



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

*R-76-180*

BRUCE E. BABBITT  
ATTORNEY GENERAL

*and (R-75-284)*

April 19, 1976

76-130

Warren Colton, Jr., M.D.  
Assistant Director for Children's Services  
Arizona Department of Health Services  
1740 West Adams  
Phoenix, Arizona 85007

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Dear Dr. Colton:

We are responding to your request for an opinion to the following question:

Should interest earning on funds donated to Crippled Children's Services for the benefit of its program beneficiaries and thereafter deposited with the State Treasurer as provided by law be credited to the special donation fund or to the State general fund?

A.R.S. § 36-261 directs the Department of Health Services to establish and administer a program of service for crippled children, which includes authorization to receive and expend funds made available to the Department for services to crippled children by private donors other than parents or guardians whose children are being cared for.

We are advised that monies are received from such private donors for the care of children, and that the monies are handled in accordance with procedures established for receiving and expending private funds in A.R.S. § 35-149 as follows:

A. Every department, institution, board or commission receiving private funds or contributions available for its support or for the purpose of defraying expenses or work done under its direction or other receipts which may be subject to refund or return to the sender or receipts which have not yet accrued to the state, shall in depositing such monies with the state treasurer as provided in this chapter, certify to the division of finance:



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1. The source from which such funds were received.
2. The terms and conditions under which, and the purpose for which, they were received.
3. The names of the trustees or administrators of the funds or contributions.
4. The name of the person authorized to approve expenditures from each fund.

B. The state treasurer shall keep an accounting of each such fund or contribution mentioned in subsection A entirely separate and distinct from all other funds.

C. All disbursements from such funds and contributions shall be made by the state treasurer on warrants of the division of finance, who shall issue such warrants only upon adequate vouchers approved by the person or persons authorized to approve the disbursements. Separate sets of accounts with each of such funds and contributions, and the receipts and disbursements thereof, shall be maintained by the division of finance.

The handling of such private funds in the State treasury also is covered under A.R.S. §§ 35-321 to 35-325.20, relating to depositories of state monies. "State monies" is defined in A.R.S. § 35-321.2 as follows:

"'State monies' means all monies in the treasury of the state or coming lawfully into the possession or custody of the state treasurer."

See, also, A.R.S. § 35-321, which defines "public monies" as including "state monies" and "public deposit" as public monies "deposited in a designated depository" pursuant to the provisions of the law relating to depositories. Under that law, the State Board of Deposits is authorized to award deposits of state monies to qualifying financial institutions on terms and

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conditions which generate earnings. See A.R.S. § 35-325.06. Under some circumstances, the State Board of Deposits also may direct the State Treasurer to invest certain state monies in securities. See A.R.S. § 35-325.12. Interest and other earnings on public deposits are apportioned according to A.R.S. § 35-325.20.

A.R.S. § 35-325.20, which was first enacted by Laws 1956, Ch. 119, § 23, effecting April 12, 1956, read as follows:

Interest realized on monies included within a public deposit and belonging to individual tax funds, shall, except as otherwise provided by law, be apportioned pro rata among the separate funds in the proportions in which the funds are entitled to receive distribution of such undivided tax funds, due allowance being made for sums transferred in advance of settlement. All interest arising from other money deposited by the treasurer which, by reason of being custodial funds, or for any reason, do not belong in the treasury of the state or subdivision, shall be apportioned among and credited to the funds to which the principal sums of such deposits or portions thereof belong. All other interest realized on any public deposits shall be credited to the general fund of the state or subdivision.

This section was amended by Laws 1972, Ch. 129, § 19, effective August 13, 1972, to read as follows:

All interest arising from other money deposited by the treasurer which, by reason of being custodial funds, shall be apportioned among and credited to the funds to which the principal sums of such deposits or portions thereof belong. All other interest realized on any public deposits shall be credited to the general fund of the state or subdivision.

