IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

RICHARD RODGERS, SHELBY MANGUSON-HAWKINS, AND DAVID PRESTON,
Plaintiffs/Appellants,

v.

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; AND PIMA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA,
Defendants/Appellees.

No. 2 CA-CV 2021-0072
Filed October 26, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20161761
The Honorable Paul E. Tang, Judge
The Honorable Gary J. Cohen, Judge

REVERSED

COUNSEL

Scharf-Norton Center for Constitutional Litigation at the Goldwater Institute, Phoenix
By Timothy Sandefur and Jonathan Riches
Counsel for Plaintiffs/Appellants

Osborn Maledon P.A., Phoenix
By Mary R. O'Grady
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Vice Chief Judge Staring and Judge Brearcliffe concurred.

E P P I C H, Presiding Judge:

¶1 Pima County resident-taxpayers Richard Rodgers, Shelby Manguson-Hawkins, and David Preston (collectively "Taxpayers") appeal from the trial court's judgment in favor of Pima County, Pima County Administrator Charles Huckelberry, and current and former members of the Pima County Board of Supervisors (collectively "the County"). The court determined that Pima County's agreements with World View Enterprises, Inc. for the lease, use, and purchase of certain county property do not violate the Gift Clause of the Arizona Constitution. For the following reasons, we reverse.

Factual and Procedural Background

¶2 World View is a near-space exploration company engaged in manufacturing high-altitude balloons for scientific research and tourism with its headquarters and operations in Tucson. In 2015, representatives of Pima County entered into discussions with World View about expanding its operations in Tucson. World View had received competing economic incentive offers from Florida and New Mexico. Pima County obtained an independent study of the expansion project's potential economic impact, which estimated a total economic benefit of approximately $3.5 billion over twenty years. This included tax revenues to Pima County of approximately $10.7 million. Based on the study and its negotiations with World View, Pima County anticipated World View's expanded operations would generate at least 400 direct jobs and indirectly result in the creation of another 400 jobs, together generating an estimated annual payroll of $38.7 million in the region.

¶3 In January 2016, in reliance on the anticipated economic benefits and its belief that World View would relocate to another state but

for the agreements—and citing its authority to make expenditures for economic development under A.R.S. § 11-254.04—the Board of Supervisors approved a lease-purchase agreement ("LPA") and a Space Port Operating Agreement ("SPOA"). Under the LPA, Pima County agreed to build an administrative and balloon manufacturing facility on a twelve-acre, county-owned parcel in the city of Tucson ("Leased Facility") and to lease it to World View for twenty years; the LPA also granted World View an option to purchase the improved parcel for $10 at the end of the term. World View was required to insure, maintain, and pay rent and applicable taxes on the Leased Facility and to meet employment and employee salary level targets. The rental payments were expected to total $24,850,000 over the twenty-year term. Under the SPOA, Pima County would construct a "Space Port," consisting of a launch pad for high-altitude balloons, on county-owned land adjacent to the Leased Facility. In exchange, World View agreed to maintain, insure, and operate the Space Port for twenty years at its own cost—estimated to be $12,800 annually. Although the Space Port would be owned by the county and publicly available for the launching of high-altitude balloons by others, the SPOA granted World View priority use and allowed it to apply its own criteria for others to use the launch pad and to charge users a reasonable fee.[1]

¶4 Pima County spent $12,715,673 and $2,435,369, in land acquisition and to develop the Leased Facility and the Space Port, respectively. It financed the costs by issuing certificates of participation, which would cost the county $19,444,134 in principal plus interest over the fifteen-year repayment period.[2] To issue the certificates, Pima County restructured its existing public debt, which was secured by county property and facilities. The certificates were to be repaid from "rent payments [Pima] County makes on [its own] facilities." Pima County publicly explained the deal as "front-ending the capitalization of the building and facilities" and that it would "finance this facility to be repaid by World View through annual lease and/or rent payments." World View took occupancy of the

[1]The fee was to be no more than a "reasonable apportionment" of World View's operating costs. As of the trial, no other party had used the Space Port to launch balloons.

[2]Ordinarily, certificates of participation offer investors a share of lease revenues and are secured by those lease revenues. Here, as noted below, they were secured by other lease revenues Pima County paid to itself.

