ 16-912.01 and 16-914.01, which explicitly apply to ballot measure committees, do not apply to recall committees. <p><i>Note: Attorney General Thomas Horne recused himself from this matter. Thus Arizona Solicitor General, David Cole signed the opinion.</i></p>
I11-004	July 7, 2011	<p>Re: Transaction Privilege Tax Upon Medical Marijuana Sales</p> <ol style="list-style-type: none">1. Under current law, the proceeds of medical marijuana sales are taxable under the retail classification of the transaction privilege tax.2. Even though the distribution of marijuana is a federal crime, medical marijuana dispensaries do not have a valid Fifth Amendment defense to a generally applicable requirement to file transaction privilege tax returns and pay the tax that is due.
I11-005	August 12, 2011	<p>Re: Three Second Yellow Light Signal Requirement</p> <p>Under A.R.S. § 28-643, all traffic control devices must conform to the specification that the yellow light duration be at least three seconds. A plain reading of the statute indicates that the statute’s language applies to <i>all</i> traffic lights, including those for left turns, and the legislative history confirms this interpretation.</p>
I11-006	September 21, 2011	<p>Re: Donations to Legal Defense Fund</p> <p>No. Consistent with interpretations of the Federal Election Commission, “contribution” as defined in A.R.S. § 16-901(5) does not include donations made to a legal defense fund for the sole purpose of covering the candidate’s legal expenses to defend a lawsuit over nominating petition signatures. Such donations, however, must be made to a separate fund that is not a political committee.</p>
I11-007	September 12, 2011	<p>Re: Community Colleges: Student Not Lawfully Present in U.S.</p> <ol style="list-style-type: none">1. No. Proposition 300 prohibits a community college district from classifying a person who is not lawfully present in the United States as an in-state student or a county resident for tuition purposes.2. By violating Proposition 300, a community college board and its members risk exposure to several adverse consequences, including litigation and potential liability for foregone monies.3. No. A community college district may neither (1) create separate tuition levels for persons who are not lawfully present in the United States that are lower than the out-of-state tuition rate, nor (2) use individual financial assistance to achieve the same result.

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Opinion number	Date of opinion	Opinion summary
I11-008	December 12, 2011	<p>Re: Service of Citations Photo Enforcement Systems</p> <p>Section 28-1593(A) requires that a uniform traffic ticket and complaint personally served by being delivered to the person against whom the complaint is brought or by any means that the Arizona Rules of Civil Procedure authorize and permits service by certified mail, return receipt requested, under certain circumstances. Where a law enforcement agency or its agents seek to achieve service of a traffic ticket and complaint that a photo enforcement system has generated through a means other than those authorized by § 28-1593(A), the agency must inform the person against whom the complaint is brought that he or she is not obligated to identify the driver or to respond to the citation, but that failure to respond will probably result in the person being formally served and being required to pay service costs. Similarly, where a municipality or a company contracted to supply photo enforcement services provides a notice of violation, the notice must give the recipient the same information and must also state that the notice is not a court-issued document. A.R.S. 28-1602. These statutory requirements apply to municipalities.</p>