IN THE SUPREME COURT

STATE OF ARIZONA

DARCIE SCHIRES; ANDREW AKERS; AND GARY WHITMAN, Plaintiffs/Appellants, V. CATHY CARLAT, et al., Defendants/Appellees.	Supreme Court No. CV-20-0027-PR Court of Appeals Case No. 1 CA-CV 18-0379 Maricopa County Superior Court Case No. CV2016-013699

AMICUS CURIAE BRIEF OF PIMA COUNTY

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INTRODUCTORY STATEMENT

This brief is filed on behalf of Pima County, a political subdivision of the State of Arizona ("**County**"). No other entity provided financial resources for the preparation of this brief, which was not authored in whole or in part by any party to the appeal.

INTEREST OF THE AMICUS

Governing bodies like the Peoria City Council and the Pima County Board of Supervisors make decisions all the time about what public good to pursue, how to pursue it, and how much to spend in the process. Those are political decisions, and the elected representatives of the people should be free to make them without fearing that every decision is subject to being second-guessed by a court functioning as a super-legislature under the guise of a legal test. Every decision by a public body will be seen as wise by some and foolish by others. But there is no *legal* test for wisdom. *Indus. Dev. Auth. of Pinal Cty v. Nelson*, 109 Ariz. 368, 371 (1973) ("This Court is not concerned with the wisdom, necessity, propriety or expediency of the legislation in question."). Perceived foolishness is not proven illegality.

This Court, in the *Turken* case, recognized that reality and strove mightily to articulate a usable test under the Arizona Constitution's Gift Clause. The Court explained that an expenditure of public funds satisfies the Gift Clause if it is made for a public purpose and in exchange for consideration with a value that isn't grossly disproportionate to the expenditure. *Turken v. Gordon*, 223 Ariz. 342, 349, ¶¶ 28-30 (2010). Courts must be very deferential to the public entity in the first

part of the test because determining what constitutes a "public benefit" is a political, not a legal decision. *Id*. at 349, ¶ 28. And a public benefit can be accomplished indirectly. *Id*. at 348, ¶ 25, and 350, ¶ 33. But "public benefits" are not what is valued in the second part of the test. Instead, the test focusses on the value of the consideration provided by the private party—traditional contract consideration, meaning whatever that private party is doing or promising. *Id*. at 349-350, ¶¶ 31-33, and 352, ¶¶ 48-49. If that value is not grossly disproportionate to what the public entity is paying, the test is satisfied. *Id*. at 349, ¶ 30. And, of course, the person challenging the constitutionality of a contract has the burden of proof with respect to both parts of the test. *Wistuber v. Paradise Valley Unified Sch. Dist*., 141 Ariz. 346, 350 (1984).

By deferring to the political body in the first part of the test, allowing the political body to pursue a public purpose indirectly, requiring gross disproportionality for a violation in the second part of the test, and putting the burden of proof on those challenging a transaction, the Court created a zone—a sort of safe harbor—within which political bodies can safely exercise their discretion. And by focusing on the value of actual contract consideration rather than attempting to quantify the notion of "public benefit," the Court created an objective test that is reasonably predictable, one that allows public lawyers to meaningfully assess and advise political bodies regarding the potential legal risks associated with a proposed transaction.

Taxpayers in this case seek to undo that carefully crafted test and reintroduce the confusion and uncertainty that this Court in *Turken* worked so hard

to dispel. They want this court to hold that Peoria's deal with HU fails, but they provide no reasonable, articulable, generally appliable principle on which to do so. They conflate the two parts of the test, confusing the notion of *value* with *public benefit*. They insist that the benefit to the public must be "primary, tangible, direct," and "quantifiable," essentially resurrecting the "primary benefit" test that this Court has repeatedly rejected (*Turken*, 223 Ariz. at 348, ¶ 21) and ignoring the Court's clear direction that indirect public benefits are sufficient to establish a transaction's public purpose. They urge the Court to ignore basic contract law notions of consideration and limit the public purposes that may be pursued by a political body to some notion of "traditional government function," which is utterly unsupported by any of this Court's prior holdings. And they want to shift the burden of proof to the political body.

