**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' REPLY BRIEF


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## ARGUMENT

### 1. The Arizona Supreme Court has not rejected the County's Argument.

*Achen-Gardner, Inc. v. Superior Court In & For County of Maricopa*, 173 Ariz. 48 (1992), does not, as Goldwater asserts (Answering Brief ("AB") at 5 and 8),[1] control this case. It was interpreting an entirely different statute, in a different context. Though the court in that case declined to find that the development-agreement statute created an implied exception to Title 34 requirements, it by no means held that an implied exception can *never* be created to a statute that involves a competitive process.

The contractor in *Achen-Gardner* argued that the enactment of the development-agreement statute—which states that a development agreement can address the "conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time"—made it unnecessary for a private developer building public infrastructure to follow Title 34. *Id*. at 52. The Supreme Court disagreed. *Id*. at 52-53. And in the course of doing so, it does note that the Legislature should have been explicit if it intended to create an exception to Title 34. *Id*. at 54. But the fact is that there was absolutely nothing in the development-agreement statute that even *by implication*

[1] The page numbers given are the page numbers of the PDF document, rather than the page numbers as the document is numbered internally.

addressed Title 34 applicability. An implied exception was unnecessary to harmonize the development-agreement statute and Title 34. In our situation, as explained in more detail later, there *is* statutory language—the reference to "leasing or conveyance" in § 11-254.04—that indicates that § 11-254.04 makes compliance with § 11-256 unnecessary when leasing property for economic development purposes.

**2. The fact that the Arizona Legislature knows how to include specific statutory exceptions does not answer the question of whether the language it included in § 11-254.04 means that economic-development leases do not have to comply with § 11-256.**

**A. The County has not "resort[ed] to incomplete statutory history."**

Goldwater accuses the County of "resort[ing] to incomplete statutory history" (AB at 8) and "shortcutting the statutory history of § 11-254.04" (AB at 9). This accusation is nothing short of bizarre. As Goldwater notes, enactment of § 11-254.04 in 1994 gave counties far more latitude to engage in economic development activities than they had previously enjoyed under A.R.S. § 11-254. That is quite true. But it doesn't answer the question of what purpose the statute's reference to leasing serves if it does nothing more than authorize the County to do what it already has authority to do under § 11-256. We agree that the Legislature clearly intended to give counties broad authority to use their resources to promote economic development through whatever means they choose—specifically including, but not limited to, leasing and conveying real property. Goldwater asserts that this history

somehow makes the County's reading of the statute—which furthers that clear legislative purpose—less compelling, but it doesn't explain how or in what way.

**B. The County has never argued that § 11-254.04 "repealed" § 11-256; to the contrary, the County's reading of the two statutes harmonizes them.**

Goldwater claims that the County is asserting that § 11-254.04 "repealed" § 11-256 by implication, and then argues that it did not. But the County has *never* argued that 11-254.04 "repealed" § 11-256. "Repeal" means "[a]brogation of an existing law." REPEAL, Black's Law Dictionary (10th ed. 2014). "Abrogate" means to abolish or annul. http://www.dictionary.com/browse/abrogate?s=t. Section 11-256 is still alive and well; the County's argument is simply that it does not apply to a lease entered into under § 11-254.04 as an economic-development activity.

Goldwater argues that the two statutes do not conflict, and the County agrees. But Goldwater achieves consistency by reading part of § 11-254.04 completely out of existence. As Goldwater itself (AB at 15-16) argues at length, counties can enter into leases, after following the § 11-256 process, for any reason, including for economic development. That being the case, what is the purpose and meaning of the language, in § 11-254.04, that specifically authorizes counties to "lease or convey" real property in order to promote economic development? Under Goldwater's interpretation, this language is meaningless and does nothing. That is not permissible. *Premier Physicians Group, PLLC v. Navarro*, 240 Ariz. 193, 196, ¶ 16 (2016) ("In construing statutes, a 'cardinal principle' of interpretation is to give

effect to every clause and word."); *Williams v. Thude*, 188 Ariz. 257, 259 (1997) ("Each word, phrase, clause, and sentence [of a statute] must be given meaning so that no part will be void, inert, redundant or trivial.") (alteration in original) (emphasis omitted) (quoting *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949)); *Baker v. Gardner*, 160 Ariz. 98, 101 (1988) (agreeing with Judge Howard's dissent in an earlier case pointing out that the anti-deficiency statute would be "rendered meaningless" if it did not impliedly exempt residential foreclosures from an earlier-enacted election-of-remedies statute); *State v. Superior Court for Maricopa County*, 113 Ariz. 248, 249 (1976) ("The law will be given, whenever possible, such an effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant."). The County's interpretation of the statutes, in contrast, neither runs afoul of the "surplusage" cannon, nor results in an implied repeal.

