

SUPREME COURT OF THE STATE OF ARIZONA

Robert Burns v. Arizona Public Service Company, et al.

Burns · No. CV-21-0080-PR · Decided September 27, 2022

SUMMARY

The Arizona Supreme Court held that the Arizona Corporation Commission and each individual commissioner possess constitutional and statutory authority to investigate public service corporations and issue investigatory subpoenas. A majority of commissioners may not prevent an individual commissioner from exercising that authority, although the authority remains subject to procedural requirements and due process. The court also held that the commissioner could seek declaratory relief under Arizona’s Uniform Declaratory Judgment Act, vacated the court of appeals’ opinion, reversed the superior court’s ruling on the issues presented, and remanded.

CASE DETAILS

COURT	Supreme Court of the State of Arizona
WRITING FOR THE COURT	Justice Bolick; Justice Beene; Justice Montgomery; Justice King
JURISDICTION	Arizona
DECIDED	September 27, 2022
DOCKET	CV-21-0080-PR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Arizona Supreme Court review of the dismissal of Burns's amended complaint seeking declaratory relief concerning an individual Arizona Corporation Commissioner's investigatory and subpoena authority.
STANDARD OF REVIEW	De novo review of purely legal issues.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert Burns v. Arizona Public Service Company, et al.

TOPICS

- constitutional law
- administrative law
- judicial review of agency action
- declaratory judgment
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether article 15, section 4 of the Arizona Constitution permits an individual Arizona Corporation Commissioner to exercise investigatory powers, including issuing subpoenas, without approval from the other commissioners.
2. Whether the Arizona Uniform Declaratory Judgment Act gives an individual commissioner standing to obtain a declaration concerning his and his colleagues' statutory and constitutional rights.

HOLDINGS

1. Article 15, section 4 of the Arizona Constitution grants investigatory authority and subpoena power not only to the Arizona Corporation Commission as a collective body but also to each individual commissioner. A majority of commissioners therefore may not prevent an individual commissioner from exercising those powers.
2. An aggrieved individual commissioner may seek judicial recourse through a declaratory judgment action under the Arizona Uniform Declaratory Judgment Act to determine the scope of his and his colleagues' rights.

KEY QUOTATIONS

“In this case we hold that the Arizona Corporation Commission (“Commission”) acting by a majority of its commissioners may not prevent an individual commissioner from exercising investigatory powers pursuant to article 15, section 4 of the Arizona Constitution; and that a commissioner aggrieved by such action may seek judicial recourse by way of declaratory judgment pursuant to A.R.S. §§ 12-1831 to -1846.” (¶ 1)

“Reading section 4 in its totality, giving effect to every word, the conclusion is inescapable: it provides to the Commission, and to its individual members, the authority to investigate and inspect, and the power of a court of general jurisdiction to compel the attendance of witnesses and the production of documents through specified means such as a subpoena.” (¶ 26)

FACTUAL BACKGROUND

During the 2014 elections for the Arizona Corporation Commission, allegations arose that commissioners received anonymous campaign contributions from Pinnacle West, the holding company of Arizona Public Service Company. Commissioner Robert Burns sought APS records concerning political and charitable contributions and lobbying expenditures, and issued subpoenas seeking related information during an APS rate case and a later rule-making proceeding. The other commissioners refused to fund or enforce the investigation and effectively quashed the subpoenas by denying Burns's motions.

PROCEDURAL HISTORY

Burns sued Arizona Public Service Company for declaratory relief after APS did not fully comply with subpoenas he issued as an individual Corporation Commissioner. The superior court initially stayed the proceedings for exhaustion, later dismissed Burns's amended complaint, and entered judgment against him after

ruling that he lacked standing for one claim and could not initiate and maintain an investigation to disqualify other commissioners. The court of appeals affirmed, holding that individual commissioners lacked authority to enforce investigatory subpoenas in rate-making cases. The Arizona Supreme Court granted review, vacated the court of appeals' opinion, reversed the superior court's judgment on the issues presented, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must conduct any further proceedings consistent with the Arizona Supreme Court's ruling, including determining whether further proceedings are warranted given that Burns no longer serves on the Commission. The court of appeals' opinion was vacated.

CASES CITED

- Johnson Utils. v. Ariz. Corp. Comm'n, 249 Ariz. 215 (2020)
- Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n, 133 Ariz. 500 (1982)
- U.S. v. Morton Salt Co., 338 U.S. 632 (1950)
- Morrissey v. Garner, 248 Ariz. 408 (2020)
- U.S. v. Ron Pair Enters., 489 U.S. 235 (1989)
- State v. Feldstein, 134 Ariz. 129 (App. 1982)
- Rochlin v. State, 112 Ariz. 171 (1975)
- State v. Osborne, 14 Ariz. 185 (1912)
- Saguaro Healing LLC v. State, 249 Ariz. 362 (2020)
- Cochise Cnty. v. Ariz. Health Care Cost Containment Sys., 170 Ariz. 443 (App. 1991)
- City of Surprise v. Ariz. Corp. Comm'n, 246 Ariz. 206 (2019)
- Com. Life Ins. Co. v. Wright, 64 Ariz. 129 (1946)
- Sun City Home Owners Ass'n v. Ariz. Corp. Comm'n, 252 Ariz. 1 (2021)
- Residential Util. Consumer Off. v. Ariz. Corp. Comm'n, 240 Ariz. 108 (2016)