Under Taxpayers' approach, virtually any transaction by a political body will be subject to legal challenge, the outcome of which will be extremely difficult if not impossible to accurately predict. The ability of political bodies to pursue policy goals as the elected representatives of their citizenry will be impeded, and public funds that could otherwise be invested in that pursuit will be spent on endless litigation. Pima County files this brief as a friend of the Court to urge the Court not to intrude in such an inappropriate and unwarranted fashion into the workings of the political branches of government.

ARGUMENT

1. **The notion that a public purpose exists only "when the government spends money on something that primarily, tangibly, and directly benefits the public at large, and involves a traditional government function" is a radical departure from existing law and is completely unworkable.**

Taxpayers assert that permissible public purposes under the Gift Clause are limited to the performance of "traditional government functions," and that the only method for pursuing those functions is the purchase of "tangible goods or services from private parties for use by the general public." They reject the notion that a government can seek to advance a public purpose through indirect means by incentivizing operation of private businesses that create economic growth and employment opportunities. This is not only contrary to this Court's holding in *Turken*—which, for at least the second time, explicitly rejects the primary/secondary benefit test and explains that indirect public benefits are sufficient to establish public purpose—it is completely unsupported even by the older cases cited by Taxpayers.

Taxpayers principally cite the *Tombstone* case in support of their narrow construction of public purpose. But this Court in that case, far from limiting "public purpose" to "traditional government functions," notes that "[t]he question of what is a public purpose is a changing question, changing to suit industrial inventions and developments and to meet new social conditions." *City of Tombstone v. Macia*, 30 Ariz. 218, 226 (1926); *see also* *Turken*, 223 Ariz. at 346, ¶ 13 (noting that public purpose "changes to meet new developments and

conditions of time"). The case also does not support Taxpayers' asserted direct/indirect benefit distinction.

In fact, the *Tombstone* Court refers approvingly to the government's "taking of land for railroads or public markets" (*Tombstone*, 30 Ariz. at 229) as well as construction of an opera house (*id.* at 228). Yet railroads can only be used by railroad companies, which surely seek to operate at a profit; public markets provide businesses with the use of land to sell their goods; and an opera house is used by performers charging admission to their performances.[1] None of these examples involve the general public "directly" using the public property, but rather the government's provision of an affordable venue in which businesses can, in turn, offer their services to the public. None of them would satisfy Taxpayers' extremely narrow definition of public purpose.

Surely no one would dispute that health and welfare are public purposes, that a government entity could run a medical clinic or hospital to ensure that healthcare is available to the public, and that it could use tax dollars to subsidize that operation if it was not otherwise financially self-sustaining. But what if it was more cost-effective for the government to instead provide free clinic space to a private healthcare provider to incentivize the provider's operation of a clinic in a medically underserved area? Would this expenditure (in the form of free rent)

[1] Consider the more modern version of an "opera house"; a convention center. It surely could not be argued that construction and operation of a municipal convention center does not serve a public purpose. Yet such venues are used by sports teams, amateur sports leagues, industry groups, and performing-arts organizations to conduct events and programs for which those teams, groups, and organizations charge the public some sort of fee or admission price.

suddenly lack any *public purpose* simply because it achieves a public benefit indirectly instead of providing it more directly at a higher cost to the taxpayer?