This section was again amended by Laws 1973, Ch. 151, § 2, effective May 14, 1973, and now reads as follows:

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- A. Interest realized on subdivision monies included within a public deposit which are collected for individual tax funds or other similar fund shall be apportioned pro rata among such funds except for accounts otherwise invested as provided by any law applicable to such a fund.
- B. All other interest realized on any public deposits not otherwise apportioned by law shall be credited to the general fund of the state or subdivision making the deposit.
- C. In the manner provided in this article, the governing body of any subdivision or of any agency, department, board or commission of the state or of any subdivision may, by the annual adoption of a resolution of continuing effect, authorize the treasurer to invest funds collected for such body.

From the foregoing, it appears that prior to May 14, 1973 funds contributed from private sources for the support of the operations or program beneficiaries of a state agency were required to be deposited with the State Treasurer and placed in special accounts, which funds were deposited with financial institutions along with other state monies, and the interest earnings thereon periodically were credited to the special accounts. The question, therefore, is whether the 1973 amendment requires that interest earnings derived from monies in such special accounts are to be credited to the general fund rather than to the special accounts.

In legal contemplation, private donations to the State for the support of state activities create charitable trusts with the recipient agency acting as a fiduciary. The Board of Crippled Children's Services had the powers and duties of a fiduciary with respect to such funds prior to its dissolution on April 30, 1974, and since that time these powers and duties have reposed in its successor in interest, the Director of the Department of Health Services. See § 36-103.01 and Executive Order 74-6 dated May 1, 1974.

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The Director of the Department of Health Services is, in effect, the trustee with respect to such funds, and the State Treasurer as custodian of such funds is ". . . responsible for the safekeeping, management and disbursement of the certificates of deposit received and the interest paid on deposits under the provisions of . . . [A.R.S. § 35-325]."

The Arizona Supreme Court recently had occasion to consider the applicability of the general provisions of state statutes relating to the handling of custodial funds on deposit in the State treasury. In Navajo Tribe v. Arizona Department of Administration, 111 Ariz. 279, 528 P.2d 623 (1975), the Court said:

Payment of funds into the state treasury does not necessarily vest the state with title to those funds. Ross v. Gross, 300 Ky. 337, 188 S.W.2d 475 (1945). Only monies raised by the operation of some general law become public funds. Cyr & Evans Contracting Co. v. Graham, 2 Ariz.App. 196, 407 P.2d 385 (1965). Custodial funds are not state monies. MacManus v. Love, 499 P.2d 609 (Colo. 1972). The term "public funds" refers to funds belonging to the state and does not apply to funds for the benefit of contributors for which the state is a mere custodian or conduit. Pensioners Protective Assn. v. Davis, 112 Colo. 535, 150 P.2d 974 (1944). . . .

The monies in questions, having been given to the Department or its predecessor, the Board of Crippled Children's Services, for the benefit of Crippled Children's Services beneficiaries, are "custodial funds" within the meaning of that phrase as used in Navajo Tribe, supra, and are "contributions" within the meaning of that word as used in A.R.S. § 35-149, supra.

When A.R.S. §§ 36-261, 35-149, 35-325.20, and Navajo Tribe, supra, are all read together, we think they stand for the proposition that interest income derived from the investment of private funds donated to the State for the benefit

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of Crippled Children's Services' programs and their beneficiaries should be credited to the special donation accounts in the State Treasury rather than to the general fund of the State.

Sincerely,



BRUCE E. BABBITT  
Attorney General

BEB:FWS/WW:vld

cc: State Treasurer  
Director Arizona State Parks



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- C. In the manner provided in this article, the governing body of any subdivision or of any agency, department, board or commission of the state or of any subdivision may, by the annual adoption of a resolution of continuing effect, authorize the treasurer to invest funds collected for such body.

From the foregoing, it appears that prior to May 14, 1973 funds contributed from private sources for the support of the operations or program beneficiaries of a state agency were required to be deposited with the State Treasurer and placed in special accounts, which funds were deposited with financial institutions along with other state monies, and the interest earnings thereon periodically were credited to the special accounts. The question, therefore, is whether the 1973 amendment requires that interest earnings derived from monies in such special accounts are to be credited to the general fund rather than to the special accounts.

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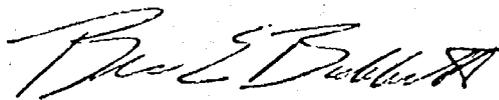
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