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ARIZONA TAX RESEARCH ASSOCIATION

NEWSLETTER VOLUME 81 NUMBER 3 APRIL 2021

Consultant Labels La Paz County Insolvent

La Paz County can't shake its financial troubles. In a recent presentation to the La Paz County Board, consultants informed supervisors of a potential $4.2 million gaping hole in its $18.9 million county general fund budget. The banks are bailing since the county has virtually no restricted cash, and to make matters worse, the county has been borrowing cash from restricted funds—a clear violation of state laws and regulations.

This shouldn't have come as a surprise to the county supervisors. The County's deficit was first reported in April 2019 when its FY 2018 audit was filed, and again in April 2020 upon the FY 2019 audit filing. [see page 9 for the audit report highlights.] Recent local media reports indicate the county board had no idea the county was running a deficit. To the contrary, county

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Tucson Pushes Legal Limits of GPLET Program

Tucson has recently become the new state leader in tax giveaways; liberally handing out tax breaks to all comers in their downtown. Nearly every property on Congress and Broadway downtown either has a tax break or has a request to get one. ATRA calculations show roughly $36 million in property value has been or is planned to be removed from the property tax rolls, meaning that until these deals expire, other area taxpayers will pay more. This past month the City took up a measure to consider a massive 48% expansion to their gerrymandered Central Business District, an indication they plan to grant many more deals.[1]

But the City is either deliberately ignoring state law or has devised workarounds to evade legislative changes

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Tucson Unified Finally Closes Its Deseg Case

OPINION

This past month the federal judge overseeing Tucson Unified School District's (TUSD) desegregation case indicated they would be released from monitoring, ending roughly 50 years of litigation. The TUSD Deseg case should be recorded as the largest overreach of federal judicial authority in state history. At long last, administrative control over Tucson schools goes back to Tucson. For taxpayers in TUSD, it's a glimmer of hope that their district may one day behave like a normal school district and have to talk to their voters for additional funding, instead of annually relying on $63.7 million nonvoter approved Deseg dollars.

Despite the Supreme Court's 1995 *Missouri v. Jenkins* ruling declaring that civil rights monitoring cases like TUSDs must be limited in nature and not exceed the scope for what the district was accused of, the federal supervision of TUSD made a mockery of *Brown v. Board of Education*, undermined local control of the district, and now ends with almost nothing of value to show after decades of court supervision. While the case originated on the issue of

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staff painted a rosy picture of the county's finances as recent as last year according to a recent article in the Parker Pioneer newspaper.

How did the County drive its finances into the ground? Consultants pointed to several years in which the county did not accurately account for revenues and expenditures, imprudent borrowing from restricted fund sources to cover deficits, among other reasons.

Financial struggles aren't new to La Paz County. Established by voter initiative in 1983, maintaining financial stability has been difficult for Arizona's youngest county. Consequently, the poor decisions made by various county officials and personnel over time have put the county in dire straits.

La Paz County v. Yakima

In 2011, the county was ordered to pay a multi-million-dollar judgment in the Court of Appeals case, *La Paz County v. Yakima*. In 2002, the County entered into an agreement with Yakima Compost Company to receive and process sewer sludge on county land for 25 years. Not long after the agreement was executed, disputes between the parties ensued and the County filed a lawsuit in May of 2003 contending that Yakima breached the agreement. In June 2004, Yakima filed a counterclaim and the case proceeded to a jury trial in August 2007. Evidence at the trial demonstrated that the County regretted entering into the agreement, and as a result, may have intentionally made it impossible for Yakima to fulfill its end of the agreement. The jury found in Yakima's favor and awarded the company approximately $13 million in damages, including interest, attorney's fees, and other costs. Put into perspective, the judgment rivaled that of the county's general fund budget of $13.9 million at the time, and therefore, the county had no ability to pay the judgment. The County turned to the Legislature for help, and under SB1178 during the 2011 session, received the authority to issue county judgment bonds that allowed the County to levy up to a 1.5% sales tax to repay the bonds. The county issued approximately $19 million in judgment bonds and currently levies a one-cent sales tax, which is anticipated to be in effect for 20 years until the bonds are repaid.