Consider even the basic holding in *Tombstone*: the City of Tombstone could constitutionally tax its residents to support the construction and operation of an ice plant because ensuring that its residents—no doubt individuals and businesses alike—had access to ice was deemed to be a sufficiently public purpose to satisfy the Arizona Constitution's Tax Clause. *Tombstone*, 30 Ariz. at 229. Good enough. But what if the City could, instead, have paid a private ice-plant operator to open a plant in Tombstone by, for example, covering enough of the operator's capital costs to make the operation financially feasible? And suppose this would have cost taxpayers the same—or even less—than constructing and operating a publicly owned and operated plant? Would the *purpose* of the tax expenditure in the latter scenario be less public than the expenditure contemplated in *Tombstone*? According to Taxpayers, yes, because the benefit to the private company would be direct, while the public benefit would be realized only indirectly.

This direct/indirect distinction makes no sense and will be impossible to apply in the real world. It confuses the *purpose* of the transaction with the *form* it takes.

2. Economic development is already a recognized public purpose.

Taxpayers claim, sweepingly, that "[t]he Gift Clause was written to prohibit the pursuit of economic development with public aid." (Appellants' Supplemental Brief at 18.) That simply cannot be squared with cases like *Walled Lake Door* and *Nelson*, or with legislative authorizations.

After the Walled Lake Door factory, located in Gila Bend, was destroyed in a fire, the company was understandably reluctant to rebuild without assurances that an adequate water supply would be available to avoid a repeat of its losses, and it threatened to relocate if that could not be addressed. *Town of Gila Bend v. Walled Lake Door Co.*, 107 Ariz. 545, 547 (1971). So, in exchange for the factory's promise to rebuild in the Town, the Town promised to install a water line (*id.*)—one that would have no purpose other than supplying water to the factory in the event of a fire (*id.* at 549).The Court, in its analysis of the Gift Clause challenge to this contract, noted that the "supplying of water for purposes of preserving and protecting lives and property is a 'public purpose' and one which will provide a direct benefit to the public at large." *Id.* at 550. So this case stands, in one sense, for the unremarkable proposition that the expenditure of public funds to construct an item of public infrastructure is not a gift simply because the infrastructure will serve only one member of the public.[2] But it is *absolutely clear* that the Town entered into its contract with the factory based on its desire to retain the jobs, tax revenue, and other economic benefits that flowed from the factory's presence; any generalized concerns about public safety could have been resolved by simply acquiescing to the factory moving elsewhere. This case therefore stands squarely for the proposition that encouraging an employer to remain in the community is an appropriate *public purpose* for a promise to spend public money.

[2] How many people have to be served by a public infrastructure improvement before the "public *benefit*" is sufficient to justify the expense is, of course, a nonjusticiable political question.

Likewise, the industrial development authority's agreement to issue bonds to finance construction of pollution control equipment for Magma Copper Mine, at issue in the *Nelson* case (*Indus. Dev. Auth. of Pinal Cty v. Nelson*, 109 Ariz. 368, 371 (1973)), was clearly for the purpose of helping to keep the mine in business for the economic benefit of the community. This case arose, after all, shortly after passage of the 1970 Clean Air Act, which for the first time authorized the development of comprehensive federal and state regulations to limit emissions from industrial operations.[3] The purpose of the IDA's agreement likely wasn't to protect the public but to help the Mine comply with new pollution-control measures imposed on it by federal regulations and thus help safeguard the jobs and tax revenue generated by the Mine. Consideration wasn't an issue in this case, either, because the Mine was ultimately responsible for repaying the IDA bondholders. *Id*. But the clear message of this case is that assisting employers to locate and stay in business in a community is a perfectly appropriate *public purpose*.

Moreover, there are numerous statutes allowing municipalities and counties in Arizona to tax and spend for economic development purposes. *See, e.g.*, A.R.S. §§ 11-254 (county funding for nonprofits and government agencies for economic development), 11-254.02 (county spending for sports economic development activities), 11-254.04 (county expenditures for economic development activities generally), and 42-6108 (county bed tax to support stadium district activities,

[3] See discussion of the history of the Clean Air Act, at https://www.epa.gov/clean-air-act-overview/evolution-clean-air-act (visited October 22, 2020).

economic development, and tourism promotion). Obviously, the Arizona Legislature considers public spending in support of economic development to be fulfilling a public purpose.

