



Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

August 8, 1979

Honorable Billy Hicks  
Yavapai County Attorney  
Yavapai County Courthouse  
Prescott, Arizona 86301

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

Re: I79-206 (R79-106)

Dear Mr. Hicks:

In your letter dated March 28, 1979, and your subsequent letter dated June 6, 1979, you request that we reconsider the conclusion in our Opinion 78-132 (R77-369) dated July 3, 1978. You further indicate that the conclusion reached in that opinion is now in litigation in Yavapai and Mohave Counties.

It is the policy of this office not to comment on questions that are in litigation. Accordingly, we are declining to issue an opinion reconsidering 78-132.

Sincerely,

BOB CORBIN  
Attorney General

BC/mm



WILLY L. HICKS  
COUNTY ATTORNEY

OFFICE OF  
**County Attorney**

YAVAPAI COUNTY COURTHOUSE  
PRESCOTT, ARIZONA 86301  
445-7450 EXT. 208

CARL H. COAD  
DEPUTY  
STEVEN B. JAYNES  
DEPUTY  
LINDA J. POLLOCK  
DEPUTY  
JAMES H. LANDIS  
DEPUTY  
TERI DETTMER  
DEPUTY

*Addition to  
R79-106*

June 6, 1979

Mr. Robert Corbin, Attorney General  
State Capital Building  
Phoenix, Arizona 85007

Dear Mr. Corbin:

On March 28, 1979, we requested that you reconsider Opinion 78-132 (R77-369) dated July 3, 1978, relating to In Lieu Federal Funds. In relation to that matter your attention is called to Navajo Tribe v. Arizona Department of Administration, 11 Az. 279, 528 P. 2d 623 (1975) and the cases therein relied upon. The court therein stated:

"Payment of funds into the state treasury does not necessarily rest the state with title to those funds.\*\*\*Only monies raised by the operation of some general law become public funds.\*\*\*Custodial funds are not state monies.\*\*\*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.\*\*\*It is within the power of the legislature to make appropriations relating to state funds, but funds from a purely federal source are not subject to the appropriative power of the legislature."

The cases cited in the Navajo decision refer to the separation of powers doctrine. The federal monies are received directly by the executive branch of government and cannot be controlled by the legislative branch.

Very truly yours,

*Carl H. Coad*  
Carl H. Coad  
Deputy County Attorney

CHC:kb



R79- 106

BILLY L. HICKS  
COUNTY ATTORNEY

OFFICE OF

## County Attorney

YAVAPAI COUNTY COURTHOUSE  
PRESCOTT, ARIZONA 86301  
445-7450 EXT. 208

CARL H. COAD  
DEPUTY  
STEVEN B. JAYNES  
DEPUTY  
LINDA J. POLLOCK  
DEPUTY  
JAMES H. LANDIS  
DEPUTY

March 28, 1979

Mr. Robert Corbin  
Attorney General  
State Capitol Bldg.  
Phoenix, AZ 85007

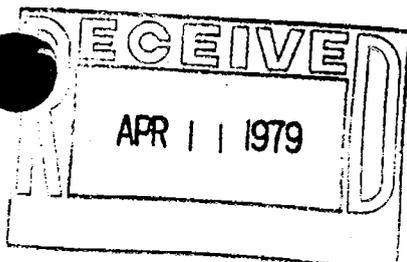
Dear Mr. Corbin:

Opinion 78-132(R77-369) dated July 3, 1978, dealt with budgetary restrictions on in lieu of tax funds received by Counties pursuant to P.L.94-565. The conclusion therein stated was:

"\*\*\*that expenditures of payments received by counties under P.L.94-565 are subject to all requirements of the Budget Law. Therefore, expenditures from the federal in-lieu payments must be anticipated in the budget, and such expenditures are subject to the 10% limitation of A.R.S. §42-303C."

The first in lieu funds were received by Yavapai County in fiscal year 1977-78 in the amount of \$802,000.00. These funds were neither anticipated in, nor allocated for expenditure in, the County budget for that year. They were deposited in an interest bearing account with the intent of the Board of Supervisors to use such funds for construction of a needed office building and jail. No objections were made at the hearings on the 1977-78 budget in relation to in lieu funds. Nor were there any protested tax payments made because of the omission of the in lieu funds.

In the 1978-79 fiscal year budget the in lieu funds for 1977-78 were reported along with anticipated receipts of \$607,500. for the 1978-79 fiscal year. A total of \$1,409,500. was shown in a fund erroneously labeled Revenue Sharing, but was in fact the in lieu fund. No part of the in lieu funds for either year was allocated for expenditure.



Several of the major taxpayers paid their taxes under protest, including the non-use of the in lieu monies in the 1978-79 budget as one of the reasons for protest. The July 3, 1978, opinion was strongly relied upon by these taxpayers as support for their position.

Because of the protests and the urgent need to clarify the right of the County to expend the in lieu funds for the building program, the County filed a Declaratory Judgment action, naming the protesting taxpayers as defendants. Several of the defendants counterclaimed for recovery of taxes based on a lower tax rate determined by inclusion of the entire \$1,409,500. of in lieu funds in the general fund and subject to the 10% budgetary limitation.

If the in lieu funds must be subject to the 10% budgetary limitation, use of such funds is necessarily limited to those general fund, health fund, and road fund expenditures that are not excludable by various statutes. The publication, "Preparation of Proposed Budget," Arizona Tax Research Association, (Revised October, 1977) lists over two pages of exemptions from the 10% budget limitations. A copy of that list is attached as Exhibit A. Included therein are many major expenditure items of the County as shown by the 1978-79 Yavapai County budget:

Indigent Hospital Costs	\$1,914,123.00
Retirement and OASI	549,037.00
Sanitary Landfill	365,000.00
Elections and Voter Registrations	145,693.00
Probation Salary and Fees	152,514.00

In addition to these items it precludes use of the in lieu funds in the Public Works Reserve fund for capital improvements which by A.R.S§42-306E are not subject to the 10% limitation.

