



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA et al. v. AZ BOARD OF REGENTS et al.
CV-21-0134-PR**

PARTIES:

Petitioner/Appellant: State of Arizona, *ex rel.* Attorney General Mark Brnovich

Respondents/Appellees: Arizona Board of Regents (“ABOR”) and Paul D. Petersen, in his official capacity as Maricopa County Assessor and Royce T. Flora, Maricopa County Treasurer, in their official capacities.

Amici Curiae: Vince Leach, a private citizen of Arizona
In support of Petitioner

FACTS:

On the southeast corner of Mill Avenue and University drive in Tempe, ABOR owns land that is exempt from property taxes. Pursuant to statute, ABOR has the ability to enter into leases and long-term leases of such property “for the benefit of this state and for the use of the institutions under its jurisdiction.”

During a June 2016 meeting, ABOR publicly discussed its intent to develop and/or lease a portion of the land to Omni Hotels Corporation (“Omni”) for Omni to build and operate a hotel and conference center. Four months later, ABOR, Omni, and the City of Tempe signed a term sheet containing some of the deal’s terms, which included: 1) ABOR agreed to lease 1.6 acres to Omni and contribute up to \$19.5 million towards constructing a conference center next to the hotel; 2) ABOR would retain ownership of both the hotel and conference center until the 60-year lease term expired, when Omni could exercise an option to purchase the hotel and conference center for a nominal amount; 3) Omni agreed to prepay \$5.9 million in rent (roughly \$85 per square foot) and make additional yearly rent payments (for the total of \$118 million) instead of property taxes; and 4) ABOR agreed to build a parking structure directly abutting the complex and granted Omni exclusive use of about one-fifth of the parking spaces.

On January 11, 2018, the City of Tempe and Omni reached a final agreement. The agreement included \$21 million in sales tax relief. On that same day, attorneys from the Attorney General’s Office (AGO) internally circulated a letter to the editor of the Arizona Republic discussing the Omni transaction. One AGO attorney wrote that the Omni transaction sounded “pretty suspicious.”

On February 28, 2018, ABOR and Omni executed the Option Agreement. The Option Agreement declared that Omni was “entitled to realize all economic benefit from the ownership and operation of the Improvements and all Alterations during the Term of this Lease.” Omni has yet to

exercise this option but, if it chooses to, it will pay pre-paid “rent” of about \$5.9 million. Omni must also pay “additional rent” of \$1.09 million per year (with annual increases). ABOR and Omni refer to the “additional rent” as “payment in lieu of taxes.” If Omni pays property taxes, it receives a dollar-for-dollar credit against “additional rent” owed.

On January 10, 2019, the AGO filed a complaint seeking to void the transaction. *Count I* sought declaratory and injunctive relief, alleging the lease improperly exempted the hotel and conference center from property taxes. For the authority to bring *Count I*, the AGO relied on A.R.S. § 42-1004(E) (“the Tax Enforcement Statute”). *Count II* sought *quo warranto* relief under A.R.S. § 12-2041(A) to void the transaction because the AGO alleged it constituted an improper exercise of ABOR’s power to enter into leases for public purposes. *Count III* sought *quo warranto* and declaratory relief that the lease was illegal because the AGO alleged it lacked a public purpose under A.R.S. § 15-1625.

After discovering additional information about payments and property usage, the AGO amended its complaint on April 3, 2019, to add another count. *Count IV* alleged several components of the transaction violated the Arizona Constitution’s Gift Clause and constituted an illegal payment of public money. The AGO sought declaratory and injunctive relief under A.R.S. § 35-212.

The tax court dismissed the three original claims under Rule 12(b)(6) (failure to state a claim upon which relief can be granted). The tax court initially denied the dismissal of *Count IV* but ultimately granted summary judgment in favor of ABOR on the statute-of-limitation grounds, finding that *Count IV* did not relate back to the filing of the original complaint.

The AGO timely appealed and the court of appeals affirmed the tax court’s decision. The AGO filed a petition for review before this Court, which was granted.

ISSUES:

The Supreme Court rephrased the issues as:

1. Was the Attorney General Office’s public-monies claim under § 35-212 (Count IV) timely?
2. Did the Attorney General’s Office have statutory authority to bring the claims set forth in counts I through III of its amended complaint?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ 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.