**ARIZONA COURT OF APPEALS**

**DIVISION TWO**

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| RICHARD Rodgers, et al.,<br><br>Plaintiffs - Appellees,<br><br>v.<br><br>CHARLES H. HUCKELBERRY, et al,<br><br>Defendants - Appellants. | No. 2 CA-CV 2017-0091<br><br>Pima County Superior Court<br>No. C20161761 |

# APPELLANTS' OPENING BRIEF


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## Introduction

Counties have general authority, under A.R.S. § 11-256, to let any county-owned property by having the property's rental value appraised, and then auctioning the lease off to the highest bidder, for no less than 90% of the appraised value, after publishing notice of the auction. They also have authority, under A.R.S. § 11-254.04, to "appropriate and spend public monies for and in connection with economic development activities," which are defined as "any project, assistance, undertaking, program or study … that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county," *specifically including* "acquisition, improvement, leasing or conveyance of real … property."

In January 2016, the Board of Supervisors (the "Board") of Pima County (the "County"), approved a lease of County-owned real property to a private company, World View Enterprises, Inc. ("World View"), as an economic development activity under the latter statute, without following the process in the more general leasing statute.

Four months later, the Goldwater Institute ("Goldwater")[1] sued Pima County,[2] challenging the legality of the World View lease and several other related contracts on both statutory and constitutional grounds. The trial court granted a Partial Motion for Summary Judgment filed by Goldwater with respect to one of the claims, ruling that the County was required to follow the procedure in § 11-256, even though it was entering into the World View lease, not simply to productively utilize County-owned property not immediately needed for some government purpose, but as an economic development activity under § 11-254.04. The County is appealing that grant of partial summary judgment.

[1]Technically, Goldwater represents three Pima County taxpayers, who function as the named plaintiffs, but this brief will refer to them collectively as "Goldwater." *See* Ariz. R. Civ. App. P. 13(e).

[2]Goldwater also named each member of the Board of Supervisors in his or her official capacity, as well as the County Administrator. This brief will refer to all the defendants collectively as the "County."

## Statement of the Case and Facts

In 2015, representatives of World View approached representatives of the County regarding the company's need for a facility; one at which it could construct, and from which it could launch, its unique high-altitude balloons. (ROA 15, at 2.)[3] World View had developed balloons capable of going up to the stratosphere, or "near space," 20 miles above earth. (ROA 15, at 2-3.) This technology allows various payloads to be launched for scientific or commercial purposes less expensively and more safely than traditional rocket technology, and World View already had several large contracts with NASA and Northrop Gruman. (*Id*.) World View was also developing a protective capsule, capable of accommodating a group of individuals, which could be attached to and lifted by their balloons, and they planned to use this to expand into the "space tourism" business. (*Id*.) World View representatives were considering sites at several different "spaceports" in other parts of the country, but expressed an interest in keeping the operation in Pima County if the County could provide a suitable facility quickly, and at a competitive cost. (*Id*.)

On January 19, 2016, the Board approved a lease-purchase agreement (the "Lease") with World View. (ROA 68, at 56-58.) In it, the County agreed to build a

[3]"ROA" refers to the Clerk's Index of Record on Appeal. All pinpoint citations immediately follow the hyperlinked ROA reference and refer either to the electronic page(s) on which the cited information can be found, or to a specific section of the document if it is one that is divided into numbered sections.

facility that would accommodate World View's operations (the "Facility") on 12 acres of County-owned land within what the County had designated as the Aerospace, Defense and Technology Business and Research Park (ROA 12, § 1.2). The County agreed to build the Facility on an accelerated construction schedule, at a maximum cost of $14,500,000[4] (ROA 12, §§ 1.3 and 5), and lease the Facility to World View with an option to purchase (ROA 12, § 6.3 and Ex. C). In exchange, World View agreed to pay the County substantial rent, at a gradually increasing rate, over a 20-year term[5] (ROA 12, § 6.1), and to employ a specified number of individuals, at specified salaries levels (ROA 12, § 4).

