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December 17, 1980

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Mr. Frank Felix, Chairman
Arizona Housing Finance Review Board
University of Arizona
Administration Bldg., Room #610
Tucson, AZ 85721

I80-212 (R80-251)

Dear Mr. Felix:

We have considered your question whether the Arizona Housing Finance Review Board can charge a filing fee to all organizations who file general plans pursuant to A.R.S. § 9-1156. The filing fee proceeds would be used to compensate Board members for travel and per diem expenses as well as to enable the Board to contract for consultant services. We have reviewed the applicable legal authorities and conclude that the Arizona Housing Finance Review Board cannot charge filing fees.

The Arizona Housing Finance Review Board is established pursuant to A.R.S. § 9-1174 and its various functions are described therein. Neither ARS § 9-1174 nor any other provision of the Industrial Development Plans for Municipalities and Counties, A.R.S. §~~92~~-1151 et seq., however, set forth authority for the Board to establish and collect any kind of fees. It is well settled that a state agency cannot charge fees if there is no express statutory authority authorizing the collection of a fee. In State v. Phelps, 12 Ariz.App. 83, 467 P.2d 923 (1970), the court held that the authority of an administrative department to charge a fee must be specifically authorized by the legislature. See also Ariz.Att'yGen.Op. No. 76-162 (holding and citing cases for the proposition that the authority of an administrative agency to impose charges or fees upon those it regulates must be based upon a statutory provision); Ariz.Att'yGen.Op. No. 62-91-L (sheriff could not charge a fee for the preparation of a certificate of good conduct in the absence of express statutory

Mr. Frank Felix
Page 2
December 17, 1980

authority); Ariz.Att'yGen.Op. No. 57-14 (county assessor could not charge and collect a fee which exceeded the fee specifically provided for in the statute for the handling of applications for the annual registration of motor vehicles). In view of this substantial authority, we conclude that the Arizona Housing Finance Review Board cannot charge fees unless specifically authorized by the legislature.

Sincerely,



BOB CORBIN
Attorney General

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