

MINUTES
LEAGUE OF ARIZONA CITIES AND TOWNS
EXECUTIVE COMMITTEE MEETING
Friday, May 14, 2021
Zoom

MEMBERS

President

Cathy Carlat, Mayor, Peoria

Vice President

Douglas Nicholls, Mayor, Yuma

Treasurer

Greg Mengarelli, Mayor, Prescott

Tom Brady, Mayor, Bullhead City
Craig McFarland, Mayor, Casa Grande
Kevin Hartke, Mayor, Chandler*
Alexis Hermosillo, Mayor, El Mirage
Paul Deasy, Mayor, Flagstaff
Brigitte Peterson, Mayor, Gilbert
Jerry Weiers, Mayor, Glendale*
Georgia Lord, Mayor, Goodyear
Cal Sheehy, Mayor, Lake Havasu City
Thomas L. Schoaf, Mayor, Litchfield Park
Ed Honea, Mayor, Marana

Christian Price, Mayor, Maricopa*
John Giles, Mayor, Mesa
Kate Gallego, Mayor, Phoenix
Gail Barney, Mayor, Queen Creek
Tom Murphy, Mayor, Sahuarita
David Ortega, Mayor, Scottsdale
Sandy Moriarty, Mayor, Sedona
Rick Mueller, Mayor, Sierra Vista
Mila Besich, Mayor, Superior
Corey Woods, Mayor, Tempe*
Regina Romero, Mayor, Tucson

*Not in attendance

President Cathy Carlat called the meeting to order at 10:04 a.m. She then led the Executive Committee in the Pledge of Allegiance.

1. REVIEW AND ADOPTION OF MINUTES

President Cathy Carlat requested a motion on the adoption of the minutes. Mayor Mengarelli of Prescott moved to approve the minutes of the February 5th, 2021 Executive Committee Meeting; Mayor Bridgette Peterson of Gilbert seconded the motion and the motion carried.

2. LEGISLATIVE POLICY OVERVIEW AND SESSION UPDATE

President Cathy Carlat called upon League Executive Director Tom Belshe and Legislative Director Nick Ponder for the legislative policy overview and session update.

League Executive Director Tom Belshe introduced and welcomed Legislative Director Nick Ponder to provide an overview with an emphasis on the budget discussions underway. Mr. Ponder recounted that in February, the Governor's executive budget proposed \$600 million in income tax cuts, which would

have a \$90 million impact on local governments. We anticipated that this figure alone would raise significant concerns for us.

The budget that is being discussed at the legislature now is a proposal that includes a \$1.5 billion tax cut as a result of a 2.5% flat income tax rate. Without a hold-harmless provision, this new figure would result in a \$285 million cut to local governments. Previously, the House had acknowledged that local governments needed to be held harmless and that they would propose a .4% increase in sales tax to make up for this loss. However, since then the House has realized this idea does not have the support needed to pass. On March 5, the League held an intergov meeting to discuss the flat tax proposal, and its impact on local governments. Based on discussions with lawmakers, Mr. Ponder believed that the flat tax approach would work its way out of the budget as several individual lawmakers expressed concerns about it. The flat tax proposal has been discussed before in previous sessions and has not received broad support. Nevertheless, the League would continue to advocate against the flat tax proposal due to its impact on local government.

An April 2nd article released the details of a proposed budget to the public, which did not include a hold-harmless for cities and towns. On April 7th, the League called for an impromptu intergov meeting where we discussed outreach and efforts to hold local government harmless. The League wanted its approach to be about supporting local decision-making. Arguments for the tax cuts were centered on the idea that cities and towns are getting funds from the American Rescue Plan (ARPA) and these funds could be used to offset the economic impacts, however, within ARPA, the measure stipulates that the state can't use its share for tax cuts. Another argument is that local governments are receiving new funding from Wayfair. This is a rumor that the League has been working to dispel. The League has data showing that the top 21 online retailers were already paying TPT prior to Wayfair. While Wayfair generated new revenue, not everything in this category is new. Mr. Ponder added that an additional argument that has been used to justify cuts to local governments was the passage of Prop 207 and the new monies it would bring to municipalities. A portion of monies from 207 is allocated to local governments if added public safety costs result, as well as paying down pension costs. Additionally, within Prop 207 there is language that stipulates the state cannot use Prop 207 monies to supplant existing funding sources.

Mayor Gallego shared that she is concerned with the possible redirection of Prop 207 funds because the City of Phoenix needs the funding for pension purposes and does not plan on using those new dollars for public safety operations. There is also a concern that individuals will opt for medical marijuana and the city will not receive the tax benefits from adult-use marijuana that some have speculated. Mayor Gallego shared she had concerns about some of the arguments Mr. Ponder outlined and expressed appreciation to the League for their representation.

Mr. Ponder went on to share the actions the League has taken to identify the League's position to lawmakers, including communication on social media to drive the message. Five of the state's top economist spoke during the most recent Finance Advisory Committee and advised the state to exercise caution in implementing tax cuts. The League has highlighted this on social media as part of our strategy. Additionally, we commissioned a report from Jim Rounds after the state decided not to contract with him for an analysis of the flat tax. This report specifically considers the impact of a flat tax on local governments as well as the possibility of increasing city/town revenue share so that cities and towns are held harmless. We believe strongly that a percentage increase is in line with what voters passed in 1972.

Mayor Paul Deasy commented that a large portion of Prop 207 funds will go to fund to an alternative response system and that if the League had to accept an appropriation (rather than an increase in percentage share) that the language should allow for funding to be more comprehensive of public safety.