The Board also agreed to build a public balloon launch pad (the "Launch Pad") on property adjacent to the leased parcel. (ROA 12, § 1.4.) In a separate agreement (the "Operating Agreement" and, together with the Lease, the "World View Agreements"), also approved by the Board on January 19, 2016, World View agreed to maintain and operate the Launch Pad on behalf of the County at its own expense in exchange for the right to utilize it on a non-exclusive basis. (ROA 13.)

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[4] The County obtained the funds necessary for this purpose by issuing taxable "certificates of participation" ("COPs") which is a commonly-used method of government borrowing. Goldwater's Complaint contains many inaccurate statements about how this type of financing works, and about the specific series of COPs sold to fund construction of the Facility and Launch Pad. The financing is, however, irrelevant to the issue in this appeal.

[5] Total rent over the 20-year period was estimated at $23,625,000. (ROA 15, at 6.) Because the Facility, as actually built, is a little larger than originally estimated, the rent is actually higher (see footnote 8 below).

Both agreements clearly state that the Board was approving them under the County's § 11-254.04 authority to "appropriate and spend public monies for and in connection with economic development activities," which are defined as "any project, assistance, undertaking, program or study, whether within or outside the boundaries of the county, including acquisition, improvement, leasing or conveyance of real or personal property or other activity, that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county." (ROA 12, § 1.8, and ROA 13, § 1.7.) Based on "an economic impact study by Applied Economics, commissioned by Sun Corridor, Inc., which takes into account World View's anticipated employment and salary levels," the Board made a specific finding that entering into the World View Agreements, in order to retain World View's operations in Pima County, would "have a significant positive impact on the economic welfare of Pima County's inhabitants." (*Id.*)

In order to accommodate the accelerated construction schedule in the Lease, the Board, at the same meeting, awarded contracts for the design and construction of the Facility and Launch Pad under A.R.S. § 34-606. That statute permits certain types of contracts—including architect and construction-manager-at-risk contracts, such as the ones utilized in this instance—to be awarded without following the normal public-construction procurement requirements of A.R.S. Title 34 "if a

situation exists that makes compliance with this title impracticable, unnecessary or contrary to the public interest." (ROA 68, at 52-53 and 57-58.)

On March 28, 2016, the Goldwater Institute ("Goldwater") delivered a letter to the Chair of the Board. In it, Goldwater asserted that the World View Agreements violated Article 9, Section 7, of the Arizona Constitution (the "Gift Clause"), and that the award of the design and construction contracts violated Title 34. (ROA 68, at 60-62.) Goldwater demanded that the County immediately terminate the contracts. That would obviously have constituted a breach of the contracts, exposing the County to liability for substantial contract damages, so the County declined to do so. Goldwater filed and served its Complaint against the County on April 14, 2016. (ROA 2 through 10.) By that time, of course, construction was well under way.

The Complaint contains 4 counts, and seeks declaratory and injunctive relief. Goldwater asserts, in Count 1, that the World View Agreements are unlawful because they constitute a gift or loan of the County's credit in violation of the Gift Clause. In Count 2, Goldwater asserts that the World View Lease is unlawful because the County didn't follow the § 11-256 appraise-notice-auction process. And Counts 3 and 4 assert that the design and construction contracts are unlawful because the County did not follow the competitive process in A.R.S. § 34-603,[6] and the

[6] Goldwater, in its Complaint and in its subsequent filings addressing Counts 3 and 4, insists on referring to "bidding" requirements even though, as the County's lawyers have pointed out numerous times, procurement of architect and

requirements of the County's own Procurement Code, and instead awarded the contracts under § 34-606.