Leased Facility in December 2016 following an accelerated construction schedule.

¶5 In April 2016, before the completion of construction, Taxpayers initiated this litigation to halt the project, claiming the arrangement was an unconstitutional "$15 million gift and loan of taxpayer funds to a private entity," and requesting declaratory and injunctive relief. Several years after the facilities were constructed, the trial court conducted a bench trial.[3] The court found in favor of the County and denied Taxpayers' requests for declaratory and permanent injunctive relief. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Analysis

¶6 Article IX, § 7 of the Arizona Constitution, commonly referred to as the Gift Clause, reads, in relevant part: "Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any . . . corporation . . . ." Taxpayers argue the LPA violates the Gift Clause because World View's rent payments to Pima County are grossly disproportionate to the value received by World View—the enjoyment of a twenty-year leasehold and the purchase option—and are thus unconstitutional.[4] The County urges the transaction was a permissible exercise of its authority to engage in economic development activities.

¶7 On appeal from a judgment following a bench trial, we review de novo the trial court's application of the law, including its interpretation of constitutional provisions, but defer to its findings of fact unless clearly erroneous. *Town of Marana v. Pima County*, 230 Ariz. 142, ¶ 46 (App. 2012)

---

[3]Before trial, Taxpayers' other claims were resolved in favor of the County. *Rodgers v. Huckelberry*, 247 Ariz. 426 (App. 2019); *Rodgers v. Huckelberry*, 243 Ariz. 427 (App. 2017).

[4] Taxpayers also argue that three additional provisions were unconstitutional subsidies: the rent payment structure that grants World View below-market rates for a decade; an exemption to the Government Property Lease Excise Tax for aviation-related activities; and the construction of the Space Port. However, given our disposition of the case, we need not reach those questions. *See Tumacacori Mission Land Dev., Ltd. v. Union Pac. R.R. Co.*, 231 Ariz. 517, n.1 (App. 2013) (issue not affecting disposition need not be resolved).

(facts viewed in light most favorable to upholding trial court's rulings); *Cheatham v. DiCiccio*, 240 Ariz. 314, ¶ 8 (2016) (reviewing application of constitutional provisions de novo).

Impermissible Subsidy and the *Wistuber* Test

¶8 Our supreme court has recognized the historical purpose of the Gift Clause is to avoid "the depletion of the public treasury or inflation of public debt by engagement in non-public enterprises," while not prohibiting state and local governments "from dealing with private enterprises . . . in acquiring goods and services required to furnish and sustain governmental functions." *State v. Nw. Mut. Ins. Co.*, 86 Ariz. 50, 53 (1959). Both sides agree that Arizona's Gift Clause was adopted to prevent the gift of public money to private enterprises. It was borrowed from other state constitutions and added to our own in reaction to railroad barons bilking the public in a bad investment using bribery and other means. Paul Avelar & Keith Diggs, *Economic Liberty and the Arizona Constitution: A Survey of Forgotten History*, 49 Ariz. St. L.J. 355, 390 (2017); Nicholas J. Wallwork & Alice S. Wallwork, *Protecting Public Funds: A History of Enforcement of the Arizona Constitution's Prohibition Against Improper Private Benefit from Public Funds*, 25 Ariz. St. L.J. 349, 354-60 (1993). To that end, courts have sought to evaluate governmental dealings with private entities in a way that prevents misuse of public assets, while still allowing expenditure of public monies and disposition of public assets for a public purpose. *See Nw. Mut. Ins. Co.*, 86 Ariz. at 53.

¶9 Over the years, the Gift Clause has been interpreted in the context of purchases of goods, lease and sale of real property, and issuance of bonds by both state and local governments and governmental entities. *See Turken v. Gordon*, 223 Ariz. 342, ¶ 35 (2010) (lease of privately owned parking spaces); *State ex rel. Corbin v. Superior Court*, 159 Ariz. 307, 310 (App. 1988) (arbitrage earnings on proceeds of industrial development bonds); *City of Tempe v. Pilot Props., Inc.*, 22 Ariz. App. 356, 358 (1974) (lease of city-owned property); *Indus. Dev. Auth. v. Nelson*, 109 Ariz. 368 (1973) (bond issuance to fund loan of money to company to install air pollution control facilities). Our supreme court has developed a test for determining whether government expenditures amount to a constitutionally impermissible "gift" to a private-entity buyer or seller. *See Schires v. Carlat*, 250 Ariz. 371, ¶¶ 7-9, 13-14 (2021); *Turken*, 223 Ariz. 342, ¶¶ 21-22.