Goldwater continues to miss the distinction between a statute that limits or creates an exception to another statute's scope, such that they can exist together in harmony, and a statute that "repeals" an earlier statute because it so directly and completely contradicts that other statute that one or the other must now be of no further force or effect; they cannot co-exist. The County wholeheartedly agrees with Goldwater that § 11-254.04 effected no such repeal of § 11-256. Instead, the two statutes can and must be read in a manner that preserves them *both—including* § 11-254.04's reference to leasing. This can be done by understanding that § 11-254.04

provides a limited exception to § 11-256, which nevertheless remains operative and continues to apply to other leases.

Goldwater asserts that it is significant that the two statutes at issue in this case "were passed decades apart," (AB at 5 and 12) and that "[t]he County does not point to a single non-explicit, later-enacted exception to § 11-256 or any other statute" (AB at 12). This Court, in *Johnson v. Mohave County*, 206 Ariz. 330, 333, ¶ 12 (App. 2003), noted that "[t]he rule that statutes *in pari materia* are to be construed so as to give effect to each, applies with even greater force when the statutes are enacted at the same session of the legislature." But the Court by no means indicated that this was a necessary condition for its ultimate conclusion that a county need not comply with § 11-256 before entering into a park lease under A.R.S. § 11-932.[2]

It is in fact clear that statutes enacted at different times must still be interpreted in a harmonizing way if possible, and both this Court and the Arizona Supreme Court have done so in many cases. *See State ex rel. Larson v. Farley*, 106 Ariz. 119, 122 (1970) ("If reasonably practical, a statute should be explained in conjunction with

[2] That is *Johnson's* actual holding. The *Johnson* Court did not, as Goldwater claims (AB at 13) "hold" that "'Section 11-256 governed all leases of land not involving parks' until the Legislature added *explicit* exceptions." Not that it matters much. Even if the *Johnson* Court did hold as Goldwater claims, it is by no means inconsistent with the Legislature creating an implied exception years later, in 1994. This is just a repetition of Goldwater's argument that the lack of an explicit reference to § 11-256 in § 11-254.04 means that there is no implied exception to that statute's requirements. The problems with that argument are explained in Section 2.C of this brief.

other statutes to the end that they may be harmonious and consistent. … This rule of construction applies even where the statutes were enacted at different times, and contain no reference one to the other, and it is immaterial that they are found in different chapters of the revised statutes."); *Isley v. Sch. Dist. No. 2 of Maricopa County*, 81 Ariz. 280, 286 (1956) ("In determining the legislative intent this court is at liberty to examine both prior and subsequent statutes *in pari materia*.").

So, for example, the Arizona Supreme Court has held that its adoption of a general procedural rule providing 60 days to appeal a judgment did not impliedly repeal an earlier-enacted statute that required an appeal in a certain type of case (involving the validity of corporation commission orders) to be filed within 30 days. *Arizona Corp. Comm'n v. Catalina Foothills Estates*, 78 Ariz. 245, 249 (1954). The court explained that "allowing the earlier statutory rule to stand will not create a conflict with the provisions of the Rules of Civil Procedure, hence both can be given effect with consistency." *Id*. That is because *an exception is not a repealing "conflict*." *See also S. Pac. Co. v. Gila County*, 56 Ariz. 499, 502 (1941) ("When the question of repeal by implication arises, if the later statute and the former can be construed so that both will be operative, it is the duty of the court to give them such a construction."); *Steer v. Eggleston*, 202 Ariz. 523, 527, ¶¶ 19-20 (App. 2002) (reconciling A.R.S. § 29–359, enacted in 1982, and A.R.S. § 12–1510, enacted in 1962); *Phoenix Children's Hosp. v. Arizona Health Care Cost Containment Sys.*

*Admin*., 195 Ariz. 277, 281, ¶ 13 (App. 1999) (deciding that "contrary to Plaintiffs' assertions, the 1995 amendments to section 41–1033 did not 'implicitly repeal' section 41–1034. The legislature simply distinguished between two classes of cases."); *Prudential v. Estate of Rojo-Pacheco*, 192 Ariz. 139, 146 (App. 1997) (harmonizing arguably conflicting statutes by determining that the later-enacted statute did not "repeal" the earlier statute, but merely limited its application.).

