

August 17, 2020

To:

Rowle P. Simmons,
Thomas Thurman,
Randy Garrison,
Craig L. Brown,
Mary Mallory,
the Board of Supervisors of Yavapai County, Arizona
1015 Fair Street
Prescott, AZ 86305

RE: Notice of Claim Pursuant to A.R.S § 12-821

To: Whom it May Concern:

This letter constitutes a Notice of Claim pursuant to Arizona Revised Statute § 12-821 against the Yavapai County Board of Supervisors (BOS) and is served on behalf of Claimant William E. Williams, a resident of Yavapai County. This letter satisfies requirements of A.R.S § 12-821 and 11-622 to the extent that section applies. The conduct of the BOS, its employees, officers, agents or others acting with the authority or at the direction of the BOS (their Responsible Parties) may have contributed to the injuries suffered by Claimant as discussed herein, and when their identities become known, this claim may be supplemented to include them.

This Notice of Claim is given without the benefit of formal discovery and is subject to amendment or supplementation. Claimant reserves the right to amend this Notice. If for any reason you believe this Notice is not in compliance with Arizona Revised Statutes, or if additional facts/information is needed please contact the Claimant.

The Claimant seeks an award to halt all planning on a new jail construction until petition signatures to place such construction on a ballot or until enough time has been obtained to file a lawsuit to stop jail planning and construction; or until BOS acquiesces to the wishes of the county taxpayers and stops all jail planning; and until such time as BOS has answered all citizen letters, including but not limited to request for documents; and until an environmental study is completed; and until BOS has explained how it has authority to proceed with jail planning and its acquisition of a new jail bond it secured; and until BOS explains the facts it used to incur debt via their \$57-65 million jail bond; and until BOS defines the exact amount of debt it incurred for the total amount of the bond.

The terms and content of this Notice of Claim are subject to Rule 408 of the Arizona Rules of Evidence.

I. Factual Basis for Claim

Mr. Williams is a taxpayer and home owner in Yavapai County Arizona.

In July 2020, BOS was quoted in the Prescott Courier newspaper and KYCA Radio News as “being ready to go forward with the construction of a new jail” and “if they don’t go forward with immediate construction the county would lose money already invested in the project.”

The BOS did not allow thorough discussion or input from citizens throughout the process, not when it purchased land for the proposed jail near the Juvenile Justice Center location in Prescott, AZ and not during BOS discussions. Part of the limitations on citizen input was imposed when the BOS decided on closed board meetings as a result of Covid-19 issues and partly because BOS has a history of doing what it wants without citizen input while making “backroom deals.”

The BOS allowed some sort of late and haphazard acceptance of letters from citizens and imposed an August deadline; two citizens groups, of whom this claimant is a member, sent 394 letters in opposition to the new jail plan, but the next day following the citizen letter deadline the BOS announced it had selected a contractor. This Claimant is not speaking for the two citizen groups, but discloses some discussions with them below.

About a month earlier BOS announced a ceremonial ground breaking but withdrew the announcement and cancelled the event when two citizens groups opposing the jail announced protests and three candidates for the primary ballot for new BOS seats announced their desire to halt the jail plan.

Protests against the new jail plan, by the two citizen groups, have been well publicized by local news media.

On August 3, 2020, Yavapai County Administrator Phil Bourdon forwarded a copy of the executed Obligation Purchase Agreement to the Claimant. It was the first time the document saw the light of day to citizens of the County, and was on the day before Primary Election Day, and was the result of numerous requests by Claimant under the Arizona Open Records Law; the contumacious disregard of Claimant’s requests by numerous county staff included about six official requests and required months of haggling. If the documents were released sooner, and without the sinister and planned delay, this Claimant could have published it on his website, the citizens could have spoken out with documents in their possession; in addition, the county staff is under the false impression that “forms” have to be filled out for acquisition of documents. Nothing in the law, Arizona Public Records Law, A.R.S. §§ -39-101 to -161, requires a form – legal precedent has been set showing only an email is required in Arizona. The demand for forms caused sinister delay.

When Bourdon forwarded said document to the Claimant, it showed a bond worth \$57 million but an email to this Claimant from BOS Clerk Kim Kapin, sent in late July said “The Board of Supervisors received \$65,000,000 in proceeds from the sale of Jail District Revenue Obligation Bonds for the design and construction of the Criminal Justice Center in Prescott. The statute granting them the authority is Title 7 of Arizona Revised Statutes.”