¶10 The test was originally devised in *Wistuber v. Paradise Valley Unified School District*, 141 Ariz. 346 (1984). In *Wistuber*, a school district and a teacher, who was also president of the teachers' union, agreed she would

be relieved of her classroom duties but the district would continue to pay a portion of her salary. *Id.* at 348. The agreement was meant to provide sufficient time for the teacher, as union president, to handle employee matters—the handling of which benefitted the district. *Id.* Although our supreme court found that the arrangement served a public purpose, the court clarified that this did not end the analysis. *Id.* at 348-49. Even if "[t]he public benefit to be obtained from the private entity as consideration for the payment or conveyance from a public body may constitute a 'valuable consideration,'" the Gift Clause "may still be violated if the value to be received by the public is far exceeded by the consideration being paid by the public." *Id.* at 349. The court in *Wistuber* found the consideration adequate because the duties of the union president under the agreement were "substantial, and the relatively modest sums required to be paid by the District not so disproportionate as to invoke the constitutional prohibition." *Id.* at 350.

¶11 To apply the *Wistuber* test, a court first evaluates whether a challenged expenditure serves a public purpose. *Id.* at 348-49; *see also Schires*, 250 Ariz. 371, ¶¶ 7-9; *Turken*, 223 Ariz. 342, ¶¶ 23-28. If a challenged transaction does not serve a public purpose, it is constitutionally impermissible. *Wistuber*, 141 Ariz. at 348-49; *Turken*, 223 Ariz. 342, ¶ 11 ("Although the Gift Clause does not itself mention public purpose, the public purpose requirement has long been a fixture of our Gift Clause jurisprudence, perhaps because Gift Clause challenges typically involve the expenditure of tax funds."). If the transaction serves a public purpose, the court then determines if the expenditure is "grossly disproportionate to the objective value" of the consideration offered in return. *Schires*, 250 Ariz. 371, ¶¶ 7-8 & 13 (quoting *Turken*, 223 Ariz. 342, ¶ 35). If the expenditure is not grossly disproportionate to the value received by the government, then the transaction does not violate the Gift Clause. *Id.* ¶¶ 13-14. In *Turken*, the court described the importance of the second prong using the following example: "[A] city's purchase of a garbage truck would undoubtedly serve a public purpose. Purchasing the truck for twenty times its fair value, however, would constitute a subsidy to the seller." 223 Ariz. 342, ¶ 16.

Public Purpose under *Wistuber*

¶12 The first stage of the inquiry asks whether the expenditure serves a public purpose by promoting the public welfare or enjoyment. *Schires*, 250 Ariz. 371, ¶¶ 7-8. We consider both direct and indirect benefits of the challenged expenditure, taking "a broad view of permissible public purposes." *Id.* ¶¶ 8-9 (quoting *Turken*, 223 Ariz. 342, ¶ 28). In doing so, we

give significant deference to the judgment of elected officials in finding a public purpose, within whose purview such considerations lie. *Id.* ¶ 9. Rarely has that discretion has been so "unquestionably abused" that we decline to find a public purpose. *Id.* (quoting *Turken*, 223 Ariz. 342, ¶ 28). Arizona's legislature, "tasked with identifying and furthering such purposes," *id.* ¶ 9, approves of county expenditures in furtherance of economic development to promote economic welfare and job creation, *see* § 11-254.04. This court is not concerned with the wisdom or necessity of the expenditure, which are considerations best left to the County's discretion. *See Schires*, 250 Ariz. 371, ¶ 8.

