



*Genine*  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

March 6, 1980

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

INTERAGENCY

The Honorable Tony West  
Arizona State Representative  
House Wing, State Capitol  
Phoenix, AZ 85007

Re: I80-035 (R79-280)

Dear Representative West:

In your letter of October 22, 1979, you asked our opinion as to whether the drafts of Auditor General's reports are confidential. You also asked whether a public board may meet in executive session to discuss an Auditor General's draft report and whether there is a prohibition against a public official disclosing information contained in an Auditor General's draft report. Finally, you asked whether sunset review draft reports are subject to the same provision regarding confidentiality as Auditor General draft reports.

The pertinent provision with respect to the confidentiality of Auditor General's reports is A.R.S. § 41-1279.03.A.3, which provides as follows:

Annually on or before the fourth Monday of December, under the direction of the committee, [the Auditor General shall] prepare an annual report to contain, among other things, copies or the substance of reports of examination on the various state agencies, together with a summary of recommendations made in regard to such examination. All such reports of examination shall be open to public inspection after they have been filed with the committee, the governor, the department of library and archives and the state agency concerned. (Emphasis added.)

The above provision provides that Auditor General reports shall be open for public inspection, but only after such reports have been filed with the Joint Legislative Budget Committee, the Governor, the Department of Library and Archives and the state agency concerned. Therefore, preliminary drafts of these reports are exempt from public inspection.

Your second question is whether a public board may meet in executive session to discuss an Auditor General's draft report. A.R.S. § 38-431.03.A.2 of Arizona's public meeting law (A.R.S. §§ 38-431 et seq.) provides that "[u]pon a public majority vote of the members constituting a quorum, a public body may hold an executive session" for the "[d]iscussion or consideration of records exempt by law from public inspection." Since drafts of Auditor General's reports are exempt from public inspection under A.R.S. § 41-1279.03.A.3, public bodies can meet in executive session to discuss these draft reports.<sup>1/</sup>

Your third question concerns whether a public official may disclose information contained in drafts of Auditor General's reports. We have said that, under A.R.S. § 41-1279.03.A.3, draft reports are not open for public inspection. Thus, there is a policy that draft reports shall be kept confidential. In order to promote this policy, it is our opinion that public officials who have seen Auditor General's draft reports should not disclose the information contained therein.

We have found no criminal sanctions for public officials who disclose Auditor General's draft reports, except for A.R.S. § 41-1279.05. That statute makes it a class 5 felony to disclose "any particulars of any record, document or information disclosure of which is restricted by law," but it applies only to the Auditor General, members of his staff and other employees of his office.

---

1. In Ariz.Att'yGen.Op. No. 179-304, we opined that A.R.S. § 38-431.03.B of Arizona's public meetings law (A.R.S. §§ 38-431 et seq.) should be read to prohibit members of an executive session from disclosing the official record of an executive session and any information pertaining to the official record. Thus, any members of an executive session at which an Auditor General's draft report is discussed are not free to disclose its contents.

Your fourth question relates to the confidentiality of sunset review draft reports. Sunset review of state agencies, departments, programs, boards and advisory councils and committees is governed by A.R.S. § 41-2351 et seq. A.R.S. § 41-2352.4 defines the term "sunset review", and provides:

1. "Sunset review" means a systematic evaluation by the oversight committee with the assistance of the committee of reference, appropriate agency, joint legislative budget committee, auditor general and support staff to determine if the merits of the program justify its continuation rather than termination, or its continuation at a level less than or greater than the existing level. Such review shall be undertaken in the scope and detail the oversight committee deems appropriate and shall include, without limitation, whether there is a need for the program in state government and, if so, an assessment of the degree to which the original objectives of the program have been achieved expressed in terms of the performance, impact or accomplishments of the program and of the situation it was intended to address. Such review shall be coordinated with the performance audit procedures of the auditor general as set forth in chapter 7, article 10.1 of this title. [A.R.S. §§ 41-1279 et seq.] (Emphasis added.)

The provision directs that sunset review shall be "coordinated with" the Auditor General's performance audit procedures. Those procedures are set forth in A.R.S. § 41-1279.03.A. Subsection 3 of the provision states that Auditor General examination reports shall be open to public inspection after they are filed with certain entities.<sup>2/</sup> There exists no provision regarding confidentiality of sunset review draft reports<sup>3/</sup> in the chapter governing such reports.

---

2. See answer to question 1, supra.

3. There appear to be several stages of draft sunset review reports. Pursuant to A.R.S. § 41-2353.E, a "draft sunset review report" is prepared and given to the affected state agency for comments. The agency's comments, included with the draft report, then become the "preliminary sunset review report" which it is forwarded to parties designated by statute.

Therefore, the crucial issue is whether the protection afforded Auditor General examination reports also applies to draft and preliminary sunset review reports.

As a general rule, matters pertaining to state government operations shall be public.<sup>4/</sup> Therefore, these reports should not be kept confidential in the absence of a specific statute rendering them so, or unless the court-established standard of Mathews v. Pyle, 75 Ariz. 76, 251 P.2d 893 (1953) is satisfied.<sup>5/</sup>

The fact that A.R.S. § 41-2352.4 provides that sunset review shall be "coordinated with" performance audit procedures does not render such reports confidential. The steps to be taken for the filing of performance audits, after which time the reports are public, differ from the steps taken in sunset review. Also, although we are informed that the contents of both types of reports are the same, the statutory scope and contents of sunset review are broader,<sup>6/</sup> and the purpose of the review differs from that of an audit.<sup>6/</sup>

---

4. See A.R.S. §§ 38-431 et seq. (public meetings law); A.R.S. § § 39-121 et seq. (public records law); Ariz.Att'y Gen.Op. No. 76-43.

5. That case held that "other matters" (writings coming into the hands of public officials in connection with their public duties) need not be disclosed to the public if the public official determines that it would be against the state's best interest to disclose the matter to the public. This determination is subject to judicial review.

6. Contrast the definition of "sunset review" (cited above) with that of "performance audit" in A.R.S. § 41-1279.3, which provides:

3. "Performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited agency both of the following:

(a) Whether the audited agency is managing or utilizing its resources, including public funds of this state, personnel, property, equipment and space in an economic and efficient manner.

The Honorable Tony West  
March 6, 1980  
Page 5

We therefore conclude that draft and preliminary sunset review reports are open to public inspection.<sup>7/</sup> If, however, draft and preliminary sunset review reports are deemed by the Auditor General to be performance audits, they are exempt from public inspection until filed.<sup>8/</sup>

Sincerely,



BOB CORBIN  
Attorney General

BC/mm

---

Footnote 6 Continued

(b) Causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.

7. A public official having custody of a report does have discretion, however, not to reveal its contents under Mathews v. Pyle, supra.

8. In other words, if a report prepared by the Auditor General is not required to be filed pursuant to A.R.S. § 41-1279.03.A.3, then it is public. If a report must be duly filed, then it is public only after filing. We note that the Auditor General has the discretion to characterize his report as a performance audit even though it is to be used for sunset review purposes.