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STATE CAPITOL  
PHOENIX, ARIZONA

May 27, 1969

DEPARTMENT OF LAW LETTER OPINION NO. 69-14-L (R-76)

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REQUESTED BY: DAVID H. CAMPBELL  
Superintendent  
Motor Vehicle Division

- QUESTIONS:
1. When legislation is enacted requiring the expenditure of funds by a state agency, and funds are not appropriated to take care of the provisions of the law in the current or next year's budget, is it incumbent upon the state agency affected to enforce the requirements of the law?
  2. In what way may the necessary funds be obtained prior to the next regular session of the State Legislature?

- ANSWERS:
1. See body of opinion.
  2. See body of opinion.

A.R.S. § 18-132.A says that the highway fund shall be used only for purposes set forth in this subsection and in strict conformity with budget determinations set forth in A.R.S. §§ 18-133 through 18-137. Among those purposes set out in A.R.S. § 18-132.A are the payment of salaries, wages, necessary travel and other expenses (including incidental expenses) and to defray lawful expenses and costs required to carry out the intent, purposes and provisions of A.R.S. Title 18.

A.R.S. § 18-133.B states the Department shall operate strictly under a budget provided and authorized by the Legislature and A.R.S. § 18-134 provides:

". . . no expenditures shall be made by the department unless and until they have first been authorized by the legislature and the money appropriated therefor." (Emphasis added.)

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Further, A.R.S. § 18-136 prohibits the Commission (or anyone under its authority) from expending monies in excess of an appropriation by the Legislature.

Additional limitations are contained in A.R.S. §§ 35-152 through 35-154 which require the Commissioner of Finance to reject a request for expenditure for which no appropriation has been made and provide that no budget unit can approve such an expenditure, with the result that any creation of an excess obligation is null and void as against the State of Arizona.

A.R.S. § 35-173, as amended, Laws 1968, Chapter 89, Section 39, provides that when an appropriation is authorized, the budget unit head must provide an allotment request to the Commissioner of Finance, subdividing the appropriation into classes and subclasses of expenditures employed by the accounts of the Commissioner of Finance, and allows the budget unit head to request a transfer of funds from one class or subclass to another if approved by the Department of Finance. This provision is limited, however, in that no transfer can be made from or to personal services accounts nor may any allotment or expenditure be made for an object not within the purpose of the appropriation.

See also 81 C.J.S., States, § 167, p. 1227, which says:

". . . an appropriation for a stated purpose or object may be used for any matter reasonably included within that purpose or object."

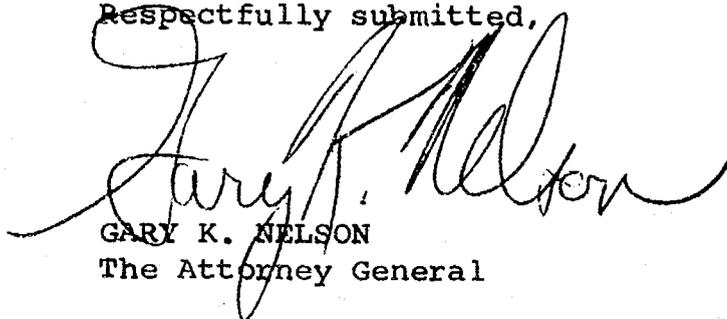
The statutory prohibition against the expenditure of monies in excess of appropriations or where no appropriation was made, would seem to preclude enforcement of the requirements of statutes for which no funds were appropriated. However, if the duties of enforcing new statutes will not require the expenditure of additional funds, but may be performed by adjusting the assignments of existing personnel in the affected agency, the new legislation must be enforced. As stated by the Court in Wiggins v. Kerby, 44 Ariz. 418, 38 P.2d 315:

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"In planning how the appropriation should be spent he [the administrator] should, of course, use his best efforts to reduce the expenses of administering his office to such a point that the appropriation will cover the cost of all the necessary duties thereof. . . ."

In the event it is determined that additional funds are necessary, the Governor is empowered by Article IV, Part 2, Section 3, Constitution of Arizona, to include the subject matter of such necessity in any call for a special session of the Legislature. The Governor should be consulted in all such cases, as he is the head of the executive branch of government, and is obligated by the Arizona Constitution, Article 5, Section 4, to see that the laws are faithfully executed.

Respectfully submitted,



GARY K. NELSON  
The Attorney General

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