Expenditure Limit Relief

The Legislature assisted the County again in 2016 when it included a provision in the state budget to waive any penalties against La Paz County for exceeding its constitutional expenditure limit in FY 2014, FY 2015, and FY 2016 related to a contract with Los Angeles County to import incinerator ash for disposal during those years. And again during the 2018 legislative session, HB2290 was enacted to provide the County with expenditure limit relief for all excess expenditures between FY 2014 and FY 2018. ATRA did not oppose the measure since the County planned to ask its voters for a permanent increase of $3 million in its expenditure limit, which voters approved in 2018.

Local Government Audits

The local governments of counties, community colleges, cities and towns are required to have financial audits

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performed within nine months of each fiscal year. However, the ability of local governments to timely file their audits has been an ongoing issue. Over the last two decades, La Paz County has typically been behind several years in filing its audits. County leadership really had no idea how much cash the County actually held in its reserves each year as the annual budget was being crafted. In many cases, those budgets included employee pay raises to which the County had no idea how much those raises would cost.

Financial problems aren't unique to rural counties. In the mid 90's, the lack of adequate financial controls and reporting helped drive Maricopa County into a financial crisis. Similar to La Paz County, Maricopa's fiscal woes were made worse through short-term borrowing from banks and restricted funds to cover shortfalls.

In 2015, the Legislature enacted an ATRA-backed measure under SB1066 that increased the transparency when local governments fail to file their audits within the statutory time frame. Specifically, local governments must include in their budgets, and post on their websites, a form prescribed by the Office of the Auditor General that describes the reason for the delay and the anticipated date of completion. La Paz County is currently behind in filing its FY 2020 audit and the reasons attributed to the delay include the Covid-19 pandemic, complications with a failed payroll vendor, and the restructuring of payroll.

SB1074 Local Government Audits; Public Meetings

ATRAs *May 2020 Newsletter* reported several instances in which audits reflected the misuse and/or failure to appropriately account for public monies by several counties. This legislative session, ATRA is advocating for the passage of SB1074, which requires counties, community colleges, cities and towns to have the auditor who conducted the audit present any findings to the governing body in a public meeting. Having this requirement in law will allow local governing boards to take corrective action immediately to remedy any flaws in their policies and processes. Furthermore, this law may help prevent another local government from experiencing similar financial problems as La Paz County.

-Jennifer Stielow

General Fund Analysis

	Audited					Unaudited	Unaudited 9 months
	2015	2016	2017	2018	2019	2020	2021
Revenues	$ 14,692,325	$ 16,437,738	$ 14,072,361	$ 14,596,435	$ 15,515,708	$ 17,707,286	$ 10,877,970
Expenditures	15,185,324	15,004,197	14,027,959	13,560,172	16,112,520	18,467,038	10,966,334
Income/(loss) before transfers	(492,999)	1,433,541	44,402	1,036,263	(596,812)	(759,752)	(88,364)
Transfers in	3,718,720	-	-	-	1,480,139	564,312	-
Transfers out	(3,366,367)	(4,170,315)	(816,474)	(1,617,985)	(949,598)	(853,535)	(720,000)
Income/(loss)	$ (140,646)	$ (2,736,774)	$ (772,072)	$ (581,722)	$ (66,271)	$ (1,048,975)	$ (808,364)
Fund balance (deficit)	$ 2,150,175	$ (586,599) [A]	$ (1,715,655)	$ (2,297,377)	$ (2,363,648)	$ (3,412,623)	$ (4,220,987)

[A] The deficit of $586,599 as of 7/1/2016 was increased by $356,984 as a correction to cash and investments.

