

MINUTES

LEAGUE OF ARIZONA CITIES AND TOWNS

EXECUTIVE COMMITTEE MEETING

Wednesday, August 22, 2018 at 11:45 a.m.
The Phoenician Resort, Camelback H
6000 East Camelback Road, Scottsdale AZ 85251

MEMBERS

President

Jay Tibshraeny, Mayor, Chandler

Georgia Lord, Mayor, Goodyear
Thomas L. Schoaf, Mayor, Litchfield Park
Ed Honea, Mayor, Marana

Vice President

Mark Nexsen, Mayor, Lake Havasu City

John Giles, Mayor, Mesa
Satish Hiremath, Mayor, Oro Valley*
Cathy Carlat, Mayor, Peoria

Treasurer

Christian Price, Mayor, Maricopa

Thelda Williams, Mayor, Phoenix
W.J. "Jim" Lane, Mayor, Scottsdale
Daryl Seymore, Mayor, Show Low

Doug Von Gausig, Mayor, Clarkdale
Lana Mook, Mayor, El Mirage
Coral Evans, Mayor, Flagstaff
Linda Kavanagh, Mayor, Fountain Hills
Jenn Daniels, Mayor, Gilbert
Jerry Weiers, Mayor, Glendale

Rick Mueller, Mayor, Sierra Vista
Sharon Wolcott, Mayor, Surprise
Mark Mitchell, Mayor, Tempe
Bob Rivera, Mayor, Thatcher
Jonathan Rothschild, Mayor, Tucson
Douglas Nicholls, Mayor, Yuma

*Not in Attendance

President Jay Tibshraeny called the meeting to order at 11:48 a.m. He invited the Executive Committee to join him in the Pledge of Allegiance.

President Jay Tibshraeny recognized Mayor Thelda Williams as Councilmember Danny Valenzuela resigned from the Executive Committee. He then asked for a motion to appoint Mayor Williams to fill the remaining term of the vacated seat.

Mayor Mark Mitchell moved to appoint Mayor Thelda Williams to the Executive Committee; Mayor Jim Lane seconded the motion and it carried unanimously.

1. REVIEW AND ADOPTION OF MINUTES

Mayor Jonathan Rothschild moved to approve the minutes of the May 11, 2018 Executive Committee Meeting; Mayor Rick Mueller seconded the motion and it carried unanimously.

2. LEGISLATIVE POLICY OVERVIEW AND UPDATE

President Tibshraeny asks Ken Strobeck to introduce Legislative Director, Nick Ponder.

Mr. Ponder thanked league staff for their work this last session as well as league contract lobbyist, Scott Smith. Mr. Ponder discussed the makeup of the legislature and noted the House of Representatives is made up of 35 Republicans and 25 Democrats while the Senate is made up of 17 Republicans and 13 Democrats. He also noted that the Speaker of the House, J.D. Mesnard, is running for the Senate which will leave the Speaker seat vacant and will be made up by either Rusty Bowers from LD 25 or Darin Mitchell from LD 13. In the Senate, it will be either Karen Fann or J.D. Mesnard to take the place of President.

Mr. Ponder informed the Executive Committee of the League's special projects. Firstly, digital goods was a big issue last session and when we ran our numbers, the loss was calculated around \$160 million to the state, cities/towns and Prop 301 monies. Mr. Ponder explained to the board that the major issue with this bill was data centers. There are only a handful of cities that have data centers but they were a driving factor in our inability to negotiate with those who were pushing for the digital goods legislation. The League contracted with Rounds Consulting Group, to identify the economic impact of data centers. We do expect digital goods to continue to be an issue in the 2019 Legislative Session and wish to use this analysis moving forward. Mr. Ponder informed the board that the League has contracted with two tax specialists who will assist in updating the Model City Tax codes for all of the non-self-collecting cities and towns. Lastly, Mr. Ponder told the board that the League will be contracting with HighGround, LLC for the 2019 Legislative Session to assist with new and social media in an effort to better communicate with the legislature and local communities. Most importantly, Mr. Ponder wishes to reintroduce the League to the Legislature for the 2019 session.

