



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

BRUCE E. BABBITT
ATTORNEY GENERAL

April 20, 1978

Ms. Margaret Griffith
Assistant Director
Finance Division
State Capitol, Room 601
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Re: 78-78 (R78-23)

Dear Ms. Griffith:

You have requested our opinion of whether the Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans ("Committee") is authorized to accept an offer from its Plan Administrator to provide funds¹ to hire a secretary. The secretary would record the minutes of the Committee's meetings and perform other miscellaneous secretarial tasks associated with the proper preparation and maintaining of the public records of the Committee and which are not normally carried out by the Plan Administrator. We understand that you are concerned about the lack of express statutory authority in A.R.S. §§ 38-871 et seq., for the Committee to receive this money or to make expenditures therefrom and that you question the applicability of A.R.S. § 35-149 to the Committee.

Initially we note that the need for a secretary at the Committee meetings is not for the convenience of the Committee members or for carrying out any of the duties imposed upon the Committee by A.R.S. §§ 38-871 et seq., but rather is to assure compliance with the provisions of A.R.S. § 38-431.01 relating to the recording and availability of minutes of the meetings of the Committee under the Open Meetings Law (Article 3.1, Chapter 3, Title 38, A.R.S.) and Title 39, Arizona Revised Statutes, relating to the keeping of public records. A.R.S. § 38-431.01 (the Open Meetings Law) provides in part:

1. The funds are derived from the general revenues of the Plan Administrator generated by its business activities.

B. All governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their official meetings. Such minutes shall include, but not be limited to:

1. The date, time and place of the meeting.
2. The members of the governing body recorded as either present or absent.
3. An accurate description of all matters proposed, discussed or decided, and the names of members who propose and second each motion.

C. The minutes or a recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article.

Although administrative agencies are empowered to do only such things as the legislation creating them authorizes, the Legislature need not be so precise in granting powers that there must be an express statutory provision for each and every particular act necessary and proper to carrying out the agency's duties. See State v. Thomas, 80 Ariz. 327, 297 P.2d 624 (1956). In this particular instance, the Legislature has required that the Committee provide for the taking of written minutes of its meetings, and make those minutes available for public inspection. In our view, the Committee, by reason of this legislative mandate, is empowered to take whatever action is necessary for complying with it. This would include the power to employ someone with clerical and secretarial skills. We think this also includes the power to use and expend private funds or contributions for the purposes of employing such a person as provided in A.R.S. § 35-149. A similar question was considered in Op. Atty. Gen. No. 60-21 (February 3, 1960), where we said that A.R.S. § 35-149 was intended to authorize boards, commissions, departments and institutions to receive and expend private funds to defray the expenses of their work.² We find

2. A.R.S. § 35-149 provides:

A. Every department, institution, board or commission receiving private funds or contributions available for its support or for the

no compelling reason to abandon our 1960 opinion. Therefore, so long as the provisions of A.R.S. § 35-149 are met, the Committee may receive monies from its Plan Administrator and pay therefrom the cost of a secretary to record the minutes of the Committee's meetings.

Footnote 2. (continued):

purpose of defraying expenses of work done under its direction . . . shall in depositing such monies with the state treasurer as provided in this chapter, certify to the division of finance:

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.

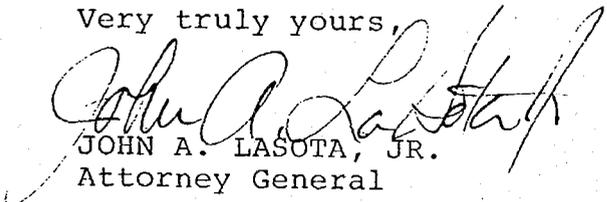
C. All disbursements from such funds and contributions shall be made by the state treasurer on warrants of the division of finance, who shall issue such warrants only upon adequate vouchers approved by the person or persons authorized to approve the disbursements. Separate sets of accounts with each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

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You have expressed concern whether A.R.S. § 38-871.C.1³ would be violated by the receipt and expenditure of private contributions because of the expenses of the Treasurer and your office in receiving, accounting for and processing of vouchers and disbursing such contributions in the manner required in A.R.S. § 35-149.C. The prohibition against cost to the State relates only to operation of approved plans, and not to the Committee's administrative functions peripheral to the plans' operations, such as recording and maintaining the minutes of its meetings. The expenses incurred by the Treasurer and your office to comply with A.R.S. § 35-149 (if they can be identified) are not expenses of operation of the plans. They are, moreover, expenses incurred in connection with activities authorized and imposed by A.R.S. § 35-149.

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General

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3. A.R.S. § 38-871.C.1 provides:

Arrange for consolidated billing and efficient administrative services in order that any such plans approved shall operate without cost or contribution from the state except for the incidental expense of administering the payroll salary deduction or reduction and remittance thereof to the trustee or custodian of the plan or plans.