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September 11, 1981

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INTERAGENCY

The Honorable Thomas N. Goodwin
Chairman, Joint Legislative Budget Committee
1716 West Adams
Phoenix, Arizona 85007

Re: I81-103 (R81-098)

Dear Representative Goodwin:

We are writing in response to your letter of June 30, 1981, in which you requested our opinion concerning two legislative appropriations.

Your first question concerns the status of an appropriation in Chapter 126, 1981 Sess. Laws (First Reg. Sess.) to the Department of Water Resources. Chapter 126 provided for an emergency appropriation, the pertinent portions of which are as follows:

Section 1. Purpose

This state has recently taken decisive steps to institute the efficient and effective management of both surface water and groundwater. The purpose of this act is to provide funds and hiring authority to the department of water resources for the purpose of expediting the implementation of these programs.

Section 2. Appropriation; purpose

A. The sum of one million eight hundred eighty-nine thousand seven hundred dollars is appropriated from the state general fund to the department of water resources.

B. Of the amount appropriated in subsection A, one million seven hundred fifty thousand dollars is for

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mailing notices to prospective claimants in the adjudication of the state's surface waters, ninety-three thousand seven hundred dollars is for twelve positions to augment the adjudication staff and forty-six thousand dollars is for six new positions to expedite the water management program of the department.

Section 3 of the Chapter provided that the appropriation would be non-lapsing until June 30, 1983, at which time any unencumbered or unexpended monies would revert to the general fund.

After April 15, 1981, the effective date of the Act, the Legislature apparently decided to eliminate the non-lapsing aspect of that portion of the appropriation concerning funding for the eighteen positions. In the general appropriation bill, Ch. 316, subdivision 92, 1981 Ariz. Sess. Laws (First Reg. Sess.), the Legislature attached the following footnote to the appropriation to the Department for Water Management:

"Includes funds for eighteen positions identified in H.B. 2411 [Ch. 126]. Any monies unexpended and unencumbered from the funds allocated for the eighteen positions under H.B. 2411 shall revert to the general fund on June 30, 1981."

The question, then, is whether this footnote effectively amended the non-lapsing provision in Chapter 126. The answer depends, in turn, on whether Chapter 126 is characterized as an appropriation or as substantive legislation.

Generally, the Legislature has the exclusive power over appropriations. Webb v. Frohmiller, 52 Ariz. 128, 79 P.2d 510 (1938). This power extends to the right to modify or to repeal, as well as enact an appropriation. Hudson v. Brooks, 62 Ariz. 505, 158 P.2d 661 (1945). In the Hudson case, a general bill repealing all continuing appropriations was held not to apply to a special statute providing for a continuing appropriation of the State Highway Fund to the Highway Department. The court stated that the Legislature could repeal the appropriation, but in the absence of a clearly-articulated intent to do so, the continuing appropriation was not repealed. In the situation at hand, although by no means forthrightly stated, the intent to repeal the non-lapsing provision is evidenced by the footnote specifying the reversion

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of all monies allocated pursuant to Chapter 126, on June 30, 1981, coupled with a statement that the appropriation for fiscal year 1981-82 includes monies for the positions identified in Chapter 126.

The legislative appropriation power is, however, subject to constitutional restrictions. Crane v. Frohmiller, 45 Ariz. 490, 45 P.2d 955 (1935). One such restriction is contained in Article 4, part 2 §20 of the Arizona Constitution, which limits the scope of subjects that may be included in a general appropriation bill to appropriations only. In other words, the Legislature may not include substantive legislation in a general appropriation bill. Caldwell v. Bd. of Regents, 54 Ariz. 404, 96 P.2d 401 (1939). The Caldwell court struck down a provision in the appropriation to the Board of Regents that said a husband and wife could not both be employed by the state. See also Cochise Cty v. Dandoy, 116 Ariz. 53, 567 P.2d 1182 (1977); Sellers v. Frohmiller, 42 Ariz. 239, 24 P.2d 666 (1933). The footnote to Chapter 316 only reverted monies allocated in a prior appropriation. This action does not appear to constitute substantive legislation, as defined by applicable case law.

The repeal (or amendment) of a continuing appropriation may be invalid if it adversely impacts on an office or salary established by statute. Thus, in McDonald v. Frohmiller, 63 Ariz. 479, 163 P.2d 671 (1945), the court held that a general bill repealing all continuing appropriations could not apply to a state officer whose salary was established by statute. See also State v. Angles, 54 Ariz. 13, 91 P.2d 705 (1939). In the situation at hand, Chapter 126 established funding for various positions. Inasmuch as neither statutory duties nor salaries were specified, these positions do not constitute offices under McDonald and thus may be affected by an appropriation. In any case, Chapter 316 does incorporate funding for these positions in the general appropriation. The only change has been in the duration of the appropriation for these positions.

In light of the above analysis and discussion, we think the footnote to subdivision 92 of the general appropriation to the Department of Water Resources for Water Management in Chapter 316, 1981 Ariz. Sess. Laws (First Req. Sess.), effectively amends the non-lapsing appropriation of Chapter 126, 1981 Ariz. Sess. Laws (First Req. Sess.).

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Your second question asks whether an appropriation to the Flood Control District of Maricopa County may be expended for purposes other than those specifically stated in the appropriation. Ch. 193, §2.F, 1981 Sess. Laws (First Reg. Sess.) appropriated monies for flood control work in specified areas. However, an engineering study has determined that work in an area other than those specified would best accomplish the legislative objectives.

An appropriation is "the setting aside from the public revenue of a certain sum of money for a specified object, in such a manner that the executive officers of the government are authorized to use that money, and no more, for that object and no other." Hunt v. Callaghan, 32 Ariz. 235, 257 P.648 (1927). We think, therefore, that monies may be expended only for work specified by the terms of the appropriation and that legislative action will be necessary to authorize an expenditure for any other work.

Sincerely,



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