The case of *State v. Deddens*, 112 Ariz. 425 (1975), is a good example of the distinction between reconciling and repealing statutory language. Statutes providing for good-behavior credits against a person's prison sentence were already on the books when the Legislature, in 1961, enacted the Uniform Narcotic Drug Act ("UNDA"). Deddens was convicted under one of the statutes in that act, which provided that a person convicted "shall not be eligible for release … until he has served not less than three years." An Attorney General ("AG") opinion, noting that "repeals by implication" are disfavored, had opined that persons so convicted were still eligible for good-behavior credits, even if that meant they would be released before serving 3 years. *Id*. at 428-429. The Supreme Court disagreed. It noted that "[s]tatutes are to be given, whenever possible, such an effect that no clause, sentence or word is rendered superfluous, void, contradictory or insignificant." *Id*., at 429. The AG's interpretation had "no support either in law or reason" because it "would result in the words 'shall not be eligible for release upon completion of sentence, or

on parole, or on any other basis until he has served not less than (a certain number of) years' as wholly superfluous." *Id*. The UNDA did not "repeal" the earlier statutes; it simply created some exceptions to them. Likewise, § 11-254.04 did not repeal § 11-256, but it did create an exception to it; Goldwater's reading, in contrast, renders § 11-254.04's explicit reference to leasing real property as an economic-development activity "wholly superfluous."

### C. Goldwater's argument begs the question; and the County has not, by pointing out that fallacy, implied that Goldwater must provide the *probatio diabolica*, or impossible proof.

Goldwater has repeatedly argued that the lack of an explicit reference to § 11-256 in § 11-254.04 means that the County must follow the § 11-256 process when it enters into economic-development leases under § 11-254.04:

- Premise 1: "Each time that the Legislature has chosen to create an exception to or modification of § 11-256, it has done so explicitly." (AB at 10).
- Premise 2: Section 11-254.04 does not explicitly exempt economic-development leases from § 11-256's requirements.
- Conclusion: Therefore, economic-development leases entered into under § 11-254.04 are not exempt from § 11-256.

The problem with this argument, as the County has repeatedly pointed out, is that it begs the question; the first premise assumes the truth of the conclusion (because,

obviously, if the conclusion is false—if economic-development leases entered into under § 11-254.04 *are* exempt from § 11-256—then the first premise is false). The argument is objectively fallacious.

We can fix the begging-the-question problem by altering the first premise so that it is a true statement that does not assume the argument's conclusion:

- Premise 1: No court has, to date, recognized the creation of an implied exception to § 11-256.
- Premise 2: Section 11-254.04 does not explicitly exempt economic-development leases from § 11-256's requirements.
- Conclusion: Therefore, economic-development leases entered into under § 11-254.04 are not exempt from § 11-256.

Both premises are true, and neither begs the conclusion. Unfortunately for Goldwater, the argument is still unsound because it seeks to prove a negative, which—as Goldwater points out in its Answering Brief—is impossible.

Anyone who has taken even a beginners-level logic course understands that, while one can conclusively prove the *existence* of something, the lack of evidence of its existence does not prove its *nonexistence*. The fact that one has seen only white

swans, the reasoning goes, doesn't prove that there are no black swans.[3] And the fact that we don't know of any other instances in which the Legislature has created an implied exception to § 11-256 does not prove that it did not do so when it enacted § 11-254.04. When Goldwater categorically claims that it does, it is simply wrong.[4]

At most, Goldwater can say that, since the Legislature has in the past included explicit § 11-256 exceptions in other statutes, but did not do so here, and since we shouldn't too readily read additional language into a statute, we should start with a *presumption* that § 11-254.04 economic-development leases *are* subject to § 11-256. This must be what Goldwater means by its reference to the *probatio diabolica* doctrine. (AB at 12-13.) That doctrine recognizes that the law cannot, in fairness, require a party to prove something that cannot possibly be proved. Courts are

[3] This is the example typically used to illustrate the principle. Europeans, familiar only with white swans, assumed black ones did not exist until Dutch explorer Willem de Vlamingh discovered them in Australia in 1697.

