



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

July 10, 1979

Mr. Richard Wertz, Executive Director
Arizona State Justice Planning Agency
Professional Plaza, Suite 400
4820 N. Black Canyon Freeway
Phoenix, Arizona 85017

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: I79-193 (R79-133)

Dear Mr. Wertz:

We are writing in response to an inquiry of May 1, 1979, from acting Executive Director William Braybrook, regarding the applicability of A.R.S. 11-951 et seq., (intergovernmental agreements provisions) to grant awards made by the Arizona State Justice Planning Agency.

A.R.S. § 11-952.A provides as follows:

A. If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services, or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.

The legislative intent in promulgating this article was set forth in Laws 1968, Ch. 94 § 1:

"The purpose of this article is to permit public agencies, if authorized by their legislative or governing body, to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies. . . (Emphasis added).

The touchstone, then, for a contract within the purview of A.R.S. § 11-952 is that it involves the joint exercise of a power common to the contracting parties. Thus, when two public agencies contract for services or enter into an agreement for joint action pursuant to § 11-952.A, each agency must have the power to perform the service or action contemplated in the contract pursuant to which they agree to allocate responsibilities between them.¹

The Arizona State Justice Planning Agency distributes grants pursuant to A.R.S. § 41-2251.B. 6 and 9, which provide as follows:

B. The Arizona state justice planning agency shall:

6. Apply for, receive, allocate and disburse grants or funds made available by the United States government, foundations, corporations and other businesses, agencies or individuals for the purposes of this chapter and provide the accounting, auditing and administrative procedures necessary to assure proper fiscal and management control for the disbursement of funds under the control of the agency.

* * *

9. Accept and evaluate applications for financial assistance from state agencies, units of local government and private nonprofit agencies and disburse available federal, state and private funds to applicants in compliance with the comprehensive statewide plan provided for in this section.

Where the agency is authorized only to distribute funds pursuant to these subsections and has no independent power to spend the funds for its own projects, the recipient agency has

1. See, e.g., Atty.Gen.Ops. 79-079, 78-272, 77-179.

Mr. Richard Wertz
July 10, 1979
Page 3

the sole authority to utilize the grant award for the purpose of implementing the statewide plan. The Agency is acting only as a conduit in the transfer of available funds to qualified recipient agencies. Thus, no common power of the contracting parties is being exercised in this type of situation.

Because no common authority is being exercised relative to the above described grant awards, the grant contracts executed pursuant thereto are not subject to the requirements of A.R.S. § 11-951 et seq.

Sincerely,



BOB CORBIN
Attorney General

BC/mm