The County filed a Motion to Dismiss all the Counts in the Complaint for failure to state a valid legal claim. (ROA 11.) The trial court denied the motion. (ROA 26 and ROA 28.) Goldwater subsequently filed a Partial Motion for Summary Judgment as to Count 2 (ROA 29), which the trial court granted (ROA 47). The parties stipulated to a Rule 54(b) entry of final judgment on that Count, and to a stay of Count 1 (the Gift Clause claim) pending the outcome of this appeal.[7] (ROA 48.) The trial court stayed Count 1. (ROA 56.) After some disagreement between the parties about the form of judgment and the nature of the relief to be granted, the court entered a final Judgment on Count 2, declaring the Lease to be unlawful because of the County's failure to comply with § 11-256, and ordering the County to "cancel" the Lease no later than 270 days after entry of Judgment. (ROA 70.) At the request of the County, however, the court stayed the operation of that Judgment pending the outcome of this appeal. (ROA 70.)

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construction-manager-at-risk services is done following the qualifications-based process in § 34-603, which specifically forbids consideration of "fees, price, man-hours or any other cost information at any point in the selection process" (§ 34-603(C)(1)(a)).

[7] If the County is ultimately ordered to follow the § 11-256 process, there is no reason to reach the Gift Clause issue.

Goldwater never sought to preliminarily enjoin the County's construction of the Facility and Launch Pad, so the County—as it was contractually required to do—proceeded with construction. The construction was substantially complete as of December 23, 2016. (ROA 51, 53, and 54.) World View moved into and has been occupying and running its business in the Facility (ROA 53)—and paying the County rent in the amount of $59,166.67 per month[8]—for 7 months as of the date of this Opening Brief. Completion of the construction has rendered Counts 3 and 4 moot and the County has filed a Partial Motion for Summary Judgment with respect to those counts, which is still pending in the trial court.

The Judgment on Count 2, entered April 19, 2017, states that there is no just reason to delay, and that it is made under Rule 54(b). The Judgment fully resolves one count in Goldwater's Complaint, and grants injunctive relief. (ROA 70.) The County filed a timely Notice of Appeal. (ROA 73.) This Court has jurisdiction under A.R.S. § 12-2101(A)(1) and (A)(5)(b).

[8]The annual rental rate under the Lease for the first 5 years is $5.00 per square foot. (ROA 12, § 6.1.) The parties initially estimated that the facility would be around 135,000 square feet in size (ROA 12, § 5), but the finished building is actually slightly larger, 142,000 square feet. The parties, as required by the Lease (ROA 12, § 5.9), executed a supplement to the Lease agreement memorializing the final square footage and rental amounts. This does not appear in the Record on Appeal, but is a public document accessible on the County's website: http://onbase.pima.gov/PublicAccess/PR/PublicAccessProvider.ashx?action=ViewDocument&overrideFormat=PDF

## Issue Presented

This appeal presents only one issue:

Section 11-256 authorizes a county to lease any county-owned property to the highest bidder after following an appraisal-notice-auction process. Section 11-254.04, which was enacted much more recently, specifically authorizes counties to lease county-owned property as an "economic development activity" for the purpose of assisting "in the creation or retention of jobs or … otherwise improv[ing] or enhanc[ing] the economic welfare of the inhabitants of the county." Must a county follow the § 11-256 process when leasing county-owned property as an economic development activity under § 11-254.04?

## Argument

### 1. Standard of Review.

The County has always frankly acknowledged that it did not follow the § 11-256 process before it entered into the Lease. (ROA 11 9:9-10, and ROA 37 12:20-13:11.) The County's position is that it had authority to enter into the World View Lease under § 11-254.04 as an "economic development activity" without following the § 11-256 process and that the trial court erred in its legal analysis when it concluded otherwise. The interpretation of these two statutes is purely a matter of statutory construction, which this Court reviews de novo. *E.g.* *Delgado v. Manor Care of Tucson AZ, LLC*, 242 Ariz. 309, 312, ¶ 10 (2017).

