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MEMORANDUM

TO: Charter Review Task Force
FROM: Sherry R. Scott, Deputy City Attorney
CC: City Council, Bruce Washburn, Kelly Ward, Brent Stockwell, Carolyn Jagger
DATE: January 8, 2010
RE: Summary of Arizona Gift Clause Law

The Arizona Constitution prohibits a city from making gifts or donations to private enterprises. Specifically, Article 9 section 7 of the Arizona Constitution provides that:

Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

This provision, known as the Gift Clause, was adopted “to ensure that the players in the economy were on a level playing field and that government would not unfairly favor particular enterprises or individuals.” See *Turken v. Gordon (City North)*, 220 Ariz. 456, 461 (App. 2008) (on review with the Arizona Supreme Court).

Current Arizona case law provides that the courts should analyze three factors to determine whether the use of government funds violates the Gift Clause. These three factors are: (1) whether the transaction serves a public purpose; (2) whether the public benefits received provide adequate consideration for the government’s contribution of funds and (3) whether any private or personal interests are unduly promoted by the public’s funds. *Id.* at 467. The *Turken* decision is currently under review by the Arizona Supreme Court and if this decision is reversed or modified, this legal analysis may change to some extent (likely only regarding the third factor.)

In reviewing cases related to Gift Clause violations, the Arizona Supreme Court has stated that the courts “must give appropriate deference to the findings of the governmental body.” *Arizona Center For Law in Public Interest v. Hassell*, 172 Ariz. 356, 367 (Ariz. App. 1991). However, the Arizona Supreme Court has also stated that a reviewing court must be independently satisfied that the gift clause analysis has been met. *Id.*