

SUPERIOR COURT OF ARIZONA
GRAHAM COUNTY

S0500CV202300024 (Graham County)

03/20/2024

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT

A. Walker

Deputy

TIM SUMNER

JOSHUA TAYLOR GREER

NICHOLAS J WALTER

v.

RICHARD LUNT, ET AL.

GEORGIA A STATON

JUSTIN M. ACKERMAN

GRAHAM COUNTY CLERK

JUDGE HANNAH

RULING

The Court has had under advisement the parties' cross-motions for summary judgment on Greenlee County Sheriff Tim Sumner's Complaint for Declaratory Judgment. The Court has read and considered all of the filings in connection with the motions, and the oral arguments of counsel, in the context of the record in this case. The summary judgment motion of Sheriff Sumner (the "Sheriff") will be denied, and the cross-motion of Greenlee County Supervisors Richard Lunt, David Gomez, and Ron S. Campbell (the "Board") will be granted, for the following reasons.

This case turns on interpretation of A.R.S. section 11-444. The statute reads as follows:

§ 11-444. Expenses of sheriff as county charge; expense fund

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- A. The sheriff shall be allowed actual and necessary expenses incurred by the sheriff in pursuit of criminals, for transacting all civil or criminal business and for service of all process and notices, and such expenses shall be a county charge, except that the allowable expenses of service of process in civil actions shall be as provided in § 11-445.
- B. The board shall, at the first regular meeting in each month, set apart from the expense fund of the county a sum sufficient to pay the estimated traveling and other expenses of the sheriff during the month, which shall be not less than the amount paid for the expenses for the preceding month. The sum so set apart shall thereupon be paid over to the sheriff for the payment of such expenses.
- C. At the end of each month the sheriff shall render a full and true account of such expenses, and any balance remaining unexpended shall be paid by the sheriff into the county treasury. If the sum so paid over is insufficient to pay the expenses incurred during the month, the excess shall be allowed and paid as other claims against the county.

The Sheriff interprets this provision as a grant of fiscal autonomy from the Board. He alleges that it affords him “discretion to utilize the funds he receives from the Board in a manner as he sees fit to fulfill the duties of the Sheriff’s Office.” Complaint for Declaratory Judgment, ¶ 26(b).

Whether section 11-444 requires the Board to give the Sheriff more authority to decide how much money to spend, and where to spend it, is a question of law for the court to decide. *See Arizona Dept. of Economic Sec. v. Superior Court in and for County of Mohave*, 186 Ariz. 405, 408 (App. 1996) (interpretation of a statute is a question of law). It is undisputed that Greenlee County’s budgeting and spending procedures do not give the Sheriff as much fiscal autonomy as he believes he should have. There are no other facts that matter to the decision. It is therefore appropriate to resolve the issue on summary judgment.

The Court does not agree with the Sheriff’s contention that there is no reasonable interpretation of section 11-444 other than his. The keystone of the Sheriff’s argument, the first sentence of subsection A, is phrased in the passive voice: “the sheriff shall be allowed actual and necessary expenses ...” The statute does not say who “shall [allow] actual and necessary expenses” – that is, *who decides* what expenses are “actual and necessary.” Is it the Sheriff who decides? Or is it the Board?

In construing a statute, a court must “look to the statute as a whole and ... consider statutes that are *in pari materia* -- of the same subject or general purpose -- for guidance and to give effect to all of the provisions involved.” *Stambaugh v. Killian*, 242 Ariz. 508, ¶ 7 (2017). The Sheriff

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here focuses on the language of section 11-444 as though the statute stood alone. On that narrow base he rests the broad conclusion that section 11-444 “is designed to ensure that he has the resources he needs to effectively perform his official duties,” such as the “separate information technology services that the Board has “refused to fund.” Reply in Support of Motion for Summary Judgment at 14.

The Sheriff fundamentally misreads the statute. Section 11-444 does not empower the Sheriff to override the Board’s decisions about how much money the Sheriff can spend and what he can spend it on. It does not make the Sheriff the final authority as to what expenses are “necessary” for the performance of his duties. Read as a whole and in the context of related statutes, the statute is not a grant of authority of any kind, financial or otherwise. A different statute, A.R.S. section 11-411, sets out the Sheriff’s “powers and duties” -- law enforcement, jail management, service of process. Section 11-444 merely provides process instructions, for budgeting and payment of expenses that a sheriff incurs in the course of exercising those powers and carrying out those duties. The Board – not the Sheriff -- makes the fiscal policy decisions that section 11-444 implements.

A variety of statutes support the conclusion that Board has plenary fiscal authority, and that the Sheriff has none, even if the Sheriff regards a particular expenditure as “necessary” for the exercise of his law enforcement authority. “The powers of a county shall be exercised *only* by the board of supervisors or by agents and officers acting under its authority and authority of law.” A.R.S. § 11-201(A) (emphasis added). Reserved to the board alone are, among other things, the power to “[m]ake such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers,” A.R.S. § 11-201(A)(3), and the power to “[d]etermine the budgets of all elected and appointed county officers enumerated under § 11-401 by action of the board of supervisors.” A.R.S. § 11-201(A)(6). The Sheriff characterizes himself as an “officer acting under [the board’s] authority and authority of law” for purposes of section 11-201(A), but the Board plainly has not delegated to the Sheriff its authority to contract for the vehicle maintenance and information technology services the Sheriff says he needs, or to budget for the new cars he wants to buy. Nor has the Sheriff cited any independent “authority of law” to enter those contracts or to make those expenditures, other than section 11-444.

