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January 3, 1991

The Honorable Pat Wright, Chairman
Joint Legislative Budget Committee
1716 West Adams
Phoenix, Arizona 85007

The Honorable Ray Rottas
State Treasurer
1700 W. Washington
Phoenix, Arizona 85007

Re: I91-001 (R90-160)

Dear Chairman Wright and Mr. Rottas:

You have asked whether the initial distribution of twenty million dollars of State lottery monies pursuant to Proposition 200 (the Heritage Fund Initiative) must be made in the current fiscal year or whether the transfers may be made in fiscal year 1991-1992, the first full fiscal year following its enactment.^{1/} Second, you asked whether the distribution of twenty million dollars from the State lottery fund, as required by the initiative, will divert anticipated lottery revenues from the general fund for the support of general fund appropriations and thereby invalidate the current year's appropriations for the operation of the government. Third, you asked whether any action would be required by the Legislature, the Governor or the State Treasurer should we conclude that the initial transfers may be deferred until the fiscal year which commences on July 1, 1991. For reasons which follow, we conclude that the initial Heritage Fund Initiative distributions must occur in the current fiscal year and that the Heritage Fund Initiative did not invalidate any appropriations for fiscal year 1990-1991. Therefore, the answer to your third question is moot.

The Heritage Fund Initiative amended the Arizona State Lottery Act, A.R.S. § 5-501 to -525, to provide that twenty million dollars of the State lottery fund shall be deposited

1. The State's fiscal year commences on the first day of July. Ariz. Const. art. IX, § 4.

each fiscal year into two separate funds of ten million dollars each. The amendment provides as follows:

of the monies remaining in the State Lottery Fund each fiscal year after appropriations and deposits authorized in subsections A, B and C of this section, ten million dollars shall be deposited in the Arizona State Parks Board Heritage Fund established pursuant to § 41-502 and ten million dollars shall be deposited in the Arizona Game and Fish Commission Heritage Fund established pursuant to § 17-297.

A.R.S. § 5-522(D).

The Heritage Fund Initiative also created the Arizona Game and Fish Commission (Game and Fish) Heritage Fund, A.R.S. § 17-297, and the Arizona State Parks Board (Parks Board) Heritage Fund, A.R.S. § 41-502. The funds are not subject to appropriation and the unexpended monies of the funds may not revert to the general fund. A.R.S. § 17-297(B), (C); A.R.S. § 41-502(B), (D). The funds are exempt from the provisions of A.R.S. § 35-190 relating to lapsing of appropriations. A.R.S. § 17-297(C); A.R.S. § 41-502(D). The intent of the people who enacted the Heritage Fund Initiative is expressed in the following "Declaration of Policy:"

Section 1. Declaration of Policy

A. The people of Arizona believe it is in the best interest of the general economy and welfare of Arizona and its citizens to set aside adequate State funds on an annual basis to preserve, protect and enhance Arizona's natural and cultural heritage, wildlife, biological diversity, scenic wonder and environment and provide new opportunities for outdoor recreation in Arizona.

B. It is the intention and desire of the people of Arizona in enacting this statute by initiative that the funds provided hereby are in addition to and separate from other funds that are now and shall be annually appropriated by the Legislature.

In Arizona, the people may, by initiative, appropriate public funds because the legislative authority of the State is vested in both the legislature and the people. Ariz. Const.

art. IV, pt. 1, § 1;^{2/} Ariz. Const. art. XXII, § 14;^{3/} Adams v. Bolin, 74 Ariz. 269, 284, 247 P.2d 617, 627 (1952); Ariz. Att'y. Gen. Op. 181-022. Moreover, the people are not limited by some of the Constitutional constraints which apply solely to the Legislature in its carrying out its functions. See, e.g. Ariz. Att'y Gen. Op. 181-022, n.13 (Ariz. Const. art. IX. § 17, limits only the Legislature but not the people from appropriating revenues in excess of 7% of the total personal income of the State for that fiscal year).

