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STATE CAPITOL
PHOENIX, ARIZONA

December 1972

DEPARTMENT OF LAW OPINION NO. 67-15

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REQUESTED BY: The Honorable Leo F. Corbet, Jr.
STATE SENATOR

QUESTION: In view of the Attorney General's Opinion No. 67-15, are the funds received and spent by the local government under the Federal Revenue Sharing Act expenditures as the word is used in the general budget law and therefore may the cities, towns and counties expend such funds even though not anticipated in their budgets?

ANSWER: See body of opinion.

In Department of Law Opinion No. 67-15 we opined that a county may expend funds provided to it by the United States under a grant when the grant has not been included in the county budget for the fiscal year during which the county received the grant. In that opinion, we said:

[T]he general case law and interpretation by our Supreme Court is to the effect that when the general taxing authority is not pledged, then such an obligation is not in fact an indebtedness within the Budget Law and in addition is not considered an expenditure as that word is used in the general budget statute.

Therefore, it is our opinion that normally a federal grant received by any state or county agency, when spent, is not considered an expenditure as that word is used in A.R.S. § 42-303(D) and therefore counties may expend such funds even though not anticipated in their budgets.

A.R.S. § 42-303 provides:

A. The governing board of the county, city or town shall meet on the seventh day before the day on which it levies taxes as designated in the notice provided by subsection E of § 42-302, and any taxpayer may appear and be heard in favor of or against any proposed expenditure or tax levy.

B. When the hearing is concluded, the governing board shall finally determine and adopt estimates of proposed expenditures for the various purposes set forth in the published proposal and such adopted estimates shall constitute the budget of the county, city or town for the current fiscal year.

C. The total amounts in the budget proposed for expenditure shall not exceed the total of amounts proposed for expenditure in the published estimates, nor shall the total of amounts in the budget proposed for expenditure exceed by more than ten per cent the total of amounts proposed for expenditure in the budget adopted for the previous fiscal year, excluding expenditures for school, bond, special assessment and district levy, primary, general or special election purposes, municipal cemeteries, the amount of increase in salaries of public officials whose salaries are set or limited by state law, or municipal utility undertaking as defined in § 9-521.

D. No expenditures shall be made for a purpose not included in such budget, and no expenditure shall be made, nor debt, obligation or liability incurred or created in any fiscal year in excess of the amount specified for each purpose in the budget for such fiscal year as finally adopted except when authorized under and pursuant to the provisions of § 42-308, whether or not the county, city or town has at any time received, or has on hand, funds or revenue in excess of those required to meet expenditures, debts, obligations, and liabilities incurred under such budget.

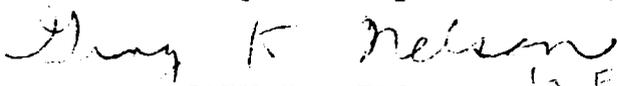
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The State and Local Fiscal Assistance Act of 1972 (Public Law 92-512, 92nd Congress, H.R. 14370, October 20, 1972) imposes several restrictions upon the use and handling of funds paid to state and local governments. Section 103 of the Act limits use of funds by local governments to defined priority expenditures. Section 121 requires (a) reports to the Secretary of the Treasury on use of funds, (b) reports to the Secretary of the Treasury on planned use of funds, and (c) publication in local newspapers of the reports in (a) and (b). Section 123 requires that state and local governments provide for the expenditure of amounts received in accordance with the laws and procedures applicable to the expenditure of their own revenues.

Arguably, the requirements of Section 123 of the State and Local Fiscal Assistance Act of 1972, standing alone, might appear to require that assistance funds be expended only in compliance with A.R.S. § 42-303. When the requirements of Section 123 are read together with the other requirements of the Act, however, it appears to us that the Congress of the United States did not intend that the expenditures of assistance funds comply with state statutes such as A.R.S. § 42-303. Rather, it appears that the Congress intended that the fiscal procedures and controls provided by state and local laws for the receipt and disbursement of money be applied to the disbursement of federal assistance funds.

Based upon the foregoing, it is our opinion that a unit of local government in Arizona may expend funds received under the State and Local Fiscal Assistance Act of 1972 notwithstanding that such funds have not been included in the budget of the government under the requirements of A.R.S. § 42-303, provided that the funds are expended in accordance with state and local laws and procedures governing the handling of funds of the unit of local government.

Respectfully submitted,


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The Attorney General

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