

# **Bond Case Briefs**

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## **TAX - ARIZONA**

### **State v. Arizona Board of Regents**

**Court of Appeals of Arizona, Division 1 - April 20, 2021 - P.3d - 2021 WL 1540961**

Attorney General's Office sued Arizona Board of Regents (ABOR) and vice president of state university, seeking injunctive relief and relief under quo warranto statute related to an agreement between ABOR and operator of hotels to build and operate hotel and conference center on ABOR's property.

Attorney General's Office later amended complaint to allege that agreement violated state constitution's gift clause and constituted illegal payment of public money. The Superior Court granted ABOR's motion for summary judgment on claim under gift clause, granted ABOR's motions to dismiss remaining counts, entered judgment for ABOR and vice president, and awarded ABOR and vice president attorney fees and costs. Attorney General's Office appealed.

The Court of Appeals held that:

- Provision of statute governing actions brought to recover state monies illegally paid that requires any suit brought by Attorney General's Office to be filed five years or less after illegal payment was ordered is not a statute of limitations but rather is a statute of repose;
- Claim that agreement violated gift clause accrued, and one-year limitations period began to run, when attorneys from Attorney General's Office circulated internal legal memorandum and opinion editorial on the topic and one of the attorneys specifically called transaction "pretty suspicious";
- Trial court did not abuse its discretion when it denied discovery request to access ABOR's entire file, including deal drafts and communications, pertaining to agreement;
- Count alleging violation of gift clause and illegal payment of public money did not relate back to filing of original complaint;
- Attorney General's Office lacked authority under statute authorizing it to enforce payment of taxes to bring claim that ABOR abused its tax-exempt status and improperly diverted property tax revenues;
- Attorney General's Office lacked authority under quo warranto statute to bring action based on claims that ABOR made conveyance to evade taxes and exceeded its authority to enter into leases; and
- Attorney General's Office failed to meet its burden to establish that attorney fees requested by ABOR were unreasonable.