



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

April 3, 1985

The Honorable Hal Runyan
State Capitol - Senate Wing
1700 West Washington
Phoenix, Arizona 85007

Re: I85-046 (R85-034)

Dear Senator Runyan:

You have asked whether the Office of Economic Planning and Development (OEPAD) and its successor as of July 1, 1985, the Department of Commerce (Department), are authorized to perform various tasks to enable the issuance in Arizona of tax exempt industrial development bonds. Your inquiry arises from the following fact situation.

In 1968 the Legislature enacted the Industrial Development Authority Revenue Bond Act¹ (the Act) which permits counties, cities and towns to create industrial development authorities (IDAs). IDA's are authorized to issue federal tax exempt municipal revenue bonds. A.R.S. §§ 9-1156 and 9-1171 et seq.

Recently, Congress enacted the Deficit Reduction Act of 1984 (Pub.L. 98-369), 98 Stat.494 (Pub.L. 98-369), which, among other things, limits the dollar amount of IDA bonds which may be issued by each state through state and local agencies. In other words, when bonds in face amounts totalling the dollar cap for Arizona have been issued in a given year, no further bond issues will be eligible for tax exempt status.

1. Codified as A.R.S. §§ 9-1151 through 9-1196.

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Pub.L. 98-369 provides a formula for allocating a state's cap amount among various state and local issuing agencies. However, Pub.L. 98-369 authorizes a governor or a state legislature to establish an allocation formula different from that contained in Pub.L. 98-369.

The Governor promulgated three executive orders prescribing the allocation of Arizona's cap amount for 1984. Executive Order No. 84-8, October 12, 1984; Executive Order No. 84-10, December 13, 1984; and Executive Order No. 84-11, December 24, 1984. Most recently, the Governor promulgated Executive Order No. 85-5 dated March 14, 1985,² establishing the allocation formula for the State's 1985 cap. Executive Order No. 85-5 designates the Office of Economic Planning and Development (OEPAD) to perform several administrative functions for the allocation process to serve until July 1, 1985, when OEPAD will be succeeded by the Department of Commerce.³ Executive Order 85-5 provides that these agencies will serve as a registry for requests and confirmations of particular allocations. In addition, Executive Order No. 85-5 authorizes OEPAD to collect a registry fee of \$200.00 per million dollars and a security fee based upon a percentage of the principal amount set forth in the confirmation of an allocation to a particular project.

As noted above, the Governor has authority under Pub.L. 98-369 until January 1, 1986, to direct the allocation of the State cap--at least until the legislature acts. By the terms of Executive Order No. 85-5, the Governor remains responsible for establishing the allocation policy and formulas. You have asked whether OEPAD and, after June 30,

2. As provided in Pub.L. 98-369, given that the Arizona Legislature is currently in session for over sixty days, the Governor's authority to allocate the State's cap amount expires on December 31, 1985, or sooner, if the Legislature enacts its own allocation formula. However, if the Legislature fails to enact such an allocation formula to be effective on or before January 1, 1986, the formula specified in Pub.L. 98-369 itself will govern allocation of Arizona's cap.

3. The Department was created by Laws 1984, Ch. 318, effective July 1, 1985, which also abolishes OEPAD.

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1985, the Department have statutory authority to perform the duties delegated to them by Executive Order No. 85-5. In particular, your inquiry focuses upon the terms of Executive Order 85-5 which purports to authorize OEPAD to collect fees and deposits and also asks us to determine if these monies can be utilized to pay for costs of administering the terms of the Executive Order 85-5. For the reasons set forth below, we do not find the requisite statutory authority to allow OEPAD and the Department to carry on these particular activities as contemplated by Executive Order No. 85-5 or to allow these agencies to utilize these monies for administrative expenses.

OEPAD

In creating OEPAD's predecessor, the legislature expressed its purpose:

Sec. 3. PURPOSES. The purposes and objectives of the [Arizona development] board shall be to attract tourists, new residents and new commercial industries to Arizona, and generally to promote such tourist, population and industry development of the state; to advertise and further the development and use of the resort and recreational advantages and facilities of all areas of Arizona on a year-round basis; to explore and publicize Arizona's facilities, resources and possibilities in order to attract new capital and new industries to the state.

Laws 1954, Ch. 113, § 3 (chapter 113).

The duties of OEPAD relevant to this inquiry are prescribed in A.R.S. § 41-503, which provides in pertinent part:

B. The office of economic planning and development shall:

1. Formulate policies, plans and programs designed to effectuate the purposes of this article.

2. Stimulate and encourage all local, state, regional and federal

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governmental agencies, and all private persons and enterprises which have similar and related objectives and purposes, and cooperate with such agencies, persons and enterprises and correlate its plans, programs and operations with those of such agencies, persons and enterprises.

A.R.S. § 41-503.A.7 permits OEPAD to:

[a]ccept grants, matching funds and direct payments from public or private agencies for the conduct of programs which are consistent with the general purposes and objectives of this article.

In large measure the Department of Commerce will succeed OEPAD and inherit most of its duties on July 1, 1985. Laws 1984, Ch. 318 (chapter 318). The powers and duties of the Department are very similar to those of OEPAD:

A. The department shall:

1. Formulate policies, plans and programs designed to encourage orderly planning and stimulate economic activity in this state and to effectuate this chapter.

2. Stimulate and encourage all local, state, regional and federal governmental agencies, and all private persons and enterprises which have similar and related objectives and purposes, and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

* * *

A.R.S. § 41-1504.

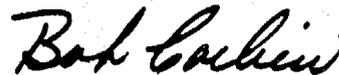
It is axiomatic that the powers and duties of an administrative office are to be measured by the statutes

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creating it. Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Board, 137 Ariz. 536, 540, 672 P.2d 201 (1983); Ayala v. Hill, 136 Ariz. 88, 90, 664 P.2d 238 (App. 1983). Administrative officers and agencies have no common law or inherent power. Ayala v. Hill, Cox v. Pima County Law Enforcement Merit System Council, 27 Ariz. App. 494, 556 P.2d 342 (1976). An administrative agency which is created for a special purpose has only limited powers and it can exercise no powers which are not expressly or impliedly granted. Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Board.

Based upon these fundamental principles, we think that, absent express legislative authorization, neither OEPAD nor the Department are authorized to conduct those activities contemplated by Executive Order No. 85-5, such as collection of fees and security deposits. Moreover, even if these agencies were authorized to collect these monies, we do not think that the pertinent statutes authorize these agencies to utilize those funds for administrative expenses.

Sincerely,



BOB CORBIN
Attorney General

BC:CSP:lfc