There are several problems with the previous paragraph. 1) the dollar amounts are different so the taxpayers have no idea what the total debt is, 2) if Title 7 is controlling, nowhere on the record does there exist affidavits from freeholders or householders affidavits stating that they are worth the amount specified in the bond over and above just debts and liabilities, exclusive of property exempt from execution, 3) Bourdon’s Obligation Purchase Agreement says Title 48 is controlling, but the county, under Title 48 has to state: it has monies sufficient to pay the bonds and interest as they become due, and to create and maintain reasonable reserves. The amount pledged may consist of all or any part of such revenue. The board of directors, in determining the cost of the undertaking, may include all costs and estimated costs of the issuance of the bonds, all engineering, inspection, fiscal and legal expenses, and interest which it is estimated will accrue on money borrowed or which will be borrowed during the construction period for six months thereafter. Nothing on the record of the BOS shows this sufficiency. Title 48 requires bids and

notice of a desire for bids; this is absent from the record. Title 48 requires bids, with bonds equal to 10% - one BOS member announced to a media member that a contractor was chosen, but no clear process of entering into a contract is available on the record nor has a 10% bond been provided to the County; Title 48 requires a special fund be set apart by law for the payment of said bonds; this has not occurred; Title 48 requires a bond election put to the vote of the "municipality electors." This has not been done. Title 48 requires time for protests and hearings on the protest matters; letters were received as described above but no hearing has been afforded, yet the process of securing the land and negotiating with contractors continues. Title 48 requires the formation of a county jail district organized under this chapter is a tax-levying public improvement district for all purposes of article XIII, section 7, Constitution of Arizona; this has not been done. Title 48 requires property tax levies and a general fund with an annual audit; none of these procedures have been put in place.

If A.R.S. Title 48 is controlling, it is instructive to notice that Chapter 25 County Jail Districts (48-4001 through 48-4005 and 48-4021 through 48-4026) describes the jail district system and the excise or ad valorem property tax routes that the counties can take. A.R.S. 48-4001 establishes the rules for setting up a district by the Board of Supervisors and limitations such as the sheriff and presiding juvenile judge proposing a juvenile detention component. A.R.S. 48-4021 sets up the rules for holding an election to set up a funding mechanism through an excise tax or an ad valorem property tax. A.R.S. 48-4022 describes the excise tax route. A.R.S. 48-4023 describes the ad valorem property tax route. But Claimant's rights were violated when the BOS and Responsible parties failed to adhere to such mandates.

In an email to the Claimant, Ryan Boyd, Legislative Liaison with Arizona Association of Counties sees it differently. He cited Arizona Revised Statutes 35-452 - 454 as controlling, when a County wants to build a jail, along with A.R.S. Titles 11, 19.

To this date, no Environmental Study has been performed regarding the building of the jail at the location chosen, which is near a riparian area and hiking trails.

There were no notice of or public discussions regarding the purchase of the land.

The BOS commissioned an expensive consultant and that consultant's report titled the Chinn Report without public discussion. That report said many things can be implemented to offset prison populations such as diversion programs. In a speech at the Veterans of Foreign Wars meeting hall in Prescott Valley in July 2020, the Yavapai County chief jailor, who is running unopposed as sheriff on the current ballot, David Rhodes, said thanks to his efforts recidivism has dropped nearly 20% and the jail population has dropped, indicating no need for a new jail.

The current, large jail in Camp Verde can house 600 inmates Rhodes said in his speech.

A smaller jail on Gurley Street, already built and getting remodeled can house more than 100 more inmates.

If the new jail bond is a revenue bond, paid via property tax, there has been no discussion with the public regarding the tax, nor has the BOS described what dollar amount it expects to receive.

The BOS put a jail tax on a ballot in a previous year but the Yavapai County taxpayers voted it down.

II. Legal Basis for Claim

Violation of rights of taxpayers.

The processes for securing a jail bond, purchasing land, deciding on contractors described above require adherence to the statutory language described above – adherence to all of the statutes listed. At no time did the BOS afford an opportunity to protest or be heard or secure petition signatures for a ballot initiative or provide enough time to begin a lawsuit.

The BOS has violated the provisions set forth in A.R.S. 35-501(B) which requires adherence to a dozen mandates that must be done within 60 days of securing the bond.

