



MEMORANDUM

Date: January 28, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **January 17, 2014 Auditor General Letter Addressed to Ex Supervisor Edwin R. Moore**

As you recall, you have received copies of a letter sent by former Supervisor Edwin Moore to the Governor, Auditor General, and Attorney General. Attached is the Auditor General's response dated January 17, 2014.

Mr. Moore objects to the County utilizing park bond funds to build park improvements at Rillito Park. The scheduled improvements that will begin after this year's racing season will continue to remove dilapidated and obsolete horse barns in favor of additional soccer fields and public park amenities. The County continues to pursue these improvements in accordance with the voter authorized bond question, bond implementation plan, and bond implementation ordinances of the County as they may have been amended pursuant to Code.

If you have any questions, please contact me.

CHH/anc

Attachment

c: John Bernal, Deputy County Administrator for Public Works
Nanette Slusser, Assistant County Administrator for Public Works Policy
Chris Cawein, Director, Natural Resources, Parks, and Recreation
Nicole Fyffe, Executive Assistant to the County Administrator
Diana Durazo, Special Staff Assistant to the County Administrator



DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

January 17, 2014

Mr. Edwin R. Moore
P.O. Box 36077
Tucson, AZ 85740

Re: Pima County 1997, 2004, and 2006 General
Obligation Bond Programs Special Audit— Issued January 2013

Dear Mr. Moore:

We received your January 15, 2014, letter regarding our Special Audit of the Pima County General Obligation Bond Programs and appreciate your interest in our audit. *Friedman v. Cave Creek Unified School Dist. No. 93*, 231 Ariz. 567, 299 P.3d 182, (2013) was not considered in connection with the audit because it was decided after our audit was issued. However, we believe that the audit findings are consistent with the basic principle decided by the Court of Appeals in *Friedman*:

The purpose for which the district will use bond proceeds is an essential consideration in voting for or against a bond measure. Voters may agree to accept the financial obligation of a bond if the proceeds are to be used for one purpose, but reject the obligation if the proceeds are to be used for another purpose.

(*Friedman* at 570.) In that case, the voter-approved purposes for which the school district issued the bonds were for "the construction of new school buildings, the purchase of buses, the improvement of school grounds, and the payment of other associated costs." (*Friedman* at 569.) Where the district went astray was to propose using the remaining funds to "improve existing school facilities in projects not specified in the publicity pamphlet," or, in other words, outside of the specified purposes. You insist that we need "to audit the use of funds for projects, not purposes" while the Court found that the District had to follow the voter-approved purposes and not expend money on projects not specified in the publicity pamphlet.

We included in Appendix A at the end of the report every bond election question for each bond program (see pages a-1 through a-4). Each question begins with the words "For the purpose of . . ." and ends asking whether Pima County should be authorized to issue and sell general obligation bonds not exceeding a certain amount. For example, Question 4: Parks and Recreational Facilities of the 2004 bond program asks:

For the purpose of acquiring, developing, expanding, improving and equipping new and existing parks and recreational facilities in the County, including, without limitation, athletic fields, community centers, libraries, historic and cultural facilities and trails, and the

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acquisition or construction of real or personal property or interests or rights in property for such purpose and paying all expenses properly incidental thereto and to the issuance of such bonds, shall Pima County, Arizona be authorized to issue and sell general obligation bonds of the County, in an aggregate principal amount not exceeding \$96,450,000?

The bonds to be issued in one or more series, maturing not more than 30 years following the date of issuance of each series, and bearing interest at a rate or rates not higher than 12 percent per annum.

As is evident, this question and all other questions identified purposes but did not identify projects. Contrary to your assertion, the public did not vote on individual items but authorized bonds for broad purposes.

Friedman addressed school district bonding statutes in Arizona Revised Statutes (A.R.S) Title 15. However, the requirements for issuing county bonds differ from the requirements for issuing school district bonds and are found in A.R.S. §35-455. Subsections B and D provide:

B. The call for the election shall set forth the aggregate amount of the bonds, the maximum rate of interest to be paid thereon, the minimum and maximum number of years bonds of any issue or series may run from their date, the purposes for which the money derived from the sale of the bonds will be expended, the current outstanding general obligation debt and the constitutional debt limitation of the political subdivision.

...
D. The governing body or board may expend the monies received from the sale of the bonds only for the purposes stated in the ballot and for the necessary costs and expenses of the issuance and sale of the bonds. If an unexpended balance remains after satisfying the purposes of the bonds, the balance shall be used to retire the bonded indebtedness.

(Emphasis added.) Considering these requirements, the only appropriate audit focus with regard to the use of the Pima County general obligation bond monies are the purposes for which the county bonds were issued.

On page 7 of our audit, we explain the County's bonding activity:

However, rather than seek voter approval for individual projects, the County seeks approval for specific purposes, or categories of projects, and an authorized amount of debt to be issued for each purpose. The purposes and amounts are determined based on the list of board-approved projects in the Bond Implementation Plan Ordinance, and each purpose and associated amount is placed on the ballot as a separate question....

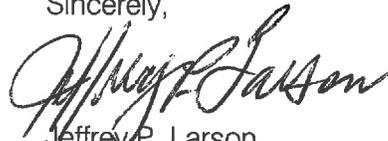
Based on *Friedman* and the law described above, the County proceeded lawfully on its bond plan. As we indicated in our audit, the County determined purposes based on its Implementation Ordinance. However, the County has some flexibility to modify an adopted bond implementation plan, which includes a list of board-approved projects, according to the County's Ordinance Chapter 3.06, Bonding Disclosure. Section 3.06.070 of that ordinance allows for substantial modification of an adopted bond implementation plan according to the criteria described in that

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section. Therefore, while the Board can spend bond proceeds only for the purposes described in the ballot questions, the Board may adjust approved projects according to the criteria in its bond ordinance.

Considering the information above, we find nothing that supports your allegations regarding a deficiency in our audit. Consequently, we affirm its findings and conclusions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey P. Larson". The signature is written in a cursive, flowing style.

Jeffrey P. Larson
General Counsel

cc: The Honorable Janice K. Brewer
Arizona Governor

Tom Horne, Esq.
Arizona Attorney General

Barbara LaWall, Esq.
Pima County Attorney

Pima County Board of Supervisors
Ramon Valadez, Chairman
Sharon Bronson, Supervisor
Ally Miller, Supervisor
Richard Elias, Supervisor
Ray Carroll, Supervisor

C.H. Huckelberry
Pima County Administrator

Connie Hay, Secretary
Arizona Quarter Horse Association

American Quarter Horse Association

Christina Sandefur, Esq.

Donald E. Gabriel, Esq.