STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

APRIL 1983

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 83-7

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

April 19, 1983

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Major General John Smith, Adjutant General
Department of Emergency and Military Affairs

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Department of Emergency and Military Affairs. This report is in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Department of Emergency and Military Affairs is found on the yellow pages preceding the appendices.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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DEPARTMENT OF EMERGENCY

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Department of Emergency and Military Affairs, Division of Emergency Services, in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Division of Emergency Services (ADES) grew out of the Department of Civil Defense. The Legislature established the Department of Civil Defense in 1951 to prepare for and carry out emergency functions. In 1971, the agency was renamed the Division of Emergency Services (ADES) and placed within the Office of the Governor. The Division was transferred to the Department of Emergency and Military Affairs in 1972. Responsibility for the fire marshal program was added in 1982.

The Division is responsible for 1) establishing, organizing and maintaining disaster preparedness and emergency programs; 2) coordinating plans and programs with political subdivisions; and 3) developing an emergency response plan for fixed nuclear facilities.

ADES' objective of establishing and maintaining a comprehensive coordinated emergency management program is consistent with legislative intent. Specific program activities are 1) hazard mitigation, including hazard identification, floodplain management and community relocation; 2) emergency response plan development and testing; 3) radiological survey equipment maintenance and calibration; and 4) training and education.

Our audit addressed significant financial, procurement and personnel problems at ADES. These problems were pervasive and raise serious questions about the adequacy of the controls over these areas. Because of the serious nature of these problems and the potential for both criminal and civil violations of law, the Attorney General's Office was informed of our findings. The Attorney General has initiated an investigation.

ADES has mismanaged substantial amounts of State and Federal monies. The Division has inappropriately spent or transferred at least $1.4 million. As a result, the State may be required to repay misspent Federal funds. This extensive financial mismanagement occurred because 1) the former director of the Division failed to exercise his responsibility to ensure that funds were properly expended and accounted for, and 2) internal control and accounting procedures were either inadequate or lacking. The Division needs to strengthen its accounting system to provide adequate controls. Further, an internal auditor reporting to the Adjutant General should conduct financial and compliance audits of emergency fund accounts (see page 13).

The State may have incurred excessive costs because the Division has consistently disregarded, and in some instances circumvented, both State and Federal competitive bidding requirements. ADES failed to solicit bids, placed orders with vendors before advertising for bids and split payments into amounts less than $5,000 to avoid bidding. We also found that ADES made emergency purchases without obtaining waivers required by State law. Statutory changes are needed to 1) serve as a deterrent and 2) provide the State with recourse when such violations occur. Internal audits should include reviews of procurement procedures to ensure that the Division complies with bidding requirements (see page 37).

Division personnel practices have violated State merit system requirements. Beginning in 1981, the Department of Administration - Personnel Division (DOA-Personnel) identified numerous questionable personnel practices at ADES. More recently, our audit found that ADES has circumvented the State merit system by 1) misusing exempt positions and 2) using employees to perform work unrelated to their official duties including tasks clearly unrelated to Division activities. Many of the problems identified have not been adequately addressed.

ADES' questionable personnel practices create unnecessary and excessive costs, threaten the credibility of the State merit system and jeopardize future Federal funding for the Division. ADES should fill competitively two positions currently held by exempt employees. DOA-Personnel analysts should review staffing levels and conduct a comprehensive classification study (see page 45).

Further review is needed in several areas. During our audit we identified potential problems including the 1) use of professional services contracts, 2) extent to which agency programs have actually protected the public, and 3) completion of all State- and Federal-required tasks (see page 55).

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Department of Emergency and Military Affairs, Division of Emergency Services in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Division grew out of the Department of Civil Defense. The Legislature established the Department of Civil Defense in 1951 to prepare for and carry out emergency functions. These functions included rescue, air raid warning services, communications, evacuation and other activities related to citizen protection. In 1971, the agency was renamed the Division of Emergency Services (ADES) and placed within the Office of the Governor. The Division was transferred to the Department of Emergency and Military Affairs in 1972. Responsibility for the fire marshal program was added in 1982.

The agency was established to

> ". . . cope with the effects of natural, war-caused or other man-made disasters which endanger life, property and resources of this state, and to provide for the health, welfare and safety of the people of this state and for preservation of property. . . ."

The Division is responsible for 1) coordinating emergency response during disasters, 2) preparing for future disasters, and 3) developing a response plan for accidents at the nuclear generating facilities. To fulfill its statutory responsibilities, ADES administers a number of programs:

- Hazard mitigation, including hazard identification, flood plan management and community relocation;

- Plan development and testing for emergencies resulting from nuclear war or nuclear generating station operations;

- Maintenance and calibration of radiological survey equipment; and

- Training and education for public officials and emergency staff.

The Division receives funding from both State and Federal sources. State fund sources include 1) General Fund appropriations for regular operations, 2) General Fund monies designated for states of emergency declared by the Governor, and 3) additional appropriations for specific projects such as nuclear facility disaster response. ADES also receives Federal funds from the Federal Emergency Management Agency for regular Division operations. Other Federal agencies, such as the Department of Housing and Urban Development (HUD), provide grants for disaster-related programs such as housing relocation. The Division's revenues and expenditures for fiscal years 1978-79 through 1981-82 are detailed in Tables 1 and 2.

TABLE 1

ACTUAL REVENUES FOR
FISCAL YEARS 1978-79 THROUGH 1981-82

	Fiscal Year			
	1978-79	1979-80	1980-81	1981-82
State:				
Regular appropriations	$ 135,900	$ 150,800	$ 553,100	$ 839,000**
Emergency funds	736,528	2,300,000	2,150,000	-0-
Special projects	1,000,000	125,000	300,000	300,000
Subtotal	1,872,428	2,575,800	3,003,100	1,139,000
Federal:				
Regular operations	N/A*	515,519	1,072,300	915,548
Grants-in-aid	N/A	1,477,555	857,048	1,249,548
Pass-through funds	-0-	1,910,000	3,121,706	-0-
Subtotal	-0-	3,903,074	5,051,054	2,165,096
Total - all sources	$1,872,428	$6,478,874	$8,054,154	$3,304,096

Source: Department of Administration - Finance Division budget and financial records

* Not available

** Includes appropriation for Office of Fire Marshal, transferred to the Division as of January 1, 1982.

TABLE 2

ACTUAL EXPENDITURES FOR FISCAL YEARS 1978-79 THROUGH 1981-82*

Activity	1978-79 State	1978-79 Federal	1978-79 Total	1979-80 State	1979-80 Federal	1979-80 Total	1980-81 State	1980-81 Federal	1980-81 Total	1981-82** State	1981-82** Federal	1981-82** Total
Personal services	$ 88,900	$ 200,800	$ 289,700	$ 97,600	$ 346,700	$ 444,300	$152,900	$ 343,900	$ 496,800	$197,300	$ 535,800	$ 733,100
Employee-related	15,700	37,300	53,000	17,800	72,100	89,900	29,600	70,100	99,700	42,300	114,500	156,800
Professional services	-0-	1,700	1,700	4,200	2,000	6,200	-0-	34,500	34,500	-0-	43,500	43,500
Travel:												
In-State	4,300	20,200	24,500	1,000	27,000	28,000	7,000	41,100	48,100	8,300	42,200	50,500
Out-of-State	500	5,600	6,100	29,000	6,100	35,100	-0-	7,000	7,000	-0-	8,000	8,000
Other operating	26,500	230,200	256,700	1,200	289,000	290,200	31,700	133,900	164,800	50,900	107,200	158,100
Equipment	-0-	-0-	-0-	-0-	-0-	-0-	331,900	397,200	721,900	164,100	219,700	383,800
Project refunds	-0-	14,300	14,300	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Emergency Services assistance	-0-	812,500	812,500	-0-	870,500	870,500	-0-	208,200	208,200	-0-	362,000	362,000
Source total	135,900	1,322,600		150,800	1,613,400		553,100	1,235,100		462,900	1,432,900	
Total			$1,458,500			$1,764,200			$1,788,200			$1,895,800

Source: Department of Administration - Finance Division budget records

* Excludes expenditures of State emergency funds, special appropriations, Federal grants for specific projects and Federal pass-through relief funds.
** Due to deficiencies in the Division's accounting records as discussed in the body of the report, reported expenditures are approximations.

Audit Scope

Our audit addressed significant financial, procurement and personnel problems at ADES. These problems were pervasive and raise serious questions about the adequacy of the controls over these areas. Because of the serious nature of these problems and the potential for both criminal and civil law violations, the Attorney General's Office was informed of our findings. The Attorney General has initiated an investigation.

Specifically, we reviewed the following issues:

- Propriety of expenditures and accounting procedures;
- Compliance with statutory bidding procedures; and
- Appropriateness of Division personnel practices.

Additionally, we identified numerous potentially serious problems that we were unable to review. Our audit scope was limited due to the extensive time required to review the issues identified above. The audit work was further hindered by the absence of audit trails and lack of documentation. Other problems we identified are discussed in the "Areas for Further Audit Work" section (see page 55).

The Auditor General and staff express appreciation to the Adjutant General, the director of the Division of Emergency Services and members of their staffs for their cooperation and assistance during the course of our audit.