The BOS voted to approve the bond on February 19, 2020, without a robust public discussion or public notice in violation of BOS rules and Arizona statutes.

The Underwriter of the Bond (one Responsible Party) is guaranteed a premium of nearly \$9 million, a figure not openly discussed in public, and a figure this Claimant is not comfortable with nor are the two citizen groups opposing the bond: No New Jail and Stop the New Jail, whose members will be subpoenaed at trial. Payment to the Underwriter was approved on June 4, 2020 but because of the closed door nature of BOS meetings, the public was not informed.

The BOS approved a wire transfer to the Underwriter of \$458,000, a figure not openly discussed in public, and a figure this Claimant is not comfortable with nor are the two citizen groups opposing the bond, whose members will be subpoenaed at trial. Payment to the Underwriter was approved on June 4, 2020 but because of the closed door nature of BOS meetings, the public was not informed.

The BOS approved a payment to the Underwriter of \$172,000 at closing, a figure not openly discussed in public, and a figure this Claimant is not comfortable with nor are the two citizen groups opposing the bond, whose members will be subpoenaed at trial. Payment to the Underwriter was approved on June 4, 2020 but because of the closed door nature of BOS meetings, the public was not informed.

Large authorized sums of money (\$172K, \$458K, and \$9 mil) are to be discussed in open forum according to law and policy, and basic government ethics, yet Underwriter payments were authorized on May 1 by the BOS.

The credo of the two citizen groups opposing the new jail includes but is not limited to:
The new jail will be a financial hardship for taxpayers during the Pandemic...

- 18% property tax increase per year during a pandemic when people are out of work could cause great hardship.
- \$68 million jail, justice center and mental health outpatient facility will cost \$30 million more than the original proposal for a jail only.
- Economists say the full financial impact of COVID-19 will be impossible to predict, likely leading to further tax increases to finance this jail.

III. Legal Basis for Claim and Remedy Sought

Because the BOS and Responsible Parties (such as Underwriter, County Administrator, Assistant County Administrator, BOS Clerk, etc) conducted themselves in a manner in both their official and individual capacities that violated clearly established norms and rights, Claimant asserts that

BOS and Responsible Parties have caused substantial harm to Claimant and citizen property taxes, property values, and debt load to the county without prior approval of the Claimant or taxpayers.

Failing to either submit the matter for approval by the voters or, alternatively publishing notice of the Proposition as required by law, the County is attempting to frustrate the ability of voters to make a democratic choice, or exercise their right to lawfully petition.

Claimant has no idea whose uncle or cousin is benefiting or if a violation of the County's ethics policy has occurred. Sheriff David Rhodes has a wife whose company seeks jail inmate psychology contracts; Rowle Simmons once sold electronic devices to the County; former BOS member and current Treasurer Arlo "Chip" Davis got his wife large un-bid contracts working for the county.

Claimant demands an opportunity to protest or be heard at an open meeting, or secure petition signatures for a ballot initiative, or be provided enough time to begin a lawsuit.

No valid excuse can be given for not performing the BOS duties described herein, and a preemptory order by a court should issue. If that time is not afforded (to protest, be heard, secure signatures), Claimant shall seek an injunction or writ of mandamus to halt all current planning for a new jail by the BOS and/or Responsible parties

The 394 citizen letters will be subpoenaed as evidence and the BOS members will be subpoenaed to testify as to their authority to make the decisions set forth above and under the statutes set forth above.

Claimant would also be entitled to recover punitive damages against the BOS and Responsible Parties for acting in their capacities and for their intentional acts because their conduct was malicious and in reckless disregard of the Claimant's clearly established rights.

Claimant will settle for \$100,000 for reasonable costs of investigating the problem, court costs, and attorney fees.

Pursuant to Arizona Revised Statute § 12-821, the entities and individuals named in this letter have sixty (60) days to respond before further legal action can be instituted under Arizona state law.

The County, BOS and Responsible Parties lack immunity from this prosecution; see Dale Wilson, Plaintiff, v. Yavapai County Sheriff's Office; UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA.

Sincerely,



William E. Williams, Claimant
3655 N Taylor Dr
Prescott Valley, AZ 86314
(816) 804-4162

A copy of this Notice was certified mailed by USPS to the Board of Supervisors' clerk at the address above and was emailed to those parties and the County Administrator on this date, and process served by Palmer Investigative Services