



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

December 1, 1988

Dr. Eddie F. Brown, Director  
Arizona Department of Economic Security  
1717 West Jefferson  
Phoenix, Arizona 85005

Re: I88-121 (R86-175)

Dear Dr. Brown:

Your predecessor in office asked numerous questions relating to the interpretation and application of A.R.S. § 35-181.03 relating to the audit of nonprofit corporations receiving state monies. These questions will be addressed in the order presented.

1. What is meant by the term "state assistance"?

The term "state assistance" is found in A.R.S. § 35-181.03 which provides:

A. All state contracts with nonprofit corporations for assistance shall include requirements concerning financial and compliance audits.

B. Each nonprofit corporation that receives in excess of one hundred thousand dollars in state assistance in any fiscal year shall file for each such fiscal year at the corporation's expense with the grantor agency either audited financial statements prepared in accordance with federal single audit regulations or financial statements prepared in accordance with generally accepted accounting principles audited by an independent certified public accountant.

C. Each nonprofit corporation receiving fifty thousand dollars to one hundred thousand dollars in state assistance in any fiscal year shall file biennially at the corporation's expense with the grantor agency either an audited annual financial statement for the most recently completed even-numbered year prepared in accordance with federal single audit regulations or a financial statement for the most recently completed even-numbered year prepared in accordance with generally accepted accounting principles audited by an independent certified public accountant.

D. Each nonprofit corporation receiving less than fifty thousand dollars in state assistance in any fiscal year shall comply with contract requirements concerning financial and compliance audits contained in contract agreements governing such programs.

E. As used in this section, "nonprofit corporation" means an organization defined by § 10-1004.

In each instance where the term "state assistance" is utilized in the above-referenced statute there also is a reference to an amount of money. See, e.g. A.R.S. § 35.181.03(A) ("[O]ne hundred thousand dollars in state assistance").

When a word used in a statute is ambiguous or vague, its meaning may be made clear and specific by considering the company in which it is found and the meaning of the terms which are associated with it.

Southern Pacific Co. v. Corporation Commission of the State of Arizona, 39 Ariz. 1, 11, 3 P.2d 518, 522 (1931). We therefore conclude that the term "state assistance" refers to monies provided to nonprofit corporations by the State. Our conclusion finds further support by the fact that the title of the statute refers to "[a]udits of nonprofit entities receiving . . . state monies." (Laws 1986 [2nd Reg. Sess.] Ch. 194) (emphasis added). Although not the law, A.R.S. § 1-212, courts can refer to titles in the statute for indications of legislative intent. State v. Supreme Court in and for the County of Pima, 128 Ariz. 535, 537, 627 P.2d 686, 688 (1981).

2. Does the term "fiscal year" refer to the state fiscal year or to a contractor fiscal year?

The term "fiscal year" refers to the state fiscal year. Title 35, A.R.S., of which A.R.S. § 35-181.03 is a part, relates to public finances and the term "fiscal year" as used in the title relates to the state fiscal year. See A.R.S. § 35-102.1 There is no indication in the statute or anywhere else in the title that a different fiscal year is intended.

3. Does the audit requirement apply to those contracts entered into after August 13, 1986, to all contracts entered into during Fiscal Year 86-87 or to some other period?

Statutes apply prospectively unless the legislative intent is to the contrary. State ex rel. Corbin v. Pickrell, 136 Ariz. 589, 593, 667 P.2d 1304, 1308 (1983); see also A.R.S. § 1-244 ("No statute is retroactive unless expressly declared therein."). The provisions of the statute, therefore, are to be applied prospectively from the effective date of the act, August 13, 1986. Thus, contracts entered into on or after August 13, 1986 must include requirements concerning financial and compliance audits pursuant to A.R.S. § 35-181.03(A) and nonprofit corporations receiving any of the specified amounts set forth in A.R.S. § 35-181.03(B), (C) or (D) in the fiscal year beginning July 1986 or later fiscal years must comply with the audit and reporting requirements of those provisions.

4. Is the Department of Economic Security required to cause audits to be performed on contracts which contain no audit provision?

The Department of Economic Security ("DES") has the responsibility to enforce those provisions of its contracts concerning financial and compliance audits which are required by A.R.S. § 35-181.03(A) to be a part of each contract DES has with nonprofit corporations. The statute, however, does not require DES to perform audits on its contracts. That, pursuant to the statute is the responsibility of the nonprofit corporations.

---

1. A.R.S. § 35-102(A) provides: "The fiscal year of the state and for the expenditure of appropriations shall commence July 1 each year. Accounts or annual reports of state officials required by law to be published, shall be prepared and published for the fiscal year as established by this section." See also, Ariz. Const. art. IX, § 4.

Dr. Eddie F. Brown  
December 1, 1988  
Page 4

5. Is DES responsible for determining whether a contractor has received "state benefits" from other state agencies, thereby possibly exceeding the dollar amounts stated in the statute?

DES is not required to determine how much state assistance a nonprofit corporation receives from other state agencies. A.R.S. § 35-181.03 places the responsibility of complying with the audit provisions on the nonprofit corporations.

A.R.S. § 35-181.03 requires the filing of financial statements with "the grantor agency." The plain meaning of the statute calls for each nonprofit corporation to determine the total amount of state assistance received from each state agency and then file the appropriate financial statement with that state agency. For example, a nonprofit corporation receiving \$50,000 from DES and \$101,000 from the Department of Health Services ("DHS") must file a biennial audit with DES pursuant to A.R.S. § 35-181.03(C) and an annual audit with DHS pursuant to A.R.S. § 35-181.03(B). At the end of the fiscal year, however, each state agency is to determine the amount of state assistance each nonprofit corporation received from that state agency in order to ascertain whether the nonprofit corporation should have submitted an annual audit, a biennial audit or complied with the audit provisions set forth in the contract for corporations receiving less than \$50,000 in a fiscal year. The method of assuring nonprofit corporation compliance with A.R.S. § 35-181.03 is through enforcement of the contract. Any failure of a nonprofit corporation to comply with the audit provisions would be a breach of contract.

Sincerely,



BOB CORBIN  
Attorney General

BC:CW:RJR/it