The Peoria City Council had an evidentiary basis for concluding that its agreements with HU and Arrowhead would result in economic opportunities and growth for the community, a clear public good and laudable goal. There is no evidence of any sort of fraud or bad faith. Its political judgment should not be subject to second-guessing by a court.

3. Taxpayers insistence on a different, and extremely narrow, definition of "consideration" for government contracts will create uncertainty and confusion and could have widespread unintended consequences. A promise is not valueless simply because its value is difficult to quantify precisely.

Taxpayers insist, in defiance of this Court's direction in *Turken*, that traditional contract-law concepts regarding what constitutes "consideration" do not apply in the Gift Clause context. "Taxpayers … assert that, as a matter of law, these firms' promises merely to open/operate their own private business (as opposed to providing goods, services or other direct and objectively quantifiable benefits *to the City*) do not count as consideration *at all* under the Gift Clause." (Appellants' Supplemental Brief, at 8.)

A promise is *always* valid contract consideration; there shouldn't be some special rule in the Gift Clause context—something this Court recognized in *Turken* (223 Ariz. at 349, ¶ 31). Consideration is consideration. This Court cannot categorically state that a promise to operate a business in a particular location will

never have *any* value. That simply makes no logical sense. What the *value* of the consideration *is,* is a different question. But it would be the height of jurisprudential irony if the difficulty of *meeting* a burden of proof were to relieve of that burden altogether the party bearing it. "Beyond a reasonable doubt"?! That's crazy! Let's lock everyone up, because it's ridiculous to expect the government to meet *that* burden! Let's just defer to the State. Oh, but when it comes to the Gift Clause … let's go the opposite way and assume the government is always wrong, because how could we possibly require taxpayers—represented by a well-funded public-interest law firm—to prove otherwise? Oh, sure, in the Gift Clause context, no one's life or liberty is at stake, and there is a political solution—vote out of office the elected officials who make what voters believe are bad choices—but *still* … wait, where did we start this conversation? Relieving Taxpayers of their burden of proof just because it's tough to meet?

How might the value of HU's and Arrowhead's promises be shown? Well, there are companies that specialize in assisting businesses with siting decisions by evaluating the economic feasibility of various locations, including general economic factors as well as the availability of local business incentives. Might one of those furnish an expert who could intelligently explain to a court what a community like Peoria will normally be required to pay in the "market" to induce a company like HU to relocate there and make the other promises that HU made in its agreement with the City? Might such an expert be able to opine as to whether there are—or aren't—other similarly situated companies who would likely be

willing to relocate to Peoria, with the same level of expected economic benefit, for more or less in the way of incentives?

Taxpayers instead want this Court to state categorically that deals like this one violate the Gift Clause—but without being able to articulate a meaningful definition of what constitutes a "deal like this one"; at least not a definition that doesn't sweep up other transactions that most people would find logically unobjectionable. Taxpayers simply invoke the "purpose" of the Gift Clause and insist that this is *exactly* the sort of abuse it was meant to prevent. But is it? *Is* this an example of the sort of public-private debacles that prompted the drafters of the Arizona Constitution to include the Gift Clause?

Consider Pima County's railroad-subsidy experience. On February 21, 1883, the Arizona territorial legislature adopted a law (the "**Act**") that ordered Pima County to issue $200,000 in bearer bonds, accruing interest at the rate of 7% per year, with the principal due 20 years after issuance, and exchange them for the bonds of the Arizona & Narrow-Gauge Railroad Company ("**ANGRC**") with the same interest rate and maturity date.[4] On July 1, 1883, the Pima County Board of Supervisors issued $150,000 in bonds in compliance with the Act. ANGRC, of course, sold the County bonds to get the cash from investors (this was the classic "gift or loan of credit" method of providing public assistance to railroads at that time). *Utter v. Franklin*, 19 S. Ct. 183 (1899).