Mayor Doug Nichols asked if a percentage increase to revenue sharing be tied to a benchmark that recognizes that if there is an increase in revenue, our losses would be mitigated. Mr. Ponder stated that the League has been cautious in this approach because of how taxes have been collected historically.

Mayor Regina Romero asked if the League had taken a formal position on the flat tax during a previous meeting. Mr. Ponder responded that the position was not taken during the February meeting however that the League's position was based on discussions held during weekly meetings with League officers and intergovs. The direction the League took was to focus on the local government impact, adding that while there may be different views on tax policy, cities and towns have a unanimous view regarding the impacts to local governments. Decisions are guided by discussions made in weekly meetings with intergov staff and officers, Mr. Ponder stated. We are opposed to the proposal as it stands, however if local governments are held harmless our nexus to the issue would be satisfied.

Mr. Ponder concluded by stating that the League has tried to express in the last few weeks that having an elected-to-elected conversation between local leaders and legislators is key right now. This could be the largest cut to municipalities in Arizona history.

3. LEGAL UPDATE

Mayor Carlat called on General Counsel Nancy Davidson to share a Legal Update.

Ms. Davidson informed the Executive Committee that the meeting packet included the summaries of cases at the federal and state levels, but her presentation would focus on some of the key decisions only.

She discussed the Arizona Supreme Court's recent decision in *Schires v. Carlat* regarding the Gift Clause and the potential impacts of the decision on cities and towns. Under the court's previous decisions, alleged violations of the Gift Clause were assessed under the 2-part test established in *Wisturber*. Under the *Wisturber* test, (1) a public expenditure must serve a valid public purpose and (2) the public expenditures cannot far exceed the value received by the local government. The Court in *Schires* used the same 2-part test from *Wisturber*, but it added new "conditions" regarding the second part of the test. While courts can defer to the decisions of local elected officials to determine whether a valid purpose is served for part 1 of the test, they cannot defer to local officials to assess the consideration in part 2 of the test. Similarly, indirect benefits may be relevant for part 1 of the test, but they are not relevant for part 2 of the test. There are several takeaways from the *Schires* case. The case emphasizes the need to include the specific and enforceable obligations in agreements with private parties. The agreements should describe the direct benefits in detail and include the fair market value of each benefit. The contract should condition the expenditure of public funds upon meeting measurable performance thresholds by a specified date. The impact of *Schires* is not limited to development agreements – it applies to the expenditure of public funds to private parties in general. Cities and towns should consult with their attorneys regarding the expenditure of federal relief funds (CARES, ARPA) because *Schires* may apply.

Next, Ms. Davidson discussed *State ex rel. Brnovich v. City of Tucson*, which held that a charter city is not required to consolidate its local elections with state and national elections if its charter provides otherwise.

Ms. Davidson discussed *France v. Indus Comm'n of Arizona*, which held that a police officer's PTSD resulting from a violent encounter during work may be compensable as a workers' compensation claim.

Ms. Davidson discussed the Arizona Court of Appeal's decision in *Town of Florence v. Florence Copper Inc.* The court held that a development agreement may provide a vested right to certain uses, and this vested right is not eliminated without a written executed amendment to the development agreement.

Ms. Davidson discussed *State v. Arizona Bd. of Regents*, which held that Gift Clause claims are subject to the one-year statute of limitations under A.R.S. Sec. 12- 821.

Lastly, Ms. Davidson discussed the status pending cases. In *Mountainside Mar, LLC v. City of Flagstaff*, a party is challenging water and wastewater capacity fees that were adopted by the City of Flagstaff pursuant to A.R.S. Sec. 9-511.01. The developer is arguing that A.R.S. Sec. 9-463.09 is the only mechanism by which a city or town can charge utility capacity fees. A.R.S. Sec. 9-511.01, however, clearly grants independent authority to charge these fees. A.R.S. Sec. 9-463.09 does not diminish the authority granted in A.R.S. Sec. 9-511.01. A.R.S. Sec. 9-463.09 provides a mechanism to charge properties within a city's boundaries only, but many cities and towns serve customers outside their boundaries. As a result, several cities and towns adopt fees under A.R.S. Sec. 9-511.01 because the statute authorizes charging fees to utility customers located outside the city's boundaries. The amicus briefs are due 7/1/2021.

4. 2021 LEAGUE ANNUAL CONFERENCE UPDATE

President Cathy Carlat invited League Deputy Director Matt Lore to provide a brief update on the 2021 League Annual Conference. Mr. Lore shared that the League's Annual Conference will be from August 31st through September 3 in Phoenix. The conference will be in person at the Arizona Biltmore and registration will open at the end of May. Registration will be available first for all executive committee members and then to all cities and towns.

5. LEAGUE BUDGET FOR FY 2021 – 2021

President Cathy Carlat invited League Executive Director Tom Belshe to provide a review of the league budget.

League Executive Director Tom Belshe advised the Executive Committee that Budget Subcommittee Chair, Mayor Mengarelli will share some key points of the report. The budget report reveals dues were reviewed and there is an agreement on a slight increase. The annual conference, professional services, contract lobbying, and consulting were also included within the budget. Finally, there was a 3% increase in League staff salaries.

League President Cathy Carlat asked for a motion for the FY21-22 budget presented by the Budget Subcommittee. Mayor Greg Mengarelli moved to approve the FY21-22 budget presented by the Budget Subcommittee; Mayor Douglas Nicholls seconded the motion and it carried unanimously.

President Cathy Carlat adjourned the Executive Committee Meeting at 11:42am.


EXECUTIVE DIRECTOR


PRESIDENT