The Arizona Supreme Court has compared the legislative powers of the people to the legislative powers of their elected representatives:

It is crystal clear that in adopting the [referendum and initiative] provisions of our Constitution the people of this state meant to reserve to themselves without the possibility of legislative interference the supreme power in legislative matters, and meant that the legislature occupy a secondary position in this field of government.^{4/}

(footnote added) Croizer v. Frohmiller, 65 Ariz. 296, 298-99,

^{2/} Ariz. Const. art. IV, pt. 1 § 1 provides in pertinent part: "The legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature...."

^{3/} Ariz. Const. art XXII, § 14 provides: "Any law which may be enacted by the Legislature under this Constitution may be enacted by the people under the Initiative. Any law which may not be enacted by the Legislature under this Constitution shall not be enacted by the people."

^{4/} In a later case, however, the Arizona Supreme Court made it clear that under the Constitution, the people's power of initiative may be subject to the Governor's veto and legislative amendment. The Constitution provides that "[t]he veto power of the Governor or the power of the Legislature to repeal or amend, shall not extend to initiative or referendum measures approved by a majority vote of the qualified electors." Ariz. Const. art IV, pt. 1, § 1(6) (emphasis added). By negative implication, and as interpreted by Adams v. Bolin, 74 Ariz. at 269, 247 P.2d at 628, the Heritage Trust Initiative may (footnote continued on page 4)

179 P.2d 445, 446 (1947). Therefore, we conclude that the people have the power to appropriate public monies independently of the Legislature.

In interpreting a statute, the fundamental rule of construction is to give effect to the intent of the Legislature or, in the case of initiative, to the intent of the people. See, e.g., Mardian Construction Co. v. Superior Court, 113 Ariz. 489, 492, 557 P.2d 526, 529 (1976). Toward that end, the language of the statute is the best and most reliable index of its meaning, and when clear and unequivocal, the plain language determines the correct construction. Arizona Sec. Center, Inc. v. State, 142 Ariz. 242, 689 P.2d 185 (Ct. App. 1984); Arizona Lotus Corp. v. City of Phoenix, 136 Ariz. 22, 25, 663 P.2d 1013, 1015 (Ct. App. 1983).

The plain language of the Heritage Fund Initiative provides that the Heritage Fund deposits will begin in the current fiscal year. There is no language in the initiative, the people's Declaration of Policy nor in the election Publicity Pamphlet itself to infer that the people intended to defer the initial Heritage Fund deposits to the 1991-92 fiscal year. The "Declaration of Policy" gives a present effect to the Heritage Funds deposits by providing that the funds

are in addition to and separate from other funds that are now and shall be annually appropriated by the legislature.

(Emphasis added.)

By using the words "now . . . appropriated," the people plainly provided that the initial deposits would take effect in the current fiscal year.^{5/} To ignore the use of the word "now" in the Declaration of Policy would impermissibly render use of the word void or superfluous. Marlar v. State, 136 Ariz. 404, 666 P.2d 504 (App. 1983).

Furthermore, upon reading the Heritage Trust Initiative provisions together with the relevant portions of the Lottery Act, we conclude that the initiative requires the

(Footnote 4/ continued) be amended by the Legislature because it was approved by less than a majority of the qualified electors or registered voters. The Secretary of State's office has informed us that 34.8% of the qualified electors voted for the initiative as distinguished from 62.1% "yes" votes of those voting on the measure. Thus, the initiative was approved by less than a majority of the qualified electors.

^{5/} The Heritage Fund Initiative was approved by the voters on November 6, 1990 and it became law on November 27, 1990 upon proclamation by Governor Mofford. Ariz. Const. art. 4, pt. 1, § 1(5).

Heritage Fund deposits to commence in the current year. The lottery statute provides that monies from the lottery fund "shall be expended only for the following purpose and in the order provided", A.R.S. § 5-522(A), and that the newly enacted Heritage Fund deposits shall be made "each fiscal year" after the other enumerated deposits are made. A.R.S. § 5-522(D) (emphasis added).