SUNSET FACTORS

Eleven factors were reviewed to determine if the Department of Emergency and Military Affairs, Division of Emergency Services should be continued or terminated in accordance with Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

1. Objective and purpose in establishing the agency

The Division of Emergency Services (ADES) was established in 1971. According to the enabling legislation, the Division was created to

> ". . . cope with the effects of natural, war-caused or other man-made disasters which endanger life, property and resources of this state, and to provide for the health, welfare and safety of the people of this state and for preservation of property. . . ."

The Division is responsible for 1) establishing, organizing and maintaining disaster preparedness and emergency programs, 2) coordinating plans and programs with political subdivisions, and 3) developing an emergency response plan for fixed nuclear facilities.

ADES' objective of establishing and maintaining a comprehensive coordinated emergency management program is consistent with legislative intent. Specific program activities are 1) hazard mitigation, including hazard identification, floodplain management and community relocation; 2) emergency response plan development and testing; 3) radiological survey equipment maintenance and calibration; and 4) training and education.

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which the agency has operated

We were unable to adequately review ADES effectiveness in meeting its objectives due to extensive work required on expenditures, bidding and personnel irregularities. Some uses of funds and personnel, however, are inefficient and may adversely impact program effectiveness. Further

review is needed in several other areas concerning efficiency and effectiveness (see page 55).

We identified the following conditions which may adversely impact both efficiency and effectiveness:

- ADES may have incurred excessive costs because numerous contracts and projects were not bid competitively (see page 37).

- Division personnel practices are inefficient and may adversely impact program effectiveness. First, the Division may be overstaffed. Second, personnel have been used improperly. Some staff performed duties 1) clearly unrelated to Division activities and 2) outside of the positions for which they were hired, resulting in unnecessarily excessive personal services costs. This misuse of resources may also affect program operations. Last, improper use of exempt positions jeopardizes future Federal funding (see page 45).

3. <u>The extent to which the agency has operated within the public interest</u>

Although the Division's programs are designed to benefit the public, some of the Division's actions are not within the public interest. Further review is needed in several areas.

The primary beneficiaries of Division operations are the general public, and more specifically, disaster victims. The Division responded to 34 declared emergencies and contingencies between July 1, 1977, and August 31, 1982. ADES has been actively involved in relocation projects for several communities located in hazardous areas. Additionally, plan development and testing and various educational activities benefit the public by providing for emergency preparedness.

However, some Division financial transactions did not serve the public interest. The former Director failed to ensure that funds were expended or accounted for properly. In some instances, expenditures were not for valid public purposes (see page 13).

As noted in the previous section, further review is needed to determine whether program goals have been met and the extent to which the programs provide benefits to the public.

4. The extent to which rules and regulations promulated by the agency are consistent with the legislative mandate

Division rules and regulations are consistent with statutory intent. A.R.S. §26-306, subsection A and Executive Order 69-4 require the Division to 1) promulgate rules and regulations necessary for Division operations and 2) prescribe minimum standards for fallout protection. Our review revealed that ADES has promulgated these rules and regulations as required.

5. The extent to which the agency has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

Due to time and staffing constraints resulting from the extensive review of other issues required, further review is needed to address this factor.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction

This factor is not applicable because the Division is not responsible for complaint investigation or resolution.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

Although ADES enabling legislation does not specify that the Attorney General has authority to prosecute, A.R.S. §41-192, subsection A, paragraph 2 and subsection B, paragraph 4 authorize the Attorney General to provide legal services to State agencies.

8. The extent to which the agency has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

The Division sponsored or supported four bills during the past six legislative sessions:

Senate Bill 1040, passed in 1979, increased the amount of liability which could be incurred under a gubernatorial disaster declaration from $750,000 to $1,500,000. Senate Bill 1349, passed in 1980, increased the limit to $2,500,000.

Two bills introduced in the House in 1977 failed. House Bill 2008 would have allowed the use of State monies to reimburse expenses incurred in combating menaces to property of the Federal government. House Bill 2327 would have allowed the Governor to 1) authorize debris removal during emergencies, 2) provide temporary housing to disaster victims, and 3) obligate the State to participate in funding individual and family disaster relief grants.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in the subsection

Statutory changes are needed to provide criminal penalties for intentional violations of bidding requirements. Current State statutes do not contain criminal penalties for violations of bidding requirements. Consequently, the State may have limited recourse for violations. Criminal penalties may also serve as a deterrent to prevent improper procurement practices. The Legislature should consider establishing criminal penalties for intentional violations of the bidding requirements established by A.R.S. §§41-1051 et.seq., 34-201 and 41-730 (see page 44). Further review is needed to determine if changes are needed in other operational areas.

10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare

Terminating the Division would adversely affect the public health, safety and welfare by fragmenting responsibility for emergency responses. Since emergency situations require a rapid and well-coordinated response, a centralized agency responsible for both planning for emergencies and directing emergency response is necessary.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate

This factor is not applicable as the Division is not a regulatory agency.

FINDING I

THE DIVISION HAS MISMANAGED AT LEAST $1.4 MILLION IN STATE AND FEDERAL FUNDS.

The Division of Emergency Services (ADES) has inappropriately spent or transferred at least $1.4 million in State and Federal funds. As a result, the State may be required to repay misspent Federal funds. This extensive financial mismanagement occurred because 1) the former director of the Division failed to exercise his responsibility to ensure that funds were properly expended and accounted for and 2) internal control and accounting procedures were either inadequate or lacking.

Statutory Restrictions on Use and Transfer of Emergency Funds

The Division receives funds from the following sources:

- Annual General Fund appropriations for regular operating activities and capital outlays;
- Special one-time appropriations of General Fund monies for specific projects such as providing direct emergency relief, establishing a statewide emergency communications system and developing emergency response plans;
- General Fund monies for expenses incurred during declared emergencies under the provisions of Arizona Revised Statutes (A.R.S) §35-192;
- Federal grants-in-aid for specific projects; and
- Federal lump sum grants for various activities related to regular operations.

ADES may use these funds only for the specific purposes for which they were appropriated or granted. In a September 11, 1981, opinion* the Attorney General concluded that

* Appendix I contains the opinion text.

> "An appropriation is 'the setting aside from the public revenue of a certain sum of money for a specified object, in such a manner that the executive officers of the government are authorized to use that money, and no more, for that object and no other'. . . monies may be expended only for work specified by the terms of the appropriation and that legislative action will be necessary to authorize an expenditure for any other work." (emphasis added)

According to Legislative Council, emergency relief monies are subject to this restriction. Funds allocated for one emergency may not be used for 1) other emergencies, 2) items designed for prevention or recovery from future emergencies, or 3) items not related to any future emergency. A December 27, 1982, memorandum* states:

> "The statutory framework of A.R.S. §35-192 creates, in effect, a continuing appropriation . . . which may be expended for each contingency or emergency declared by the governor. . . . As such, this continuing appropriation is subject to the limitations prescribed by Arizona law. Appropriated monies may be expended only for the purposes and items specified by the terms of the appropriation."
>
> . . . . .
>
> ". . . The language used in this section [A.R.S. §35-192] evidences an intent that monies allocated pursuant to each emergency declaration may be used only for expenses incurred in relation to that particular emergency and for no other purpose unless authorized by law." (emphasis added)

Similarly, Federal grant monies may be used only for specified purposes. The U.S. Office of Management and Budget (OMB) has developed guidelines identifying allowable costs. In general, costs are allowable if they 1) are necessary and reasonable for grant program administration, 2) provide a benefit to the grant program, and 3) are not general expenses related to overall State government or agency responsibilities. Further, the grantor agency must approve capital outlay expenditures.

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* Appendix II contains the opinion text.

Because appropriations and grants may be spent only for specific purposes, transfers and subsequent expenditures of these funds must also be related to the appropriation or grant. For example, funds available for a declared emergency may be transferred to an account established for a specific State-funded project if the project is related to the declared emergency. Similarly, State and Federal funds may also be transferred to joint clearing accounts when matching is required.

Scope of Audit

To determine if funds were managed in accordance with statutory requirements and restrictions, we reviewed both expenditures and transfers in three accounts and related transactions in other accounts. A separate account is established for each budget classification, program, project and declared emergency. ADES used 49 such accounts during fiscal years 1977-78 through 1981-82. The Division has also established nine joint Federal-State clearing accounts. The three accounts selected for detailed review were:

- The State-funded Santa Cruz County flood emergency account,
- The State-funded Globe asbestos emergency account, and
- A Federal-funded project to upgrade safety features in mobile homes used to house flood victims.

We evaluated expenditures to determine whether the item or service purchased was proper, that is, related to the specific purpose for which the funds were appropriated or granted. Transfers were reviewed to determine whether 1) the ultimate disposition (expenditure) of transferred funds was related to the grant or appropriation and 2) the documentation was sufficient.

However, due to deficiencies in the accounting records, we were unable to review 1) most expenditures made from funds transferred out of these accounts* or 2) the propriety of some payroll-related expenditures.

