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December 30, 1981

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ARIZONA ATTORNEY GENERAL

INTERAGENCY
James E. Sarn, M.D., M.P.H., Director
Arizona Department of Health Services
1740 West Adams
Phoenix, Arizona 85007

Re: I81-138(R81-085)

Dear Dr. Sarn:

By letter dated June 1, 1981, Jon M. Counts of your staff has requested our opinion on several questions relating to recoupment of state laboratory costs for providing tuberculosis testing services for the Indian Health Service (IHS), a federal agency. Essentially, the first two questions seek ways in which funds paid by (1) the IHS or (2) the Arizona Lung Association for such services might be retained in the state laboratory accounts to cover the costs of providing the services.

As a general matter, all funds received by the state must be credited to the general fund, unless legislatively permitted to be credited to a special fund. A.R.S. § 35-142. One such exception is created by A.R.S. § 35-142.A.7, which states, "Monies designated by law as special state funds shall not be considered a part of the general fund."

The Department of Health Services, is specifically authorized to accept "special project grant" funds to assist in carrying out state programs. A.R.S. § 36-132.B provides, in pertinent part:

B. The department may accept from the state or federal government, or any agency thereof, and from private donors, trusts, foundations, or eleemosynary corporations or

organizations, grants or donations for or in aid of construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement regulated or prohibited by this title, and to enter into contracts with the federal government, or any agency thereof, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes or any thereof. All funds made available under the provisions of this section shall be considered special project grants. He [sic] may also expend such funds to further applicable scientific research within this state. (Emphasis added.)

Thus, if the monies received qualify as special project grants, they may be placed in a special fund.

On the other hand, A.R.S. § 36-139 provides:

A. The department of health services may charge fees for:

1. Rental of films and film strips.
2. Laboratory tests.

B. The amount of the fees charged for such services shall not exceed the cost to the department of rendering them, and all fees shall be remitted, at least once each month, to the state treasurer and placed in the general fund. No rental or laboratory fee shall be charged to or collected from a county, city, town, school, school district or any political subdivision thereof. (Emphasis added.)

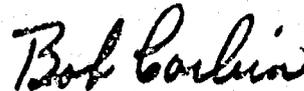
This section explicitly specifies the disposition of fee income for laboratory tests. Therefore, if monies received from IHS or the Arizona Lung Association for laboratory testing services provided by the state laboratory are fees within the contemplation of § 36-139.B, rather than a special project grant as contemplated by A.R.S. § 36-132.B, they must be deposited in the general fund. The characterization of the monies necessarily depends upon the terms of the agreement under which they are received.

Dr. James E. Sarn
December 30, 1981
Page 3

The third question involves the transfer of funds from other DHS accounts to support the cost of providing these laboratory services to IHS. Section 35-173 of the Arizona Revised Statutes specifies the conditions upon which such transfers may be made. Upon application the Assistant Director of Finance, Department of Administration, may approve fund transfers. Those transfers involving personal services or employee-related expenditures must, in addition, be recommended by the Joint Legislative Budget Committee. Assuming appropriate justification can be made, we see no reason why you could not transfer available funds to meet costs encountered by the state laboratory to provide testing services purchased by the Indian Health Service. Since your agency is frequently involved in arranging such transfers, we see no purpose in detailing its mechanics in this opinion.

Your final question concerns the applicability of Ch. 321, 1981 Ariz. Sess. Laws, popularly referred to as the Free Enterprise Act, to laboratory testing services rendered to IHS. The Private Enterprise Review Commission, established by Section 13 of the Act, is currently reviewing the proposed legislation and hopefully will provide definitive standards by which we both may be guided.

Sincerely,



BOB CORBIN
Attorney General

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