[4] In order to put the argument in the form of an actual categorical syllogism, with exactly 3 terms, a major premise that has the middle term as its subject and the major term as its predicate, a minor premise that has the minor term as its subject and the middle term as its predicate, and a conclusion that has the minor term as its subject and the major term as its predicate, we would have to rewrite it as: All explicit exceptions are valid exceptions; the § 11-254.04 exception at issue is not an explicit exception; therefore the § 11-254.04 exception is not a valid exception. This formulation suffers from the fallacy of the illicit process of the major term; the major term is distributed in the conclusion, but is undistributed in the major premise. Put in the form of a hypothetical syllogism—if a statutory exception is expressly stated, it is valid; the purported § 11-254.04 exception is not expressly stated; therefore the purported § 11-254.04 exception is not valid—suffers from the fallacy of denying the antecedent, as explained in the County's Opening Brief.

therefore reluctant to require a party to prove a negative[5] and will in some—though by no means all[6]—cases shift the burden of proof to the other party in order to avoid doing so.[7]

The debate in this case, of course, is not about what factual elements Goldwater must establish to successfully prove its cause of action, but rather how best to interpret a particular statute. To such a purely legal inquiry, the doctrine of *probation diabolica* doesn't really apply. But using the doctrine to create a presumption by analogy is entirely reasonable. By all means, therefore, let us start

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[5] *See, e.g.*, *Ex parte Rogers*, 68 So. 3d 773, 780 (Ala. 2010) (noting "the disinclination of the law to place upon a party the burden to prove a negative"); *Carter-Wallace, Inc. v. Admiral Ins. Co.*, 712 A.2d 1116, 1126 (N.J. 1998) (noting "inherent reluctance to place the burden of proving a negative fact on a litigant").

[6] *See, e.g.*, *Moore v. Kulicke & Soffa Indus., Inc.*, 318 F.3d 561, 572 (3d Cir. 2003) ("where a negative is essential to the existence of a right, the party claiming the right generally has the burden of proving such negative" (quoting *U. S. Gypsum Co. v. Birdsboro Steel Foundry & Mach. Co.*, 52 A.2d 344, 348-349 (Pa. 1947)); *United States v. Prentiss*, 206 F.3d 960, 971 (10th Cir. 2000), *on reh'g en banc*, 256 F.3d 971 (10th Cir. 2001) ("the government is, on occasion, required to prove a negative at trial").

[7] *Dep't of Labor & Indus. v. Rowley*, 378 P.3d 139, 147 (Wash. 2016) (worker need not prove noncommission of a felony as part of worker's compensation claim *Travelers Cas. & Sur. Co. v. Ribi Immunochem Research, Inc.*, 108 P.3d 469, 477 (Mont. 2005) ("Forcing the insurer to prove a negative—that the discharge was not all sudden and accidental—seems unfair where the insured solely possesses the relevant information pertaining to its activities."); *United States v. Besase*, 623 F.2d 463, 465 (6th Cir. 1980) (taxpayer does not have burden to show nonexistence of income).

our analysis with the presumption, based on the lack of an explicit reference to § 11-256, that § 11-254.04 economic-development leases *are* subject to § 11-256. Doing so does not help Goldwater. Presumptions are rebuttable, and the County has rebutted this one by showing that it is contradicted by the statute's text. If leases entered into under § 11-254.04 must comply with § 11-256, it means the language in § 11-254.04 specifically authorizing economic-development leases did nothing and is meaningless surplusage. Because that would violate an accepted cannon of statutory interpretation, § 11-254.04 must be read to create an implied § 11-256 exception.

That being the case, it is up to Goldwater to come up with a textual argument that is even more compelling. *Patterson v. Shumate*, 504 U.S. 753, 760 (1992) (one who urges an interpretation inconsistent with the statutory text bears an "exceptionally heavy" burden of persuasion). This it has failed to do.

**3. Goldwater's remaining argument, based on § 11-256's purpose, neglects to take into account the purpose of § 11-254.04, and is not consistent with the statutory text. In contrast, the County's argument is not based on "policy" but on the statutory text.**

Goldwater claims that "[t]he County … resorts to … policy arguments in favor of jettisoning § 11-256." (AB at 8.) In fact, Goldwater is the one advancing a "policy"-based argument, divorced from the statutory text.