[4] A copy of the Act, together with a supplemental act adopted March 6, 1883, is attached as Exhibit A to this Brief.

Though, under the terms of the Act, the payments that ANGRC promised to make to the County as the holder of *its* bonds were clearly the *intended* source of revenue for both the interest and principal payments on the *County* bonds, there was nothing in the legal structure of the deal that required that. Under the terms of the bonds and the underlying legislation, the *County's* obligation to *its* bondholders was backed by the County's full faith and credit, meaning that the County had an obligation to levy taxes to pay the principal and interest on the bonds if necessary; they were not "special revenue" bonds. And completion of the railroad was not made a condition precedent for the validity of the bonds. *Murphy v. Utter*, 22 S. Ct. 776, 782-783 (1902). And, as it turns out, Pima County obtained "little or no benefit" from its issuance of the bonds because ANGRC built only 10 miles of track. *Id*. Here is how the project is described on a website about the history of narrow-gauge railroading in the western United States:

> Construction began on July 6, 1883 starting at the Southern Pacific depot in Tucson, northward along what is today Fairview Ave to a crossing of the Rillito Wash. …
>
> soon work began on a 386-foot long bridge across Rillito wash. On July 24th, to celebrate the completion of the bridge, an excursion was run over the entire 6-mile length of the line. Work continued through August and by September, *10 miles of track were in place*, with an additional 30 miles of grade completed towards its goals of Oracle and Globe. Despite the progress, *a downpour destroyed the Rillito wash bridge* in September 1887 and construction was again halted.
>
> In November 1887 the company reorganized and its name changed to the Tucson Globe and Northern Railroad, proposing conversion to standard gauge with an extension to meet the Denver & Rio Grande at Espanola, New Mexico. *The rails were removed and equipment sold in 1894*. The railroad was in part financed by Arizona Territorial and

> Pima County Bonds. Litigation over those bonds continued long after the railroad was gone, reaching the U.S. Supreme Court on four separate occasions *before the bonds were finally retired in 1953*.

http://www.pacificng.com/template.php?page=roads/az/angrr/index.htm (visited October 22, 2020) (emphasis added). So the County incurred $150,000 in debt and the public received nothing in return except expensive litigation and an extra 50-years' worth of interest on bonds that were supposed to be retired in 20 years but instead were outstanding for *70* years.

In contrast, here Peoria has a specific well-thought-out, transparent, program in place with defined parameters—a standing offer to entities to accept if they can meet the criteria. The specific deal with HU was then heavily negotiated, and everyone agrees that *but for* the incentives provided by Peoria, HU would not have set up shop in that locale. Clearly, therefore, HU's promises came with a price, and that price was set by bargaining. Finally, this was no lump sum payment in advance of any evidence of progress; instead, payments were doled out based on milestones met, and Arrowhead was reimbursed actual costs—again, after milestones were met, and with its contingent repayment obligation secured by a deed of trust. All these safeguards prevent a repetition of debacles like the Pima County ANGRC bonds saga. Under these conditions there is no rational basis for *assuming* that Peoria paid too much for the promises it received in return for the incentives it provided, and Taxpayers made no effort to actually prove that this was the case. The lower courts correctly concluded that they failed to carry their burden.

CONCLUSION

Taxpayers want this court to create a categorical prohibition under the Gift Clause that would encompass deals like the one challenged here. But there is no way to do that without doing great mischief to what is currently a restrictive, but nevertheless reasonably workable test. Distinctions such as direct/indirect and quantifiable/non-quantifiable won't work in any rational, predictable way.

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Exhibit List for Amicus Curiae Brief of Pima County

Exhibit A …….. The "Act", with a supplemental act adopted March 6, 1883

Exhibit A

SEC. 9. The County Treasurer shall pay said interest and redeem said bonds, as aforesaid, out of any money in the Treasury provided for that purpose.

