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IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY MAGNUSON-HAWKINS; and DAVID PRESTON, Plaintiffs, vs. CHARLES H. HUCKELBERRY, in his official capacity as County Administrator of Pima County; SHARON BRONSON, RAY CARROLL, RICHARD ELIAS, ALLYSON MILLER, and RAMÓN VALADEZ, in their official capacities as members of the Pima County Board of Supervisors; PIMA COUNTY, a political subdivision of the State of Arizona, Defendants.	**Case No.:** C20161761 (Assigned to the Honorable Catherine Woods) **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Ariz. R. Civ. P. 56, Plaintiffs move for summary judgment on Count Two of their Complaint, alleging Defendants violated A.R.S. § 11-256 when they entered into a lease-purchase agreement with World View Enterprises for a County-owned building. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990). This Motion is supported by the accompanying Statement of Undisputed Facts ("PSOF") and the Memorandum of Points and Authorities set forth below.

Memorandum of Points and Authorities

I. Introduction.

This action was filed on April 14, 2016, to challenge Defendants' illegal subsidy of World View Enterprises' space balloon business. That subsidy involves a partially subsidized Headquarters Lease and a fully subsidized Balloon Pad. Plaintiffs' Statement of Undisputed Facts ("PSOF") ¶ 10. Plaintiffs' Complaint alleged four counts, regarding violations of the Arizona Constitution, Arizona Statutes, and the Pima County Procurement Code. Compl. ¶¶ 49–98. Defendants moved to dismiss, and this Court denied that motion with respect to Counts 2–4 on August 22, 2016. This Court took Defendants' motion to dismiss Count One under advisement and denied that motion on October 17, 2016, in part because Plaintiffs adequately alleged that "Pima County 'unquestionably abused' its discretion in spending taxpayer money and lending its credit when, among other things it … failed to obtain competitive bids." PSOF ¶ 25; Under Advisement Ruling at 4.

This Motion for Partial Summary Judgment addresses only Count Two. There is no genuine issue as to any material fact regarding Count Two and Plaintiffs are entitled to judgment as a matter of law because Defendants have admitted that they did not follow the appraisal, auction, and minimum price requirements of A.R.S. § 11-256 when they entered into the World View lease. PSOF ¶ 24. This Court ruled on August 22 that A.R.S. § 11-256 applies to the World View lease; Plaintiffs are therefore entitled to summary judgment on Count Two. *See* PSOF ¶ 26.

This Court should declare the Headquarters Lease invalid and enjoin Defendants from performing the lease, unless and until Defendants comply with A.R.S. § 11-256 by: (1) appointing "[a]n

experienced appraiser … to determine the rental valuation of such land or building"[1]; (2) giving "[n]otice of a proposed lease … by publication, once each week for four consecutive weeks, in a newspaper of general circulation in the county;"[2] and (3) leasing the Headquarters "at a public auction to the highest responsible bidder, provided that the amount of bid is at least ninety per cent of the rental valuation as determined by the appraiser."[3]

II. Analysis.

To "prevent favoritism, fraud and public waste," A.R.S. § 11-256 requires an appraisal, a public auction, and a minimum price whenever a county leases property. *Johnson v. Mohave Cnty.* 206 Ariz. 330, 333, ¶ 12 (App. 2003). Defendants admit that they ignored those requirements. PSOF ¶ 24 ("Correctly pointing out that the County did none of those things before the Board approved the Lease, Plaintiffs have asked this Court to declare the Lease invalid.").

Defendants' admission leaves them with only one defense: the legal argument that the economic development provisions of A.R.S. § 11-254.04 allow them to spend public monies without complying with A.R.S. § 11-256. Mot. to Dismiss at 9; PSOF ¶ 27. That legal argument ignores the rules of statutory construction and this Court rightly rejected it when denying Defendants' Motion to Dismiss. PSOF ¶ 28. ("There are plenty of examples where the legislature has exempted public entities from requirements of 11-256 and it has not done so with respect to economic development.").

Seemingly conflicting statutes must be interpreted to harmonize the apparent inconsistencies and give effect to both statutes. *Steer v. Eggleston*, 202 Ariz. 523, 527, ¶ 16 (App. 2002). And, courts should review the history of various statutes in order to understand legislative intent and construe the statutes to further that intent. *State v. Thomason*, 162 Ariz. 363, 366 (App. 1989).