¶13 Taxpayers argue that the challenged expenditures do not serve a public purpose because World View "does not contribute to the public convenience or satisfy any need of the people at large." They distinguish this case from *Town of Gila Bend v. Walled Lake Door Co.*, 107 Ariz. 545 (1971), where a public expenditure for water infrastructure benefiting one private corporation did not violate the Gift Clause because fire prevention protects lives and property. Taxpayers describe fire prevention as an obvious public purpose, unlike World View's own commercial, for-profit enterprise. They also rely on *City of Tombstone v. Macia*, which defined a public purpose as being "primarily to satisfy the need, or contribute to the convenience, of the people of the city at large." 30 Ariz. 218, 224 (1926) (finding bond issuance for light, power, and ice production plant did not violate constitutional provision limiting taxation to public purposes). Although not a Gift Clause case, *Macia* reminds us that the definition of a public purpose may change to address new social and economic conditions, and, in determining whether a public purpose exists, "we should not be to too great an extent controlled by decisions which come from a remote time, . . . out of tune with modern conditions." *Id.* at 226.[5]

¶14 We conclude that Taxpayers have not shown that the LPA failed the public purpose prong under *Schires*, *Turken*, or *Wistuber*, given Pima County's authority under § 11-254.04 to make expenditures for economic development purposes. Section 11-254.04(C) permits county

[5] Taxpayers also cite *Kromko v. Arizona Board of Regents* for the proposition that government funding for a public entity can satisfy a public purpose *only* when the private entity is "subject to the control and supervision of public officials." 149 Ariz. 319, 321 (1986). But *Kromko* contains no such broad holding. Rather, as noted by the County, public supervision was merely a factor the court considered in its overall analysis.

boards of supervisors to make expenditures in furtherance of economic development, including any project, "acquisition, improvement, leasing or conveyance of real or personal property," that the board has determined will improve its residents' economic welfare, such as through the creation or retention of jobs.[6] Here, the County took into account the contracted-for employment and salary targets and the anticipated overall economic impact and job creation over the next twenty years, to determine that the arrangement served a public purpose. It also found that World View would have relocated elsewhere if not for Pima County's expenditure. Moreover, our legislature, by allowing for county expenditures to promote such economic development, has statutorily recognized its public benefits. *See* § 11-254.04; *cf. Kromko v. Ariz. Bd. of Regents*, 149 Ariz. 319, 320 (1986) ("by providing for the type of transaction at issue, [legislature] has statutorily recognized" its public benefit). Pima County did not unquestionably abuse its discretion in finding a public purpose in the overall arrangement with World View.

Proportionality Under *Wistuber*

¶15 Taxpayers argue the LPA, with its purchase option allowing World View to purchase the Leased Facility for $10 at the conclusion of the lease, amounts to an illegal subsidy in violation of the Gift Clause. The County asserts that, at best, it received full value for the benefit conferred on World View under the LPA, and at worst, World View received consideration only nominally higher than that it conferred on Pima County. Consequently, the County argues, any gift or subsidy was not a grossly disproportionate benefit to World View.

¶16 We agree with Taxpayers that the $10 purchase option amounts to an unconstitutional subsidy because the consideration received by Pima County is grossly disproportionate to the value of the World View facility. Under the LPA, Pima County developed the Leased Facility at a cost of approximately $12.5 million, including land acquisition, and then surrendered occupancy to World View under the lease terms. Under the terms of the lease, World View pays below-market rent for the first ten years of the lease and then above-market rent annually for the remaining ten years. Neither party disputes that World View's rent over the twenty-year lease term approximates market rent because it averages a market rate

[6]Taxpayers do not challenge the constitutionality of § 11-254.04, on which Pima County relied for its authority to enter into the transaction with World View.

over the life of the lease. At the conclusion of the twenty-year lease in 2036, the LPA grants World View the option to purchase the Leased Facility for $10. It can only exercise that option if it has timely made all lease payments and is not otherwise in breach of the LPA. The County's expert estimated the value of the Leased Facility at the conclusion of the lease term will be $14 million in 2036 dollars.[7]

¶17 As stated above, under the *Wistuber* test, a business transaction between a governmental entity and a private business, even if otherwise serving a public purpose, is an unconstitutional subsidy in violation of the Gift Clause "if the value to be received by the public is far exceeded by the consideration being paid by the public," *Wistuber*, 141 Ariz. at 349, or if the consideration conferred by the government is "grossly disproportionate" to the amounts received, *Turken*, 223 Ariz. 342, ¶¶ 7, 22. Courts therefore look to the delta between "what the public is giving and getting from an arrangement and then ask[] whether the 'give' so far exceeds the 'get' that the government is subsidizing a private venture in violation of the Gift Clause." *Schires*, 250 Ariz. 371, ¶ 14.