SEC. 10. The said Board of Trustees is hereby authorized to sell the present School-house within said District No. 1, and all the land belonging to said district, upon a part of which land it is built, in such a manner and upon such terms as in the opinion of said Board will most conduce to the interests of said school district, and said Board is further authorized to purchase a new building site within said district for the erection thereupon of the said school building provided for in this Act, and to use for such purchase of a new building site, and for such purpose of the erection of a new school building, the proceeds of such sale authorized by this section; *provided*, that in the event of the Trustees deeming that it is to the best interest of said district to lease the present School-house, or any part of the present real estate, of said district, said Trustees shall have authority so to do on such terms and to such parties as may to them seem proper; *provided, further*, that in the event of sale of the property in this section mentioned, such sale shall be previously advertised, for at least twenty days, in a daily paper of the City of Tucson, and shall require the presentation of sealed proposals for the same or any part thereof, and such sale shall be made to the highest and best bidder, but the said Board of Trustees shall have authority to reject any and all bids if they shall judge it to be for the best interest of said district so to do.

SEC. 11. This Act shall take effect and be in force from and after its passage.

Approved February 21st, 1883.

No. 35. AN ACT

To promote the construction of a certain railroad. Sen 137

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Upon information in writing to the Chairman of the Board of Supervisors of Pima County, Arizona Territory, by the President of the Arizona Narrow Gauge Railroad

Company, the corporation of that name which filed its articles of association with the Secretary of said Territory, on the 23d day of November, A. D. 1882, that said railroad company is ready to exchange bonds with the said County of Pima, according to the provisions of this Act, it shall be the duty of said Chairman, and he is hereby directed to call a meeting of said Board, to be held within five days after the receipt of said notification, and it shall be the duty of said Board of Supervisors, and they are hereby directed to meet within five days, at the county seat of said county, and then and there to order issued two hundred thousand dollars of bonds of said county, in denominations of one thousand dollars each, and bearing interest at the rate of seven per cent. per annum, interest payable semi-annually, the principal payable in twenty years, which said bonds and the interest coupons thereto attached shall be signed by said Chairman and the Clerk of said Board, and shall, within thirty days after the said order of issuance thereof has been made, be delivered by the Clerk of said Board to the County Treasurer of said County of Pima, to be by him disposed of as hereinafter provided, and said County Treasurer shall receipt to the said Clerk for the said bonds.

SEC. 2. Upon the application of said railroad company to the said Treasurer, and the tender by said company of fifty thousand dollars of the first mortgage bonds of said company in like denominations, bearing like interest and payable in like time as those of said county, it shall be the duty of said Treasurer, and he is hereby directed to deliver fifty thousand dollars of bonds of said county to the President and Secretary of said railroad company, in exchange for fifty thousand dollars of the first mortgage bonds of said railroad company, so tendered as above provided. And whenever and so often as five each miles of said railroad shall have been graded, laid with ties and iron, said Treasurer shall upon proof thereof, which proof shall be the certificate of the County Surveyor to that effect, exchange with the said President and Secretary of said railroad company fifty thousand dollars of said bonds of said Pima County for fifty thousand dollars of said bonds of said company, for each five miles so completed, until the two hundred thousand dollars of bonds of said Pima County are exchanged for a like number of bonds of said railroad company.

SEC. 3. The said bonds herein provided to be issued by the said County of Pima shall be issued in the name of said county, and shall be made payable to bearer twenty years after date, and

shall be made payable, both principal and interest, at the office of the County Treasurer of said county issuing the same. The said bonds and coupons, in addition to being signed by the Chairman and Clerk of the Board of Supervisors of said county, shall also be signed by the Recorder of said county, who shall affix to each bond the seal of his office.

