Bond Case Briefs

Municipal Finance Law Since 1971

Arizona Supreme Court Holds Agreement Violates Gift Clause: What Gilmore v. Gallego Teaches Us About Multi-Party Service Contracts Between Public and Private Parties

Economic incentive agreements are tools used by city, county, and state actors to facilitate public goals with the help of private actors. States that provide incentives to developers to promote economic growth have a comparative advantage over other states. In Arizona, these transactions are tested by the Constitution's Gift Clause that essentially asks: (1) does the transaction serve a real public purpose; and (2) does the public party get something in return for what it gives to the private party to incentivize the deal?

The Arizona Supreme Court has issued several recent decisions that define the parameters of the Gift Clause. In *Gilmore v. Gallego*, the Arizona Supreme Court considered a deal struck between the City of Phoenix (City) and a Labor Union regarding "release time" provisions in a Collective Bargaining Agreement that allowed police officers to work for the union while on paid time for the City. The Court concluded that the arrangement violated the Gift Clause.1 In doing so, the Court provided valuable lessons regarding the scope of a Gift Clause analysis, especially when there are more than two (direct or indirect) parties to the transaction.

Facts of the Case. In 2019, the City and the American Federation of State, County, and Municipal Employees, (AFSCME), Local 2384 (Union) entered into a memorandum of understanding (MOU) regarding "release time" provisions.2 Release time provisions generally fund the use of City employees to be "released from their normal job duties" for other purposes.3 The release time provisions were specifically excluded from the members' compensation package.4

The MOU provided for (a) four full-time release employees, (b) banks of release hours for union members to engage in "union activities," and (c) a fund to reimburse the Union for member attendance at various trainings and conferences.5 The full-time release employees are authorized to spend time on a variety of Union tasks, including activities like Union recruitment.6 Under the MOU, release employees are also required to participate in various City task forces and committees, but "because serving on these committees takes time away from the expected Union tasks" the MOU provides additional banked hours to compensate for these commitments.7 The MOU also authorizes stewards to represent employees in grievance proceedings.8 Although the "City ordinarily controls and supervises employee activities, it does not control or supervise how released employees spend their time and released employees do not report their activities to the City."9

Continue reading.

Snell & Wilmer LLP – Nicholas J. Wood, Joyce K. Wright , Brett W. Johnson and Tracy A. Olson

August 5 2024

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com