

# **Bond Case Briefs**

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## **PUBLIC FINANCE - ARIZONA**

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

**Supreme Court of Arizona - April 5, 2022 - P.3d - 67 Arizona Cases Digest 34 - 2022 WL 1011795**

Attorney General brought action against 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, and alleging 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 appealed. The Court of Appeals affirmed. Attorney General filed petition for review, which was granted.

The Supreme Court held that:

- Attorney General lacked authority to bring claim that ABOR abused its tax-exempt status and improperly diverted property tax revenues;
- Attorney General lacked authority to bring quo warranto action based on claim that ABOR made conveyance to operator in order to evade taxes;
- Attorney General had authority to bring quo warranto action based on claim that ABOR violated statute and non-delegation doctrine in lease provision of agreement with operator;
- Five-year, rather than one-year, statute of limitations applied to claim that ABOR violated "Gift Clause" of state constitution; and
- Amended complaint related back to original complaint, for limitations purposes.

Property held by Arizona Board of Regents (ABOR), which was a state agency, was tax-exempt state property, and thus Attorney General 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 by entering into agreement with operator of hotels to build and operate hotel and conference center on ABOR's land.

Attorney General lacked authority under quo warranto statute to bring action against Arizona Board of Regents (ABOR) based on claim that ABOR unlawfully exercised its authority by making conveyance to evade taxes in agreement with operator of hotels to build and operate hotel and conference center on ABOR's land; property held by ABOR was tax-exempt state property, such that there was no applicable tax to evade.

Attorney General had authority to bring quo warranto action against Arizona Board of Regents (ABOR) alleging that portion of agreement between ABOR and operator of hotels to build and operate hotel and conference center on ABOR's property that allowed operator to lease the hotel and conference center property from ABOR for 60 years, and to purchase property from ABOR at

end of lease term for a nominal fee, was not for benefit of state, as required by statute governing ABOR's authority, but rather for the benefit and use of operator, and that lease violated non-delegation doctrine, where claim was based on allegation that ABOR unlawfully exercised its franchise.

Five-year statute of limitations under statute governing actions brought by Attorney General to recover state monies illegally paid, rather than one-year statute of limitations applicable to actions to enjoin illegal payments against any public entity or public employee, applied to Attorney General's claim alleging that money Arizona Board of Regents (ABOR) agreed to contribute towards construction of conference center in agreement with operator of hotels to build and operate hotel and conference center on ABOR's property violated "Gift Clause" of state constitution; five-year statute of limitations created exception for public-monies claims brought by Attorney General that supplanted the one-year statute of limitations, and exempted such claims from entirety of one-year statute of limitations.

Amended complaint's count alleging violation of state constitution's "Gift Clause" and illegal payment of public money related back to filing of original complaint, for limitations purposes, in action brought by Attorney General against Arizona Board of Regents (ABOR) challenging ABOR's agreement with operator of hotels to build and operate hotel and conference center on ABOR's land, even if the operative facts supporting the added claim differed from those supporting the original claims; claims in amended complaint and claims in original complaint all arose from the agreement between ABO and operator and, thus, arose from the same transaction.