



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**LEAGUE OF ARIZONA CITIES AND TOWNS v. DEAN MARTIN,
Arizona State Treasurer and JANET NAPOLITANO, Arizona Governor**
CV-08-0379-SA

PARTIES AND COUNSEL:

Petitioner: The League of Arizona Cities and Towns is represented by Paul Eckstein, Charles Blanchard, Steven Monde, and Aaron Welling, Perkins Coie Brown & Bain.

Respondent: Governor Napolitano is represented by Robert Schaffer, Kim Demarchi, Emily Cates, Stefan Palys, and Sarah Selzer, Lewis and Roca.

State Treasurer Dean Martin is represented by Mary O'Grady and Christopher Munns, Assistant Attorneys General.

FACTS:

The League asks the Court to determine whether a portion of the general appropriations bill for fiscal year 2008-2009 ("Section 47") is invalid under the Arizona Constitution because it imposes a new tax, fee, or assessment not approved by a two-thirds vote of both houses of the Arizona Legislature as required by Article 9, Section 22 of the Arizona Constitution. Secondly, the League asserts that Section 47 creates a new source of State revenue thus constituting improper legislation in a general appropriations bill in violation of Article 4, Part 2, Section 20 of the Arizona Constitution.

House Bill 2209, the general appropriations bill governing state funding for fiscal year 2008-2009, was passed by the Arizona Legislature on June 25 and 26 of 2008. The bill was signed into law by the Governor on June 27, 2008, four days before the beginning of that fiscal year. Section 47 of the bill requires a payment of funds by the counties, cities, and towns to the State general fund, with the total required payment to be allocated based on an existing statutory formula used to distribute excess highway-related taxes, penalties, interest, and fees to the incorporated cities and towns. Section 47 states:

Counties; incorporated cities and towns; deposits; fiscal year
2008-2009; county expenditure limitations

A. Notwithstanding any other law, in fiscal year 2008-2009, counties, incorporated cities and towns shall deposit \$29,748,400 into the state general fund. The amount transferred to the state general fund by each county, incorporated city, and town shall be calculated by the joint legislative budget committee staff, who shall publish the allocations by

August 31, 2008. The joint legislative budget committee staff shall base its allocation on the distributions provided under section 28-6538, subsection A, paragraphs 2, 3, and 4, Arizona Revised Statutes.

B. Notwithstanding any other law, a county may meet any statutory funding requirements of this section from any source of county revenue designated by the county, including funds of any county wide special taxing district in which the board of supervisors serves as the board of directors.

C. Contributions made pursuant to this section are excluded from the county expenditure limitations.

HB 2209, 2008 Ariz.Sess.Laws, ch. 285, §47 (2d Reg. Session); *see also* A.R.S. §§28-6538(A) (2)-(4) (establishing allocation formula for undistributed highway user revenue funds); 28-6501 (defining highway user revenues).

Section 47 imposes a collective duty on Arizona counties, incorporated cities, and towns, to deposit a payment of \$29,748,400 to the State general fund. Each county, city, and town is responsible for a share of the whole payment. Section 47 does not specify the funds from which local governments shall make their share of the required deposit, leaving that to the discretion of each political subdivision.

On January 6, 2009, the Court considered the League's original special action and responses filed thereto. The Court ordered this matter for oral argument on January 21, 2009, informing that parties may file supplemental briefs and that in those briefs and oral argument counsel should be prepared to address: (1) whether the Arizona Supreme Court should accept jurisdiction in light of the delay in the filing of this matter, and (2) whether Section 47 is an appropriation under Article 4, Part 2, Section 20 of the Arizona Constitution which states that "The general appropriation bill shall embrace nothing but appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt. All other appropriations shall be made by separate bills, each embracing one subject."

ISSUES: "1. Whether Section 47 of the Appropriations bill, a legislative act imposing a new tax, fee, or assessment, and providing for a \$29,748,400 net increase in state revenue, is invalid because it was approved by a simple majority vote of the Legislature.
2. Whether Section 47 of the Appropriations bill, by creating a new source of public revenue, does more than set aside money from the public revenue."

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.