



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE: 542-5025
TELECOPIER: 542-4085

May 16, 1991

Hon. Bev Hermon
Arizona State Representative
State Capitol - House Wing
1700 West Washington
Phoenix, AZ 85007

Re: I91-019 (R91-028)

Dear Representative Hermon:

You recently asked this office to review Att'y. Gen. Op. No. I90-063 relating to the distribution of Highway User Revenue Funds (HURF) based on the 1990 census.

Ariz. Att'y. Gen. Op. I90-063 concluded that ADOT must use the population figures included in the 1990 census as of the date established for the population in the census. According to this conclusion, ADOT would continue to use 1980 census figures for 1990 HURF distributions until the 1990 decennial census figures are officially determined at which time the 1990 HURF allocations would then be corrected pursuant to ARS §28-1598 (G),^{1/} based on the actual population existing in 1990 as reflected in the census population figures. We conclude that Ariz. Att'y. Gen. Op. I90-063 should be reversed as set forth below.

^{1/}The citation in Ariz. Att'y. Gen. Op. I90-063 on this point is to A.R.S. § 28-1598(G). However, this section was amended by both Laws 1990 (2nd Reg. Sess.) Ch. 371 and Laws 1990 (3rd Spec. Sess.) Ch. 2 to reletter this subsection as A.R.S. § 28-1598(H).

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A.R.S. § 28-1598 directs the Department of Transportation to allocate and the State Treasurer to distribute revenues of the Arizona Highway User Revenue Funds (HURF).

Many of these allocations and distributions of this section are based on population. A.R.S. § 28-1598(R)(3) provides that:

"Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in § 28-1501.02.^{2/}

The legislature did not specify the precise date after which the decennial census figures are to be used.

It is clear, however, that the 1990 United States census does not replace the 1980 census as the most recent decennial census until the final and official 1990 population count is issued. The final 1990 census data was issued to the President of the United States on December 31, 1990. Final population counts were issued to Arizona in January, 1991.^{3/} The most recent decennial census for purposes of HURF allocations and distributions occurring during 1990 was the 1980 census.

Although the 1990 decennial census issued in 1991 is based on a 1990 population count, it does not then follow that allocations and distributions done in 1990 must be based on 1990 population counts. Because of the ongoing nature of the census during 1990, it is not logical to conclude that 1990 population counts be used for 1990 distributions of HURF. The

^{2/}A.R.S. § 28-1501.02 provides that the results of a special census shall be used on July 1 of the year following the special census.

^{3/}These "final" population counts are subject to possible correction for undercount or overcount, however. The Department of Commerce, Bureau of the Census, will publish any corrected amounts no later than July 15, 1991.

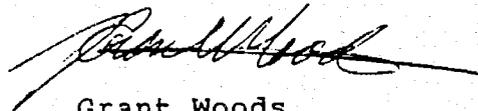
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legislature's simple instruction to use the most recent decennial census should be heeded. Statutes are to be given a sensible construction that will accomplish legislative intent and at the same time avoid an absurd result. State v. Arthur, 125 Ariz. 153, 608 P.2d 90.(App. 1980). To conclude that 1990 HURF allocations were incorrect simply because they were based on 1980 census population figures is not sensible or reasonable.

As a result, 1990 allocations and distributions were properly based on 1980 census figures and do not require any adjustment of future monthly allocations pursuant to A.R.S. § 28-1598(H). Should the Department of Commerce issue corrections to the 1990 census figures issued in January, 1991, then the Department of Transportation should determine whether any allocations or distributions made after January, 1991 based on the 1990 census are similarly in need of correction. If so, the adjustment procedures set forth in A.R.S. § 28-1598(H) should be followed.

Since the proportions of allocations and distributions of HURF revenues are made on a fiscal year basis pursuant to A.R.S. § 28-1598(B) through (F), the 1990 census figures issued in 1991 would not actually be used to determine population for this purpose until July 1, 1991. It has, in fact, been the long standing practice to commence using new census figures on July 1 of the year following the taking of the census. See State ex rel. Arizona Department of Revenue v. Magma Copper Co., 138 Ariz. 322, 674 P.2d 876 (App. 1983) (Acquiescence in an administrative construction for a long period of time will not be disturbed unless it is manifestly erroneous.)

Sincerely,



Grant Woods
Attorney General

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