3. DISCUSSION OF WAYFAIR DECISION AND NEXT STEPS IN DIGITAL GOODS LEGISLATION

President Tibshraeny asked Executive Director Ken Strobeck to explain the issue.

Mr. Strobeck explained that since the U.S. Supreme Court decision in the Wayfair case had changed the nexus for online sales from a physical presence to an economic standard. League staff has had a lot of questions in regard to how to implement this at the state level especially in light of the digital goods bills we saw last session. League Tax Policy Analyst Lee Grafstrom has been working with Deputy Director Tom Belshe to work with the Department of Revenue to find a path forward. Mr. Strobeck invites Mr. Grafstrom and Mr. Belshe to report on this issue.

Mr. Grafstrom informed the Executive Committee that the South Dakota vs. Wayfair decision said that physical presence is no longer the standard. The standard now falls back to the same standard that we use for income tax which is, do you have a substantial nexus with the state. This standard focuses on is the seller creating and maintaining a market in exchange for services from the state, such as does the seller take advantage of the state courts to form and enforce contracts. The bottom line is that sellers no longer have to have a physical presence in the state to have sales tax liability. This is a significant change. The Department of Revenue is taking a "wait and see" approach as they expect legislation in the coming session. They are gathering information,

mainly looking at what other state are doing so they will be ready to share it with legislators and the JLBC, but they are not planning on issuing anything before the next session. South Dakota had an economic presence rule in their statute, so when they won the case that law was effective immediately. However, the South Dakota Department of Revenue released a statement saying they would not be enforcing this law until October 1. Many other states have released similar statements about requirements for remote sellers under the new standard, including some that don't have the bright line rules South Dakota has.

In the next legislative session we expect a bill establishing economic presence for remote sellers with minimum thresholds similar to South Dakota's standards of at least \$100,000 in sales or 200 transactions in a calendar year. Another critical aspect is that this is almost certain to be considered by some to be new revenue, so a bill will probably include offsetting tax cuts to avoid a Prop 108 clause. Predicting how much revenue this will generate is going to be difficult but we need to be skeptical of any revenue estimates that are very high. The top 100 online retailers are responsible for at least 2/3 of all online sales with Amazon being the largest by far. Wayfair is the only taxpayer in the top 20 that is not licensed and collecting tax already in the State of Arizona. Out of the top 100, at least 83 are already licensed in Arizona and paying taxes. The top three who were not paying were the defendants in the South Dakota case: Wayfair, Newegg and Overstock.com, which rank about #17, 28 and 36 on the list of online retailers, respectively. Amazon has been collecting taxes for several years, but only on sales it made directly. Many thousands of smaller online retailers operate as 3rd party sellers through the Amazon platform and up to now tax collection was mostly left up to those companies. However, on the Monday after the Wayfair decision, Amazon informed their third party sellers they must become licensed in all states as necessary to continue operating on the Amazon marketplace. This was reflected in a sudden influx of new license applications received by the DOR. A lot of the potential revenue you might think would be associated with this change is already being collected voluntarily, so we shouldn't expect a huge bump when the issue is resolved.

4. LEAGUE POSITION ON PROPOSITION 126, "THE PROTECT ARIZONA TAXPAYERS ACT"

President Tibshraeny introduced Executive Director Ken Strobeck to discuss Proposition 126.

Mr. Strobeck informed the Executive Committee of Proposition 126 which will be on the ballot for the upcoming election. The proposition would essentially shut off more than half of the economy from ever being subject to tax, banning taxes on any service. Analysis has shown that broad-based, low-rate tax policy is the best policy. Mr. Strobeck explained that this proposition would make it impossible for cities and towns to tax services as it would be voter-protected and in the constitution. The preamble language called out local leaders, specifically charter city leaders, making the accusation that these leaders are greedy and are working to oppress the public via taxation. Mr. Strobeck requested that the Executive Committee send out a press release stating that the League is against this proposition.