### 2. Requiring compliance with § 11-256 for economic-development leases does not "harmonize" the two statutes; it simply nullifies part of § 11-254.04 by rendering meaningless its explicit reference to leasing as an allowed "economic development activity."

Although courts can employ various principles in interpreting statutes, they all serve one end—"ascertain[ing] the meaning of the statute and intent of the legislature." *City of Phx. v. Superior Ct.*, 139 Ariz. 175, 178 (1984). When attempting to do so, courts apply various canons of interpretation, none of which is absolute. Antonin Scalia & Bryan A. Garner, *Reading Law: the Interpretation of Legal Texts*, 59 (2012) ("No canon of interpretation is absolute. Each may be overcome by the strength of differing principles that point in other directions.").

Those canons are means and not ends—ultimately, the goal is to "give [statutes] a fair and sensible reading." *City of Phx.*, 139 Ariz. at 178.

One canon of interpretation is that, when construing two statutes, a court should prefer an interpretation that avoids a flat contradiction between them. *State v. Bowsher*, 225 Ariz. 586, 588-89, ¶¶ 13-14 (2010). Goldwater, in the court below, cited this canon as support for its reading of the statutes at issue in this appeal. But that is a misapplication of the canon. The *Bowsher* case is a good example of how to apply it correctly. The question in that case was whether the trial court could impose probationary terms to be served consecutively rather than concurrently. The Arizona Supreme Court was faced with two apparently contradictory statutes. One, A.R.S. § 13-903(A), stated that "[a] period of probation commences on the day it is imposed *or as designated by the court*" (emphasis added); the other, A.R.S. § 13–901(A), stated that a period of probation shall begin "without delay." The defendant in that case argued that the "without delay" language required probationary periods to be concurrent. *Bowsher*, 225 Ariz. at 588, ¶ 12.

Noting that a Court should try to read statutes "in such a way as to harmonize and give effect to all of the provisions involved," the court rejected the defendant's reading of § 13-901(A) because it would flatly contradict, and render meaningless, the language in § 13-903(A) that allowed the court to designate a different commencement date. *Bowsher*, 225 Ariz. at 588-89, ¶¶ 13-14. In contrast, giving

effect to that language in § 13-903(A) did *not* render the "without delay" language in § 13-901(A) meaningless:

> Harmonizing the two statutes, we conclude that the authority granted in § 13–903(A) to impose consecutive terms of probation is limited by the "without delay" provision in § 13–901(A), such that the trial court does not have unfettered discretion to postpone the onset of probation indefinitely into the future. For example, a judge seeking to impose two consecutive probation terms must designate that the second term begins immediately after the first term ends.

*Bowsher*, 225 Ariz. at 589, n.4.

By reading § 13-901(A) in a manner that merely *limited* the scope of the discretion granted to courts by § 13-903(A), the Court was able to preserve both statutes and avoid rendering the language in the latter one entirely meaningless. In our case, Goldwater's reading of one statute, § 11-256, renders the reference in § 11-254.04 to the leasing of property as an approved economic development activity, meaningless, much like the *Bowsher* defendant's reading of § 13-901(A) rendered the phrase in § 13-903(A) meaningless.

The predecessor to § 11-256 was enacted by the Arizona Legislature in 1939. 1939 Ariz. Sess. Laws ch. 9, §§ 1-2. It authorizes county boards of supervisors to lease any county property by appraising the fair rental value of the property, publishing notice of the proposed lease and its material terms, and holding an auction at which the lease is awarded to the highest bidder for no less than 90% of the appraised value. The lease can but need not be for any particular purpose beyond

utilizing county-owned property not otherwise in use to generate income for the benefit of taxpayers. Under those circumstances, it makes sense to focus on obtaining the highest possible rent.