ADES Mismanaged State and Federal Funds

ADES has inappropriately spent or improperly transferred at least $1.4 million in State and Federal funds. We identified $438,204 in inappropriate expenditures and transfers in the three accounts we reviewed. An additional $925,215 in inappropriate expenditures and transfers were found in other accounts. The timing of these expenditures and transfers suggests a deliberate attempt to circumvent the appropriations process. Annual reports submitted to the Legislature do not reflect the purposes and nature of all expenditures.

We found $438,204 in inappropriate expenditures and transfers in the Santa Cruz County flood emergency, Globe asbestos emergency and trailer upgrade project accounts. The original purposes of these funds are discussed below and the subsequently inappropriate expenditures and transfers are detailed in Table 3.

* In most cases, we were unable to identify specific expenditures made with transferred funds because of deficiencies in the accounting records. These deficiencies are discussed on page 33.

TABLE 3

SUMMARY OF DISPOSITION OF FUNDS FOR
SANTA CRUZ COUNTY FLOOD EMERGENCY ACCOUNT,
GLOBE ASBESTOS EMERGENCY ACCOUNT AND
TRAILER UPGRADE GRANT ACCOUNT FUNDS REVIEWED

Account	Inappropriate Expenditures	Transfers	Total Inappropriate Expenditures and Transfers	Total Funds Reviewed
Santa Cruz County flood emergency account	$ 26,914	$ 50,341	$ 77,255	$100,000
Globe asbestos emergency account	6,287	63,635	69,922	237,692
Trailer upgrade grant account	206,231	84,796	291,027	436,646
Total	$239,432	$198,772	$438,204	$774,338

Santa Cruz County Flood Emergency Account - On August 21, 1980, the Governor declared an emergency to assist the City of Nogales and Santa Cruz County with costs incurred during an August 13th flood. The emergency was terminated 12 months later, on August 31, 1981.

ADES misspent or improperly transferred over 75 percent of available funds. Sources and disposition of funds are shown in Table 4.

TABLE 4

SOURCES AND DISPOSITION OF FUNDS FOR
SANTA CRUZ COUNTY FLOOD EMERGENCY ACCOUNT

Sources of funds:	
General Fund monies	$100,000
Disposition of funds:	
Inappropriate expenditures	$ 26,914
Transfers to other accounts	50,341
Appropriate expenditures	22,745
Total uses of funds	$100,000

The former director spent $10,000 of funds specifically designated for Santa Cruz County to host a conference for a private professional association of which he was president-elect. Additional conference costs totaling over $4,500 were paid from other accounts, including an account established for direct emergency relief for flood victims. A portion of this $14,500 was used for such items as miniature flags, greens fees for a visiting guest, county emergency directors' registration fees and a $4,500 bar bill.

The Division paid at least $1,396 from the Santa Cruz flood emergency account to repair and restore a Department of Public Safety (DPS) airplane.* In addition to paying for these repairs, ADES paid for use of the plane. The Division has paid DPS hourly usage charges totaling at least $1,566. The plane could not have been used during the Santa Cruz emergency because it was not airworthy at the time. Further, the expenditures were improper in that emergency funds may not be used for items related to future emergency situations.

FIGURE 1

DPS AIRPLANE REPAIRED WITH SANTA CRUZ COUNTY FLOOD EMERGENCY AND OTHER FUNDS

* Additional project expenses totaling $28,027 were paid from other accounts (see page 26).

The agency inappropriately spent $7,100 from the Santa Cruz flood account for van conversion project expenses. Additional conversion project costs were paid from accounts established for the Globe asbestos emergency (see page 22), direct relief to flood victims and two federally funded temporary housing projects. Although neither State nor Federal funds were authorized for this purpose, ADES spent $91,742 on these projects.*

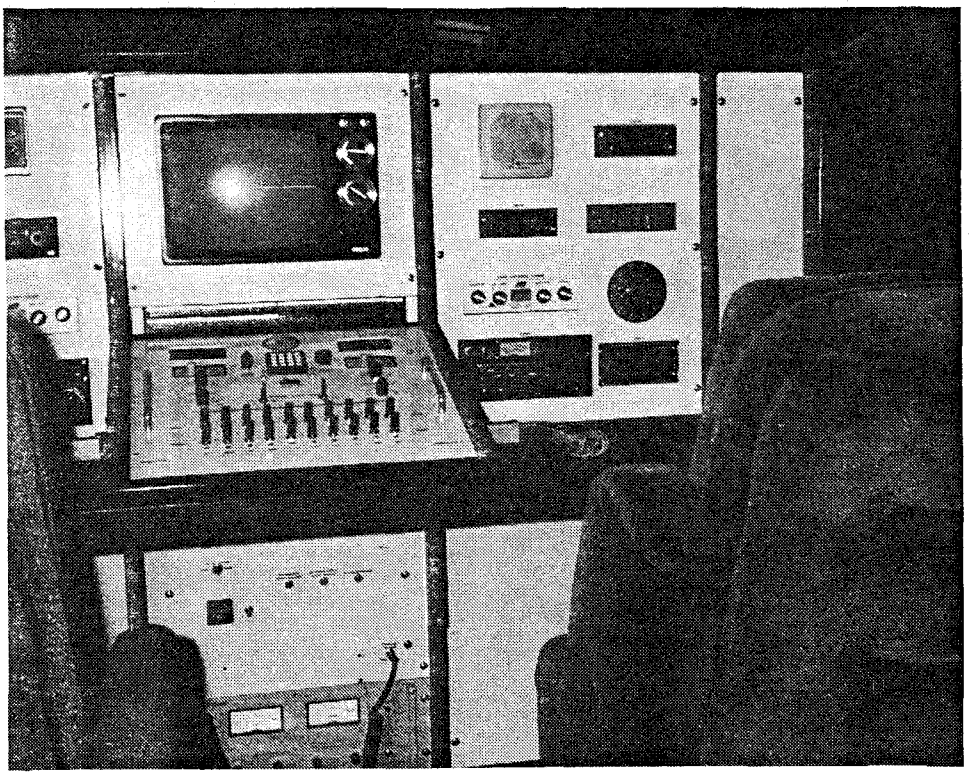
FIGURE 2

ADES MOBILE COMMUNICATIONS VAN
PURCHASED WITH SANTA CRUZ COUNTY FLOOD EMERGENCY AND OTHER FUNDS

* ADES purchased four vans and converted them to mobile communications units. This project will cost the State at least $177,000. The first two vehicles were purchased and converted in 1979 and 1980, before State or Federal funds were available, at a cost of $91,742. ADES received a $45,000 Federal grant in 1982 for equipment for the third and fourth vans.

FIGURE 3

INTERIOR OF ADES MOBILE COMMUNICATIONS VAN



Other inappropriate expenditures from this emergency account include

- $1,341 for word processor supplies which were ordinary operating expenses rather than costs related to a specific emergency and

- $1,800 for a county emergency director's expenses. The Division paid these expenses regularly to match the county's monthly expense payments. The same individual received travel reimbursements from another emergency account (see page 22).

In addition to inappropriate expenditures of $26,914, ADES improperly transferred over half of the available funds to special revenue clearing accounts. According to the former accounting officer, the former director made the transfers to meet cash flow needs and transfers and subsequent expenditures were not related to the Santa Cruz flood.

Globe Asbestos Emergency Account - On January 16, 1980, the Governor declared an emergency in Gila County because Department of Health Services officials believed asbestos tailings created a health hazard to Globe residents. The emergency was terminated six months later on June 2, 1980. During the emergency the Division temporarily relocated residents while their homes were professionally cleaned and the surrounding area covered with topsoil. This work was substantially completed six months after the emergency declaration.

Of $237,692 received from State and Federal sources for this emergency, $69,922 was spent or transferred inappropriately. Sources and disposition of funds are shown in Table 5.

TABLE 5

SOURCES AND DISPOSITION OF FUNDS FOR GLOBE ASBESTOS EMERGENCY ACCOUNT

Sources of funds:	
General Fund monies	$200,000
Federal reimbursements	37,692
Total available funds	$237,692
Disposition of funds:	
Inappropriate expenditures	$ 6,287
Transfers to other accounts	63,635
Appropriate expenditures	157,352
Reverted to General Fund	10,182
Unknown*	286
Total uses of funds	$237,692

* Agency records do not agree with Department of Administration - Finance Division (DOA-Finance) records. ADES ledgers reflect $237,456 in transfers and expenditures, $286 less than total receipts. Audit staff did not reconcile the difference.

Inappropriate expenses included $3,275 for communications equipment for the van conversion project (see page 19), $1,398 for furnishings, including patio chairs and tables, and $865 for catering at a county emergency director's conference.

In addition, ADES improperly paid from the Globe asbestos account travel claims totaling $298 to non-State employees including the Santa Cruz County emergency director.* After DOA-Finance notified ADES that non-State employees were not eligible for travel reimbursement, the Division began paying these expenses as professional services rather than travel claims.

In addition to inappropriate expenditures, the Division improperly transferred 27 percent of available funds. These funds were transferred to joint Federal-State clearing accounts for operating and travel expenses, an account for direct relief to flood victims and an account for a Federal temporary housing project. As in the case of the Santa Cruz County flood emergency account, the former director made the transfers to meet cash flow needs in other accounts. In most cases, subsequent expenditures are not related to the original emergency. For example, $6,500 transferred from the Globe asbestos emergency account to the account for direct emergency relief was used as partial payment for a van used in the conversion project.

