

95-002

OPINION CITED IN 95-002
I93-008

STATUTES CITED

ARS 15-253

ARS 15-910

ARS 15-910(G)

ARS 15-271

ARS 15-271(C) (4)

ARS 15-271(C) (6) (b)



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

January 31, 1995

Gary L. Lassen, Esq.
Jennings, Strouss & Salmon, P.L.C.
Two North Central, 16th Floor
Phoenix, Arizona 85004

Re: I95-002 (R94-61a)

Dear Mr. Lassen:

Pursuant to A.R.S. § 15-253, we have reviewed your opinion to Dr. Carol Peck, Superintendent, Alhambra Elementary School District (the "District"), concluding that an amount equal to the cost of air conditioning devices, which the District has purchased to replace the evaporative cooling, is exempt from its capital outlay revenue limit in Arizona Revised Statutes Annotated ("A.R.S.") § 15-910(G). Because we disagree with your conclusion and your interpretation of A.R.S. § 15-910(G), we revise your opinion by replacing it with the following opinion.

In reliance upon the A.R.S. § 15-910(G) exemption, the District began a program to replace evaporative cooling at Alhambra Elementary Schools. Because the District believed that the energy-saving devices were exempt from the capital outlay revenue limit, the District did not seek funding for the new energy-saving devices through its major bond renovation project. The District thus asks whether the District is permitted to budget its purchase of new high efficiency air conditioning and energy management systems to replace the evaporative cooling system outside the capital outlay revenue limit under A.R.S. § 15-910(G).

Pursuant to A.R.S. § 15-910(G) (1992), a school district governing board could:

budget for the cost of purchasing energy saving devices, the amount of which is specifically exempt from the capital outlay revenue limit, provided that the energy saving device results in a documented reduction in utility expenditures in the

Gary L. Lassen, Esq.
January 31, 1995
Page 2

current year or a rebate in the current year, or both, in an amount equal to at least the cost of the energy saving device or the portion of the cost that is budgeted as provided in this subsection.

In House Bill 2312, the Legislature amended A.R.S. § 15-910 to delete the provisions relating to energy saving devices and services. 1994 Sess. Laws, Second Reg. Sess., Chap. 254, § 1. By session law, the Legislature provided that the costs of energy saving devices and services were entitled to exemption from the revenue control limit and the capital outlay revenue limit for fiscal years 1993-1994 through 1998-1999 if the conditions formerly contained in A.R.S. § 15-910(G) and other conditions in the session law were met. 1994 Sess. Laws, Second Reg. Sess., Chap. 254, § 2.

The Auditor General must prescribe a uniform system of financial records that mandates "methods for the apportionment of revenues, including apportionment of various revenues to . . . capital outlay" and provides information including "capital outlay expenditures." A.R.S. § 15-271(C)(4) and (6)(b). Pursuant to A.R.S. § 15-271, the Auditor General, acting in conjunction with the Department of Education, issued U.S.F.R. Memorandum No. 108 which prescribes the implementation of the budget exemptions created in A.R.S. § 15-910(G) and Section 2 of Laws 1994, Ch. 254. In his Memorandum, the Auditor General stated:

Districts that increased their FY 1993-94 general budget limit (GBL) for energy saving services and/or devices MUST SUBMIT the calculation of the documented reduction in utility expenditures with the FY 1993-94 annual financial report. The calculation must be based on actual data and NOT projected amounts and must disclose the FY 1993-94 usage for all relevant energy units (e.g., kilowatt hours, thermal units). The usage must be compared with the same type of energy usage for the three years prior to purchase of services or installation of devices, or appropriately less if there is not a three year history. The reduction in usage must then be converted to a dollar amount. The amount that was budgeted for the

Gary L. Lassen, Esq.
January 31, 1995
Page 3

energy saving service in excess of the revenue control limit (RCL) or budgeted for the energy saving device in excess of the capital outlay revenue limit (CORL), must not have exceeded the lesser of the documented dollar amount of the reduction in utility expenditures and rebate for purchase of energy saving services or devices or the cost of the energy saving service and/or device. In those cases where the amount budgeted in excess of the RCL and/or CORL was greater than the documented reduction in utility expenditures and rebate or the cost of the service/device, an overexpenditure may have resulted.

Apparently if the District uses actual data as required by U.S.F.R. Memorandum No. 108, the District is unable to show that the replacement of the evaporative cooling system results in a reduction of utility expenses. The District acknowledges that U.S.F.R. Memorandum No. 108 does not allow the utilization of energy-saving devices based upon projected savings comparing conventional roof-mounted air conditioning units with high efficiency air conditioning and energy management systems, but asks whether the Auditor General is correct in his interpretation of the statutory requirement of a documented reduction in utility expenditures.

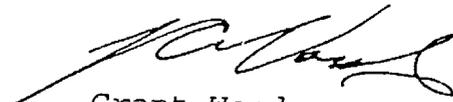
In our opinion, the Auditor General's construction of A.R.S. § 15-910(G) in U.S.F.R. Memorandum No. 108 is binding upon the District and is consistent with the language in A.R.S. § 15-910. The Auditor General may, by an internal memorandum such as U.S.F.R. Memorandum No. 108, prescribe methods for apportioning revenues for capital outlay without having to resort to rulemaking under the Administrative Procedures Act. Ariz. Att'y. Gen. Op. No. I93-008. An internal memorandum issued pursuant to A.R.S. § 15-271 is binding upon the Districts. *Id.* U.S.F.R. Memorandum No. 108, which was issued pursuant to the authority in A.R.S. § 15-271, is binding upon the District.

Moreover, the Auditor General's conclusion that under A.R.S. § 15-910(G) and Laws 1994, Chapter 254, Section 2, school districts must use actual data to show a reduction in utility expenditures is consistent with the language and purpose of those provisions. Those provisions allow districts to use the exemption only if "the energy saving device results in a documented reduction in utility expenditures in the current year

Gary L. Lassen, Esq.
January 31, 1995
Page 4

or a rebate in the current year or both. . . ." A.R.S. § 15-910(G) and Laws 1994, Ch. 254, § 2 (emphasis added). To authorize the energy-saving device exemption on the basis of projected savings comparing conventional roof-mounted air conditioning units with high efficiency air conditioning systems would sanction a practice under which a district might be unable to achieve budgeted savings. Accordingly, we conclude that U.S.F.R. Memorandum No. 108, as it interprets the requirement of "a documented reduction in utility expenditures" in A.R.S. § 15-910(G) and Laws 1994, Ch. 254, Section 2, is consistent with the language of those provisions.

Sincerely,



Grant Woods
Attorney General