Section 11-254.04 was added much later, in 1994. 1994 Ariz. Sess. Laws, ch. 280, § 3. And in it the Legislature specifically listed leasing of property as an approved "economic development activity." If that language authorizing counties to lease property for economic development did no more than authorize counties to do what they already had authority to do—lease county-owned property for any purpose, including for economic development, after following the appraise-and-auction process in § 11-256—then it did nothing at all. Such an interpretation effectively nullifies and renders that language meaningless, which violates another canon of interpretation—that, "If possible, every word and every provision is to be given effect …. None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." Scalia & Garner, *supra*, at 174. *See State v. Eddington*, 228 Ariz. 361, 363, ¶ 9 (2011) ("we generally construe statutes so that no part is rendered redundant or meaningless").

A more natural and harmonious reading of the two statutes is that § 11-254.04 creates an exception to § 11-256, the older and more general statute, for a specific class of leases: those entered into for economic-development purposes. Such a

reading limits § 11-256's scope, but by no means renders it meaningless. "If a provision is susceptible of (1) a meaning that gives it an effect already achieved by another provision …, and (2) another meaning that leaves both provisions with some independent operation, the latter should be preferred." Scalia & Garner, *supra*, at 176. When that can be done, "the two provisions are not in conflict, but can exist in harmony." Scalia & Garner, *supra*, at 185.

This interpretation is also consistent with the language in § 11-256(F), which states that the statute is "supplementary to and not in conflict with other statutes governing or regulating powers of boards of supervisors"; in other words, it is a grant of authority, and is not intended to prescribe the *only* way a County may lease property in the face of other statutes that authorize it to do so. Indeed, the County can, under A.R.S. § 11-251(9), "lease any county property to any other duly constituted governmental entity" without following the procedure in § 11-256, provided the Board unanimously approves it. Finally, such an approach is consistent with the canon that specific statutes control over general statutes. *Mercy Healthcare Ariz., Inc. v. Ariz. Health Care Cost Containment Sys.*, 181 Ariz. 95, 100 (App. 1994) ("when a general and a specific statute conflict, we treat the specific statute as an exception to the general, and the specific statute controls").

### 3. This Court has already held that a county can enter into a lease without following the § 11-256 process, when it does so in the course of exercising authority under another statute.

If the above arguments were not enough, the reality is that this Court has addressed an issue very similar to this and concluded that a county can enter into a lease, without following the § 11-256 process, when it does so in the course of exercising its authority under another statute.

*Johnson v. Mohave Cty.*, 206 Ariz. 330 (App. 2003), was an action brought against the Mohave County Board of Supervisors by a former supervisor, who claimed that the board should have followed the § 11-256 process before entering into an operating agreement for one of its parks under A.R.S. § 11-932, because the agreement was the functional equivalent of a lease. *Id*. at 332, ¶ 5. Section 11-932(A) provides:

> **A.** Notwithstanding the ten-year limitation prescribed in § 11-256, a county or municipality may purchase, enter into contracts to purchase, acquire by lease or sublease and lease or sublet for any term, or obtain by gift or accept by grant from the United States or other governmental agency real property, within or without its territorial limits, and may hold, maintain and improve it for the use and purpose of a public park, and it may dedicate property already owned to a like purpose. A county or municipality may enter into contracts for any term for the operation of any such public parks. A county or municipality may expend public funds for improvements on lands dedicated, or acquired by lease or sublease for any term, or by agreement or contract of purchase, under the provisions of this section.

(Emphasis added.)

The Court "conclude[d] that the public auction requirement of § 11-256(C) is inapplicable to acquisitions or leases for public park purposes made pursuant to § 11–932." *Johnson*, 206 Ariz. at 333, ¶ 11. The Court noted that the precursors to both § 11-256 and § 11-932 were enacted as part of the 1939 Arizona Code (1939 Ariz. Sess. Laws ch. 9, §§ 1-2, and ch. 78, § 2, respectively), and that although the latter statute provided for park operation agreements, the Legislature had not included an auction requirement. It also did not include a specific *exemption* from § 11-256; the current exemption from § 11-256's "10-year limitation" (a limitation that is no longer even in § 11-256), was added later. *Johnson*, 206 Ariz. at 333, ¶ 12. Nevertheless, "[c]onstruing all the relevant statutes together," the Court concluded "that the intent of the legislature, when it enacted the earlier version of § 11-932 in 1939, was to promote and facilitate the development of public parks by excepting such leases from the public auction requirement in § 11-256." *Johnson*, 206 Ariz. at 334, ¶ 15.