Source: La Paz County Financial Presentation, April 19, 2021

TUSD DESEG CASE FINALLY OVER *Continued from Page 1*

eliminating a dual system for different races or ethnicities, it morphed over the years into intentionally unsolvable crimes such as reducing the concentration of Latinos at certain schools in an increasingly minority-majority district. The goal-posts moved in a direction where the only ones who could score were the lawyers and consultants, while taxpayers funded decades of proceedings. At every turn, plaintiff lawyers sought to stretch proceedings, blaming the district for its lack of cooperation when the many parties involved did not agree on a course of action. Between the elected board, staff, two plaintiffs, and the special master, conflicts were routine. This helped continue the federal oversight and delayed the steps towards full unitary status. It was a distraction from the business of educating children, to say the least.

After being found to be in compliance with the original court order soon after the 1978 ruling, the district displayed a complete lack of diligence towards exiting the litigation and monitoring for the next 30 years. They applied for unitary status first in 2004 but were denied due to a lack of documentation of their good faith efforts. TUSD finally received unitary status in 2009 by the district court, which was overturned on appeal to the 9th circuit in 2011 because the district was found to not be adequately monitoring the progress of their settlement plan. It was remanded to the lower court for continued monitoring.

While federal supervision was intended to "eliminate the vestiges of past discrimination," it was the court supervision itself that was a vestige of the past. The Federal Court and their conspicuously titled "Court Appointed Special Master" argued over bus routes and percentages of ethnic and racial makeup of schools in order to achieve meaningless distributions of children in magnet schools. As though a preponderance of Latino students in a school is a problem to be solved. As though they or anyone else at the district had the power to tell parents where to enroll their student in a state with open enrollment laws. In fact, achieving myopic percentages of certain students became impossible after it was determined in 2007 the TUSD Board Policy which limited students from transferring to another district school unless it improved racial and ethnic balances in both schools, was unconstitutional.[1]

The solutions implemented by the courts and hired consultants often led to frustrated parents leaving the district instead. The district loses about 1,000 students per year for the last 20 years. In fact, two of its most popular 'A rated' schools in Davis Bilingual and Carrillo (only 6 out of 71 schools are 'A rated') were threatened with closure by the Special Master Willis Hawley in 2013 for having too many Latino students.[2] The steadfast position of Hawley, a professor from the University of Maryland, was that a high concentration of Latinos in magnet schools was grounds for a violation of the law and directed they find a way to enroll more White students. Instead of focusing on improving the 40+ schools in TUSD which are C rated or worse, far too much time and resources was diverted to making a half-dozen magnet schools more attractive to White parents to reduce their percentage of minority students below arbitrary levels.

It is not lost on observers that a case which originated to ensure equal access to education for minority students ended up spending considerable energy on finding ways to make magnets schools more accommodating to White students. In a 2016 peer-reviewed article for the Chicano/a Law Review, Professor Francesca Lopez outlines how TUSDs Deseg case violates the spirit of *Brown v Board of Education* by denying admittance of Latinos to magnet schools, ignores the mandates of *Missouri,* and fails to acknowledge the realities of changing demographics and open enrollment.[3]

In his recent ruling, Judge Bury noted the district has made significant progress in the last six years, justifying the release from monitoring and allowing the district to pursue its post unitary status plan. The only material difference between TUSD now and six years ago is a 6,700 or 15% student enrollment decline. While some of the blame is attributable to declining birth rates, district birth rates are down just 18% since 2001 and the material reduction in births is only impacting grades K-6 while overall district contraction is 34% or 20,200 students since the 2000 peak of just under 60,000 students.[4] Whereas many large districts have grown or held steady their high school enrollment in the last decade, TUSD has lost more than 10%. TUSDs high school enrollment will likely contract significantly in the next few years, causing financial turmoil at comprehensive, expensive-to-operate high schools. Though some may expect TUSD to recover from COVID by jumping back above 40,000 students next year, demographics suggest they may continue to fall to about 36,000 students in the next few years.