¶18 The County argues that over the course of the lease term, in a "panoptic" examination of the deal, the total rent paid under the LPA plus the purchase option price must be considered together as Pima County's "get." This means, the County asserts, that the difference between the "give" by the county—use of the facility for twenty years and then fee ownership—compared to the "get" by the county of market rent plus $10, is a permissible sixteen percent.[8]

¶19 We disagree with the County that the rent paid over the term ought to be factored into the "get" by Pima County for the purchase option. In a voluntary, arm's-length transaction, "market value rental rate" means the rent a willing lessee would pay a willing lessor for the use and occupancy of premises for the term of the lease. *LOMTO Fed. Credit Union v. 6500 W. LLC*, 103 N.E.3d 950, 956-57 (Ill. App. Ct. 2018). Typically, when

---

[7] Any reduction to present value would be at a consistent rate, affecting both the "give" and the "get."

[8] Although Gift Clause jurisprudence often equates the "give" with government "expenditure," *see Schires*, 250 Ariz. 371, ¶ 14, the proper measure in this case is the value of the lease and purchase option conveyed by Pima County, rather than the funds it expended on land acquisition and construction.

a lease is to provide some value to a landlord beyond the receipt of rent, the tenant may be permitted to pay below-market rent in exchange for providing that added value. *Cf.* 49 Am. Jur. 2d *Landlord and Tenant* § 671 (tenant's promise to make repairs or improvements must be based on new consideration, such as landlord's promise to reduce rent). Similarly, when a lease provides some value to a tenant other than the value of the use or occupancy of a premises, the tenant pays a "premium." *See* Restatement (Second) of Property (Landlord and Tenant) § 12.1 cmt. a (1977) ("When a furnished place is leased, the rent may be fixed at an amount higher than would be the case if the same property were leased unfurnished, or the rent may be fixed at the rental for unfurnished property, with a separate charge made for the use of the furnishings."). A purchase-option provision benefits a tenant by allowing that tenant to purchase the premises outright at some point in a lease, usually at its conclusion. *Lease Option*, Black's Law Dictionary (11th ed. 2019). Such a provision is almost always bargained for and is purchased separately or through a premium market lease rate. *See, e.g.*, *Andrews v. Blake*, 205 Ariz. 236, ¶ 2 (2003) (significantly increased rent in exchange for lease-purchase option). Here, it is undisputed that the rent paid by World View over the term of the lease was, at most, market rent, without regard to the purchase-option provision. It is also undisputed that no separate consideration was paid by World View for the purchase option. Thus, Pima County will receive full value for World View's lease for the term, and World View will receive full value by its occupancy of the premises during the term, all without regard to the lease-purchase option.

¶20 Therefore, because the purchase option of the LPA, which is considered a benefit to a lessee, was not purchased through premium rent or otherwise, in applying the *Wistuber* test, we must look solely to the nominal $10 to be paid by World View to exercise its purchase option for the Leased Facility. *See Wistuber*, 141 Ariz. at 349. We cannot, even in the most generous panoptic view of this transaction, consider the value of the rent over twenty years and the cost of exercise of the lease option together. *See id.*

¶21 Under the terms of the LPA, World View is required to pay $10 at the conclusion of the twenty-year lease term to take the Leased Facility in fee. Per the expert testimony provided by the County, the value of the Leased Facility at the conclusion of the lease term will be $14 million in 2036 dollars. It was estimated to have an additional thirty years of usable life after conclusion of the initial lease term. That is, at the conclusion of the twenty-year lease, World View has the option of purchasing the facility and land it sits on—which will be worth $14 million in 2036—for a mere $10.

