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Robert K. Corbin

July 12, 1990

Mr. Charles L. Miller, Director
Arizona Department of Transportation
206 South Seventeenth Avenue
Phoenix, Arizona 85007

Re: I90-063 (R90-071)

Dear Mr. Miller:

You have asked the date which the Arizona Department of Transportation (ADOT) must use when calculating the allocation and distribution of Highway User Revenue Funds (HURF) from the 1990 decennial population figures. We conclude that ADOT may not use figures from the 1990 decennial census until those figures have been officially determined by the United States Department of Commerce. When ADOT receives the officially determined census figures for 1990, to perform the calculations prescribed by A.R.S. § 28-1598(R)(3) ADOT must use the population figures as of the date established for the population in the census. Thus, ADOT must continue to use 1980 census figures in arriving at HURF distributions to be made in 1990 until the 1990 decennial census figures have been certified. Once the 1990 census figures have been officially determined, prior HURF allocations must be adjusted to account for differences between 1980 and 1990 population figures pursuant to the provisions of A.R.S. § 28-1598(G). See A.R.S. § 28-1501.02; see also Ariz. Att'y Gen. Op. No. 180-34.

HURF and the expenditure of these funds are given special recognition in the Arizona Constitution. Ariz. Const. art. IX § 14. HURF allocations, used to finance eligible expenditures, become available to the state, counties, incorporated and unincorporated cities and towns based on population and motor vehicle fuel sales. A.R.S. § 28-1598(C),(D),(E). With respect to motor vehicle fuel sales, a portion of the formula prescribed by A.R.S. § 28-1598

rests upon estimated and actual motor vehicle fuel consumption and sales. A.R.S. § 28-1598(E)(2), § 28-1598(E)(3)(b). Actual sales of motor vehicle fuel and the calculation of the taxes derived from such sales is accomplished by means of records and reports prepared and presented to ADOT by distributors and other motor vehicle fuel vendors. See A.R.S. § 28-1595 (definition of HURF).

The population figures, determined according to the latest decennial figures, and motor vehicle fuel sales, when finally calculated, combine to enable ADOT to calculate and make adjustments as necessary to the allocation and distribution of HURF. A.R.S. § 28-1598(F),(G). ADOT must, when adjusting allocations and distributions pursuant to A.R.S. § 28-1598(G), use "the population determined in the most recent United States decennial census or the most recent special census as provided in § 28-1501.02." A.R.S. § 28-1598(R)(3). See Ariz. Att'y Gen. Op. No. 180-34. You asked whether the statute requires use of population figures as of the date the decennial census is certified by the United States Department of Commerce or as of the date by which the population was established according to the census.

We are required to give the words of a statute their ordinary and common meaning if they sensibly express the intention of the Legislature. State v. Wise, 137 Ariz. 468, 470 n.3, 671 P.2d 909, 911 n.3 (1983). Using this rule of construction, we conclude that, for purposes of section 28-1598(R)(3), ADOT must use the population figures as of the date that the population was determined to exist according to the United States decennial census. Thus, ADOT must continue to use 1980 census figures in arriving at HURF distributions to be made in 1990 until the 1990 decennial census figures have been certified. Once the 1990 census figures have been officially determined, prior HURF allocations must be adjusted to account for differences between 1980 and 1990 population figures pursuant to the provisions of A.R.S. § 28-1598(G), which provides, in pertinent part, as follows:

If the department [of Transportation] determines that any of the amounts allocated and distributed as provided in this section during the preceding twenty-four months are incorrect, the department shall adjust future monthly allocations to correct any overages or shortages as provided in this subsection.

...

Therefore, if the 1990 census fixes the population as of April 1, 1990, but the figures are not released until June 5,

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1992, ADOT must continue to use the 1980 or special census figures until the 1990 figures have become official. Because A.R.S. § 28-1598(G) contains a twenty-four month limit beyond which adjustments may not be made, ADOT may recalculate HURF allocations for the twenty-four preceding months only and not to the date on which the census figures were officially fixed, if that date is more than twenty-four months preceding release of the census figures.

Sincerely,



BOB CORBIN
Attorney General

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