Taxpayers aren't the only injured party. In addition to bleeding enrollment faster than most, TUSDs saga over Deseg created lasting and deep wounds in its community, which is at least part of the reason the district has not successfully secured a bond or override in a generation. It's last bond request in 2017 failed by 20 points, whereas bonds in metro Phoenix often pass by the same spread. Who wants to support a district who has been remediating its alleged ethnic and racial discriminations for more than 40 years? In sharp contrast to other districts who quietly levy for past Deseg or past civil rights violation issues, *everyone* in Tucson knows about TUSD and their Deseg case. The *Arizona Daily Star* in Tuscon shows 748 hits for "Desegregation" whereas *The Arizona Republic* hasn't mentioned the topic in years. Hardly anyone knows or debates whether Scottsdale or Mesa Unified should be levying taxes to remediate their past discriminations and their districts prefer it that way.

To their credit, TUSD worked hard to rid themselves of the court order in the last several years without any help from state leadership. The District Superintendent has even offered to begin reducing their annual $63.7 million levy for Deseg, which is suitable considering how much of it is annually spent on legal fees alone. It's more than Phoenix Union did after it was declared unitary in 2005 in another case of judicial overreach—they continue to annually levy their maximum amount by law (which was capped in 2009) of $55.2 million despite being unitary now for 16 years. Phoenix Union won't budge on its nonvoter approved budget override which nets them an additional $2,050 per pupil—they apparently will be remediating their past discrimination at the expense of their taxpayers in perpetuity.

The state has recently considered several pieces of legislation to end the practice of endless property taxes which supposedly are for the remediation of past discrimination—which cause present day discrimination of property taxpayers. School districts and auditors routinely concede these tax revenues are spent on routine school district expenses and are in no way related to the allegations which landed them under the legal microscope.[5] But they do like the spending advantage over their neighbors and so each effort to phase out these levies is opposed by the districts.

State lawmakers should take note that even under the shameful banner of remediating past civil rights violations, districts are willing to soak their taxpayers without a vote if it means more funding. The money is too significant to remove in one fell swoop, but history shows that phase-outs of inequitable funding streams like Career Ladder and Excess Utilities are achievable.

The TUSD Deseg debacle is pitiful and worthy of empathy. The federal meddling chased away good leaders, amplified problems in the district causing severe local friction, and left the district unable to swiftly respond to

changes as it awaited approval from the "Special Master" for all major changes. The truth is TUSD is and has been an underperforming school district made far worse because of the Deseg litigation. Battered and bruised, it must now rebuild trust with its community if it wishes to stem the tide of enrollment losses and half empty schools. It would help if they adopt a plan to phase out their Deseg levy and present to its constituents a district free from the vestiges of its past.

1. https://tucson.com/news/local/education/precollegiate/tusd-adopts-open-enrollment-policy/article_70f2bd1e-78e7-5d63-8110-1be3e19093e7.html
2. https://tucson.com/news/local/education/magnet-status-for-tusd-schools-in-jeopardy/article_5f3e53e8-b20c-599c-92c7-3e25bd836eaf.html
3. https://escholarship.org/content/qt4sr7g04r/qt4sr7g04r.pdf?t=olw49i
4. https://www.azsfb.gov/sfb/agency/Smart%20Growth/Birth%20Data%20by%20School%20Year%20to%202017.pdf
5. See https://www.azauditor.gov/reports-publications/school-districts/maricopa-unified-school-district/report/maricopa-unified-14 & https://www.azauditor.gov/reports-publications/school-districts/washington-elementary-school-district/report/washington

-Sean McCarthy

TUCSON GPLET TROUBLES *Continued from Page 1*

to Government Property Lease Excise Tax (GPLET) laws. In 2016 and 2017, the state passed bipartisan GPLET reform laws making several changes to the program.

Problem #1 The key component for a City to take ownership of a building in order to abate its property taxes is that it exist inside of a redevelopment area (RDA) that has been designated to have a preponderance of slum and blight in accordance with laws in Title 36 of Arizona Revised Statutes. One deficiency lawmakers sought to correct was the length of time between revisiting these designations. State law now requires cities to re-designate these RDAs every 10 years if they are used for GPLET. These designations are not easy or simple. State law has a laundry list of required tasks such as factual finding documentation, notifications to affected parties, public hearings, and an official redevelopment plan. An RDA requires a two-thirds affirmative vote to be established.

