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**PUBLIC CONTRACTS - ARIZONA**

## Neptune Swimming Foundation v. City of Scottsdale

**Supreme Court of Arizona - February 6, 2024 - P.3d - 2024 WL 440990**

Private swim club filed complaint seeking a writ of mandamus compelling city to award club operating license to operate youth competitive swimming program in city's facilities under request-for-proposal (RFP) process and alleging violation of the "gift clause" of State Constitution and claiming license issued to club's competitor was not supported by adequate consideration, given club's bid for higher rate per lane hour.

The Superior Court, Maricopa County, granted summary judgment to city, and club appealed. The Court of Appeals affirmed. Club filed petition for review.

The Supreme Court held that:

- Operating license for party to operate youth competitive swimming program in city's facilities under RFP process satisfied first prong of inquiry under "gift clause" in State Constitution;
- Consideration prong of State Constitution's "gift clause" applied to club's claim;
- Club's failed competitive proposal was relevant to determining objective fair market value, but club's willingness to pay higher fees for operating license than competitor did not conclusively establish fair market value;
- Club's failed bid for operating license was not sufficient to prove that what city gave in operating license to competitor far exceeded what it received in return, and thus, there was no violation of gift clause;
- City did not have ministerial duty to award operating license to private swim club after city determined that club had scored the most points under RFP process;
- Whether city engaged in favoritism by canceling RFP after club submitted more advantageous proposal than its competitor precluded grant of summary judgment to city on club's claim that city violated its own procurement process; and
- Private swim club was not entitled to attorney fees under the private attorney general doctrine.

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