

STATUTES CITED IN 93-008

ARS 15-271
ARS 15-271(B)
ARS 15-271(C)
ARS 15-271(C)(4)
ARS 41-1001(12)
ARS 41-1021



STATE OF ARIZONA

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December 22 , 1993

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Re: I93-008 (R93-012)

Dear Mr. Smith:

You have asked this office to review your letter of September 13, 1993 to David L. Hammond, Business Manager of the Chinle Unified School District. That letter analyzes the legal effect of "USFR Memorandum No. 95" and concludes that, since it was not enacted as a rule, it has no binding effect. We revise your letter as set forth in the following analysis and conclude that the memorandum does not provide a statement of general applicability affecting the public, and therefore need not be adopted through the formal rulemaking process in order to be applicable to school districts.

Section 15-271, A.R.S., requires that the Auditor General, acting in conjunction with the State Board of Education, prescribe a uniform system of financial records (USFR) for all school districts. Among other requirements, the USFR must "[p]rescribe methods for the apportionment of revenues, including apportionment of various revenues to maintenance and operations, capital outlay and adjacent ways." A.R.S. § 15-271(C)(4). In response to the statutory mandate, the Auditor General and the State Board of Education jointly issued a document entitled "USFR Memorandum No. 95," which prescribes methods for apportioning revenue as required by A.R.S. § 15-271(C)(4).

You have advised Chinle School District that, since neither the Auditor General¹ nor the Arizona Department of Education

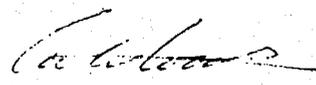
1. We do not opine on the applicability of the A.P.A. rulemaking procedure to the Auditor General.

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promulgated USFR Memorandum No. 95 through the rulemaking provisions of the Arizona Administrative Procedures Act, A.R.S. §§ 41-1021, et seq., it has no legal effect. We disagree. A rule is "an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(12). Several factors indicate that USFR Memorandum No. 95 is not a "rule," as defined by that section. First, the accounting procedures set forth in the memorandum are not of "general applicability." See Havasu Heights Ranch & Development Corporation v. State Land Department, 158 Ariz. 552, 764 P.2d 37 (App.), modified, 173 Ariz. 159, 840 P.2d 1024 (App. 1988). They pertain solely to school districts and apply only in the areas circumscribed by A.R.S. § 15-271(C). Second, the USFR is prescribed jointly by the State Board of Education and the Auditor General. In such a situation, it is unclear who would prescribe the rule: the Arizona Department of Education or the Auditor General? See A.R.S. § 15-271(B). The APA seems to contemplate promulgation by a single agency. See A.R.S. §§ 41-1001, et seq. Third, although the language of A.R.S. § 15-271(B) is not clear on this point, the section seems to anticipate that the Auditor General and the State Board of Education will jointly prescribe a USFR "each fiscal year." Such time constraints are inconsistent with the relatively lengthy rulemaking process under the Administrative Procedures Act. This factor thus also indicates that adoption through the formal rulemaking process was not contemplated. Finally, USFR Memorandum No. 95 does not affect rights or procedures available to the public. See Havasu Heights, 158 Ariz. at 559, 764 P.2d at 44. Rather, the methods set forth in the memorandum concern internal management.

For the foregoing reasons, we conclude that the Auditor General, in conjunction with the State Board of Education, may, by an internal memorandum such as USFR Memorandum 95, prescribe methods for apportioning revenues for maintenance and operations, capital outlay, and adjacent ways, and may do so without having to resort to rulemaking under the Administrative Procedures Act.

Sincerely,


Grant Woods
Attorney General

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