The far easier task is the establishment of the Central Business District (CBD) which must reside entirely within an established RDA (a city can have multiple RDAs). Property tax abatements can only occur with a CBD. The law passed in 2018 required each municipality "review the designation of each slum or blighted area" before October 1, 2020. Instead of completing the tasks required in Title 36, the City of Tucson (COT) simply passed a motion to renew its existing CBD with no mention of the RDA on September 22 before the deadline.[2] While they hired a consultant to study their downtown, they did not complete any other requirements in law. At minimum, the COT ignored the legislative intent. But it may have had a practical reason—Tucson does not have a Redevelopment Plan to renew.

Problem #2 A group of local Tucson citizens led by Colette Altaffer have been bird-dogging the City for several years, paying particular attention to incentive deals. This group discovered COT never completed its Redevelopment Plan for its downtown RDA as required by A.R.S. § 36-1479. The plan is a thorough document demonstrating to the public that it takes seriously its designation and has a detailed and measurable plan to

Proposed Modified CBD

Key Information

4.98 square miles
3,188.19 acres
3,857 parcels
2.06% area of Tucson (proposed)*
1.39% area of Tucson (current)*

Legend

- Proposed CBD Reduction
- Proposed CBD Expansions
- Current CBD Area
- South Tucson

**Area of Tucson: 241.29 square miles*

remediate the situation. Importantly, the law says that "A municipality *shall not acquire real property* for a redevelopment project unless the local governing body has approved the redevelopment plan…" (emphasis added). In a GPLET deal, the city acquires real property, often for a redevelopment project, meaning that many if not all of the deals were executed in contravention with state law.

To wit, City leaders have patted locals on the head, suggesting the Redevelopment Plan is not necessary. This is a bizarre conclusion considering that when the City adopted the CBD in 2012, it said it was preparing the Redevelopment Plan in the text of the Resolution 21882 and the Vice Mayor said it would be brought before the council "…in approximately six months for formal adoption." The City of Phoenix by contrast finds it very necessary and has carefully laid out redevelopment plans for each of its RDAs.[3] ATRA made several requests to COT for its Plan and were ignored after initially being told they would quickly respond.

Problem #3 In 2018, the State passed a bipartisan measure to limit the size of CBDs and to limit their layout to a "geographically compact" area, although it grandfathered existing districts. A.R.S § 42-6209A says that "For the expanded areas of an existing central business district only and the new designation of a central business district formed on or after January 1, 2018 and for the purposes of this subdivision, "geographically compact" means a form or shape that has a length that is not more than twice its width as measured from at least four points on the exterior boundary of the expanded areas." The legislative intent was for CBDs to encompass a portion of the city's downtown area in need of redevelopment only without using tentacle-style drawings to connect thoroughfares and maximize commercial plots while selectively avoiding other areas.

It certainly wasn't imagined at the time of passage that a city would simply expand the tentacles on its gerrymandered map in each direction as is proposed by Tucson when the goal was "geographically compact" districts. It's a disappointing development that is inconsistent with the legislative intent. Instead of focusing on their core downtown area, COT proposes to include the entire I-10 corridor and the arterial roads leaving downtown. A *central* business district is certainly not a series of roadways leading out of a downtown area.

This will no doubt lead to odd outcomes where neighbors will possibly have very different tax treatment where one is eligible for GPLET while the other is not. This certainly will have an impact on the market value of their property as well. The potential for map gamesmanship and unseemly corporatism increases dramatically if maps are drawn this arbitrarily.