The "give" then, by Pima County, is $14 million and its "get" is $10. World View will be expected to pay .0000007 percent of the value of the Leased Facility to own it outright.[9]

¶22 Although there are not many Gift Clause cases addressing consideration, an examination of the few that exist shows that the lopsided differential present here renders the LPA unconstitutional. In *Turken*, at issue was an agreement by the City of Phoenix to pay a private developer $97.4 million for the exclusive use of 200 parking-garage spaces and the non-exclusive use of 2,980 spaces for forty-five years. 223 Ariz. 342, ¶¶ 3-5. Our supreme court noted nothing prevented the non-exclusive parking spots from being filled up "when other members of the public might most want to use them." *Id.* ¶ 42. Ultimately, although it applied its holding only prospectively, the court stated, "We find it difficult to believe that the 3,180 parking places have a value anywhere near the payment potentially required under the Agreement. The Agreement therefore quite likely violates the Gift Clause." *Id.* ¶ 43. Similarly, we find it difficult to believe that a facility with an approximate value of $14 million in 2036 can fairly be exchanged for $10 without violating our constitutional proscription against subsidies or gifts to private entities.

¶23 In *Schires*, our supreme court found a private college provided no value to the City of Peoria—other than the "irrelevant indirect benefit" of "an anticipated positive economic impact"—in exchange for roughly $2.6 million paid by the city. 250 Ariz. 371, ¶¶ 2-5, 20, 24. Consequently, the city's subsidy violated the Gift Clause because the court could only consider a contracting party's bargained-for "promised performance," not "anticipated indirect benefits." *Id.* ¶¶ 14, 24 (quoting *Turken*, 223 Ariz. 342, ¶ 33). Certainly, one would think if the city received $10 for its $2.6 million expenditure the result would have been the same. Thus, we conclude that Pima County's transaction with World View fails under both *Turken* and *Schires*.

¶24 Under the plain language of article IX, § 7 of the Arizona Constitution, *Wistuber*, and subsequent cases, Pima County's LPA with World View is impermissible. Because the LPA violates the Gift Clause by granting an illegal subsidy to World View through the purchase option, the

[9]Even if we were to consider the 2021 lease amendment providing for a $5 million purchase option, which was not before the trial court, World View is still paying only thirty-five cents on the dollar for the property.

LPA is invalid. *See Schires*, 250 Ariz. 371, ¶¶ 1, 24 (holding unconstitutional city's economic development agreement).

Loan of Credit

¶25 Taxpayers also argue the LPA constitutes a constitutionally proscribed "loan of credit." Specifically, they assert the LPA, consistent with the County's own explanation of the project, was an impermissible "capitalization" of World View's operations.[10] The Arizona Constitution does not define a "loan of credit" as used in the Gift Clause, nor do we know of any Arizona cases that do so. And, like the elusive definition of a public purpose, *see Schires*, 250 Ariz. 371, ¶ 8 ("What constitutes a 'public purpose' has proved elusive to define."), a loan of the public credit is not susceptible to clear definition on the basis of plain language analysis. In addition to the County's own characterization of the transaction as a "capitalization," another troubling feature is the project's financing through certificates of participation. Unlike non-recourse bonds, the certificates appear to be secured by Pima County because they are repaid by "rent payments [Pima] County makes on [its own] facilities." Although these aspects of the transaction raise colorable questions concerning whether Pima County impermissibly loaned its credit to World View, *see* Ariz. Const. art. IX, § 7, we are reluctant to define a constitutional phrase if we need not do so. In light of our conclusion that the LPA's purchase option constitutes an unconstitutional subsidy, we decline to address the question of whether the LPA also constitutes a loan of the public credit.

Attorney Fees and Costs

¶26 Taxpayers request their costs pursuant to A.R.S. § 12-341 and attorney fees pursuant to the "private attorney general doctrine" and A.R.S. § 12-348. The County requests attorney fees pursuant to A.R.S. § 12-341.01. Even assuming § 12-341.01 would permit an award of fees, the County is not the prevailing party on appeal, and we thus deny its request. In our discretion, we also deny Taxpayers' request for attorney fees on appeal. Taxpayers are, however, entitled to their costs pursuant to § 12-341, upon compliance with Rule 21, Ariz. R. Civ. App. P.

[10]Taxpayers contend the County admitted as much when it stated it was "front-ending the capitalization of the building and facilities," and that the rent was "designed to ensure" Pima County recovered "its investment."

Disposition

¶27 For the foregoing reasons, we reverse the ruling of the trial court and remand the case with instructions to enter judgment for Taxpayers.