

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-011970

04/13/2004

HONORABLE REBECCA A. ALBRECHT

CLERK OF THE COURT
N. Greene
Deputy

FILED: 04/15/2004

STATE COMPENSATION FUND OF
ARIZONA, et al.

WILLIAM R JONES JR.

v.

DAVID PETERSEN, et al.

JOSEPH KANEFIELD

STANLEY G FELDMAN
DIANA J SIMON
WILLIAM D SHELDON
JAMES F CRANE
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MINUTE ENTRY

This complaint for Declaratory Judgment and Injunction was brought to the Court for decision on Cross Motions for Summary Judgment. The parties submitted a Stipulated Statement of Facts that all agree are sufficient to resolve this case. The pleadings were submitted and reviewed by the Court, the matter proceeded to oral argument. The Court has reviewed and considered the applicable case law, statutes and constitutional provisions.

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The Arizona Legislature, as part of its effort to resolve serious budgetary issues confronting the State, enacted House Bill 2002 Section 21. Through the enactment of House Bill 2002 Section 21, the Legislature has directed that the State Compensation fund transfer \$50,000,000 from the Compensation Fund to the state general fund. The Compensation Fund is resisting the transfer as violative of the Arizona Constitution.

Pivotal to this Court's determination of the Parties' Cross Motions for Summary Judgment is the determination of the nature of the fund assets as public funds or private funds held in trust.

"Public funds" has been variously defined by case law and in Black's Law Dictionary as revenue obtained by the state government through taxes, fees and fines; those raised by the operation of some general law, and, money the treasury credited to a particular fund. The Arizona Courts have held that when a government is a mere custodian of funds those do not constitute state funds. *McClead v Pima County*, 174 Ariz. 348, 849 P.2d 1378 (1992), *Grant v Board of Regents* 133 Ariz. 527, 652 P.2d 1374, *Navajo Tribe v Arizona Dept. of Administration*, 111 Ariz. 279, 528 P.2d 623 (1974), *Kotterman v Killian*, 193 Ariz. 273, 972 P.2d 606 (1999).

The parties' stipulated facts establish that the assets held in the State Compensation Fund are voluntary payments of premiums paid to the State Compensation Fund, real and personal property and securities all acquired with the premium income and the interest earned on the assets. The fund receives no tax revenues levies or fines. SOF 5, 6; A.R.S. § 23-981.B.

The State Compensation Fund was created and is maintained without any legislative appropriation. No state assets or property are used by the fund to conduct its business. The State has no liability for any of the funds obligations. A.R.S. § 23-981.

The State Compensation Fund is administered without any liability of the State. The Fund sues and is sued in its own name.

In 1941, the Arizona Supreme Court stated in *Industrial Commission v School District NO. 48 of Maricopa County*, 56 Ariz. 476, 108 P.2d 1004 (1941):

This compensation fund is a trust fund the state has undertaken...to collect and distribute as in the compensation law prescribed. It is not made up of taxes levied and collected upon the citizenry at large but is collected from employers in the way of insurance premiums. While it is public fund as against everybody except the employer and the employee, as to them it is a private trust fund to be administered for their use and benefit...

In *Chez v. Industrial Commission of Utah*, 90 Utah 447, 62 P.2d 549 as cited in *Moran v Derryberry*, 1975 Ok 69, 534 P.2d 1282 (1975):

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'The employer really pools his premiums in the State Fund to create a fund for the payment of an obligation for which it is liable. It is a common fund belonging to the participating employers. It is therefore not derived from anything owing to the state nor paid out on behalf of any state obligation,' and at page 551, 'The fund is publicly administered, but its debtors are not debtors to the state. It belongs, not to the state, but to the contributing employers for their mutual benefit.' The court (p. 551) concluded that the State Insurance Fund, 'while a public fund in the sense of being administered by a public body, is not public money in the sense that it is money of the state to be used for and on behalf of the state for a state expenditure * * *.'

Pursuant to the direction of the Arizona Constitution Article 18 Section 8, the Arizona legislature enacted A.R.S. §23-981 which provides in relevant part:

- A. There is established the state compensation fund which shall be maintained for the purpose of insuring employers against liability for workers' compensation, occupational disease compensation and medical, surgical and hospital benefits pursuant to the provisions of chapter 5 of this title and this chapter, and pursuant to the federal longshoremen's and harbor workers' compensation act, the federal coal mine health and safety act of 1969, as amended, and other workers' compensation or occupational disease liability programs imposed upon Arizona employers by the federal government. The fund may also indemnify an Arizona employer against his liability for workers' compensation and occupational disease benefits under the laws of any other state for Arizona employees temporarily working outside of this state if the fund insures the employer's other employees who work within this state.

The funds of the State Compensation Fund are drawn from a particular source, the premiums paid by the employers. The funds are to be used for a particular purpose to indemnify an employer's liability against his liability for workmen's compensation benefits.

In this case, the Court is persuaded that the moneys and assets held by the State Compensation Fund are not public funds, but are funds held in trust by the Compensation Fund for the employer and ultimately for injured employees and their families.

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Having determined the nature of the funds sought to be transferred to the General Fund the Court must determine whether the proposed transfer of private funds to the general fund in the manner proposed passes constitutional muster.

The statutory provisions, creating the State Compensation Fund, provide that the assets must be used solely to pay worker's compensation benefits and administrative expenses of the Fund. The Fund may, purchase real property for its use and for investment but always subject to certain limitations. The relationship between the Fund and the employers is contractual. The directors of the Fund bear a fiduciary duty to make its decisions in the best interest of the Fund and its insureds.

The statutes provide that the Fund may declare the payment of a dividend to the policyholders from the surplus of the Fund. A.R.S. §23-981.01.

All of the these factors persuades the Court that the rights of the employers are vested rights that the Arizona Constitution provides shall not be impaired by any law. *Arizona Constitution, Article II §25*. It does not matter that the Fund would not be rendered insolvent by the proposed transfer. The transfer interferes with the contracted rights, responsibilities and expectations of the parties to the contract.

The proposed transfer from the State Compensation Fund to the State General Fund pursuant to House Bill 2002 section 21 would violate the Arizona Constitution.

IT IS ORDERED granting the Plaintiffs' Motion for Summary Judgment.

IT IS FURTHER ORDERED denying the Defendants' Cross Motion for Summary Judgment.