Future Analysis The City and the special tax increment financing (TIF) district Rio Nuevo are in a heated race for who can offer GPLETs faster. Since they began in 2014, there have been roughly 24 GPLETs issued with another 15 or so in the queue. Rio Nuevo has jump started roughly half of the deals. Only the City can approve the abatement portion of a GPLET, yet their website curiously doesn't even track Rio Nuevo GPLETs. In ATRAs next piece on the topic, we'll show how the City has been using GPLET and how the current deals don't appear to be in accordance with the Supreme Court's recent Gift Clause interpretation in *Schires*. For more on that ruling, please see the ATRA March 2021 Newsletter.

-Sean McCarthy

1. https://tucsonaz.onbaseonline.com/1801AgendaOnline/Meetings/ViewMeeting?id=1512&doctype=1

2. https://tucsonaz.onbaseonline.com/1801AgendaOnline/Documents/ViewDocument/RESOLUTION%2023246.pdf?meetingId=1417&documentType=Minutes&itemId=59090&publishId=62970&isSection=false

3. https://storymaps.arcgis.com/stories/48d5aa74a9064ccdaea0228f4b6f2ee3

La Paz County's FY 2019 Single Audit Report

In its most recent single audit, several deficiencies were reported in the county's internal controls that are considered material weaknesses and significant deficiencies. A *material weakness* (MW) is a deficiency, or several deficiencies in internal controls such that there is a reasonable possibility that a material misstatement of the county's financial statements will not be prevented, or detected and corrected, in a timely manner. *Significant deficiencies* (SD) detect similar issues that are less severe, but still relevant. The La Paz County FY 2019 included the following findings, *all of which are repeat findings from previous years that have not been corrected:*

Lack of adequate segregation of accounting duties (SD): Policies have not been implemented to ensure duties are segregated that minimize control situations where individuals have opportunity to misappropriate assets.

Budgetary control (compliance with laws and regulations/SD): The County over-expended funds contrary to Arizona Revised Statutes.

Capital asset inventory (SD): The County has not performed an inventory of its capital assets since FY 2015, and therefore, was not fully compliant with the UAMAC or federal regulations.

Golf Course volunteers (MW): The County relies heavily on "volunteer" personnel to operate its Golf Course, in which these individuals receive green fee vouchers that accumulate based on hours worked. The County has an inadequate recording and voucher tracking system, which may result in unrecorded liabilities in the golf course.

Golf Course Pro Shop inventory (SD): The golf course pro shop had goods held for sale but no inventory was recorded and a physical inventory was not performed. The inventory and expenses could be misstated in the account records and lack of controls over inventory leaves the county more susceptible to theft or fraud.

Timely account reconciliation and financial statement preparation (MW) During part of the fiscal year, the County Treasurer system was not reconciled to the County's general ledger and others on a timely basis. As a result, the County may have not had accurate and timely financial information for decision making, which may lead to an increased risk of errors in the annual financial statements.

Monitoring of liability accounts (MW): In FY 2013, the County recorded a liability of $114,819 relating to amounts determined to be an overpayment from the U.S. Treasury, which is still reported in the FY 2019 financial statements and county personnel had not determined if this amount had been paid or if a liability was still outstanding. As a result, penalties may have accrued relating to this overpayment and the County may have not had accurate and timely financial information for decision making.

Court fees and assessments (Compliance with Laws and Regulations): The County's courts failed to remit its fees and assessments to the County Treasurer in a timely manner as required by law.

Grant accounting and preparation of schedule of expenditures of federal awards (MW): The County failed to perform a timely analysis of grants and contracts, including an analysis of expenditures versus drawdowns. As a result, there is an increased risk that accounting errors may occur and an increase in difficulty identifying and summarizing all Federal awards.

Cash monitoring and reconciliations (MW): The County has not established appropriate policies and procedures to monitor and reconcile all cash accounts on an ongoing basis.

Cash deficits financed by restricted proceeds (Compliance with Laws and Regulations): During the fiscal year, the County had generated deficit cash on deposit with the Treasurer balances in various special revenue funds and general fund departments. At fiscal year end, the other special revenue funds is reflecting an amount loaned to other funds relating to these restricted resources totaling $1,804,474. As a result, the County is not in compliance with State Statutes and contracts governing the use of these unrestricted funds.