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February 8, 1980

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

The Honorable John C. Pritzlaff, Jr.
 Arizona State Senator
 Senate Wing, State Capitol
 Phoenix, AZ 85008

Re: I80-018 (R79-322)

Dear Senator Pritzlaff:

In your letter of December 6, 1979, you asked for our opinion as to whether the Arizona Drug Control District (the "District") is required to comply with the line item expenditure limitations set forth in the Legislature's appropriation to the District in Ch. 172, § 78, Laws 1979.¹

Your letter also describes the procedure that the District has followed in handling the expenditure of monies the Legislature, by appropriation, authorized the District to expend. We understand that appropriations to the District are credited to the special fund established by A.R.S. § 41-2154. On a

1. This appropriation provides as follows:

Subdivision 78. DRUG CONTROL DISTRICT

Personal services	\$1,009,200.00
Employee related expenditures	222,000.00
Travel - state	76,500.00
Travel - out of state	78,700.00
Other operating expenditures	<u>797,900.00</u>
Total appropriation - drug control district	\$2,184,300.00

quarterly basis, the District obtains a warrant from the Department of Administration, Division of Finance, in the amount of a portion of the appropriation to cover estimated expenses for the quarter. The warrant is then delivered to the Pima County Treasurer, who withdraws from the state treasury the amount of the warrant and credits that amount to the account of the District in the Pima County treasury. We understand that the funds are considered by the State to have been spent by means of this quarterly lump sum warrant procedure. This raises the additional question of whether the procedure complies with the statutory requirements of A.R.S. § 41-2154.

Both questions relate to the power of the Legislature to prescribe the methods by which state funds are paid out of the state treasury, and thus shall be addressed jointly. Inasmuch as the Legislature has total authority respecting the expenditure of state monies,^{2/} the crucial issue is to determine what method of disbursement the Legislature intended the District to follow.

Article 9, § 5 of the Arizona Constitution provides, in part: ". . . No money shall be paid out of the State treasury, except in the manner provided by law." The Legislature enacted Title 35, entitled "Public Finances", and other provisions of law which prescribe the procedure to be followed for the paying of money out of the treasury. A.R.S. § 35-142.A recognizes the existence of special state funds in subsection 7 of the provision, which states:

7. Monies designated by law as special state funds shall not be considered a part of the general fund. Unless otherwise prescribed by law, the state treasurer shall be the custodian of all such funds. (Emphasis added.)

With respect to the District, the Legislature has established a special fund for all funds received on behalf of the District by enacting A.R.S. § 41-2154, which provides:

All funds received on behalf of the district shall be deposited in a special fund established by the state treasurer to be expended under the supervision of the council to effectuate the provisions and purposes of this chapter, except that such

2. Article 9, § 5 of the Arizona Constitution, cited in text of opinion; Carr v. Frohmler, 47 Ariz. 430, 56 P.2d 644 (1936).

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monies not immediately required may be invested by the state treasurer in a like manner as any other public monies. All amounts to be paid from the fund shall be on warrants drawn by the assistant director for the division of finance upon presentation of a proper claim or voucher approved and signed by the administrator. The fund shall be audited annually by the state auditor general. (Emphasis added.)

A.R.S. § 41-2154 authorizes the State Treasurer to establish the special fund with expenditures from that fund under the "supervision" of the council. There is no legislative expression of an intention that the monies in the special fund shall be kept on deposit anywhere other than in the state treasury, nor is there any apparent intention that anyone other than the State Treasurer shall serve as custodian of the fund. We therefore conclude that the State Treasurer, and not the Pima County Treasurer, at all times must be the custodian of all monies paid into the District's special fund.

With respect to the manner by which monies are disbursed from the fund, the District must comply with the pertinent legislative requirements. It is our opinion that the lump sum warrant procedure, not being authorized by A.R.S. § 41-2154, is prohibited by A.R.S. § 35-142 and, therefore, is in contravention of Article 9, § 5 of the Arizona Constitution. A.R.S. § 41-2154 directs that the State Treasurer, as custodian, may invest monies "not immediately required" to be expended by the District. We conclude from this statement that the Legislature thought that monies would remain in the fund to be expended only when "required" to be spent.

Furthermore, A.R.S. § 41-2154 specifies that amounts paid from the fund must be on warrants, indicating that the Legislature clearly anticipated that payments would be made in a method other than by quarterly lump sums. A.R.S. § 41-2154 also calls for presentation of a "proper claim or voucher" to the Department of Administration before a warrant can be drawn. This requirement necessarily requires that the District follow the procedures set forth in Title 35 for the presentation of claims to the Department.^{3/}

3. See A.R.S. §§ 35-173 (allotment of appropriations) and 35-181.01 (presentation of claims).

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Moreover, in our opinion, the District must adhere to the line item expenditure limitations in its appropriation. Article 9, § 5 of the Arizona Constitution; McDougall v. Frohmiller, 61 Ariz. 395, 150 P.2d 89 (1944); Webb v. Frohmiller, 52 Ariz. 128, 79 P.2d 510 (1938); State Bd. of Health v. Frohmiller, 42 Ariz. 231, 23 P.2d 941 (1933).^{4/} When relief from those limitations is necessary, the District can resort to the procedures in A.R.S. § 35-173 for transferring amounts from one line item to another.

In summary, it is our opinion that the District is subject to the expenditure limitations appearing in appropriations acts and must comply as soon as practicable, with A.R.S. § 41-2154 and any related provisions of Title 35 that are necessary to fulfill the legislative mandate.^{5/}

Sincerely,



BOB CORBIN
Attorney General

BC/mm

4. Wiggins v. Kerby, 44 Ariz. 418, 38 P.2d 315 (1934). In Ariz.Att'yGen.Op. No. 67-6-L, we said that a fund was exempt from the requirements of A.R.S. § 35-173, where the statute establishing the fund expressly provided for the exemption.

5. In Ariz.Att'yGen.Op. No. 78-44, we noted that A.R.S. § 41-2155 provides that the District is a budget unit and shall comply with the provisions of Title 35, Chapter 1, Article 2. In that opinion we said that A.R.S. § 41-2155 did not require the District to comply with all of the provisions of Title 35. It is unnecessary, however, to decide which provisions of Title 35 the District impliedly may not be required to follow under A.R.S. § 41-2155, because A.R.S. §§ 41-2154 and 41-2155, not being facially inconsistent, must be harmonized so as to give meaning to both. Inasmuch as A.R.S. § 41-2154, by its terms, requires compliance with certain provisions of Title 35, neither A.R.S. § 41-2155 nor Ariz.Att'yGen.Op. No. 78-44 can be read to exempt the District from complying with those provisions. We wish to emphasize, however, that neither the legislation nor prior opinions of this office have provided

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Footnote 5 Continued:

clear guidance to the District for conducting its affairs. In fact, intergovernmental agreements which set forth the procedure utilized by the district have consistently been approved by us. We do not mean to imply that the expenditure procedure which the District has been utilizing was instituted in conscious disregard of statutory procedures.