SEC. 4. The said Board of Supervisors of Pima County, issuing bonds as aforesaid, are hereby authorized and directed, at their first regular meeting, after the issuance of the same, and in each year thereafter, until the said bonds are paid, in case there should not be sufficient moneys in the railroad fund, hereafter provided for, to pay the annual interest upon said bonds, to levy for each year a tax sufficient to meet any deficiency in said railroad fund to pay said interest, which tax, however, shall not be more than twenty cents upon each one hundred dollars of taxable property in the above-named county, which tax shall be levied and collected in the manner as is, or may hereafter be provided by law for the levying and collecting of other Territorial and County taxes in said county, and which tax shall be known as the railroad deficiency interest tax, and the proceeds of said tax, together with the interest received by said county on the bonds of said railroad company, held by said county, shall constitute a fund to be applied only to the payment of the interest on and redemption of the bonds provided for in this Act to be issued by said county, and shall constitute the fund heretofore mentioned and be known as the Railroad Fund.

SEC. 5. The bonds of said railroad company hereinbefore provided for to be tendered and exchanged for the bonds of Pima County shall be secured by a deed of trust or mortgage to at least two trustees, of all the property, real and personal, owned by said railroad company, at the time of the issuance of said bonds, or that may thereafter be acquired, including, also, all franchises and privileges of whatsoever kind or nature, and which said deed of trust or mortgage shall be the first made of or on said property, and said bonds of said company shall be issued in the name of said company, and shall be made payable to bearer twenty years after date, and shall have interest coupons thereunto attached, and shall be made payable, both principal and interest, at the office of said company in the City of Tucson, in the County of Pima. And said deed of trust or mortgage shall provide that no more bonds than to the amount of thirteen thousand dollars per mile, to

be secured by said deed of trust or mortgage, shall be issued by said railroad company.

SEC. 6. Whenever, in the judgment of the Board of Supervisors of Pima County, it may be deemed advisable to sell any or all of the bonds of said railroad company, received in exchange by them, as aforesaid, they are hereby authorized and empowered to direct the Treasurer of said county to advertise in a newspaper published in said county for the space of four weeks, for sealed proposals for the purchase of any or all of said bonds of said railroad company; and ten days after the said notice shall have been published as aforesaid, the Treasurer shall open the said proposals, and shall sell said bonds to the highest bidder therefor, in such lots as he may be directed by said Board of Supervisors, and the proceeds of such sale shall be placed in the said Railroad Fund to pay the interest and principal on the respective bonds of said county; *provided, however*, that the Treasurer may reject any and all bids; *and, provided, further*, that no sale of such bonds shall be concluded until confirmed and approved by the Board of Supervisors by an order entered upon its minutes.

SEC. 7. Whenever, after the payment out of said Railroad Fund of the semi-annual interest on the said bonds, there shall be any money left in said Railroad Fund, it shall be the duty of the Treasurer of said county to advertise in a newspaper published in said county, for the space of four weeks, for sealed proposals to surrender any of the bonds of the said county, and ten days after such notice shall have been published as aforesaid, the Treasurer shall open the said proposals, and shall redeem the bonds of said county, so far as the said fund on hand may be sufficient; *provided,* those offered to be surrendered at the lowest rates, shall be redeemed first; *and, provided, further,* that none shall be redeemed at a price exceeding the par value of said bonds.

SEC. 8. If, for any reason, the Board of Supervisors of the county herein named fails to meet at the times herein designated it shall be the duty of said Board to meet on each succeeding Monday thereafter until the acts provided to be done by said Board, under the provisions of this Act, have been fully done and completed, and all the acts of said Board so done in the premises, subsequent to the times hereinbefore designated, shall be as valid as though done within the time hereinbefore prescribed.

SEC. 9. A copy of the articles of association, certified by the Secretary of the Territory of Arizona, of the Arizona Narrow Gauge Railroad Company, and endorsed as filed by said Secretary on the 23d day of November, A. D. 1882, shall be sufficient proof to the Board of Supervisors of Pima County or officers herein named of the identification of said Arizona Narrow Gauge Railroad Company herein mentioned. The route of said road shall in all respects, so far as practicable, conform substantially to the route set forth in the articles of incorporation of said company now on file in the office of the Secretary of this Territory.