Trailer Upgrade Grant Account - In November 1979, ADES received a $400,000 Federal grant to upgrade safety features on mobile homes used to house flood victims. Additional funds, including some State monies, were transferred into the account from various sources. ADES inappropriately spent or transferred at least $291,027 of these funds. Sources and disposition of funds are shown in Table 6.

* We identified other inappropriate travel claims totaling $184 paid from the training and education account (see page 26).

TABLE 6

SOURCES AND DISPOSITION OF FUNDS FOR TRAILER UPGRADE GRANT ACCOUNT

Sources of funds:	
Federal grant	$400,000
Transfers from remodeling grant	152,681
Transfers from joint Federal-State operating expense account*	57,056
Total funds available	$609,737
Disposition of funds reviewed:	
Inappropriate expenditures	$206,231
Transfers to other accounts	84,796
Appropriate expenditures	145,619
Total uses of funds	$436,646**

* At least $35,375 is State General Fund monies and at least $6,847 is Federal monies. The sources of the remaining $14,835 cannot be determined.

** Total funds available does not agree with total uses because we did not review $177,671 in expenditures. ADES received another Federal grant in February 1980 to provide temporary housing to flood victims. Before receiving these funds, ADES established a subsidiary account within the upgrade grant account. Temporary housing expenses totaling $135,348 were paid from the subsidiary account. Numerous temporary housing expenditures were also made from the principal account. The transfers were made to reimburse the upgrade account for temporary housing expenditures paid from both the subsidiary and principal accounts. We did not review temporary housing expenditures made from the subsidiary account. Further, due to deficiencies in the time-reporting system, we were unable to review payroll-related expenses totaling $42,323.

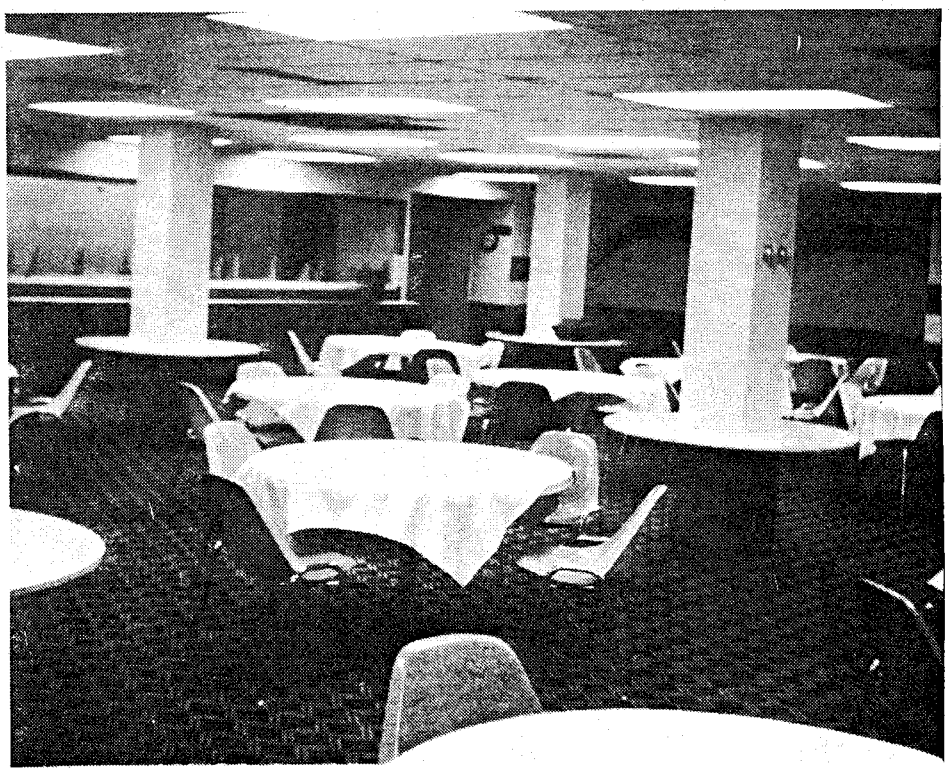
The Division misspent over $200,000, or 34 percent of available funds. Almost $90,000 of this was spent on items clearly unrelated to this or any other Federal grant. Additional expenditures totaling over $116,800 may be applicable to other Federal grants. However, such expenditures are inappropriate under the trailer upgrade grant provisions.

ADES improperly used $70,550 of these funds and $200,074 from a joint clearing account to construct a mess hall and office complex. ADES agreed to construct a mess hall for the National Guard in exchange for use of an empty National Guard warehouse. The warehouse was subsequently converted to

an ADES office and storage complex. Neither State nor Federal money was authorized for the projects.*

FIGURE 4

NATIONAL GUARD MESS HALL CONSTRUCTED WITH
TRAILER UPGRADE AND OTHER FUNDS



* At least one claim related to the project may have been falsified. The contractor submitted a $57,000 claim for "Balance owed for trailer upgrade." Available evidence strongly suggests that some labor and material costs were for the mess hall construction.

ADES made other expenditures unrelated to any Federal grant:

- $4,600 for microcomputer equipment and programming services,
- $4,173 for communications equipment and van conversion project costs (see page 19),
- $8,269 for office equipment and remodeling,
- $2,425 for automotive supplies and fuel,
- $580 for utilities and trash services, and
- $158 for soft drinks.

While unrelated to the trailer upgrade project, $116,851 in expenditures from the upgrade account may be related to a similar federally funded grant. Even if so related, they are improper. Moreover, our limited review indicates that ADES may have actually used the funds for the warehouse and mess hall projects. Questionable expenditures include

- $11,204 for furnishings and carpet--ADES purchased household items such as a recliner, beds and dinette sets--and
- $6,189 to reimburse the petty cash fund for purchases of drapes and other items.

Inappropriate Expenditures and Transfers from Other Accounts - ADES also made at least $925,200 in inappropriate expenditures and transfers from other accounts. As previously discussed, ADES spent at least $243,597 for the conference and for the warehouse, mess hall, van conversion and plane repair projects from other accounts:

- $4,548 in costs for the professional association conference was paid from the account for direct emergency relief and joint accounts for contracts and operating expenses.

- Mess hall and warehouse conversion project expenses totaling $200,074 were paid from a joint account for operating expenses.

- ADES spent $10,765 for the van conversion project from the account for direct emergency relief and a Federal grant account.

- DPS plane repair and restoration costs of $28,027 were paid from the accounts for direct emergency relief, the December 1978 flood emergency and operating expenses.

- Improper travel claims totaling $184 were paid from the training and education account.

We also identified the following inappropriate expenditures:

- $282 was paid for a consultant's room charges and meals during a conference at the Arizona Biltmore. The consultant appears to have had no formal role in the conference.

- The Division provided alcoholic beverages during another conference funded from the training and education account. These costs totaled at least $240.

- At least $13,768 was paid from emergency accounts to provide county emergency operations centers with radio equipment. In one case, the county emergency director purchased equipment costing $5,903 and sent the bill to the Division.

Further, the Division's internal auditor recently identified questionable expenditures and transfers totaling $667,298 in eight other accounts for emergencies and contingencies.* These questionable expenditures and transfers represent almost one-fifth of the reported costs. In one case, questionable costs constitute 95 percent of claimed costs. A summary of the auditor's findings is presented in Table 7.

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* Our limited review indicates that the internal auditor's analysis is reliable. The internal auditor's questioned costs for the two accounts we reviewed are approximately the same as inappropriate expenditures and transfers we identified. The differences between our totals and those of the internal auditor are immaterial. The internal auditor's role is discussed further on page 35.

TABLE 7

SUMMARY OF ADES INTERNAL AUDITS OF EMERGENCY FUND ACCOUNTS

Account	Claimed Cost	Questioned Cost	Allowable Cost
Search and rescue:			
1981	$ 59,864	$ 43,093	$ 16,771
1982	48,044	11,649	36,395
Pinal, Pima and Santa Cruz Counties floods	343,790	9,649	334,141
March 1978 statewide floods	412,768	6,890	405,878
Fire contingency:			
1981	298,845	123,758	175,087
1982	256,904	244,624	12,280
December 1978 statewide floods	2,226,513	213,449	2,013,064
Yavapai County grasshopper infestation	67,774	14,186	53,588
Total	$3,714,502	$667,298	$3,047,204