The first of these deposits is for lottery expenses and economic development. A.R.S. § 5-522(A). Second and third in order are deposits to the local transportation assistance fund and the county assistance fund. A.R.S. § 5-522(B),(C). The fourth required deposit is to the Heritage Funds. A.R.S. § 5-522(D). When subsection (D) is read together with subsection (A), the amended lottery act now requires that, of the monies remaining "each fiscal year" in the state lottery fund, twenty million dollars "shall be deposited" in the Heritage Funds after the "appropriations and deposits authorized in subsections (A), (B) and (C)" (emphasis added). Finally, after the appropriations and deposits authorized above, all of the remaining lottery monies "shall be deposited in the state general fund." A.R.S. § 5-522(E). When read as a whole, the statute makes the "remaining monies" available for legislative appropriation each fiscal year only after the Heritage Funds have received their deposits.^{6/} Conversely, if we read the foregoing provisions to allow the initial deposits to the Heritage Funds to be deferred until the first full fiscal year after the initiative became law, we would have to add to or inflate the words which appear in the law. This we cannot do under the principles of statutory construction. Union Rock & Materials Corp. v. Scottsdale Conf. Ctr., 139 Ariz. 268, 678 P.2d 453 (App. 1983).

The Publicity Pamphlet published by the Secretary of State may also be used to assist in construing the intent of the people. American Bus Lines, Inc. v. Ariz. Corp. Com'n, 129 Ariz. 595, 597, 633 P.2d 404, 406 (1981). We believe that the information provided to the voters in the Publicity Pamphlet also supports our conclusions and that the people were informed of the possible impact of the initiative on the State's finances.

The Legislative Council presented written arguments favoring and opposing the Heritage Fund Initiative in the Publicity Pamphlet. The opposing argument included the

6. We are informed by the State Treasurer that the deposits required by A.R.S. § 522(A),(B) and (C) were fully funded on November 6, 1990.

following language:

Proposition 200 would remove \$20 million from the state lottery fund each year. The money would otherwise go to the general fund to appropriate for more deserving programs. The Legislature will have to choose between two unpleasant alternatives in order to maintain current funding levels. \$20 million would have to be cut from the budgets of existing state agencies or taxes would have to be raised by \$20 million.

Page 65 of Publicity Pamphlet (emphasis added). We believe that the foregoing language informed the people of the initiative's potential impact and current effect.

As a final matter, we consider your concern that the distribution of monies to the Heritage Funds during the current fiscal year might invalidate the current year's general appropriations for the support and operation of the government. The people by appropriating the lottery monies to the Heritage Funds in the fiscal year did not invalidate the current year's general appropriations that established the 1990-1991 budget. Nor did the people reduce or "ex-appropriate" any monies which were previously appropriated by the Legislature. When it established the 1990-91 budget, the Legislature estimated that the lottery would provide ninety million, two hundred thousand dollars to the general fund after satisfying the payments required by A.R.S. § 5-522(A)-(C). If, in fact, the deposits now required by the Heritage Fund Initiative have the effect of reducing the expected revenues to the general fund, the effect is the same as if any other anticipated source of revenue falls off. When anticipated revenues exceed authorized expenditures, in order to achieve a balanced budget as required by the Arizona Constitution, the Legislature is authorized to take appropriate action to increase revenues or reduce expenditures. See Att'y Gen. Op. 187-013 respecting reducing appropriations.

In conclusion, we find no language on the face of the Heritage Trust Initiative, in the people's express Declaration of Policy or in the Publicity Pamphlet to suggest that the Heritage Fund deposits become operative in the first full fiscal year after adoption. On the contrary, we must conclude that the people intended to direct that the initial deposits would be made in the current fiscal year and that they were validly exercising their independent reserved power to spend public monies when they did so.

Very truly yours,



BOB CORBIN
Attorney General