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February 13, 1991

Mr. Douglas Norton,  
Auditor General  
2700 North Central Avenue  
Suite 700  
Phoenix, Arizona 85004

Re: I90-013 (R90-060)

Dear Mr. Norton:

By letter dated April 20, 1990 you asked whether authorized expenditures from a county's anti-racketeering revolving fund are subject to the Arizona Constitution's expenditure limitations. You have also asked whether the state's or a political subdivision's authorized expenditures from a county's anti-racketeering revolving fund are subject to the constitution's expenditure or appropriation limitations. Except as discussed below, we conclude that the expenditure or appropriation limits prescribed in the constitution govern expenditures from anti-racketeering revolving funds.

The creation of county anti-racketeering revolving funds is authorized by A.R.S. § 13-2314.03. Under the provisions of A.R.S. § 12-2314.03, subsections (B) and (C), the county anti-racketeering revolving fund ("CARF") consists of the following:

B. Any prosecution and investigation costs, including attorney's fees, recovered for the county as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of racketeering in Section 13-2301 subsection (B), paragraph 4 or Section 13-2312, whether by final judgment, settlement or otherwise, shall be deposited in the fund established by the board of supervisors.

C. Any monies obtained as a result of a forfeiture by the county attorney under this title shall be deposited in the fund established by this section. Any monies or other property obtained as a result of a forfeiture by any other agency of this state, a political subdivision of this state, or federal government may be deposited in the fund established by this section for the benefit of the agency or agencies responsible for the enforcement action to the extent of their contribution.

Under this frame work, a CARF receives money from three sources:

1. money received by judgment or settlement for prosecution and investigation costs;
2. money obtained as a result of a forfeiture by the county attorney; and
3. money deposited in the CARF as a result of forfeitures by other governmental entities.

The constitution impacts upon each of these sources of CARF deposits differently. Thus, each of these sources will be discussed, explaining the expenditure or appropriation limitations applicable pursuant to the constitution See Ariz. Const. art. 9 , §§ 17, 20.

First, monetary awards reimbursing a county for prosecution and investigation costs fall within the definition of "local revenues", which the constitution defines as:

[A]ll monies, revenues, funds, fees, fines penalties, tuitions, property and receipts of any kind whatsoever received by or for the account of a political subdivision or any of its agencies, departments, offices, boards, commissions, authorities, councils and institutions. . . ."

Ariz. Const. 9, § 20(3)(d).

The reimbursement of litigation expenses represents monies received by or for the account of the county. However, the constitution excludes from the definition of local revenues

[a]ny amounts received during a fiscal year as refunds, reimbursements or other recoveries of amounts expended which were applied against the expenditure limitation for such fiscal year or which were excluded from local revenues under other provisions of this subsection.

Ariz. Const. 9, § 20(3)(d)(xiii). Thus, if the initial expenditures for the prosecution and investigation had been subjected to the expenditure limitation in a fiscal year, then the recovery of these expenses during that same fiscal year would be excluded from the definition of local revenues.

The second source of CARF funds result from forfeitures by the county attorney. These CARF additional deposits also fall within the definition of "local revenues". Ariz. Const. 9, § 20(3)(d). None of the exclusions from local revenues apply to these receipts. *Id.* Consequently, any CARF expenditures by a county of money obtained as a result of a forfeiture by the county attorney which are not received to reimburse a county for its prosecution and investigation costs are subject to the constitution's expenditure limitation.

Third, money may be deposited into a county's CARF by governmental entities other than a county. A.R.S. § 13-2314.03(C). Such money is deposited into the CARF "for the benefit of the agency or agencies responsible for the enforcement action . . . ." *Id.* Money held on behalf of another governmental entity falls within the definition of local revenues, but is excluded from the expenditure limitations of the County responsible for the CARF. *See* Ariz. Const. art. 9, § 20(3)(d)(iii) (excluding from the definition of local revenues "[a]ny amounts or property received by a political subdivision in the capacity of trustee, custodian or agent.") Because the county holds such funds for the benefit of other governmental entities, and not for its benefit, expenditures of such monies are excluded from the expenditure limitation of the county responsible for the CARF into which the monies were placed by the other governmental entities. *See Mountain States Legal Foundation v. Apache County*, 146 Ariz. 479, 706 P.2d 1146 (App. 1985)

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Your second question asks whether CARF expenditures should be included within the expenditure limitation of a governmental entity other than the county managing the fund, such as the state or a political subdivision. See Ariz. Const. art. 9, § 20(3)(e) (defining "political subdivision" as "any county, city or town . . . ."). With respect to political subdivisions, money deposited into a county's CARF is received for the account of that political subdivision. A.R.S. § 13-2314.03(C). Thus, such deposits fall within the definition of local revenues. Ariz. Const. art. 9, § 20(3)(d). Consequently, a political subdivision's expenditure of money deposited into a CARF on its behalf is subject to the expenditure limitation applicable to the political subdivision, except as previously discussed in the context of reimbursed prosecution and investigation expenditures.

Although subject to different limitations than counties and political subdivisions, the State of Arizona is subject to similar spending limitations. See Ariz. Const. art. 9, § 17 (providing for limitations applicable to state appropriations of "state revenues"). The constitution defines "state revenues" to mean:

[A]ll monies, revenues, fees, fines, penalties, funds, tuitions, property and receipts of any kind whatsoever received by or for the account of the State or any of its agencies, departments, offices, boards, commissions, authorities, councils, institutions except as provided in this subsection.

Ariz. Const., art. 9, § 17(2)(a).

An examination of art. 9, § 17 of the constitution reveals that the state's expenditures of its share of CARF is subject to limitations consistent with those applicable to counties and political subdivisions with one exception. Ariz. Const. art. 9, § 17(2)(b)(vii) provides for an exclusion from state revenues for any:

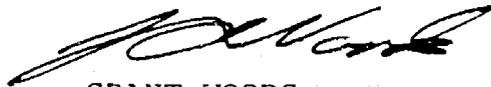
[A]mounts received as the proceeds of the sale, lease or redemption of property or as consideration for services or the use of property.

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Ariz. Const. art. 9, § 17(2)(b)(vii). This provision of the constitution does not limit the nature of the property sold or lease, the income from which may be excluded from the state's appropriation limitation. Consequently, the proceeds from the sale or leased of the property forfeited to the state would be excluded from the appropriation limitation. Other monies in the account would be subject to the state's appropriation limitation.

Very truly yours,



GRANT WOODS  
Attorney General

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