

MEMORANDUM

DATE: NOVEMBER 30, 2001

TO: PAUL MELCHER, ASST. CITY MANAGER

FROM: GLENN GIMBUT, ASST. CITY ATTORNEY

RE: CONTRACT WITH AFLAC

At present time it would appear the contract with AFLAC that you faxed me this morning was entered into in excess of legal authority and is null and void ab initio.

The City Personnel Policies set forth the terms of employee benefits. Any and all changes to either the classification plan of the City or the provision of City benefits pursuant to that plan or the Personnel Policies need to be done by an action of the City Council. City Council may approve such changes or additions to city benefits by either motion, resolution, or ordinance, but Council, in some fashion must approve any change, modification, termination, or addition to benefits provided to employees. I am informed that the AFLAC plan was never approved by Council.

Second, all City contracts must be approved as to form the City Attomey. Approval as to form means the agreement is legal and all proper legal steps have been taken. This agreement was not so approved.

Third, the purchasing ordinance of the City requires public bidding, or a legal justification to not bid, and Council approval when the potential of City funds may exceed \$12,000.00. While the monies paying for these benefits are paid from deductions from employee wages, nonetheless the check written to AFLAC is a City of San Luis check, with monies coming from the City treasury, and is therefore an expenditure of municipal funds.

Fourth, a term of the contract mandated by Arizona law is that the agreement is subject to the cancellation provisions of ARS §38-511. Said provision appears to be missing.

I hope this answers your questions. If I can be of further service, please do not hesitate to call.