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September 7, 1990

Judith Allen
Clerk of the Court
Superior Court of Arizona
P.O. Box 13680
201 West Jefferson
Phoenix, Arizona 85004-9998

Re: I90-075 (R90-055)

Dear Ms. Allen:

You asked whether the Child Support Enforcement Administration in the Department of Economic Security may preclude the Maricopa County Clerk's Office from receiving incentive payments that are paid to the state by the United States government while the Clerk's office contracts with the State to provide the state child support enforcement services. We conclude that the CSEA may not declare the Clerk's office ineligible to receive a portion of the incentive payments paid to the state by the federal government so long as the clerk renders child support enforcement services to the State.

Pursuant to 42 U.S.C. § 654(3), each state must have a single and separate organizational unit (IV-D agency) to administer its child support enforcement program. In Arizona, the IV-D agency is the Child Support Enforcement Administration (CSEA), a division of the Arizona Department of Economic Security (DES). See A.R.S. §§ 41-1954(A)(1)(c), (8) and 46-406. As part of its statewide administration responsibilities, the CSEA offers to contract with each county for provision of local child support enforcement services. The level of child support services provided by CSEA varies from county to county, depending on the level of services provided by the county under its contract. In each county providing full services, the county attorney represents the CSEA in enforcing child support obligations before the superior court. In Maricopa County and other counties which choose not to

provide full services, the Attorney General represents the CSEA in establishing and enforcing child support obligations.

To encourage states to operate their child support enforcement programs in a cost-effective and efficient manner, Congress enacted 42 U.S.C. § 658, which provides for incentive payments by the federal government to individual states based on child support payments collected by the state "which would otherwise represent the Federal share of assistance [AFDC] paid to families of the absent parent" under Title IV-A of the Social Security Act. 42 U.S.C.A. § 658(a)(1983).

In 1984, Congress amended the incentive payment statute to provide:

In order to encourage and reward state child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, . . . the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State . . . an incentive payment in an amount determined under subsection (b) of this section.^{1/}

42 U.S.C. § 658(a).

Pursuant to 42 U.S.C. § 654, each IV-D agency must share a portion of its incentive payments with any local political subdivisions that participate in the costs of carrying out the child support enforcement program. That statute provides, in pertinent part, as follows:

§ 654. State plan for child and spousal support

A State plan^{2/} for child and spousal support must-

(22) in order for the state to be eligible to receive any incentive payments

^{1/}The amount of incentive payment is determined based on separate calculations for AFDC and Non-AFDC collections over total administrative costs. 42 U.S.C. § 658(b),(c).

^{2/}A State Plan is a document prepared by the state setting forth how the child support enforcement program is to be organized and administered in that state. 42 U.S.C. § 654; 45 C.F.R. §301.10

under section 658 of this title, provide that, if one or more political subdivisions of the state participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

Effective July 1, 1989, the CSEA amended its incentive payment policy to limit incentive payments to those counties providing full child support enforcement services to establish paternity and the establishment, modification and enforcement of child support orders. The policy thus excludes from participation in the incentive payment program a county such as Maricopa County, which pays a portion of the costs of carrying out the child support enforcement in the county. ^{3/} You asked whether CSEA's incentive policy complies with the requirement of 42 U.S.C. § 654(22) that an incentive payment by the federal government to a state be shared with any political subdivision which participates in the costs of carrying out activities under the state child enforcement plan. We conclude that it does not.

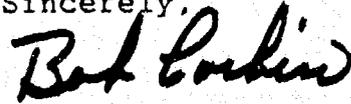
When interpreting statutes, the plain meaning of words used is controlling, absent a clearly expressed legislative intention to the contrary. Powell v. Tucson Air Museum

^{3/}The Intergovernmental Agreement between DES and Maricopa County, effective July 1, 1989, provides that the Clerk of Maricopa County Superior Court is required to receive, disburse, record and monitor child support payments pursuant to A.R.S. § 46-441. (Annex A, § 1.0 to the Intergovernmental Agreement). The county is reimbursed a portion of its costs in providing these services by DES (Annex B, § 2.0 of the Intergovernmental Agreement) from amounts received by the state from the federal government through federal financial participation pursuant to 42 U.S.C. § 655. Section 655 statute provides that each state is entitled to receive, for fiscal year 1990 and each year thereafter, 66% of its incurred costs for providing child support services. Under the Intergovernmental Agreement with Maricopa County, the state reimburses Maricopa County for approximately 66% of the county's total costs of providing child support activities by the Clerk's Office. The remaining 34% is provided from funds appropriated by the Maricopa County Board of Supervisors. (Attachment I to Annex B, § 2.0 of the Intergovernmental Agreement).

Foundation of Pima County, 771 F.2d 1309, 1311 (9th Cir. 1985). The plain meaning of subsection 22 is that political subdivisions of the state that expend their own funds in providing required child support activities under the state plan are entitled to receive an "appropriate share" of incentive payments received by the state. Furthermore, when ascertaining the meaning of a statute enacted by Congress, "a court will look to a statute's legislative history, if the statute is ambiguous, or to see whether Congress clearly expressed an intent contrary to the plain language of the statute." Alacare Home Health Services, Inc. v. Sullivan, 891 F.2d 850, 856 (11th Cir. 1990). The Senate Committee report on 42 U.S.C. § 654(22) confirms that Congress intended that the "appropriate share [of an incentive payment] will be determined by the state on the basis of each jurisdiction's contribution to the overall efficiency and effectiveness of the program." S. Rep. No. 387, 98th Cong., 2d Sess. 25, reprinted in 1984, U.S. Code Cong. & Ad. News, 2397, 2421. See also, 42 C.F.R. §§ 302.55 and 303.52(d)(1) (1989).

Our opinion is that to the extent that county funds are expended in providing required child support activities by the Clerk of Court's Office, Maricopa County is participating in the "costs of carrying out activities under the State plan" and is, therefore, entitled to receive an appropriate share of the federal incentive payments received by the state for the required state plan activities carried out by the Maricopa County Clerk of Court's Office. The determination of the "appropriate share" of incentive payments to be paid to Maricopa County should be determined by CSEA in accordance with the requirements of the incentive payment statute, 42 U.S.C. § 654(22), and applicable federal regulations.

Sincerely,



BOB CORBIN
Attorney General

BC:JMH:lpf