

## PARTNERS OBTAIN SUMMARY JUDGMENT IN TIM SUMNER V. RICHARD LUNT, ET AL.

Ms. Georgia Staton New:



Sheriff Sumner sued the Greenlee County Board of Supervisors demanding under A.R.S. § 11-444 that he had “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.” Sheriff Sumner also challenged the process by which Greenlee County funded his office’s monthly expenses. The Greenlee County Board of Supervisors opposed the Sheriff’s request for declaratory relief based on a number of well-established statutory and legal authorities demonstrating that it is a county board of supervisors (not a county sheriff) that decides what expenses are “actual and necessary” under A.R.S. § 11-444 and that the way in which the Greenlee County Board sets Sheriff Sumner’s budget and funds his office’s monthly expenses was entirely appropriate.

Following cross-motions for summary judgment, Superior Court Judge John. R. Hannah Jr., ruled in favor of the Greenlee County Board of Supervisors and against Sheriff Sumner.

The Court held that it was the Board (not Sheriff Sumner) that decides what expenses are “actual and necessary” under A.R.S. § 11-444(A). The Court noted at the outset that Sheriff Sumner “fundamentally misreads the statute” and that “[t]he Board – not the Sheriff – makes the final policy decisions that section 11-444 implements.” That is because when A.R.S. § 11-444 is read in harmony with other related budgetary statutes, it is the county board of supervisors that “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 Court rightfully noted that the powers of a county “shall be exercised *only* by the board of supervisors” and that only the Board has the power to contract and hold personal property. The Court rejected Sheriff Sumner’s argument that he was an “officer acting under [the board’s] authority and authority of law” and specifically stated “the Board plainly has not delegated to the Sheriff its authority to contract ... or budget.” The Court also recognized that the board of supervisors has supervisory duties imposed on it by Arizona’s legislature to ensure taxpayer funds are properly spent and can “refuse to fund inappropriate activities” or “use its power to withhold approval for capital expenditures, salary increases and the like.” Thus, the Court held “it is difficult to imagine how those legal requirements could be met if elected county officials independently made their own budgets and controlled their own spending.”

With regard to the later provisions of A.R.S. § 11-444 addressing how a county sheriff’s monthly expenses are paid – the Court held that this required “little additional analysis” stating that these provisions are “not hidden powers that elected county sheriffs have overlooked for the past hundred years” but rather “obsolete 19<sup>th</sup> century accounting rules superseded by more recent enactments that serve the same purposes more efficiently.” In making this determination the Court relied on Uniform Accounting Manual for Arizona Counties, which establishes a statewide mandate on how Arizona counties accomplish their budgeting and expense repayment procedures. Thus, the Court rejected the Sheriff’s argument under A.R.S. § 11-444 that the Board was obligated to pay the Sheriff a “lump sum” each month for him to spend as he saw fit.

In sum, the Court denied all of Sheriff Sumner’s requested declaratory relief and ruled entirely in favor of the Greenlee County Board of Supervisors.

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[Georgia Staton](#) has more than 49 years of experience representing governmental entities, including state, counties and cities, as well as school districts and privately-held corporations. She is committed to defending clients on issues involving governmental liability, employment law, personal injury and civil rights. Georgia has tried more than 75 cases to verdict in state and federal court in matters involving wrongful death and claims brought under the Americans with

Disabilities Act, Family and Medical Leave Act, Title VII discrimination and sexual harassment claims and retaliation, as well as false arrest and excessive force allegations against law enforcement including pursuit cases and SWAT actions. Georgia is a Certified Specialist in Personal Injury and Wrongful Death, an Advocate member of the American Board of Trial Advocates (ABOTA), and a Fellow and Past-Chair of the Arizona Chapter of the American College of Trial Lawyers (ACTL).

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**Justin Ackerman** is the trial group leader of JSH's appellate department. He represents clients in federal and state appellate matters in cases involving federal civil rights claims, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Following his clerkship, Justin has handled over 75 appeals, successfully arguing before the Arizona Court of Appeals, Arizona Supreme Court, and U.S. Court of Appeals for the Ninth Circuit. Justin has spoken at many seminars on appellate preservation topics and is recognized as a *Southwest Super Lawyers* and Best Lawyers Ones to Watch in the area of Appellate Practice.

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