



Genino
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

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May 16, 1980

INTERAGENCY
Mr. William Jamieson, Jr.
Director
Arizona Department of Economic Security
Post Office Box 6123
Phoenix, AZ 85005

Re: I80-092 (R79-328)

Dear Mr. Jamieson:

We are writing in response to your letter of December 7, 1979, in which you asked for our opinion as to whether the governing body of a public agency⁷ may delegate its authority to enter into intergovernmental agreements to another party. It is our opinion that such delegation is appropriate only under the specific circumstances discussed herein.

In Ariz.Att'yGen.Op. No. I80-070, we stated that a board or agency may not delegate a discretionary power which has been granted to it by the Legislature. In other words, the particular board or agency must perform those duties which have been devolved upon it by statute or other governing law.

Applying this standard to agencies entering into intergovernmental agreements, we first of all note that the provisions governing the joint exercise of powers, A.R.S. §§ 11-951 et seq., do not "authorize any public agency to exercise any power or engage in any business or enterprise that such public agency is not authorized to exercise or engage in pursuant to other provisions of law." A.R.S. § 11-954. Thus, if an agency is not otherwise authorized by statute to delegate its power to contract, it may not do so under A.R.S. § 11-951 et seq.

1. Public agencies, for purposes relating to intergovernmental agreements, are defined in A.R.S. § 11-951 as the federal government and its agencies, Indian tribal councils, the state and its agencies, counties, school districts, cities, towns and all other political subdivisions of the state and adjoining states.

A.R.S. § 11-952 provides in pertinent part 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 agreement with one another for joint or cooperative action. . . .

* * *

G. Appropriate action by ordinance, resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies [in an inter-governmental agreement] approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

Subsection A contemplates only that those agencies that are legally authorized to contract may be parties to an inter-governmental agreement. In order to determine where the authority to enter into a contract lies, it is necessary to examine the powers granted to the particular agency in question. For example, with respect to a state agency or county, we must look to the substantive legislation governing the body to ascertain where the power to contract is reposed; with respect to a city, a charter may set forth the power. If the power to contract rests solely with a particular body, it cannot delegate that power. If, however, legislation or other governing law permits delegation of the power to contract, the governing body may delegate that power to an appropriate other party.

Under subsection G, "appropriate action" is necessary before the agreement becomes effective. What is "appropriate" is determined again by examining "the laws applicable to the governing bodies of the participating agencies." If, for example, the power to contract rests with a particular board, it cannot pass an ordinance or resolution purporting to grant that power to someone else. The board itself must approve each agreement. However, if the board has the power, by statute or charter, to delegate its authority to contract to another person or entity, an ordinance or resolution delegating the authority to approve certain agreements may be appropriate.^{2/}

2. We would suggest that a governing body consult with its counsel in order to ascertain whether its substantive law permits delegation of the authority to contract.

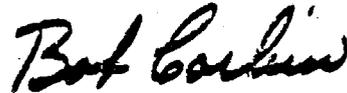
Mr. William Jamieson, Jr.

-3-

May 16, 1980

To summarize our conclusion, a public agency may delegate its authority to enter into intergovernmental agreements only when it is authorized by statute, charter or other governing law to otherwise delegate its discretionary power to contract.

Sincerely,



BOB CORBIN
Attorney General

BC:DR:lfc