

Yes
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January 30, 1952

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ARIZONA ATTORNEY GENERAL

Opinion No. 52-28

Mr. Lee Ackerman
House of Representatives
Capitol Building
Phoenix, Arizona

Dear Mr. Ackerman:

This is in answer to your request for an opinion concerning an appropriation of \$35,000.00 made by the legislature, (Chapter 2, Second Special Session, Laws of 1950) to be utilized in handling surplus commodities furnished by the Federal Government.

Your first question was:

"Would you be kind enough to advise me for what purposes the money appropriated under this program can be utilized. I am especially interested in determining whether money allocated for this program can be utilized for payment of salaries of persons working in other divisions of the State Welfare Department if these persons have not worked on the Surplus Commodity program."

The general rule on this subject is found in 42 American Jurisprudence, Sec. 79, page 774:

"The general question whether or not there is an unlawful diversion by a transfer of money from one fund of a state, municipal, or county government to another depends to a large extent upon statutory provisions and constitutional limitations. - - -

"When a special fund is raised for a particular purpose under legislature authority by a special tax or bond issue or the like, or money is appropriated for a specified purpose, it cannot be used for any other purpose either permanently or temporarily until the purpose for which it was intended has been fully accomplished."
(Emphasis supplied.)

The general rule therefore is that funds appropriated for a specified purpose cannot be used for other purposes.

Mr. Lee Ackerman
Phoenix, Arizona

January 30, 1952
Page two

Chapter 10, Arizona Code Annotated, 1939 is devoted to public finances. Section 10-924 set up the essentials of the accounting system to be used by the State Auditor. So far as material benefits it reads as follows:

herein
"When, in any act authorizing the expenditure of public money, the object or purpose is stated in such terms as: 'salaries and wages,' 'operations,' 'travel,' 'capital investment,' or 'repairs and replacements,' such terms shall import their respective popular and ordinary meaning and the appropriation so authorized shall be allotted on the records of the auditor to the corresponding objects as classified and standardized in this section or to such further sub-classification as the auditor may adopt, provided that the actual purpose shall not be defeated."

Section 10-925 ACA 1939, provides:

" - - - No allotment or expenditure shall be made for an object not within the purpose of the appropriation, and nothing in this act shall be construed to authorize the expenditure of an appropriation for a purpose other than for which it was made." - - - ."

From the foregoing statutes, it is obvious that the \$35,000.00 appropriation you have reference to could not legally be diverted to any use other than that specified by the legislature, namely: "For transportation and distribution of commodities made available by Federal Agencies," unless some other statute gives this authority. We have been unable to locate any statute giving this authority; therefore we are of the opinion that salaries of persons who have not worked on the surplus commodities program cannot legally be paid from this fund, however, any person who was so employed could legally be paid and this would raise a question of fact as to such employment.

In operating a temporary program such as the surplus commodity program was, it is quite obvious no permanent staff or office could be created. This would naturally require borrowing from the various departments already in operation. This borrowing might consist of supplies, office help or other services,

Mr. Lee Ackerman
Phoenix, Arizona

January 30, 1952
Page three

all of which could properly be charged to the surplus property fund. Therefore, in any given set of facts, it would appear that the overall program should be considered before arriving at a definite conclusion as to whether a particular expenditure was justified.

Your second question was:

"I am also interested in determining whether charges for supplies ostensibly taken from the state warehouse for use under this program can be charged back to this fund when no record has been maintained in the State Welfare Departments' warehouse concerning borrowing of supplies by the surplus commodity program."

We are of the opinion that this problem is essentially a matter of policy to be decided by the Director of Public Welfare. The keeping of proper records as to expenses incurred by each division of any State Department is certainly to be commended and highly desirable. If the supplies were actually used by the surplus commodity program, their cost could properly be charged to this fund. Whether the supplies were actually used by this program is a matter of proof which must be considered in the light of circumstances in each particular case.

Trusting this will be of help in answering your request, we remain

Sincerely,

FRED O. WILSON
Attorney General

ACM:GG

ALFRED C. MARQUEZ
Assistant Attorney General