The competitive safeguards of section 11-256 are easily reconciled with the economic development authority in section 11-254.04: the former creates basic safeguards for county leases, the latter gives counties the authority to lease property for economic development consistent with those safeguards. This reading harmonizes both statutes and is consistent with the history of the two sections.

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[1] A.R.S. § 11-256(B).
[2] A.R.S. § 11-256(D).
[3] A.R.S. § 11-256(C).

Section 11-256 was enacted in 1939, alongside a single exception to its requirements for public park leases. *Johnson*, 206 Ariz. at 333, ¶ 12. "Section 11-256 *governed all leases of land* not involving parks until 1981, when the legislature added A.R.S. § 11-256.01 (2001), obviating the need for a public auction for land leased to another governmental entity for a non-park purpose." *Id.* at ¶ 13 (emphasis added). When the non-park exception was added in 1981, it was explicitly prefaced with a "[n]otwithstanding § 11-256" clause. A.R.S. § 11–256.01(A). Each of the four times that the Legislature has sought to exclude county leases from section 11-256, it has done so *explicitly*, through a similar "notwithstanding" clause.[4] But A.R.S. § 11-254.04 contains no such exception.

In 1994, the Legislature expanded counties' economic development authority by enacting A.R.S. § 11-254.04. Prior to that, counties had been granted only the authority to appropriate $1.5 million per year to governmental agencies or nonprofits for economic development. A.R.S. § 11-254. The 1994 expansion lifted those constraints and, for the first time, added explicit authority for economic development leases. But that expansion of authority did *not* include any exception for section 11-256. A.R.S. § 11-254.04(C).

If the Legislature wanted to exclude County economic development leases from the safeguards of section 11-256, it knew how to do so. *See* A.R.S. §§ 11-256.01(A); 11-256.02; 11-251.10(A); 11-1435(B); 35-751(B). Two decades before counties were allowed expanded economic development authority by A.R.S. § 11-254.04, the Legislature made Industrial Development Authorities "exempt from any restrictions imposed on municipalities, counties or political subdivisions relating to the leasing, sale or other disposition of property or funds." A.R.S. § 35-751(B); *see also, e.g.,* A.R.S. § 11-256.01(A) (enacted 1981); A.R.S. § 11-256.02 (enacted 1983). And several times in the years following enactment of A.R.S. § 11-254.04, the Legislature explicitly excused compliance with section 11-256 when it intended that result. *See, e.g.,* A.R.S. § 11-1435(B) (enacted 1995); A.R.S. § 11-251.10(A) (enacted 2000). When the Legislature expanded the counties' economic development authority in 1994, it

[4] *See* A.R.S. § 11-256.01(A) ("Notwithstanding § 11-256"); A.R.S. § 11-256.02 ("Notwithstanding any other statute"); A.R.S. § 11-251.10(A) (County may "provide affordable housing *without holding a public auction* and for less than the fair market value *as required by § 11-256.*"); A.R.S. § 11-1435(B) (Community Health Systems agreements "*are exempt from . . . § 11-256 . . . .*") (all emphasis added).

deliberately left section 11-256 in place to protect taxpayers from exactly the sort of deal Defendants devised with World View.

Applying the section 11-256 safeguards is perfectly compatible with economic development leases. Pima County recognized the need to comply with section 11-256 in previous economic development leases. *See* Bidders' Package at 14 § 2.4, https://goo.gl/9DkXR7. As Defendants point out, section 11-256 makes it harder for counties to play favorites—but that is a feature, not a failing. *Johnson*, 206 Ariz. at 333 ¶ 12; Mot. to Dismiss at 10. And while the Gift Clause must be obeyed separately, "[t]he potential for a subsidy is heightened when, as occurred here, a public entity enters into the contract without the benefit of competitive proposals." *Turken v. Gordon*, 223 Ariz. 342, 350 ¶ 32 (2010). Indeed, had Defendants followed the law, the transparency and fair dealing required by section 11-256 would have probably averted this lawsuit.

III. Conclusion.

Given this Court's ruling that A.R.S. § 11–256's appraisal, public auction, and minimum price requirements apply here and Defendants' admission that "the County did none of those things before the Board approved the Lease," Plaintiffs are entitled to summary judgment on Count Two of their complaint. The Headquarters Lease (PSOF, Ex. 1) should be declared unlawful and Defendants should be enjoined from performing the Lease unless and until they comply with A.R.S. § 11–256.

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Respectfully submitted,

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