The Payment In Lieu of Taxes Act (P.L.94-565) was enacted in 1976. It provides that in lieu funds paid to the County "may be used for any governmental purpose". This act is based on the 1970 Public Land Law Review Commission: "One third of the Nation's land: a report to the President and to the Congress by the Public Land Law Review Commission." The report stated at page 239:

"\*\*\* the Federal Government should not earmark payments in lieu of taxes for particular functions."

The Senate Report on H.R.9719, which became P.L.94-565, is set out at page 5968 et seq. of 1976 Code of Congressional News. This report reviews several prior laws that had provided for various revenue sharing allocations. On page 5970 the report

comments on the Mineral Lands Leasing Act by which payments were to be used for construction and maintenance of public roads or for the support of public schools or other public educational institutions, "as the legislature of the State may direct." The report then states:

"Under existing programs for sharing public land revenues, the Federal government returns a percentage of revenues to the States which are then distributed to State and local governments according to State law and the requirements of the Federal statutes. For example, while receipts from timber production and grazing on national forest lands are passed on to the counties mineral leasing receipts are paid to the States for use for schools and roads. Some States pass on a percentage of mineral leasing receipts to counties and others do not.

H.R.9719 requires that any payments under the ten statutes set forth in section 4 which are actually received by a unit of local government are to be deducted from H.R.9719's payments. In most cases only a small percentage of mineral leasing revenues produced within a county are returned to that county by the State. Accordingly, to preclude penalizing these counties, H.R.9719 provides that only those monies actually received by the local government should be deducted.

Moreover, the Committee believes that payments under H.R.9719 should go directly to units of local government since the local governments are the entities which assume the burden for the tax immunity of these lands. The Committee does not believe these new payments should be restricted or earmarked for use for specific purposes and the bill allows these payments to be used for any governmental purpose.

Where entitlement land is located in two jurisdictions concurrently--is within, for example, both a township and a county--the smaller unit of local government would be the recipient of the payments for entitlement land within its jurisdiction."

From these statements it is quite clear that P.L.94-565 intended that the in lieu funds should be paid directly to the local governmental unit, free from any state regulation or control over how the funds should be used.

The in lieu fund procedures differ from the Revenue Sharing procedures. Revenue Sharing funds are paid to the State as well as to the local governmental units. 31U.S.C.A. §1241 provides for separate budgeting of these funds with published notice and hearing. Revenue Sharing funds have been excluded from the state

budgetary controls pursuant to Attorney General opinions 73-3 and 74-9. The 1973 opinion stated:

"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.

It is, therefore, our opinion that the law in the State of Arizona is that revenue sharing entitlement funds received by political subdivisions under the State and Local Fiscal Assistance Act of 1972 are within the overall budget laws for the purposes of publication, public notice and public hearings, but are excluded from the constitutional debt limitation and statutory budget limitations

because such funds and expenditures therefrom are outside of the general credit of the local taxing authorities.

This opinion, to the extent that it is inconsistent with Opinion No. 73-3, dated December 7, 1972, modifies Opinion No. 73-3".

The July 3, 1978, opinion relies upon the provisions of the Arizona budget law, stating:

"All enactments of the Budget Law have encouraged the voice of the electorate in the budgetary process. Excluding payments received by counties pursuant to P.L.94-565 from the budgetary process would frustrate this intent. If there is any ambiguity in A.R.S. §42-303(D), its clear intent should be given effect."

The July 3, 1978, opinion does not consider the legislative history of P.L.94-565. That history clearly shows the Congressional intent to pay the in lieu funds to the local governmental agency to be expended free from limiting controls of the State. Application of the 10% budgetary limitation will restrict the uses of the in lieu funds to expenditures not exempt, and would prevent use of the in lieu funds for many categories of government use. P.L.94-565 should be held to be an overriding federal pre-emption insofar as the 10% limitation of the Arizona budget law is concerned. There is no reason though why the in lieu funds should not be budgeted for expenditure, notice given and public hearing held regarding use of those funds.

We also would point out that in opinion 57-119 (Sept. 5, 1957), in answer to whether statutory contributions or cost sharing by other governmental agencies could be omitted from budgets, the Attorney General stated:

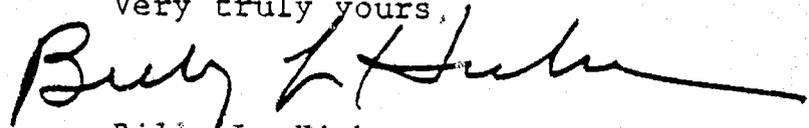
"It is the opinion of this office that cost-sharing arrangements with another governmental department are actually payments of a portion of such costs and are neither receipts to the county offsets relating to the expenditures. There would accordingly seem to be no objection to the showing of net figures for expenditures as proposed provided that the funds to be made available from the state or federal government are clearly shown on the budget itself as a part of the proposed expenditures in order to clearly inform the taxpayers as to the total amount of all of said expenditures as well as the portions of same to be expended by each specific governmental body."

"It would appear that the preparation of budgets in this manner would avoid "double budgeting" as well as the statutory 10% budget increase limitation when matching funds or cost-sharing amounts are added to the actual expenditures of the county."

R79- 106

Since the July 3, 1978, opinion appears to be the basis for litigation by taxpayers in both Yavapai and Mohave Counties, we believe it should be revised and the State assist the County in the litigation.

Very truly yours,



Billy L. Hicks  
Yavapai County Attorney

BLH:d