



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert W. Corbin

MARCH 9, 1981
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ARIZONA ATTORNEY GENERAL

INTERAGENCY:

Mr. Larry Landry, Executive Director
Office of Economic Planning
and Development
Room 505, Executive Tower
1700 West Washington
Phoenix, Arizona 85007

Re: I82-033 (R81-068)

Dear Mr. Landry:

You have asked what role regional Councils of Government (COGs) may play in administering federal funds granted under Section 18 of the Rural Transportation Program. You specifically ask whether COGs may plan for coordination, coordinate, and provide technical assistance to existing providers of local transportation; and to what extent COG employees may actively participate in transportation systems, by serving as dispatchers or agents.

A.R.S. § 40-1152.E states:

Any county, city or town or a nonprofit corporation created by such units of government may accept grants, contributions, or loans from this state or the United States, or any instrumentality thereof, for the purpose of financing the acquisition, construction, improvement, operation and maintenance of a public transportation service system directly or by contract with a private party, common motor carrier or public service corporation.

Inasmuch as the COGs are nonprofit corporations created by governmental entities, they are governed by A.R.S. § 40-1152.E.

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Your concern is based on the constraint imposed on the COGs by A.R.S. § 40-1152.F, that prohibits the COGs from providing public transportation services or operating such services contrary to the provisions of A.R.S. § 9-519:

Nothing contained in this article shall permit or be construed to permit a regional council of governments or a regional planning agency created pursuant to a joint exercise of powers agreement or pursuant to nonprofit corporation statutes to provide public transportation services nor to operate such services contrary to the provisions of § 9-519. (emphasis added) 1/

The qualifications provided by A.R.S. § 9-519 are as follows:

A. When territory within or without the corporate limits of a municipal corporation is being adequately served by a common carrier of passengers under authority of law, the municipal corporation shall not engage in business as a common carrier of passengers over the route or routes or within the territory being served by the common carrier.

B. It is declared as the public policy of this state that where a municipal corporation engaged in the business of a common carrier of passengers is adequately serving a territory over a route or routes between fixed termini, the corporation commission shall not be authorized or empowered to grant a franchise or certificate of convenience and necessity to a common carrier of passengers over the route served by the municipal corporation.

The recent deregulation of motorcarriers (Ariz. Const. art 15, §10) obviously nullifies the effect of subsection (B) after July 1, 1982. We think it also nullifies the prohibition

1. Paragraph F is ambiguous in that it is unclear whether the phrase "contrary to the provisions of § 9-519" modifies only "operate" or both "operate" and "provide." Interpreting the phrase to modify only "operate" is unreasonable because the provision of transportation services will naturally include the operation of those services.

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appearing in subsection (A). Because, after July 1, 1982, there will no longer exist both the statutory category of common carriers of passengers regulated "under authority of law", and the division of territories in which they may serve, the municipal corporation, and thus, COGs, have nothing from which to be prohibited.

Because the A.R.S. § 9-519 limitations on operation of local transportation systems are rendered ineffective in light of deregulation, COGs may provide both planning services to and active participation in local transportation systems.

Sincerely,



BOB CORBIN
Attorney General

BC:LPS:lm