Goldwater notes that the purpose of § 11-256 is "to prevent favoritism, fraud and public waste by encouraging full and complete competition." *Johnson*, 206 Ariz.

at 333, ¶ 12. And it repeatedly cites *Achen-Gardner* in support of broad statements about the importance of competitive bidding, and the idea that competitive bidding is not inconsistent with economic development. Goldwater then urges the Court to further that broad policy of competition by affirming the trial court's interpretation of § 11-254.04. (AB at 5 ("The appraisal, auction, and minimum price safeguards of § 11-256 place commonsense limits on the County's economic development authority under § 11-254.04. The Superior Court's decision requiring the County to comply with the § 11-256 safeguards should therefore be affirmed."); AB at 16 ("§ 11-256 does nothing to inhibit other kinds of economic development—e.g., improving County infrastructure and police services—to draw local investment without violating the law"); AB at 17 ("Section 11-256 provides an important safeguard against favoritism, cronyism, and abuse—safeguards this Court should not short-circuit.").)

It is not, however, the job of a court to ignore statutory text in the name of furthering whatever broad policies might lie behind that text.[8] "'The requirements of good faith and common sense … do not justify the interpreter … to seek the spirit or equitable meaning of the statute in disregard of its textual implications. These

[8] Note that *State v. Thomason*, 162 Ariz. 363, 366 (App. 1989), a case cited by Goldwater in support of the idea that legislative history should be consulted to determine a statute's purpose, involved an actual policy statement that was adopted by the Legislature as part of the bill containing the statute. It does not support the idea that a court should go beyond the legislatively-enacted text.

doctrines lead more often than the doctrine of literalness [interpreting language in a hyper-technical way] to spurious interpretation and to completely unforeseeable and unreasonable results.'" Antonin Scalia & Bryan A. Garner, *Reading Law*, at 344-355 (2012) (quoting Frederick J. de Sloovere, *Textual Interpretation of Statutes*, 11 N.Y.U. L.Q. Rev. 538, 542 (1934)).

And the Supreme Court, in *Achen-Gardner*, did not by any means suggest that a court's opinion about broad public policies should control over statutory text. The contractor in that case argued that the enactment of the development-agreement statute—which states that a development agreement can address the "conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time"—made Title 34 inapplicable to construction of public improvements by developers. The fact that the Court found that a developer is an agent of the Title 34 "agent" when building public infrastructure with public monies, and is therefore bound by Title 34, does no violence to the statutory text in either Title 34 or the development-agreement statute. The court does indicate that, if that was the legislature's intent to create an exception to Title 34, it should have done so explicitly, given the importance of public bidding on public-works projects. *Achen-Gardner*, 173 Ariz. at 54. But it also concludes that nothing about the language of the development-agreement statute supports finding an implied Title 34 exception. *Id*.

In fact, the Court in *Achen-Gardner* actually *rejected* a "purposivist" argument made by the developer:

> Despite the absence of conflict between the development agreement law and the competitive bidding law on their face, Jeri–Co and Chandler argue that the public policy behind the development agreement law will be thwarted if compliance with the competitive bidding law is required. They argue that the purpose of the development agreement statute is not merely to expedite the construction of public improvements to facilitate private development—as the court of appeals explained—or to secure the construction of public improvements, but also is to allow municipalities to enhance their economies by attracting private development.

*Id*. The Court, understandably, refused to depart from the statutory language in order to further a broad economic-development purpose not readily discernable from the statutory text.

Yes, the purpose of § 11-256 is to prevent favoritism, fraud and public waste. But there are other, competing, public purposes. When it enacted § 11-254.04, the Legislature was clearly recognizing the importance of economic development at the county level, and intended to greatly expand the discretion of county boards of supervisors to determine how to encourage that development. That understanding of § 11-254.04's purpose is based on the statute's text; not on speculation about broader policy goals that might have prompted the legislative enactment.

Whether a county, by entering into a lease like the World View lease, successfully promotes economic development, or promotes it more than it might by engaging in other activities, isn't for the courts to decide. But common sense tells us

that auctioning a lease off to the highest bidder is not consistent with using that lease as a tool to pursue a larger economic-development goal. The fact is that § 11-254.04's reference to leasing means absolutely nothing if compliance with § 11-256 is still required, because the county can always lease (and always could have leased) property under § 11-256 for economic development or any other purpose. The County's interpretation of § 11-254.04 is thus consistent with both the statute's purpose *and* its text, and must be preferred over Goldwater's.