SEC. 10. This Act shall take effect and be in force from and after its passage.

Approved February 21st, 1883.

No. 36. AN ACT

Supplemental to and amendatory of an Act entitled "An Act to prevent the improper use of deadly weapons, and the indiscriminate use of firearms in the towns and villages of the Territory."

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Any person in this Territory having, carrying or procuring from another person, any dirk, bowie-knife, pistol, gun, or other deadly weapon, who shall in the presence of two or more persons draw or exhibit any of said deadly weapons in a rude, angry or threatening manner, not in necessary self-defense, or who shall unlawfully use the same in any fight or quarrel, or who shall handle the same in a careless manner, thereby endangering the life or person of another, shall, upon conviction thereof in any Court of competent jurisdiction, be fined in any sum not exceeding three hundred dollars, or shall be imprisoned in the County Jail not more than six months, or shall be punished by both such fine and imprisonment, in the discretion of the Court trying the cause.

SEC. 2. Any person who shall purposely or carelessly discharge any gun, pistol, or other firearm in any saloon,

provided, and the Treasurer of said county is hereby directed to pay the money out of such Hospital Building Fund upon the warrant of said Commissioners, signed by the Chairman of said Board of Hospital Building Commissioners, and countersigned by the Secretary thereof, and not otherwise; *provided*, that any money that may be left in said "Hospital Building Fund," after the completion of said building, shall be used for the payment of the interest on said bonds, or may be transferred to the County General Fund, as the Board of Supervisors may direct.

SEC. 21. Upon the completion of their work, as herein provided, the said Commissioners shall turn over said hospital building and grounds to the Board of Supervisors of the County of Maricopa, who shall receive the same, and the duties of said Commissioners shall cease.

SEC. 22. This Act shall take effect and be in force from and after its passage.

Approved March 6th, 1883.

No. 56. AN ACT

Supplemental to an Act entitled, "An Act to promote the construction of a certain railroad," approved February 21st, 1883.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. The incorporators of the said railroad company known in said Act as the Arizona Narrow Gauge Railroad Company, are hereby authorized and empowered to construct said road either as a narrow gauge or standard gauge railroad, as to them shall seem advisable and expedient, and the provisions of said Act, approved February 21st, A. D. 1883, to promote the construction of a certain railroad, are extended in every particular to the said company.

SEC. 2. The said company upon exhibiting to the Board of Supervisors of Pima County, Arizona, or officers named in said Act referred to, a certified copy of their articles of incorporation filed in the office of the Territorial Secretary, providing

for the construction of a standard or narrow gauge railroad, shall be entitled to all the benefits conferred upon them by the provisions of said Act.

SEC. 3. This Act shall take effect and be in force from and after its passage.

Approved March 6th, 1883.

No. 57. AN ACT

To amend an Act entitled, "An Act fixing the compensation to be allowed to the Sheriffs of the several counties for the performance of their duties as ex officio County Assessors," approved February 8th, 1877.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That section 1 of said Act be and the same is hereby amended so as to read as follows: The Board of Supervisors of each county in the Territory shall allow to the Sheriffs of said county the amount per day herein specified for the time in which he shall have been actually engaged, either personally or by deputy, in making the annual assessment of such county; *provided,* that no greater number of days shall be allowed for making such assessment than that herein specified, to wit: In the County of Pima, ten dollars per day for one hundred days; in the County of Yavapai, ten dollars per day for one hundred days; in the County of Yuma, ten dollars per day for thirty days; in the County of Mojave, ten dollars per day for one hundred days; in the County of Apache, ten dollars per day for seventy days; in the County of Maricopa, ten dollars per day for forty days; in the County of Pinal, ten dollars per day for forty days; in the County of Graham, ten dollars per day for sixty days; in the County of Cochise, ten dollars per day for seventy days.

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SEC. 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect and be in force from and after its passage.

Approved March 6th, 1883.