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Robert R. Corbin

September 28, 1990

Jerry N. LeCompte, President
and General Manager
State Workers' Compensation Fund
3031 North 2nd Street
Phoenix, Arizona 85012

Re: I90-090 (R90-108)

Dear Mr. LeCompte:

You have asked whether the State Compensation Fund may procure Risk Management coverage from the State Department of Administration's Risk Management Division, in light of the provisions of Laws 1990 (2nd Reg. Sess.) Ch. 249 (H.B. 2583). We conclude that the State Compensation Fund may not procure such coverage.

The State Compensation Fund insures employers against certain liabilities and is under the "direct supervision" of a Board of Directors appointed by the Governor. A.R.S. § 23-981.01(A). The Board appoints the Manager of the State Compensation Fund, who has charge of its daily operations. A.R.S. § 23-981.01(B). The Manager administers the Fund, under the Board's authority, "without liability of the state beyond payment of losses sustained on account of the Fund." A.R.S. § 23-981(C).

The State Compensation Fund "shall be neither more nor less than self-supporting," and the Fund Manager is authorized to create "a catastrophe reserve" and other reserves "to meet anticipated and unexpected losses" by the State Compensation Fund. A.R.S. § 23-983(A). Such "losses" might well include losses due to liability actions arising from acts or omissions by the State Compensation Fund and its employees.

The effective date of H.B. 2583 is September 27, 1990. In Section 6 of that bill, the Legislature amended A.R.S. § 23-986, by adding the following provision to paragraph E of that statute:

The operations, transactions and affairs of the State Compensation Fund are exempt from the following provisions:

. . . .

5. Title 41, Chapter 3.1.

(Emphasis supplied). You have asked whether the term "exempt" means that the State Compensation Fund is prohibited from obtaining Risk Management coverage pursuant to Title 41, Chapter 3.1 of the Arizona Revised Statutes, in view of the provisions of A.R.S. § 41-621.

Words and phrases used in a statute are given their ordinary and common meaning unless the context of the statute requires otherwise. State v. Wise, 137 Ariz. 468, 470 n.3, 671 P.2d 909, 911 n.3 (1983). The meaning of the term "exempt," as used in the context of the statute, is "Free or released from some liability to which others are subject: excepted from the operation of some law or obligation: not subject to: not liable to" Webster's Third New International Dictionary 795 (1976).

Using this common meaning of the term "exempt," the provisions of A.R.S. § 23-986, as amended by H.B. 2583, may be read to relieve the State Compensation Fund from its duties under the Risk Management Act, Title 41, Chapter 3.1, Arizona Revised Statutes. However, such an act by the Legislature would be meaningless because the State Compensation Fund has no duty under the Risk Management Act from which it may be relieved. See A.R.S. § 41-621. This apparent ambiguity may be resolved by reference to a statute's legislative history. See Martin v. Martin, 156 Ariz. 452, 457, 752 P.2d 1038, 1043 (1988); Kriz v. Buckeye Petroleum Co., 145 Ariz. 374, 377, 701 P.2d 1182, 1185 (1985). The statute's legislative history may be shown by testimony presented to a legislative subcommittee. See, e.g., State v. Lammie, ___ Ariz. ___, ___, 793 P.2d 134, 136 (App. 1990); Boulware v. Carbaial, 138 Ariz. 118, 120, 673 P.2d 316, 318 (App. 1983).

A review of the legislative history regarding A.R.S. § 23-986 indicates that the intent of this statute was to require the State Compensation Fund to obtain its own insurance outside of the State self-insurance program. Testimony before the House Committee on Commerce, on February 19, 1990,

illustrates this point:

He [Mr. LeCompte] said this bill would also require the State Fund to provide certain operating services such as: (1) banking; (2) obtaining its own insurance outside of the State self-insurance program As to physical impact, this bill requires no funding from the General Fund and will, in fact, save the funds now being expended on such services as personnel and Risk Management. Any additional expenditures, he said, would be offset by increased efficiency. In summary, he said, this bill carried zero cost to Arizona taxpayers and employers and is created to protect Arizona's employees from the impact of on-the-job injuries.

Minutes, Arizona House of Representatives, Committee on Commerce, (February 19, 1990, at page 5) (emphasis supplied).

Also, you have noted that A.R.S. § 41-621 requires that the Department of Administration "shall" obtain insurance or self-insurance against losses incurred by the various agencies and employees of State government. The State Compensation Fund is such an agency or department of the State government. See Evertson v. Industrial Commission, 117 Ariz. 378, 383, 573 P.2d 69, 74 (App. 1977). Consequently, there would appear to be a conflict between the requirements of section 41-621 and the exemption from Risk Management coverage created in H.B. 2583. However, H.B. 2583 was enacted subsequent to the enactment of A.R.S. § 41-621. Generally, when two statutes apparently conflict, we must construe the statutes in harmony, noting that the more specific and most recent statute controls over the provisions of the other. Baker v. Gardner, 160 Ariz. 90, 101, 770 P.2d 766, 769 (1988) ("[W]hen two statutes truly conflict, either the more recent or more specific controls.") In our opinion, the more specific provisions of H.B. 2583 demonstrate the Legislature's intent to exempt Risk Management from covering the State Compensation Fund.

Based upon the language and statutory history of A.R.S. § 23-986, our opinion is that the Arizona Department of Administration has no statutory authority to provide Risk Management coverage to the State Compensation Fund on and after September 27, 1990, which is the effective date of H.B. 2583.

Sincerely,



BOB CORBIN
Attorney General