

Bond Case Briefs

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REFERENDUM - ARIZONA

Respect Promise in Opposition to R-14-02-Neighbors for a Better Glendale v. Hanna

Court of Appeals of Arizona, Division 1 - September 18, 2015 - P.3d - 2015 WL 5474447 - 721 Ariz. Adv. Rep. 33

Citizen filed application for writ of mandamus seeking to compel city and city clerk to accept and file referendum petitions challenging the city council's approval of a resolution and settlement agreement, under which city agreed to drop its opposition to Indian tribe's proposed casino project on land contiguous to city's border. The Superior Court denied the application. Citizen appealed.

The Court of Appeals held that:

- Provisions of resolution unrelated to settlement agreement were not legislative acts subject to referendum;
- Settlement agreement was not referable; and
- City clerk had authority to reject referendum petitions.

Provisions of city council resolution that affirmed or acknowledged prior resolutions of the council, expressed support for Indian tribe's proposed gaming project on land contiguous to city's border, and urged the State and its representatives to withdraw their opposition to the project, reflected the council's changed position and did not amount to "legislation," and thus provisions were not subject to referendum. Resolution merely reflected city council's changed position as to the proposed gaming project.

City council's approval of settlement agreement between city, Indian tribe, and gaming enterprise was not "legislation" subject to referendum, although the agreement was a substantive measure that obligated the city to construct infrastructure for the benefit of the gaming project. Council determined that it was in the city's best interests to stop its challenges to the tribe's proposed gaming facility and to end the disputes between them, city's agreement to initially fund off-site infrastructure was a non-referable administrative act, and allowing city's voters to control litigation would result in chaotic and absurd result if settlement agreement was later rejected by voters.

City clerk had authority to reject referendum petitions challenging city council's approval of a resolution and related settlement agreement in support of construction of a casino on land contiguous to city's borders, taken in trust by the Secretary of the Department of the Interior on behalf of Indian tribe, although statute governing challenges to a legislative measure via referendum couched clerk's duties in response to a petition in terms of what the clerk "shall" do in response. Petitions professed to challenge a non-legislative act of the city council, and statutory scheme and relevant constitutional provisions revealed that clerk had authority to reject petitions challenging non-legislative and non-referable acts.