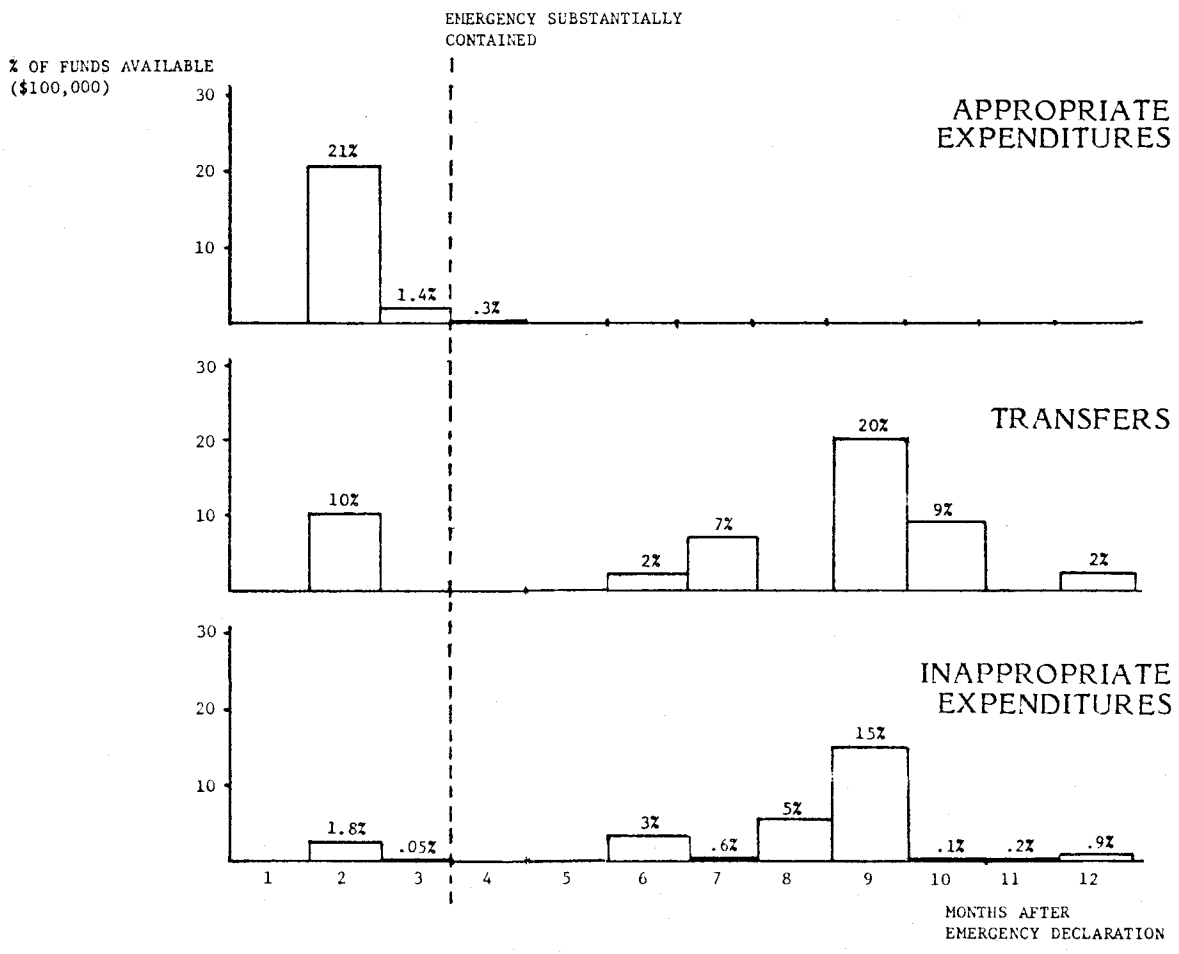
Thus, the transfers in the accounts we reviewed are not isolated cases but rather represent typical financial practices within the Division. ADES has consistently transferred significant amounts of funds from emergency-related accounts. During calendar years 1978 through 1981, over $900,000 of emergency funds were transferred to accounts established for other purposes.

Timing of Transfers and Inappropriate Expenditures - The timing of inappropriate expenditures and transfers and the inadequacy of reports filed with the Legislature (see page 30) suggest a deliberate attempt to circumvent the appropriations process. Declared emergencies are terminated by the Governor upon the Director's recommendation. At termination, all monies remaining in the account revert to the General Fund. However, in the two emergency-related accounts that we reviewed, a significant amount of funds was transferred or spent for unauthorized purposes after the immediate danger had ended and all expenses related to the emergency had been paid.

In the Santa Cruz County flood emergency, funds were appropriated to assist the City of Nogales and Santa Cruz County with flood damage repair expenses. The political subdivisions incurred expenses which were reimbursed with State funds. ADES made the final reimbursement to the localities in November 1980. However, the emergency was not terminated until August 1981, almost nine months later. Between the final reimbursement and the termination, ADES transferred or spent inappropriately all remaining funds totaling $65,409. The timing of expenditures and transfers is depicted in Figure 5.

FIGURE 5

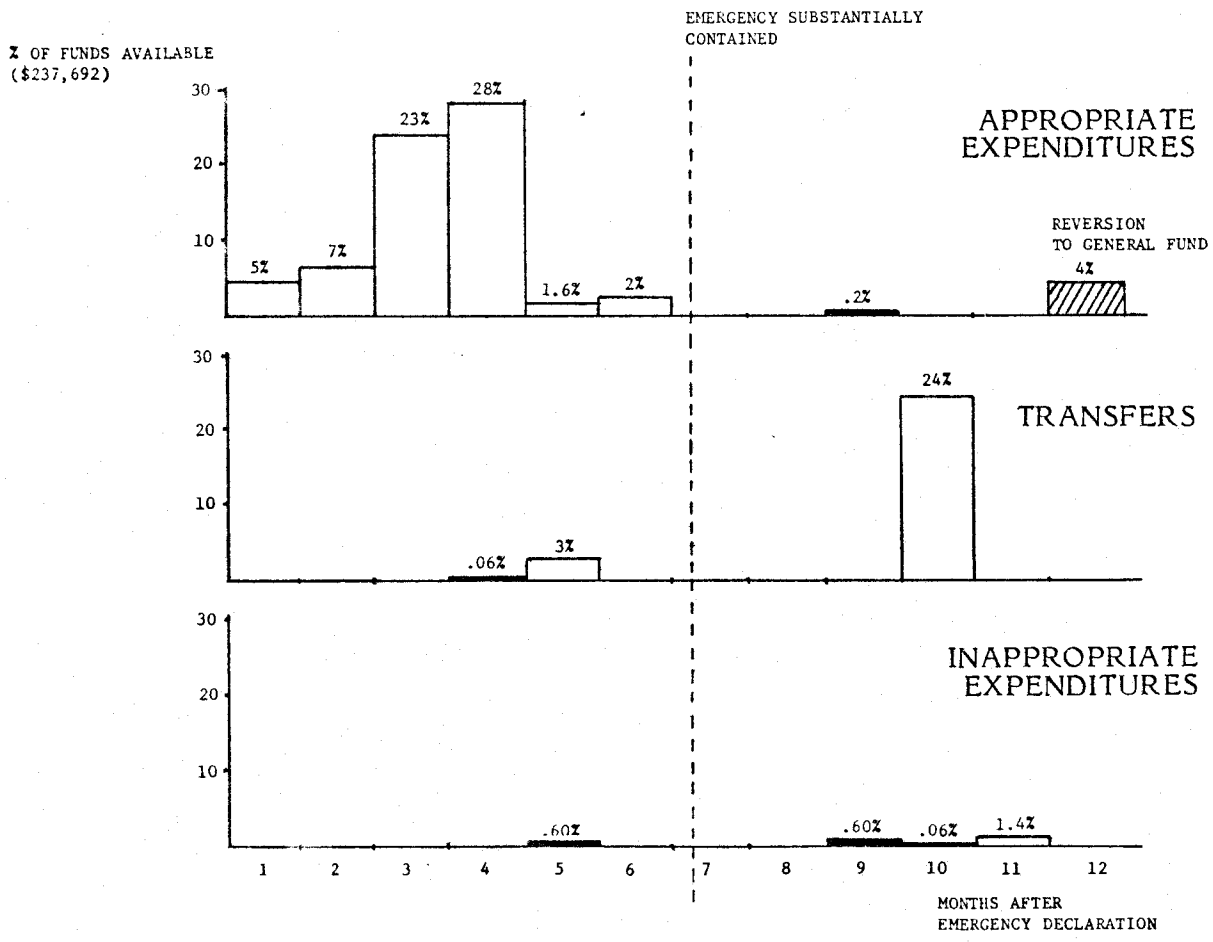
TIMING OF EXPENDITURES AND TRANSFERS FROM THE SANTA CRUZ COUNTY FLOOD EMERGENCY ACCOUNT



A similar pattern occurs in the timing of expenditures and transfers from the Globe asbestos emergency account. The work required to clean the contaminated area was substantially completed by June 1980. The Governor terminated the emergency in June 1980, but did not require ADES to revert funds until January 1981. Between June 1980 and January 1981, ADES transferred or spent inappropriately 26 percent of the clean-up project funds. These transfers and expenditures are shown in Figure 6.

FIGURE 6

TIMING OF EXPENDITURES AND TRANSFERS FROM THE GLOBE ASBESTOS EMERGENCY ACCOUNT



Inadequate Reports - Annual reports submitted to the Legislature do not provide adequate information. These reports, prepared and signed by the former emergency services director, do not provide sufficient details on the nature and purposes of expenditures.

A.R.S. §35-192, subsection E requires the Director of Emergency Services to report annually to the Legislature the actions of the emergency council. However, the statutes do not prescribe the degree of detail which these reports should contain.

As a result, the reports list only a general purpose without itemizing or grouping expenditures. For example, the 1981 report shows as follows:

> "Flooding--Santa Cruz County and City of Nogales (Governor's Proclamation of August 21, 1980). Reimbursement to County and City for repair of flood damaged facilities and associated costs."

