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ARIZONA ATTORNEY GENERAL

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PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 70-18 (R-87)

REQUESTED BY: T. G. HAWKINS
Commissioner of Finance

QUESTION: Does attendance at a conference which continues through parts of two fiscal years require the submission of two sets of travel claims?

ANSWER: Yes.

A.R.S. § 35-190 provides as follows:

"A. Except as provided in § 35-191 no officer or other agency of the state shall, after the close of any fiscal year, incur or order or approve the incurring of any obligation or expenditure under any appropriation made by the legislature for such fiscal year, and no expenditure shall be made from or be charged to any appropriation made by the legislature for any fiscal year which has expired at the time the obligation for such expenditure was incurred.

"B. The commissioner of finance is authorized to draw warrants against the available balances of appropriations made for a fiscal year for a period of one month after the close of such fiscal year for payment of obligations incurred during the fiscal year for which such appropriations were made or in fulfillment of contracts properly made during such year and for no other purpose whatever, if such goods were received or services rendered prior to the close of such fiscal year.

"C. After expiration of such period of one month from the beginning of each fiscal year, all balances of appropriations for the prior fiscal year shall lapse and no further payments shall be made on any claim on account of expenditures of such prior fiscal year.

"D. Appropriations for construction or other permanent improvements shall not lapse until the purpose for which the appropriation was made has been accomplished or abandoned, unless such appropriation is available during the entire fiscal year without an expenditure therefrom or encumbrance thereon.

"E. Nothing in this section shall be construed to require reversion to the general fund of any balance derived wholly or partly from federal grants, earnings or other sources, and remaining in any special revenue, endowment, interest, redemption or suspense agency fund at the close of the fiscal year unless expressly so provided by law, or to require reversion to the general fund of any balance of fiscal year appropriations made for state institutions under the control of the Arizona board of regents."

It is stated in 2 Sutherland, Statutory Construction, 366 (3rd ed.1943):

"A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every part or section so as to produce a harmonious whole."

Applying the above stated rule of statutory construction to A.R.S. § 35-190 results in the statutory requirement that an expenditure may be made from an appropriation only if the

obligation was incurred prior to the end of the fiscal year for which the appropriation was made, and only if the goods were received or the services rendered during the same fiscal year.

Although A.R.S. § 35-190 is clear with regard to its requirement, it does give rise to the question, "When is an obligation incurred?". Blacks Law Dictionary, 908 (4th ed. 1951), defines "incur" as follows:

"To have liabilities cast upon one by act or operation of law, as distinguished from contract, where the party acts affirmatively."

The Court, in Desco Corporation v. United States, 55 F.2d 411, 413 (Del. 1932), stated that:

". . . [E]xpenses are not incurred unless there has arisen a legal obligation to pay them. . . ."

See also Hermitage Health and Life Insurance Co. v. Cagle, 57 Tenn.App. 507, 420 S.W.2d 591, 593 (1967), in which the Court stated, "We believe the word 'incur' means 'to become liable for' and does not mean to actually 'pay for'. . . ."

Based on the above quoted definitions, it is our opinion that one incurs an obligation within the meaning of A.R.S. - § 35-190 at the time services are rendered or goods are provided, and not when one is presented with the bill or in fact makes payment.

A.R.S. § 35-154 states:

"§ 35-154. Unauthorized obligations;
effect; liability

"A. No person shall incur, order or vote for the incurrence of any obligation against the state or for any expenditure not authorized

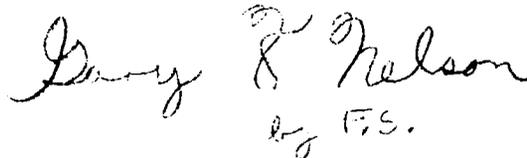
by an appropriation and an allotment. Any obligation incurred in contravention of this chapter shall not be binding upon the state and shall be null and void and incapable of ratification by any executive authority to give effect thereto against the state.

"B. Every person incurring, or ordering or voting for the incurrence of such obligations, and his bondsmen, shall be jointly and severally liable therefor. Every payment made in violation of the provisions of this chapter shall be deemed illegal, and every official authorizing or approving such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received."

As can be seen from a reading of A.R.S. § 35-154, an obligation may not be incurred unless it is authorized by an appropriation or an allotment. This necessarily implies that the appropriation or allotment is in existence at the time the obligation is incurred.

It is, therefore, our opinion that appropriations for a given fiscal year may be expended only for goods and services provided during that fiscal year, and that appropriations for a subsequent fiscal year may be expended only for goods and services provided during the subsequent fiscal year, and that two travel claims are necessary in order properly to appropriate monies from the two fiscal years.

Respectfully submitted,


by F.S.

GARY K. NELSON
The Attorney General