



MEMORANDUM

Date: May 24, 2016

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

From: C.H. Huckelberry
County Administrator 

Re: **Senate Bill 1476 and Imposed Unconstitutional Property Tax Transfer from Pima County to Schools in the Form of Additional State Aid to Education**

As the Board of Supervisors knows, the County petitioned the Arizona Supreme Court to accept jurisdiction of the County's challenge to the constitutionality of Senate Bill 1476. The Supreme Court declined jurisdiction. Attorney's fees for the Supreme Court proceedings were assessed and paid by the County. We then started over in Maricopa County Superior Court.

The County filed a Motion for Summary Judgment, and the State filed a Cross Motion for Summary Judgment. Oral Arguments on the Motions were held on May 23, 2016; and today, May 24, 2016, the County received the attached Minute Entry from Maricopa Superior Court Judge Christopher Whitten granting the County's Motion for Summary Judgment and denying the State's Cross Motion for Summary Judgment.

Judge Whitten ruled in our favor based on our argument that the new law unconstitutionally delegated legislative authority to the Property Tax Oversight Commission. Since he invalidated the law on that constitutional basis, the judge declined to reach and rule on the other constitutional arguments we made. The County will submit a proposed form of judgment by tomorrow, and the State will have until Noon on Friday, May 27, 2016, to object. Judge Whitten plans to issue his Final Order by June 30, 2016.

We will file a separate request for attorney's fees, since the County prevailed in this matter.

The Final Order of Judgment will indicate the County is not obligated to pay this additional State Aid to Education as required by Senate Bill 1476.

CHH/mjk
Attachment

c: John Bernal, Deputy County Administrator for Public Works
Tom Burke, Deputy County Administrator for Administration
Jan Leshner, Deputy County Administrator for Community and Health Services
Regina Nassen, Deputy County Attorney
Joseph Kanefield, Ballard Spahr, LLP
Michael Racy, Racy Associates, Inc.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-009739

05/23/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
H. Bell
Deputy

PIMA COUNTY, et al.

JOSEPH KANEFIELD

v.

STATE OF ARIZONA, et al.

KAREN J HARTMAN-TELLEZ

MINUTE ENTRY

Courtroom 201-OCH

11:15 a.m. This is the time set for Oral Argument re: Plaintiffs' Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment. Plaintiffs are represented by counsel, Joseph Kanefield, Heather Horrocks, and Regina Nassen. Defendants are represented by counsel, Karen J. Hartman-Tellez.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

Based upon matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

12:12 p.m. Matter concludes.

LATER:

The Court has considered Plaintiffs' Motion for Summary Judgment (Revised), filed December 23, 2015, Defendants' response and Cross-Motion for Summary Judgment, filed

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-009739

05/23/2016

January 27, 2016, and all of the supporting pleadings, the last of which was filed on March 25, 2016. The case was transferred to the Tax Court on April 5, 2016. The Court benefited from oral argument on the motions on May 23, 2016.

The Arizona Legislature has an obligation to provide for a system of property taxation that limits the total primary property taxes levied on residential property to 1% of the property's full cash value (the "Cap"). The Cap has been met by giving a residential-property owner a credit against his or her school-district primary-property-tax levy if the aggregate primary levies for that property exceed the Cap. Prior to the enactment of A.R.S. §15-972(K), the State backfilled the resulting reduction to each impacted district's levy by providing "additional state aid for education" ("ASAE"). Under §15-972(K), most of that ASAE will no longer be provided to an impacted district by the State, but instead by other local taxing jurisdictions with which that district overlaps.

A.R.S. § 15-972(K) delegates to Property Tax Oversight Commission ("PTOC") the responsibility to "determine the proportion of the violation" of the Cap "that is attributable to each taxing jurisdiction within the affected school district." It provides no objective, verifiable standard for making this allocation, other than to state that a jurisdiction with "a tax rate . . . equal to or less than the tax rate of peer jurisdictions" is exempt. "Peer jurisdictions," a term used nowhere else in the Arizona Revised Statutes, is not defined, leaving this determination wholly within PTOC's discretion.¹

Once PTOC determines which jurisdictions, if any, have tax rates in excess of their "peers," it must then allocate responsibility for the overage among those jurisdictions. And, once again, there is no defined standard for doing so. "Pro rata share" implies an equitable distribution based on a comparison of numeric values, but there is no indication which numeric values are to be compared. And use of the term "proportion of the violation" implies that there is to be some determination of "fault," rather than a simple arithmetic calculation.

The power and responsibility to tax is vested in the Arizona Legislature and may not be delegated by it. Ariz. Constitution, Article IX, Section 1. While the legislature may delegate the power to fix a tax rate to an administrative body, it may only do so if it prescribes a specific standard to be used by that body. A.R.S. §15-972(K) fails to prescribe such a standard.

Plaintiff's December 23, 2015 Motion for Summary Judgment is **granted**. Defendants' Cross-Motion for Summary Judgment is **denied**.

¹ The lack of specific guidance provided to the PTOC is demonstrated well by the fact that, when the PTOC met and discussed SB 1476 on March 10, 2015, its members expressed confusion about how to implement Section 7 of SB 1476 and its undefined terms, even going so far as to recommend that the Legislature provide clarification, which never occurred.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-009739

05/23/2016

In reducing this ruling to a judgment, time is of the essence. A.R.S. § 15-972(K), requires Plaintiff to transfer the amount assessed by the PTOC by June 30, 2016. Therefore, Plaintiff shall submit a proposed form of judgment by May 25, 2016.² Defendant shall have until 12:00 p.m. on May 27, 2016 to object to the proposed form of judgment. The Court hopes to issue a signed judgment before June 30, 2016.

² The proposed form of judgment shall not include any award of attorney fees or costs. Plaintiff may separately request fees and costs. Such a request will be litigated separately and, if appropriate, result in a separate judgment. Time is not of the essence on the issue of fees or costs.