The nature of such items as "associated costs" are not indicated. Without additional detail, the Legislature would be unaware from this report that the private association conference cost was funded from this account.

Federal Agencies May Require Arizona to Repay Funds and Other State Agencies' Operations May Be Affected

Because ADES mismanaged Federal funds, the State may be required to repay a significant amount of Federal grant monies. Under existing regulations, Federal grantor agencies may disallow and request repayment of both 1) improper expenditures made directly from Federal grant accounts and 2) unsupported transfers and expenditures.

We identified at least $165,805 in such expenditures and transfers in the Federal grant account for trailer upgrades. ADES spent $38,686 in Federal funds for the warehouse and cafeteria projects and other items clearly unrelated to the trailer upgrade grant. The Division may be unable to support either transfers or personal services payments totalling $127,119

due to deficiencies in the accounting and time-reporting systems. The State's potential liability for this account alone could exceed $400,000 if Federal agencies also disallow expenditures from the trailer upgrade account made for another federally funded project.* A summary of the State's potential liability resulting from mismanagement of the trailer upgrade grant account is presented in Table 8.

TABLE 8

POTENTIAL STATE LIABILITY RESULTING FROM MISMANAGEMENT OF FEDERAL FUNDS IN THE TRAILER UPGRADE GRANT ACCOUNT

Expenditures unrelated to any Federal grant	$ 38,686
Unsupported transactions:	
Transfers	84,796
Personal services expense	42,323
	165,805
Expenditures for federally funded remodeling project:	
Principal account	117,336
Subsidiary account	135,348
	252,684
Potential liability from trailer upgrade grant account	$418,489

Further, Federal auditors have identified a significant amount of improper expenditures in several other accounts. The actual amount of funds which may require repayment depends upon the outcome of the Federal audits currently in progress.**

* These expenditures were made before funds for the other project were received (see page 23). Although the trailer upgrade grant account was later reimbursed for the expenditures, expenditures made before funds are available may be disallowed, according to Federal auditors.

** On March 18, 1983, the Federal Emergency Management Agency (FEMA) issued a bill of collection to recover a $225,615 duplicate payment for a temporary housing project. FEMA auditors are currently reviewing numerous other accounts.

Other State agencies and some local governments could lose a significant amount of funds if repayment is required. Public Law 93-288 allows the Federal government to withhold disaster-related monies granted to any political subdivision if an agency misspends funds. Therefore, if ADES does not have sufficient funds for repayment, grants to State agencies and various county and city governments could be withheld.

In addition to possible withholding of Federal funds, financial mismanagement can adversely impact monies held in trust for other agencies if these funds are not available when needed. For example, the Division has not fulfilled its fiduciary responsibilities in at least one instance. ADES administers an account established for funds the Land Department may require for fire suppression expenses. During calendar years 1980 and 1981, ADES inappropriately transferred over $200,000, or 29 percent of appropriated funds, to accounts established for its own internal operations and to various joint clearing accounts. Only 4 percent of all transfers from the account were proper.* As a result, when the Land Department received a U.S. Forest Service bill for the State's portion of joint fire suppression activities, the account balance was $133,202 less than the required payment.

Causes of Mismanagement

This extensive mismanagement of Division funds appears to have occurred for two reasons. First, the former director of the Division failed to ensure that funds were properly expended and accounted for. Second, Division internal controls and accounting procedures were either inadequate or lacking.

Failure of Director - The former director failed to fulfill his duty to safeguard State monies. As administrative head of the Division, the director is responsible for expending funds in a manner consistent with State and Federal laws and regulations. However, our review indicates that the former director was directly responsible for at least a portion of the inappropriate expenditures and transfers we identified. According to the former accounting officer, the former director himself ordered many of these payments and transfers.

* We did not determine whether expenditures totaling $269,171 were appropriate.

Inadequate Internal Control and Accounting - Division internal controls and accounting procedures are either inadequate or completely lacking. As a result, the propriety of a significant number of expenditures cannot be determined.

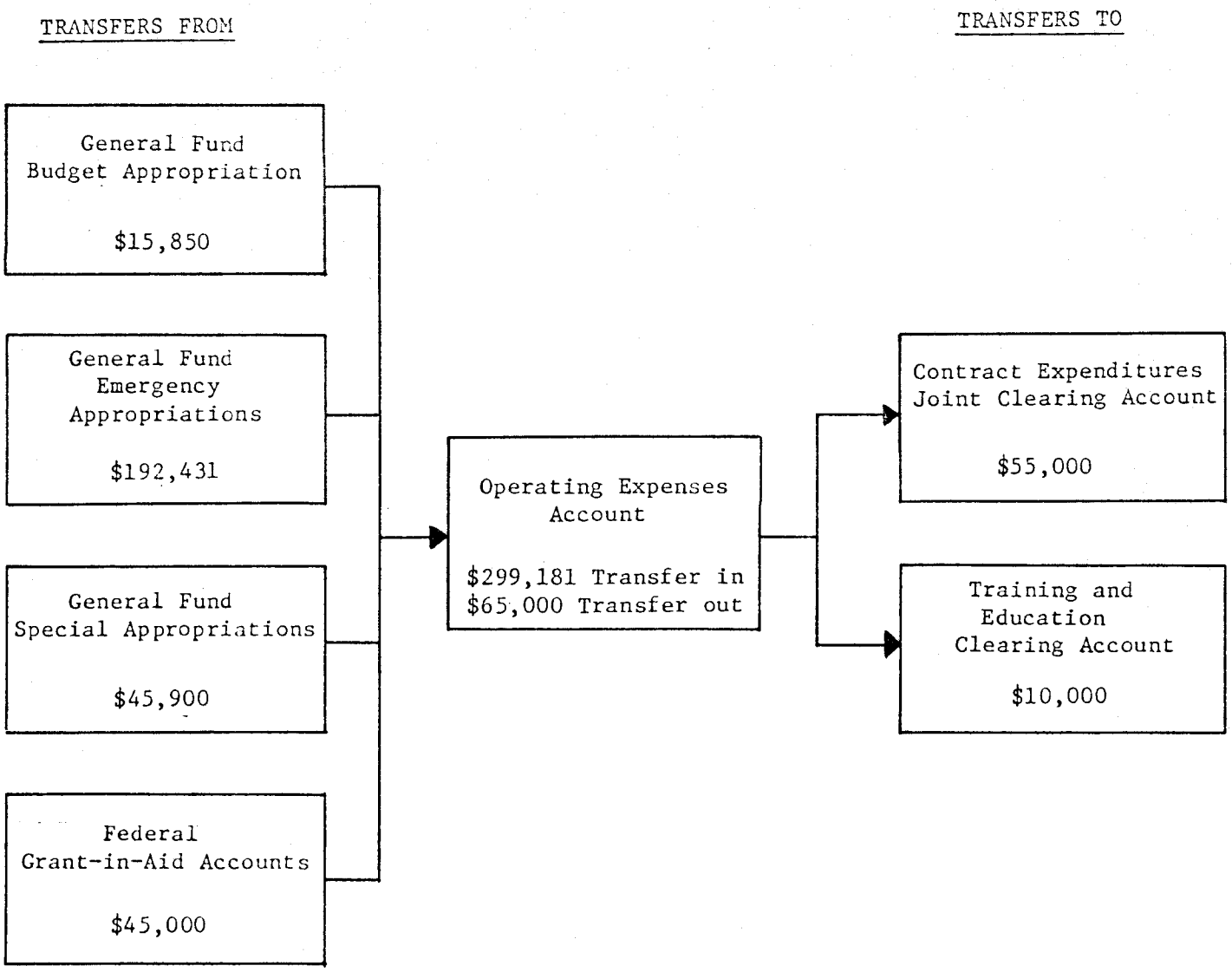
Financial transactions must be documented adequately according to State and Federal laws and regulations, including the Division's own administrative rules. Accounting records must identify the sources and uses of funds, accurately reflect the financial results of the funded program and otherwise be acceptable for audit purposes. Further, transfers must be explained and justified.

In our opinion, ADES has not met these requirements. The Division has commingled funds and obliterated audit trails to the extent that identifying the ultimate uses of some monies may be impossible. Funds are transferred frequently between accounts. In most cases, transfer documents contain only a general description such as "payroll" or "operating expenses." The persons to be paid, the amount to be paid, and in the case of operating expenses, the specific item or service to be purchased is not detailed. In some cases, the documents contain no explanation or justification at all. When funds are transferred to other accounts, especially to joint clearing accounts, without sufficient explanation, the funds lose their identities. It is virtually impossible to determine the sources of funds for specific expenditures made from these accounts.

The following example illustrates the problem. In October 1980, an account for operating expenses funded from State and Federal sources was established. Transfers to and from this account for the first two months are shown in Figure 7.

FIGURE 7

TRANSFERS AND EXPENDITURES FROM THE JOINT CLEARING ACCOUNT FOR OPERATING EXPENSES DURING OCTOBER AND NOVEMBER 1980



These transfers do not indicate a specific purpose. Therefore, it is impossible to determine whether the purchase of radio equipment, for example, was made with funds originally designated for regular payroll from the annual appropriation, a specific declared emergency or a specific Federal program such as the trailer upgrade project.

