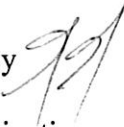


MEMORANDUM

DATE: January 3, 2005

TO: Heriberto Bejarano, Chief of Police

FROM: Glenn Gimbut, City Attorney 

Re: Interference in Police Investigations

This memo is in response to your request for an opinion. Recently it has been reported that a police officer on patrol sighted what he felt was suspicious activity and a possible crime in progress, and called for back up. Officers responded to the call. A city official observed the activity at the scene and interjected themselves. The question has been posed as to when does interference in the conduct of an officer constitute a crime. Obviously this situation is not simple.

Police officers are called upon to do a variety of investigatory work, and respond to a variety of situations. A person who is not a responding officer, needs to be very careful before injecting themselves into the scene of an investigation or active police operations. First one does not know what they are walking into. Such a person would not know if it's a crime in progress, a serious felony investigation, or a mere civil citation. Police departments develop standard operating procedures to be sure that law enforcement operates in a coordinated manner when responding to a call. This is done so as to operate in an efficient manner, but also to be sure that no mistakes are made, and that the investigation and prosecution of a crime is not unintentionally hindered. When a lay person interjects themselves, they take the risk that while their motives may be good, the results may end up being bad.

There are a variety of possible criminal offenses that might be committed by the improper actions of a lay person interjecting themselves into a crime scene or an investigation. These include: ARS §13-2409, Obstructing criminal investigations or prosecutions; ARS §13-2402, Obstructing governmental operations; ARS §§13-2510-1312, Hindering prosecution; ARS §13-2508, Resisting arrest; ARS §13-2802, Influencing a witness; ARS §13-2804, Tampering with a witness; ARS §13-2403, Refusing to aid a peace officer; ARS §13-2904, Disorderly conduct; ARS §13-2907.01, False reporting to law enforcement agencies; and ARS §13-2921, Harassment. Each of these offenses has its individual elements. However, each can occur simply by one person interjecting themselves into a crime scene when a police officer is either investigating a possible offense, or is trying to arrest another person. For example, if one person threatens force upon a police officer who is trying to arrest someone else, and it prevents or attempts to prevent the officer from making that arrest, the person making the threats are themselves committing the crime of resisting arrest. Simply following an officer around after being asked to desist, without a legitimate business purpose, could be considered the crime of harassment. The point being that it is legally risky for someone to interject themselves into a scene of a police investigation, stop, detention, or arrest.

Second, there is a way to deal with matters when one feels the conduct of an officer is inappropriate, and it is not to confront the officer at the scene. What one should do is to contact the police department administration during normal business hours and bring the matter to the attention of the administration. In this manner any questions can be answered, and if there is inappropriate conduct, it can be investigated and processed in the correct manner.

Third, we want the police department to function. We want officers to make quick judgment calls and to investigate what they think might be illegal activity even though it turns out to not be wrongful conduct. We want officers to 'get involved.' If an officer finds themselves constantly being questioned every time they make a routine stop, the reaction becomes one where the officer begins to look the other way when criminal activity actually occurs. Several studies have shown that it is possible to develop a lethargic department with officers who truly feel that 'you do not get into trouble for the stop you don't make.' One needs to have a system, and the system needs to work and be fair. If public officials do not follow their own procedures, you are sending a message to the employees that the rules and chain of command apply to some and not to others. Again this has adverse consequences on morale and job performance.

Finally, there is a risk of civil liability when some of our officers act one way and are opposed by others in a manner that interferes in the way business is normally conducted. If an official who is not a police officer conducts themselves in a manner that prevents an officer from stopping a thief, is the city now liable to the owner who lost their property? A police officer actually has immunity in such a situation, but a non police public official does not. Simply put, it is always best to follow the chain of command in an appropriate manner, and not take the matter into one's own hands.

I hope this memo answers the question that you posed.

cc: Honorable Mayor and Members of City Council
Rosie Cordova, City Manager