**4. The Legislature's failure to include an explicit § 11-256 exemption in § 11-254.04 does not conclusively indicate that compliance with that statute is required.**

Goldwater argued below that the Legislature's failure to include in § 11-254.04 a specific exemption from § 11-256 is fatal to the County's position, pointing out that "[e]ach of the four times that the Legislature has sought to exclude county leases from section § 11-256, it has done so *explicitly*, through a …

'notwithstanding' clause." (ROA 29, at 4.) That argument, however, assumes its own conclusion: that those were the only four times the Legislature created a § 11-256 exception. In fact, that is exactly the question about which we are arguing. And although an explicit reference to § 11-256 in § 11-254.04 would certainly have been a clear and unambiguous indication of legislative intent, the absence of such a reference does not necessarily indicate the absence of the intent.[9] The explicit reference in § 11-254.04 to conveying and leasing property serves the same function, because the reference would be meaningless if it authorizes nothing more than leasing or conveying property under statutes already in existence when § 11-254.04 was enacted. *See* *Bowsher*, 225 Ariz. at 588 n.2 (Court notes that its interpretation of the two probation statutes at issue in that case was not simply because the Legislature has "specifically directed or barred consecutive sentences in other circumstances.").

As for why the Legislature did not include an explicit § 11-256 exemption when it enacted § 11-254.04, it is worth noting that, as a drafting matter, including such an explicit exemption would have been awkward given the breadth of economic development activities authorized by § 11-254.04, of which leasing is just one. The statutes that do contain an explicit exemption to § 11-256 more exclusively concern

[9]This is the formal fallacy of denying the antecedent. "If A, then B; not A, therefore not B" is not a deductively valid argument.

real-property leasing and conveyance. Section 11-1435 concerns operating agreements for county-owned health-care facilities (which under § 11-1432 include a leasing component). Section 11-256.01 concerns leases of county-owned real property to government entities, county fair associations or nonprofit corporations. Section 11-251.10 concerns leasing or conveyance of county-owned real property for affordable housing.

**5. Requiring compliance with § 11-256 for economic-development leases obstructs the obvious purpose of § 11-254.04.**

A textually "fair reading" of a statute takes into account its intent, as that intent can be understood from its language, read in context.

> As expressed by the Texas Supreme Court, if the "language is susceptible of two constructions, one of which will carry out and the other defeat [its] manifest object, [the statute] should receive the former construction.
>
> This canon follows inevitably from the facts that (1) interpretation always depends on context, (2) context always includes evident purpose, and (3) evident purpose always includes effectiveness.

Scalia & Garner, *supra*, at 63 (quoting *Citizens Bank of Bryan v. First State Bank*, 580 S.W.2d 344, 348 (Tex. 1979)).

The two statutes in this case have clearly different purposes. Section 11-256 is an older and more general statute. It assumes that what the county is doing is disposing of county-owned property not currently being put to good use, and its obvious purpose is to ensure that the disposal is done in a manner that prevents the squandering of public assets. That makes sense. In contrast, the purpose of § 11-

254.04 is to authorize counties to "appropriate and spend public monies" in the course of engaging in economic development; leasing and conveyance of real property is merely one activity—one *tool*—that the county can use to pursue that development. The statute's focus is on expenditure, not revenue, and the property transactions it authorizes have an entirely different purpose than leases under § 11-256.