Retransfers further tangle the audit trail. As previously noted, funds lose their identities when transferred to joint clearing accounts. They are, in effect, mixed with all other funds in the account. In some instances, "mixed" funds from one joint clearing account are transferred to other clearing accounts containing "mixed" funds. Funds from the second joint clearing account are then transferred back to the first clearing account.

The Division's internal audit position does not serve as a control mechanism for expenditures of State funds because the auditor does not regularly review emergency accounts. The position, funded with State emergency monies, is responsible for reviewing claims submitted by applicants for Federal pass-through disaster relief funds and auditing Federal grant programs.

CONCLUSION

ADES has mismanaged substantial amounts of emergency funds. Unauthorized expenditures were made by circumventing the legislative appropriations process and transferring funds to other accounts. This mismanagement occurred because the former Division director failed to exercise his responsibility to properly expend and account for funds, and internal controls and accounting procedures were inadequate.

RECOMMENDATIONS

1. The Legislature should consider appropriating funds to establish an internal auditor position reporting directly to the Adjutant General. The auditor should conduct financial and compliance audits a) at termination of the state of emergency and b) annually for accounts which are open in excess of 12 months.

2. Annual reports submitted to the Legislature in accordance with A.R.S. §35-192, Subsection E should provide sufficient details on the nature and purpose of each expenditure. Expenditures should be appropriately itemized or grouped to provide adequate reporting.

3. The Division should revise its accounting system to provide adequate controls. Accounting procedures should include a) full documentation of transfer requests including the specific purpose of transfers and b) approvals of transfers by the director of the Division and periodic reviews of transfers by the Adjutant General.

FINDING II

THE DIVISION FAILED TO COMPLY WITH COMPETITIVE BIDDING REQUIREMENTS.

The Division of Emergency Services (ADES) consistently disregarded, and in some instances circumvented, both State and Federal competitive bidding requirements. Specifically, ADES

- Did not bid competitively for some professional services although in some cases the former director was aware that costs would exceed $5,000;
- Placed orders with vendors before advertising for bids; and
- Circumvented bidding requirements by splitting payments into amounts less than $5,000 each.

We also found that ADES made emergency purchases without obtaining waivers required by State law. Because ADES did not comply with bidding requirements, the State may have incurred excessive costs.

Bidding Requirements

Both State law and Federal procurement standards require the Division to bid competitively for purchases of goods and services exceeding $5,000. Specific bidding procedures are prescribed by statute or established by the State Purchasing Office (SPO). However, there are no criminal penalties prescribed for violating these provisions and requirements.

Arizona Revised Statutes (A.R.S.) §§41-1051 et. seq. require competitive bidding for purchases of outside professional services exceeding $5,000. Budget units must issue requests for proposals, mail notices to persons requesting notification and publish requests for proposals in newspapers. These provisions apply to most professional services, including legal and engineering services. A.R.S. §34-201, subsection A further requires State agencies to bid competitively for construction projects exceeding $5,000.

Purchases of materials and equipment in excess of $5,000 are subject to competitive bidding. A.R.S. §41-730, subsection A requires budget units to issue invitations to bid ". . . in a sufficient time . . . and in sufficient detail to permit free competition." Bids must also be solicited from ". . . the maximum number of qualified sources."

Prior to July 1982, SPO delegated purchasing authority to the Department of Emergency and Military Affairs among other agencies.* The Division, as part of the Department, was nevertheless bound by the statutory bidding requirements and SPO procurement procedures.

SPO developed procedures specifying the manner in which bidding was to be conducted to meet these statutory requirements. According to Legislative Council, the purchasing standards contained in the SPO policy and procedure manual are binding on all State agencies. A memorandum dated April 23, 1981,** states in part:

> ". . . purchase authorized agencies are . . . subject to the manual's directives. Since their authority is derived from that belonging to the purchasing section these 'other budget units' are bound by all the procedures and restrictions that govern purchasing by the purchasing section."

ADES is also subject to Federal competitive bidding requirements. U.S. Office of Management and Budget (OMB) procurement standards for Federal grant-in-aid agencies state in part:

> "All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. . . . Procurement procedures shall not restrict or eliminate competition."

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* As of July 1982, State purchasing has been centralized. SPO is the State-authorized purchasing unit. Purchasing authority is still delegated to several agencies until the agencies' staffs can be absorbed into SPO's operations. SPO plans to absorb the Department's purchasing staff by the end of fiscal year 1982-83.

** Appendix III contains the memorandum text.

The Federal standards require grantee agencies to follow State procurement procedures as long as State requirements conform to Federal requirements. Further, agency records must show the rationale for the procurement method selected, for contractor selection or rejection and cost.

ADES Not in Compliance with Bidding Requirements

ADES has not complied with State and Federal bidding requirements. Bids were not solicited for some purchases which exceeded $5,000. In other cases, vendors were selected prior to advertisement and solicitation of proposals. Finally, ADES circumvented the bidding process by splitting payments into amounts less than $5,000. Under current statutes, however, the State may have limited recourse against the individuals responsible for these actions as there are no criminal penalties for violations of the State's bidding statutes.

Failure to Solicit Bids - ADES failed to solicit bids for some contracts which exceeded $5,000. In at least one case, the former director was aware that project costs would exceed $5,000. In July 1980, the former director awarded a contract for work on a relocation project to an engineer recommended by the county emergency services director and county engineer. According to the ADES relocation project director, the Division did not publish requests for proposals or otherwise solicit bids because the project's costs were not expected to exceed $5,000. However, the engineer's proposal states that the project would cost $10,460, an amount clearly required to be bid.

It is likely that the former director was aware that costs would exceed $5,000 for two other projects funded primarily with Federal grant monies, but he again failed to solicit bids. According to the assistant director for logistics, the former director requested that the contractor

constructing the trailer storage area also construct a mess hall and convert a warehouse into an office complex.* The projects were not bid competitively although the contractor submitted a $70,000 estimate for the mess hall, and the two projects were completed at a cost of approximately $270,000.

The same contractor was also hired without competitive bidding for work on a relocation project. When the former director resigned, the Adjutant General directed the project be bid competitively. ADES received a proposal from only the contractor already working on the project.

ADES also purchased engineering services for the van conversion project** without required bidding. In January 1981, a telecommunications firm submitted a proposal for $19,980 which, according to the project manager, was not bid out.

Vendors Selected Prior to Bid Solicitation - In at least one instance, a vendor had already been selected before the Division solicited bids. ADES purchased an $11,000 van from an out-of-state vendor without obtaining State Purchasing Office vendor lists. In fact, ADES ordered the van six days before placing a newspaper advertisement soliciting bids. According to the ADES director of logistics who executed the order, the Division did not contact SPO because the purchase was highly specialized and he did not believe local vendors could provide vans meeting ADES' specifications. However, four local vendors informed audit staff that they could have provided the vehicle. The director of logistics claimed he became aware of the out-of-state firm through a local dealer who sold the vans. However, this dealer told us they were not familiar with the firm and had never carried the product. Similarly, two other local vendors we contacted had never heard of the company or product line.

* Expenditures for this project were also inappropriate and unauthorized. The projects are discussed in detail in Finding I (see page 23).
** The van conversion project is discussed in detail on page 19.

Bidding Process Circumvented - The Division appears to have circumvented the bidding process through bid splitting. In several cases, ADES entered into several consecutive contracts for identical services which totaled more than $5,000.

Arizona law requires bidding for projects whose total cost exceeds $5,000 even though individual components cost less than $5,000. According to the Attorney General, bid splitting, or purchasing services over time utilizing separate payments aggregating to $5,000 or more, must have a reasonable basis and cannot be used to avoid the bidding statutes.

ADES used consecutive contracts, extended contracts or made separate payments totaling over $5,000 without bidding and without apparent justification. The following cases illustrate improper bid splitting procedures:

- In total, 5 of 21 professional services contracts we reviewed exceeded the $5,000 limit due to extensions or use of consecutive contracts. One individual was awarded eight consecutive contracts and two extensions. She was paid at least $40,000 during the 33 months she was under contract. A computer programer received eight extensions for one contract and two extensions of a contract signed when the last extension expired. He was paid $17,300. A third contractor received $10,000 under two consecutive $5,000 contracts.

- ADES purchased engineering services for the satellite communications system totaling $21,000 without bidding because the component task costs were less than $5,000. The engineering firm's proposal quoted a $1,500 unit cost for each of 14 antenna locations and described the services to be performed. According to the ADES project manager, ADES did not seek bids because each location was engineered individually. However, this is not a reasonable basis for bid splitting in that the 1) firm submitted one proposal for all locations, 2) unit prices were identical, and 3) work to be performed did not vary by location.

No Criminal Penalties - Current State statutes governing bidding do not contain criminal penalties for violations. Consequently, the State may have limited recourse against individuals responsible for the violations uncovered at ADES. One can only speculate whether criminal penalties might have served as a deterrent in these instances.

Waivers Not Requested
for Emergency Purchases

The former director exceeded his statutory authority by making emergency purchases without required waivers. Although he was subsequently informed that such waivers were necessary, ADES has not requested exemption from the bidding statutes.