After much discussion, it was suggested the draft resolution be amended to replace the third paragraph with language from the sixth paragraph. The Executive Committee did not want to

include language that appeared to be defensive but preferred to highlight what the committee supports as good public policy in regard to taxes.

Mayor John Giles moved to approve the League Position on Proposition 126 as amended; Mayor Georgia Lord seconded the motion and it carried unanimously.

5. LATEST SB 1487 CLAIMS AND UPDATE

President Tibshraeny introduced League General Counsel Christina Estes-Werther to report on the developments regarding SB1487.

Ms. Estes-Werther reminded the Executive Committee that at the last meeting in May, there were two pending 1487 complaints. One of the complaints was against the City of Tempe regarding how they use GPLET on two different ordinances. In regard to the first ordinance complaint against Tempe, the Attorney General found that the city does not violate and the second ordinance complaint, the Attorney General found that the city may violate state law. The AG ended up filing a special action with the Supreme Court; however they then decided to settle with the City of Tempe. Part of that settlement agreement is that the city will not rely on that ordinance in the future for GPLET purposes. This case has been resolved.

The second case pending was against the City of Sedona in regard to short-term rentals. Sedona had a business license for short-term rentals and it was alleged that this license was violating state law. The Attorney General's analysis found that under the short-term rental statute, the city was not violating state law, however; there was a close enough connection to the long-term rental statutes that the AG found that the ordinance does violate state law. Sedona repealed the ordinance so they would not lose their state shared revenue.

There was another 1487 complaint filed against the City of Sedona by Senator Burges on July 17. This complaint alleged that the City diverted a portion of their Bed Tax to the non-profit Chamber and that it violated the Gift Clause. The report was due last week, but about a day before the deadline, Sen. Burges wrote a letter to the Attorney General requesting the complaint to be withdrawn and that the Attorney General investigate under a different statute. The new investigation has to do with the illegal payment of public monies which was actually amended this year to include several types of political subdivisions, including cities and towns. Ms. Estes-Werther confirmed with the Attorney General's office that they have closed the initial case and will pursue the investigation under Title 35. This investigation will not have state shared revenue at risk and is at the discretion of the office of the Attorney General.

6. REPORT FROM EXECUTIVE DIRECTOR

President Tibshraeny welcomed League Executive Director Ken Strobeck to present the League Director's Report.

Mr. Strobeck discussed the League's interim activities including the increased use of social media and updating tax codes. The social media initiative is an effort to better communicate with local communities and groups for the legislative session. He also informed the Executive Committee that the League has hired people to update all tax codes for self-collecting cities and

towns to ensure they are all up to date for the next legislation session. It has been discussed that the Arizona Tax Research Association may be interested in challenging the model city tax code in the 2019 Legislative Session and the League wants to be sure all cities and towns are current with their tax code.

Mr. Strobeck also informed the board that the League office building has a new lessee, Jim Smalls with the Arizona Center for Investigative Reporting. Lastly, he points out summaries of the three most recent Amicus briefs written by League General Counsel, Christina Estes-Werther.

7. RESOLUTIONS OF APPRECIATION

President Jay Tibshraeny presented the Resolutions of Appreciation for service on the Executive Committee for Mayor Linda Kavanagh, Councilmember Danny Valenzuela and Vice President Mayor Mark Nexsen.

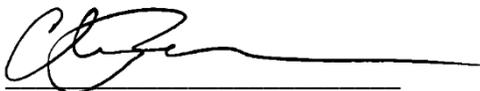
Mayor Bob Rivera moved to approve the resolutions; Mayor Nicholls seconded the motion and it carried unanimously.

Mayor Linda Kavanagh said a few words of appreciation for the League and her time on the Executive Committee. President Tibshraeny thanks Mayor Nexsen for being Vice President through his presidency on the Executive Committee.

Seeing no further business, President Tibshraeny adjourned the meeting at 12:46 p.m.



EXECUTIVE DIRECTOR



PRESIDENT