Indeed, common sense tells us that it makes no sense to follow § 11-256 when entering into a lease for economic development purposes. Section 11-256's sole focus on the amount of rent is inconsistent with the type of qualitative considerations that come into play in the economic development arena. A lease or sale of property for economic development purposes will inevitably involve a specific party—not simply the highest bidder—and the terms of the lease or sale will likely be different than an arms-length transaction focused purely on the immediate direct return. The County, for example, has an economic-development plan that includes attracting high-tech aviation and aerospace companies to relocate to or expand on the real property the County has designated as the Aerospace, Defense and Technology Business and Research Park. (ROA 15, at 4-5.)[10] It hopes that the presence of each

[10]*See also* Pima County's Economic Development Plan, 2015-2017, http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Economic%20Development/Econ%20Dev%20Plan%202015/Economic%20Development%20Plan%202015%20Download%20version.pdf

company will, in turn, help attract other companies to the area, building a synergy and an economic momentum that will eventually be self-sustaining. At the same time, the County needs to ensure that any new companies operate in a manner that is compatible with the security needs of Raytheon, which is located on neighboring land (*Id*.) Simply letting property to the highest bidder, regardless of the type of company or its economic impact on the community, will not work.

Goldwater points out that one of the purposes of § 11-256's appraise-and-auction process is to "prevent favoritism, fraud and public waste." *Johnson*, 206 Ariz. at 333, ¶ 12. That is clearly true. But, as explained above, § 11-254.04 does not eviscerate the older and more general statute; it simply creates an exception to it. And there are other mechanisms in place that help prevent favoritism, fraud and public waste, including the Gift Clause (Ariz. Const. art. 9, § 7); prohibitions on conflicts of interest (A.R.S. §§ 38-444 and 38-501 through 38-511); and open meeting laws (A.R.S. §§ 38-431 through 38-431.09).

**Conclusion**

The Court here is faced with two competing statutory interpretations. Goldwater's interpretation emphasizes the absence of an explicit exemption in § 11-254.04 at the expense of rendering § 11-254.04's reference to leasing meaningless. The County acknowledges that the legislature *could* have (albeit awkwardly) included an explicit § 11-256 exemption in § 11-254.04, but its failure to do so is

not determinative. The County's interpretation gives meaning to § 11-254.04's reference to leasing, and furthers its obvious purpose, without rendering § 11-256 meaningless. Because it is the County's interpretation that gives the statute "a fair and sensible reading," *City of Phx.*, 139 Ariz. at 178, the County's interpretation is correct. Accordingly, the County respectfully requests that this Court vacate the trial court's Judgment and direct the court, on remand, to instead enter summary judgment in favor of the County on Count 2 of Goldwater's Complaint.

RESPECTFULLY SUBMITTED July 25, 2017.

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# CERTIFICATE OF COMPLIANCE

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1. This Certificate of Compliance concerns Appellants' Opening Brief, and is filed under Rule 14(a)(5) of the Rules of Civil Appellate Procedure.

2. The undersigned certifies that the Appellants' Opening Brief to which this Certificate pertains:

- is double spaced, except for single-spaced headings and footnotes;
- uses Times New Roman, a proportionally spaced typeface, with a point size of 14; and
- contains 4,884 words, according to the word-count function of the word processing program used to prepare the Appellants' Opening Brief.

3. The Appellants' Opening Brief to which this Certificate pertains does not exceed the word limit that is set by Rule 14(a)(1) of the Rules of Civil Appellate Procedure.

RESPECTFULLY SUBMITTED July 25, 2017.

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## CERTIFICATE OF SERVICE


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The undersigned certifies that, on July 25, 2017, she did, or caused to be done, the following:

1. Filed, via this Court's Electronic Filing System, the Appellants' Opening Brief; and

2. Mailed, via first class mail, and additionally emailed one copy of the Appellants' Opening Brief to:

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RESPECTFULLY SUBMITTED July 25, 2017.

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