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January 9, 1990

The Honorable Jim Shumway  
Secretary of State  
State Capitol - West Wing  
Phoenix, Arizona 85007

Re: 190-005 (R89-103)

Dear Mr. Shumway:

You have asked whether an agency must comply with the rulemaking procedures of A.R.S. §§ 41-1001 to -1041 (The Administrative Procedure Act) (the Act) when repealing rules which were adopted pursuant to the Act, but which are now exempt from such rulemaking procedures under A.R.S. § 41-1005. We conclude that it need not.

The statutory requirements for the promulgation of rules by state agencies are set forth in A.R.S. §§ 41-1001 to -1041. The repeal of a rule is also a "rule" for purposes of the Act. A.R.S. § 41-1001(12).

A.R.S. § 41-1005 exempts certain subjects from the procedural requirements of the Act. It enumerates those subjects and provides that the "chapter [A.R.S. §§ 41-1001 to -1066, Administrative Procedure Act] does not apply" to them. Included in the list of exemptions contained in A.R.S. § 41-1005(A) are various fees, orders and rules. A.R.S. § 41-1005(B) exempts "the Arizona Board of Regents and the institutions under its jurisdiction" from the rulemaking requirements but requires the Board to "adopt policies . . . for notice of and opportunity for

comment on the policies or rules proposed for adoption." <sup>1/</sup>  
You have asked whether these exemptions apply to the repeal of  
any rule which was adopted before the subject of the rule became  
exempt under A.R.S. § 41-1005.

In responding to your question, we note that the Act  
"imposes only procedural duties." A.R.S. § 41-1002. (Emphasis  
added.) Consequently, an agency must have independent statutory  
authority to adopt rules. See Adams v. Industrial Commission, 26  
Ariz. App. 289, 547 P.2d 1089 (1976).

The general law regarding the power and  
authority of an administrative agency to make  
rules and regulations to carry out its  
statutory responsibilities is clear. An  
administrative agency must exercise any  
rulemaking authority granted by statute  
within the framework of that statutory grant.  
. . . If there is a legislative grant of  
authority, however, the agency may make rules  
and regulations supplementing the legislation  
for its complete operation and enforcement,  
so long as such rules and regulations are  
within the standards set forth in the act of  
the legislative body.

Adams, 26 Ariz. App. at 290, 547 P.2d at 1090 (Citations  
omitted).

Thus, when a statute gives an agency authority to  
promulgate rules, the agency may validly adopt or repeal a rule  
without complying with the statutorily imposed procedural  
requirements if the subject matter of the rule is exempted from  
those requirements. See, e.g., Duke City Lumber Co. v. Butz,  
382 F. Supp. 362, 373 (D.D.C. 1974), affirmed, 539 F.2d 220  
(D.C.Cir. 1975) (federal exemption for rules relating to "public  
property").

The existence of an exemption to the procedural  
rulemaking requirements represents a finding by the legislature  
that the procedures contained in the Act need not apply in that  
particular instance. Id. If the legislature has found that the  
public would not benefit from the statutory procedures in the

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<sup>1/</sup>This added requirement is not imposed on the exemptions  
listed in A.R.S. § 41-1005(A).

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promulgation of a rule dealing with a particular subject matter, imposition of those requirements on the repeal of such a rule would defeat the legislative intent. We must avoid such a result because the primary aim of statutory interpretation is to give effect to the intent of the legislature. Martin v. Martin, 156 Ariz. 452, 457, 752 P.2d 1038, 1054 (1988).

Therefore, because the definition of a "rule" for purposes of the Act and its procedural requirements includes the repeal of a rule, any exemption from the procedural rulemaking requirements contained in A.R.S. § 41-1005 would also apply to the repeal of a rule the subject of which has become exempt under A.R.S. § 41-1005.

Sincerely,



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