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Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

December 5, 1980

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INTERAGENCY  
J. Elliot Hibbs, Chairman  
Economic Estimates Commission  
Arizona Department of Revenue  
State Capitol, West Wing  
Phoenix, Arizona 85007

RE: (R80-190) I80-204

Dear Mr. Hibbs:

In your letter of August 18, 1980, you requested an opinion concerning how the "base limit" for fiscal year 1979-1980 is calculated for cities, towns, counties, and community college districts. Once the base limit is established, the expenditures of political subdivisions are limited by a formula which adjusts the base for inflation and population changes. Article 9, § 20 of the Arizona Constitution contains the following language:

"The economic estimates commission [EEC] shall determine and publish prior to April 1 of each year the expenditure limitation for the following fiscal year for each county, city and town. The expenditure limitations shall be determined by adjusting the amount of actual payments of local revenues for each such political subdivision for fiscal year 1979-1980 to reflect the changes in the population of each political subdivision and the cost of living."1/

Article 9, § 20, subsection 3 defines "base limit" as "the amount of actual payments of local revenues for fiscal year 1979-1980. . . ."

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1. Article 9, § 21 of the Arizona Constitution, containing the same operative language, relates to community college and school districts. Our analysis of Article 9, § 20 applies equally to Article 9, § 21.

What we need to determine is what is meant by the phrase, "actual payments. . . for fiscal year 1979-1980."<sup>2/</sup> The answer to this question is particularly important for determining the "base limit" for cities and towns, where encumbrances<sup>3/</sup> often are made in one fiscal year, while payment is made in a subsequent year. This practice differs from political subdivisions such as counties and community college districts governed by lapsing provisions, which provide that all encumbrances must be paid within the fiscal year.

There are several ways the phrase "actual payments. . . for fiscal year 1979-1980" can be interpreted. The Constitution sets up two standards: (1) payments must actually be made at some point in time; (2) in order to be counted, payments must relate to the fiscal year 1979-1980.

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2. Senate Concurrent Resolution 1001 originally read "actual payments. . . in fiscal year 1979-1980." The "in" was later substituted by "for". The latter word is more encompassing and less restrictive than the former. We note that A.R.S. § 41-563.A.1, which sets forth the power and duties of the Economic Estimates Commission, defines "base limit" as "the amount of actual payments. . . in fiscal year 1979-1980. . . ." This statement is inconsistent with the Constitution and the Legislature should take appropriate action to remedy the situation.

3. For purposes of these provisions, we define "encumbrance" as a binding legal obligation, entered into during fiscal year 1979-1980, to receive and pay for, with monies from the 1979-1980 budget, specific goods or services to be delivered after the close of the fiscal year. In other words, an encumbrance is a binding executory contract which the political subdivision is legally authorized to enter into.

Because the Constitution requires that all payments must relate to fiscal year 1979-1980 in order to be included in the "base limit," all expenditures for encumbrances must be made pursuant to the specific terms of the contract as of the close of fiscal year 1979-1980. Any modification to a contract after the close of fiscal year 1979-1980 precludes the encumbrance from being "related" to that fiscal year, as required by the Constitution. Accordingly, even though an expenditure may subsequently be made with 1979-1980 budget monies, it may no longer be considered part of the "base limit."

J. Elliot Hibbs  
December 5, 1980  
Page 3

The legislature has not specifically addressed this issue, especially with respect to how encumbrances are to be treated. Two possible interpretations are not consistent with the Constitution. The base limit cannot be limited to only those payments actually made during the fiscal year 1979-1980, in light of the language change of "in" to "for" in the drafting of the Constitutional provision (see n.2, supra). The base limit, likewise, cannot include all encumbrances for payment, whether paid or not. At some point in time, actual payment must be made.

There are two supportable interpretations. "[A]ctual payments. . . for fiscal year 1979-1980" may mean payments made for goods and services actually delivered in 1979-1980. This interpretation would exclude encumbrances made for goods and services not delivered in the fiscal year and would also exclude goods and services delivered in the fiscal year for which payment was made in a prior year. However, there may be goods or services delivered in the fiscal year for which payment will be made at a later date. Since the EEC must set the base limit prior to April 1, 1981, it will have to establish a cut-off date for those payments to be included in the base limit for the fiscal year 1979-1980. The legislature has not specifically granted the EEC the authority to establish such a date.

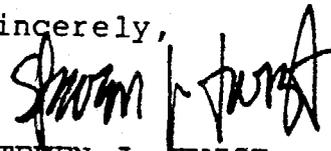
Another possible interpretation would provide for the inclusion of encumbrances made in the fiscal year 1979-1980 with 1979-1980 funds, so long as delivery and payment are made at some later point in time. Again, a cut-off date for payments would need to be established in order to meet the April 1, 1981 deadline. To be consistent, this interpretation would exclude from the base limit those encumbrances made in a prior year although paid for in 1979-1980.

Both interpretations provide that the base limit for fiscal year 1979-1980 may be adjusted in the future to reflect payments made after the annual cut-off date for encumbrances made in 1979-1980 with funds from that fiscal year. In other words, if a payment for fiscal year 1979-1980 is made after the 1981-1982 cut-off date, it may be counted in 1982-1983 towards revising the base limit of 1979-1980; the base limit thus "floats," subject to revision in subsequent years, as payments for fiscal year 1979-1980 encumbrances are made with 1979-1980 funds.

J. Elliot Hibbs  
December 5, 1980  
Page 4

Because the EEC is mandated by the Constitution to determine the "base limit" for counties, cities, towns and community college districts, we think it may take reasonable steps to establish the "base limit" in the absence of legislation prescribing a specific method of determination. The EEC may choose any method of determination, including the establishment of a cut-off date, which is not inconsistent with the Constitution.<sup>4/</sup> We suggest, however, that you seek legislative clarification of these issues.

Sincerely,



STEVEN J. TWIST  
Chief Assistant  
Attorney General

BC:cp

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4. After you have determined what comprises the "base limit," you should immediately notify the Auditor General, who has the duty under A.R.S. § 41-1279.03. A. 4 to develop a uniform reporting system for all political subdivisions to insure compliance with Article 9, §§ 20 and 21.