



CASE REPORT

REAL PROPERTY ACQUISITION—TRANSFER OF PROPERTY TO PRIVATE PARTY—GIFT OF PUBLIC FUNDS. A municipality's purchase of real property with the intent of transferring it to a private party does not violate the constitutional prohibition against gifting of public funds or lending of credit if the transaction serves a fundamental government purpose. *Citizens Protecting Resources v. Yakima County*, Slip Op. No. 27803-4-III (November 5, 2009).

I. Facts. In an attempt to prevent flooding in the Yakima River basin, Yakima County formed a Flood Control Zone District (FCZD) and sought to relocate several automobile wrecking yards to alternative sites outside the floodplain. The FCZD acquired an option to purchase an alternative site and entered into an agreement with Douglas Towing, one of the wrecking yards, to relocate its operation. Under the agreement, Douglas Towing would deed its floodplain property to the FCZD; in exchange, the FCZD would reimburse Douglas Towing for the relocation and would deed the alternative site to the company once the floodplain property had been environmentally cleaned. Neighbors of the alternative site opposed to the relocation proposal challenged the transaction as an unlawful gift of public funds and/or lending of credit under the Washington Constitution.

II. Applicable Law and Analysis. On appeal, Division III of the Washington Court of Appeals rejected the neighbors' arguments and concluded that the challenged transaction did not improperly gift public funds or lend the County's credit to a private party. Under the legal standard for determining whether an unlawful gift or lending of credit has occurred, the threshold question concerns whether the funds at issue are being expended to carry out a fundamental government purpose. If so, the arrangement is not constitutionally prohibited. Applying this standard, the Court of Appeals acknowledged that the FCZD's primary objective in acquiring the Douglas Towing property—i.e., preventing and mitigating flood damage—is widely recognized as a fundamental purpose of government. As such, the Court concluded that the expenditure of public funds to assist with the relocation of Douglas Towing's operation did not violate the constitutional prohibition against gifting or lending of credit. The appellate court rejected the neighbors' attempt to frame the legal issue as whether helping a private business to relocate represents a fundamental government purpose. Instead, the Court noted that as long as the challenged agreement is intended chiefly to effectuate a legitimate public objective (i.e., flood prevention), the fact that the arrangement may incidentally benefit a private party does not invalidate the transaction.

III. Conclusion. The *Citizens Protecting Resources* decision continues the judiciary's recent trend of upholding governmental actions against challenges alleging an unconstitutional gift of public funds or lending of credit. The case clarifies that municipalities may, under appropriate circumstances, purchase real property with the intent of subsequently conveying it to a private party if the transaction is primarily intended to serve a fundamental government purpose. Given

the complexity of the law governing this issue, however, cities should exercise caution and consult their city attorney whenever considering any such transaction, and a clear record documenting the relevant public objective should be created.