

Hands off tobacco money - Supreme Court: Legislature can't sweep First Things First

by Christian Palmer

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The Arizona Supreme Court has decided unanimously that state lawmakers overstepped their authority when they swept millions of dollars of interest held in the Arizona Early Childhood Development and Health Fund.

The dispute came down to the fine print of a ballot measure passed by voters in 2006 that created an 80-cents-per-pack tax on cigarettes and other tobacco items such as chewing tobacco in order to pay for development and health care programs for children.

The board that oversees the fund sued the state in May after lawmakers swept \$7 million that had accrued as interest and, instead, used it to fill gaps in the fiscal 2009 budget. Attorneys representing the board argued that lawmakers had taken money intended specifically to pay for children's health care, and in doing so had violated the intent of Proposition 203, the ballot measure known as First Things First.

In a 12-page opinion released July 24, Justice Michael Ryan wrote that the framers of the First Things First initiative had no intention of allowing the Legislature to dip into the revenue stream created by the 2006 ballot measure.

Ryan noted the ballot measure's stated purpose was to create "dedicated funding to improve the quality, accessibility and affordability of early childhood development opportunities."

"Given these statements, allowing monies to be siphoned from the fund to the (state's) general fund is not consistent with the purpose of the initiative," he wrote. "Rather, the purpose of the initiative was to ensure that revenues serve the specific program aims of the initiative."

The Arizona Supreme Court's five justices agreed that the transfer of money violated the terms of the 1998 Voter Protection Act, or Proposition 105, a constitutional amendment that limited the Legislature's power to amend voter-approved initiatives. It requires a three-quarters vote of the Legislature to change such initiatives, and all changes must further the purpose of laws passed by initiative.

Solicitor General Mary O'Grady, on the other hand, had argued that the initiative's statutory wording permitted the Legislature to appropriate interest from the fund.

The initiative's language stipulates that interest and "other income from investments" in the Arizona Early Childhood Development and Health Board accounts to "be credited to that account except as otherwise provided by law."

O'Grady also argued that initiatives still can have negative impacts on the state's general fund even though they are required to have their own funding stream. The inclusion of the "except as otherwise provided by law" stipulation merely "changes the default" by allowing the Legislature to appropriate money that otherwise would be directed toward investments by the state treasurer, she said.

To date, the tobacco tax has raised roughly \$330 million, according to the Arizona Early Childhood Development and Health Board.

Elliott Hibbs, the board's executive director, was not available for comment. Liz Barker Alvarez, a spokeswoman for the board, released a statement that applauded the court's ruling.

Yet not everyone was pleased. House Speaker Kirk Adams the ruling is proof that reform of Prop. 105 is necessary to give lawmakers flexibility to develop "responsible fiscal policy."

"We do not, as the appropriators, have all the tools at our disposal to solve the problem," he said.

- Reporter Jim Small contributed to this article.

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