The board also must “supervise the official conduct of all county officers” and “see that the officers faithfully perform their duties.” A.R.S. § 11-251(A), 11-253(A). In the exercise of its supervisory authority the board can “refuse to fund inappropriate activities” or coercively “use its power to withhold approval for capital expenditures, salary increases and the like.” *United States v. Maricopa County*, 151 F.Supp.3d 998, 1015 (D. Ariz. 2015), *aff’d* 889 F.3d 648 (9th Cir. 2018). The board also has overarching responsibility for compliance with laws that prohibit county spending for a purpose not included in the budget or “in excess of the amount stated for each purpose in the finally adopted budget for that year.” A.R.S. § 42-17106. It is difficult to imagine

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how those legal requirements could be met if elected county officials independently made their own budgets and controlled their own spending.

The Court of Appeals has addressed the issue at bar, in a case that parallels this one, and resolved it in favor of the county supervisors. In *Gregory v. Thompson*, two Cochise County constables asserted that a statute analogous to section 11-444 required the Cochise County Board of Supervisors “to provide them office space, support personnel, and funds to maintain the expense of such office.” 159 Ariz. 512, 514 (App. 1989). The statute at issue closely resembles section 11-444. That statute says:

Constables shall be allowed by the board of supervisors, as a county charge, the actual and necessary expenses incurred in training as required by § 22-137, pursuing defendants, transacting business relating to civil and criminal matters and serving notices and processes, except that the allowable expenses for service of process in civil actions shall be as provided in § 11-445.

A.R.S. section 22-132. Interpreting the statute, the Court of Appeals held as follows:

Does [the statute] mean that the board of supervisors has no discretion in this matter? Must it provide the constables with office space, a secretary, an automobile, and the expenses to maintain this office even if it finds that it is unnecessary? We think not. The statute speaks in terms of “actual and necessary expenses.” This means that *the necessity of these expenses is left to the discretion of the board of supervisors*. This court is not a super-board of supervisors and, in the absence of statutes or constitutional provisions mandating otherwise, we are not going to substitute our judgment for that of the board of supervisors. While it may be that these constables occupy no more than a ceremonial position, there are no laws that prevent this result. *The board did not abuse its discretion and it was entitled to judgment as a matter of law.*

159 Ariz. at 514 (emphasis added). The same is true here.

Subsections (B) and (C) of section 11-444, considered in their proper context, require little additional analysis. Those provisions are not hidden powers that elected county sheriffs have overlooked for the past hundred years. They are obsolete 19th century accounting rules superseded by more recent enactments that serve the same purposes more efficiently.

There are two recognized bases upon which a statute may be deemed implicitly repealed.

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The first is when a statute is unavoidably inconsistent with another more recent or more specific statute. *See, e.g., UNUM Life Ins. Co. of America v. Craig*, 200 Ariz. 327, 333, ¶¶ 28–29 (2001) (providing that where “two conflicting statutes cannot operate contemporaneously” the more recent or more specific statute governs). The second is when two statutes cover the same subject matter and the earlier statute is not explicitly retained by the later statute. A.R.S. § 1–245 (2002) (“[I]n all cases provided for by the subsequent statute, the statutes ... theretofore in force, whether consistent or not with the provisions of the subsequent statute, unless expressly continued in force by it, shall be deemed repealed and abrogated.”); *Olson v. State*, 36 Ariz. 294, 301, 285 P. 282, 285 (1930) (stating that repeal by implication results where the subsequent statute deals with “the same subject matter” as the earlier consistent statute).

Hounshell v. White, 219 Ariz. 381, ¶ 13 (App. 2008). Both apply here.

A statute that dates originally from the late 1960’s provides that the Arizona Auditor General “shall” “[o]rder and enforce a correct and uniform system of accounting by county, community college district and school district officers and instruct them in the proper mode of keeping accounts of their offices.” A.R.S. § 41-1279.21(A)(5). Under that mandate, the Auditor General has issued the Uniform Accounting Manual for Arizona Counties. The UAMAC covers the same subject matter as section 11-444 – procedures for accounting for public funds. It establishes a statewide statutory mandate, just as section 11-444 did.

The Introduction to the UAMAC says:

The board of supervisors is responsible for establishing and maintaining appropriate internal controls for properly administering all county departments. The procedures recommended in this manual are provided as examples of sound financial and administrative practices. Counties may use alternative procedures if they provide the same level of internal control for accounting and financial reporting.

Uniform Accounting Manual for Arizona Counties, updated September 2013 (emphasis added), *found at* <https://www.azauditor.gov/uamac> (last visited March 20, 2024). The detailed provisions that follow are, in many cases, “unavoidably inconsistent” with section 11-444’s primitive lump-sum payment procedure. The Sheriff conceded at oral argument that at least one requirement of subsection (c) – that expenses in excess of the monthly lump-sum payment “shall be allowed and paid as other claims against the county” – is not feasible today. Conversely, the Board could not possibly layer “the same level of internal control for accounting and financial reporting” as the UAMAC on a process that put the Sheriff in charge of his own budgeting and spending.

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IT IS THEREFORE ORDERED Plaintiff Sumner's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED Defendants' [Lunt et al.] Cross-Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED that the defendants shall lodge a proposed form of judgment, and any application for attorneys' fees and/or costs that may be appropriate, not more than twenty days from the date on which the Clerk issues this ruling. The longest time frame for response and reply to any of the defendants' filings (lodging of judgment, application for costs, application for fees) will apply to all responses and replies.