

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-019303

06/17/2010

HONORABLE L. GRANT

CLERK OF THE COURT
T. Soto
Deputy

INDUSTRIAL COMMISSION OF ARIZONA

DAVID J OUIMETTE

v.

DEAN MARTIN, et al.

WILLIAM A RICHARDS

MARK P BOOKHOLDER
SAMUEL DAVID CHILDERS
STANLEY G FELDMAN

MINUTE ENTRY

The Court has received and reviewed the pleadings filed by the Plaintiff, the Industrial Commission of Arizona and the Trustee of the Special Fund of the Industrial Commission of Arizona.

The Court has received and reviewed the pleadings filed by the Plaintiffs-Interveners' ACF Arizona, the Arizona Contractor's Association, Inc., the National Federation of Independent Businesses, the American Insurance Association, the Arizona Self-Insurers Association, the Arizona Multihousing Association, the Arizona Beef Council, the Alliance of Construction Traders, the Arizona Police Association, the Professional Firefighters of Arizona, the Arizona Building and Construction Trade Council and the Arizona education Association.

The Court has received and reviewed the pleadings filed by the Defendants, the treasurer of the state of Arizona the governor of the state of Arizona and the Comptroller of the state of Arizona.

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The essential facts that gave rise to this litigation are not in dispute: on or about January 28, 2009 during a special session of the state legislature, Senate Bill 1001, was enacted. That bill provides for two transfers from the Special Fund to the State of Arizona General Fund: first, in the amount of \$3,280,900.00, pursuant to section 4 of the act; second, in the amount of \$1,404,100.00, pursuant to section 5 of the act, for a total amount of \$4,685,000.00. These funds are maintained by the industrial commission of Arizona under the Workers' Compensation Act. Senate Bill 1001 was designed to transfer (sweep) funds from the special fund and transfer them to the state of Arizona general fund to assist in the offset of the state budget deficit. Plaintiff and Plaintiff-Intervenors challenge the sweep of these proceeds from the special fund to the State of Arizona General Fund.

Basically, Plaintiff and Plaintiff-Intervenors argue that the proceeds held in the special fund are derived from contributions from employers, insurance companies and the state compensation fund held in trust for the benefit of injured employees who have suffered work-related injuries. Further, that the proceeds held in the special fund may be used for only a limited special purpose authorized by the statute, the payment of benefits to injured employees for work related injuries. Plaintiff and Plaintiff-Intervenors go on to argue that these injured employees have a vested contract right to these benefits and may not be deprived of those vested contract rights without the due process of law.

As support for their arguments, Plaintiff and Plaintiff-Intervenors point to two opinions of the Arizona Attorney General's Office, acknowledging that there are no Arizona reported cases on the issue, and argues that the proceeds held in the Special Fund are not state tax revenues as they are held in trust for the benefit of injured employees covered by the Workers' Compensation Act.

Plaintiffs go on to suggest the decisions in Thompson v. Kentucky Reinsurance Association, 710 S.W.2d (Ky. 1986) and Workers' Compensation Fund v. State of Utah, 2005 Utah 52, 125 P.3d 852 (Utah 2005) should guide this Court's analysis of the issues.

Also, Plaintiff-Intervenors suggest that the decisions in Kotterman, et al. v. Killian, et al., 193 Ariz. 273, 972 P.2d 606 (1999) and Industrial Commission v. School Dist. No. 48 of Maricopa County, 56 Ariz. 476, 108 P.2d 1004 (1941) would be beneficial to this Court in resolving the issues. Plaintiff-Intervenors go on to advise the Court of the recent history of transfer of proceeds from the Arizona Residential Contractors' Recovery Fund to the State of Arizona General Fund.

The Defendants argue the Plaintiff has the burden of showing that the transfer of the proceeds in the special fund to the general fund is barred by the Arizona or the United States Constitution, that there is a presumption of validity of SB 1001, and in that the Plaintiff must

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show beyond a reasonable doubt that Senate Bill 1001, is unconstitutional and that the enactment of SB 1001 was not within plenary powers of the Legislature.

In support for their position, Defendants point the Court to Rios v. Simonton, 172 Ariz. 3, 833 P.2d 20 (1992). The issue in that case dealt with the governor's exercise of a line item veto and connection with certain special fund transfers enacted by the legislature. That is not the issue before this Court. In Rios the Court resolves the issue by discussing the circumstances surrounding the creation of each special fund and the transfer of appropriations from each fund to the general fund. However, that case did not clearly define what was and what was not "public revenues" or "public funds."

Next, Defendants argue that the proceeds in the special fund are state monies and not private money held in trust, beyond the reach of the Legislature.

This Court is of the opinion that the language in A.R.S. § 23-1081 (A) is clear: "the administrative fund is established to provide for all expenditures of the industrial commission in carrying out its powers and duties under this title.... All money and securities in this fund shall be held in trust and invested by the treasurer." If the proceeds held by the industrial commission are held in trust, it seems clear to the court that these proceeds, maybe recently characterized as trust proceedings held for the benefit of those parties who are covered by the workers' compensation act.

The Court finds that the proceeds held in the special fund by the Industrial Commission are not "public revenues" or "public fund" subject to appropriation by the Legislature in SB 1001.

This Court is persuaded by Plaintiffs and Plaintiff-Intervenors arguments that the proceeds held by the special fund are insurance proceeds held in trust for the benefit of employees and employers covered by Workers' Compensation Act.

This Court is further persuaded by the Plaintiff and Plaintiff-Intervenors arguments that the proceeds held in the special fund provide the employees and employers who are covered by the Workers' Compensation Act with a vested right in those proceeds.

This Court finds and orders the reasons set forth in the pleadings and arguments of Plaintiffs and Plaintiff-Intervenors that as a matter of law there is no genuine issue as to a material fact and that Plaintiff's and Plaintiff-Intervenors' Motion for Summary Judgment is **GRANTED**.

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The court further finds and orders that the defendants' Counter-Motion for Summary Judgment is **DENIED**.