**4. The County has never argued that the Gift Clause does not apply to the World View transaction.**

Goldwater claims that "the County has argued that the Gift Clause does not apply here—an argument that, if successful, would leave Taxpayers with *no* protections against the County's favoritism and willingness to 'deplet[e] the public treasury by giving advantages to special interests or by engaging in non-public enterprises.'" (AB at 17.) That is a rather shocking statement. The County has absolutely *never* argued that the World View transaction is not subject to the Gift Clause. It has argued only that the transaction does not *violate* the Gift Clause, because no one could sensibly conclude that a public entity has given something away by selling, for approximately $24,000,000 (see Opening Brief at 8, n. 5), a facility it spent approximately $13,000,000[9] to build.

[9] In the process of disclosure in the continuing trial court proceeding, documentation has been provided supporting this approximate actual cost. Despite Goldwater's

**5. Section 11-254.04 clearly includes the County acting as the landlord.**

The County will address one final issue. Goldwater, in footnote 3 of its Answering Brief, claims that § 11-254.04's "general grant of economic development authority is unclear about whether the county can act as lessor in an economic development lease." Goldwater notes that the statute authorizes boards of supervisors to "appropriate and spend public monies;" therefore—invoking the doctrine of *noscitur a sociis* (words grouped in a list should be given related meanings)—"acquisition, improvement, leasing or conveyance of real or personal property or other activity" only authorizes the County to pay rent as a tenant, not collect rent as a landlord. This argument is unavailing, because the reference to "leasing" appears in the phrase "leasing *or conveyance* of real or personal property." In this context, when it is appears immediately adjacent to "conveyance," any sensible person would read "leasing" to mean leasing property to another, as a landlord.[10] The cited canon does not indicate otherwise. "Appropriating and spending money" is not the "least common denominator relevant to the context" (Scalia & Garner, *supra*, at 196); because that reference to spending money cannot

assertion that the Facility has been leased to World View "at a substantial discount" (AB at 5), no evidence or documentation has been produced concerning the market rental value of the facility.

[10] Unfortunately, virtually everyone in the U.S. uses "lease" as a verb describing both what a landlord does and what a tenant does, instead of using "let" as the verb for the landlord's action.

sensibly limit the meaning of "conveyance," it likewise does not limit the meaning of "leasing."

In addition, the statutory language authorizes appropriation and spending of public moneys not simply "for" but also "*in connection with* economic development activities." A county will obviously be required to spend money in the course of acquiring or constructing the property that it then leases or conveys to someone else for economic-development purposes. And that spending, though not directly "for," is clearly "in connection with" the subsequent economic-development activity: leasing or conveying the property.

The reference to appropriating and spending money in connection with leasing and conveying property can also be fairly read as a recognition that a county may, in order to accomplish its larger economic-development goal, choose to receive less than the maximum possible direct monetary return from the transaction—subject, of course, to Gift Clause limitations. Finally, it is telling that the statute uses the word "convey" ("to transfer; pass the title to"[11]) rather than "sell" ("to transfer (goods) or to render (services) for another *in exchange for money*"[12]) Compare this to § 11-251(9): "the board of supervisors may … [s]ell at public auction …" Use of "convey" rather than "sell" is another acknowledgment that the goal of an economic-

[11] http://www.dictionary.com/browse/convey?s=t

[12] http://www.dictionary.com/browse/sell?s=t

development transaction is not to obtain the maximum direct monetary return to the County itself.

## CONCLUSION

Goldwater makes two arguments in support of its reading of § 11-254.04: (1) the lack of an express exception in § 11-254.04, to the requirements of § 11-256, means that there is also no implied exception; and (2) the Court should not find an implied § 11-256 exception in § 11-254.04 because (at least in Goldwater's opinion) the public policy behind § 11-256—preventing waste of public assets—is more important than the public policy behind § 11-254.04—promoting economic development. Neither of these arguments can overcome the statutory text. And courts are not public-policy makers.

Section 11-254.04 gives counties broad authority to engage in economic-development activities, and great flexibility in choosing which activities to engage in, and it specifically lists leasing and conveying real property as one of the authorized activities. If that language does no more than authorize counties to enter into leases under § 11-256, then that language does nothing at all. That clearly violates a well-established rule of statutory construction that every phrase in a statute must be given meaning and effect if possible; not rendered mere surplusage. Finding an implied § 11-256 exception in § 11-254.04 does not "repeal" § 11-256; it harmonizes the two statutes as rules of statutory construction require us to do when

possible. It also furthers the statute's purpose as derived from the statutory language itself.

RESPECTFULLY SUBMITTED September 25, 2017.

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