Although Arizona law provides for exemptions to competitive bidding requirements, only the assistant director for finance may grant these exemptions. Under the provisions of A.R.S. §§41-1054, subsection B and 41-730, subsection D, the assistant director for finance may waive compliance with bidding requirements. According to a Legislative Council memorandum dated December 27, 1982,* the ADES director must comply with these provisions, even during a declared emergency. The memorandum states in part:

> "Executive Order No. 79-4 authorizes the director of the division of emergency services to take certain actions under a declared state of emergency including entering contracts or leases. The governor specifically requires the director to follow 'State of Arizona procurement procedures.'
>
> "Regardless of the source of emergency monies, the director of emergency services is required to comply with Arizona procurement procedures. The director must comply with the special procurement procedures in the event of an emergency situation.
>
> ". . . The assistant director for finance and not the director of emergency services is responsible for determining whether the threat to public health, welfare or safety is such that emergency procurement procedures must be used." (emphasis added)

* Appendix IV contains the memorandum text.

The Division made purchases during emergencies without obtaining waivers. According to ADES staff, the former director was informed in March 1982 that waivers were required. Since that time, however, ADES did not submit requests for waivers.

State May Have Incurred Excessive Costs

The former director's disregard for competitive bidding requirements may have resulted in excessive costs for purchases which were not bid. According to a February 4, 1980, Attorney General opinion,* public officials have a responsibility to expend funds efficiently through bidding. The opinion states in part:

> ". . . The lack of competitive bidding in our experience generates abuse and in most instances results in higher cost. Moreover, we believe that all public officials with authority to expend public funds have a fiduciary responsibility to do so in the most economical and feasible manner." (emphasis added)

The following case illustrates how failure to bid competitively can generate excessive costs. The engineer hired for a community relocation project (see page 39) upon the recommendation of County officials submitted a proposal for $10,460. Before completing the project ADES dismissed him. According to an ADES project manager, ". . . we determined that he was not competent to continue to discharge his duties. . . ." The Division had paid him at least $43,900 (over four times the proposal amount) before the dismissal. ADES then hired a second engineer to complete the project at a cost of $22,400.

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* Appendix V contains the opinion text.

CONCLUSION

ADES failed to comply with State and Federal requirements for competitive bidding and failed to obtain required waivers for emergency-related purchases. As a result, the State may have incurred excessive costs. Additionally, the State may have little recourse because these violations are not subject to criminal penalties.

RECOMMENDATIONS

1. The Division of Emergency Services should comply with statutory and other bidding requirements. To ensure compliance, audits by the internal auditor as recommended in Finding I (see page 35) should include reviews for compliance with bidding requirements.

2. The Legislature should consider establishing criminal penalties for intentional violations of the bidding requirements in A.R.S. §§41-1051 *et. seq.*, 34-201 and 41-730.

FINDING III

THE DIVISION HAS MISUSED PERSONNEL AND CIRCUMVENTED THE STATE MERIT SYSTEM.

Division of Emergency Services (ADES) personnel practices have not conformed to State merit system requirements. Beginning in 1981, the Department of Administration - Personnel Division (DOA-Personnel) identified numerous questionable personnel practices at ADES. More recently, our audit found that ADES has circumvented the State merit system by misusing exempt positions and using employees to perform work unrelated to their offical duties. Many of the problems identified have not been adequately addressed. ADES' questionable personnel practices create unnecessary and excessive costs, threaten the credibility of the State merit system and jeopardize future Federal funding for the Division.

Purpose of State Merit System

The purpose of the State merit system is to provide for efficient use of resources in that positions are classified and compensated according to the duties performed. A sound pay plan provides the same level of pay for positions which are at a comparable level of difficulty and responsibility. According to a leading authority, a position classification plan assures the taxpayer that personal services expenditures are related to services rendered.

Further, the merit system provides that all positions except those which are exempt are filled competitively. This ensures that the best qualified job candidates are hired and promoted in State service. Numerous statutes have been enacted and rules promulgated governing hiring, promotions and other agency personnel practices. These statutes and rules are designed largely to maintain the integrity and fairness of the State merit system. However, both our review and previous DOA-Personnel audits found that ADES has operated in many instances outside of State merit system requirements since 1979.

DOA-Personnel Identified
Questionable Practices in ADES

In 1981, DOA-Personnel identified numerous questionable personnel practices in the Division of Emergency Services. DOA staff correspondence repeatedly addressed the following questionable personnel practices in ADES in 1981:

- Excessive Staff Movement: ADES was constantly promoting or transferring employees to and from limited, exempt and permanent positions. Some employees held up to seven different positions in three years.

- Position Misuse: A personnel assistant was promoted to accountant but still performed personnel tasks. An administrative assistant's primary duties included computer input, a clerical duty.

- Inappropriate Use of Exempt Positions: ADES' use of some exempt positions circumvents the merit system. Two exempt appointments were used to fill permanent Office of Fire Marshal positions. These positions are still filled improperly (see page 49). Further, a 1979 Federal Office of Personnel Management report identified eight improper exempt positions.

- Improper Hiring and Promotion Procedures: Of 65 internal promotions, 64 had only one applicant.

- Possible Overstaffing and Position Overgrading: A business manager (grade 17) was reclassified to an administrative services officer (grade 19) with the understanding that an assistant director position (grade 21) would be abolished. The position was not abolished and both were filled. Furthermore, 80 of 110 positions were grade 16 or higher.

Additional problems were identified in subsequent DOA-Personnel audits. An audit conducted in September 1981 found that

- Many hiring decisions were made before the recruitment process was complete.

- Personnel action forms had been processed incorrectly and personnel and job description files were inadequate.

DOA-Personnel conducted a second audit in February 1982 focusing on ADES personnel files. Significant problems with potentially serious ramifications were discovered in three areas:

- Job Applications Enhanced: In three cases, job applications were "enhanced," resulting in employees meeting minimum qualifications for positions for which they would not otherwise qualify. In five other cases variations existed between applications and resumes but probably did not affect minimum qualifications. However, some of the variations were very misleading and updated applications were subject to misinterpretation. According to Personnel Board regulations, an employee may be removed from his position for making a false statement of material fact in his application.

- Required Documents Missing: Several types of documents including personnel action forms, job applications, performance evaluations, loyalty oaths and salary adjustment forms were missing from many of the employees' files. Personnel Board rules require that these types of documents be contained in each employee's official personnel file.

- Performance Evaluation Reports Did Not Justify Merit Increases: Ten employees received merit increases without having performance evaluation ratings to support such increases. In six cases, ADES submitted personnel action forms with performance ratings which differed from the employee's official performance evaluation. In four cases, employees' evaluations contained no ratings.

Merit System Circumvented

Our more recent review found personnel problems similar to those identified by DOA-Personnel. ADES has used numerous exempt positions in violation of both State and Federal merit system requirements. Two exempt status employees currently hold positions which should have been filled competitively. In the past, many exempt positions were used improperly. In addition, numerous staff in exempt positions were paid from funds requiring merit system coverage. Such practices undermine the credibility of the merit system and could jeopardize future Federal funding.

State and Federal Requirements - A.R.S. §§26-305.F. and 41-771 provide that only the ADES director and fire marshal are exempt from State merit system requirements. In addition, Executive Order 79-4 permits ADES to use exempt positions during a declared emergency. These positions may be used only for tasks directly related to an emergency and only for the duration of the emergency. Further, they must be paid with funds made available for the emergency.

According to Legislative Council, employees performing duties related to regular operations are subject to the merit system. A December 27, 1982 memorandum* states that

> "If there are 'exempt' personnel performing regular division operations, the violation is their designation as exempt. . . ."

ADES is also subject to Federal merit system requirements because it receives Federal grant-in-aid monies. According to a 1979 U.S. Office of Personnel Management Evaluation of ADES, only the director, one administrative assistant and one confidential secretary may be exempt.** All other positions compensated with Federal funds are subject to merit system coverage.

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* Appendix VI contains the memorandum text.

** The report was issued before the Office of the Fire Marshal was transferred to ADES. It is likely that the fire marshal would be exempt under Federal standards because it meets the criteria of ". . . top level positions . . . [which] both determine and publicly advocate substantive public policy."

Exempt Positions Misused - Two Division employees currently hold positions which should have been filled competitively. ADES employs 14 persons to coordinate emergency services activities and conduct fire safety inspections in the counties. Twelve of these staff members hold deputy fire marshal positions which were properly filled through competition. Two individuals, however, perform identical duties but were hired without competition as emergency services supervisors which are exempt positions established for use during declared emergencies.

ADES circumvented the merit system to hire these two individuals. Both applied for the covered deputy fire marshal positions when DOA-Personnel originally advertised them in September 1981. Neither met minimum qualification requirements and were not on the DOA-Personnel list of qualified applicants sent to the Division. ADES subsequently sent the list back to DOA-Personnel stating that none of the applicants could be hired because they were unwilling to relocate to the required counties. The Division then hired the two unsuccessful deputy fire marshal position applicants into exempt emergency services supervisor positions and assigned them to perform the deputy fire marshal tasks in the two counties. The DOA-Personnel analyst assigned to the Division at the time subsequently discovered that some of the qualified applicants were indeed willing to relocate.

Past Abuses of Exempt Positions - In the past, many exempt positions were used improperly or were paid from funds requiring merit system coverage. As noted earlier, a 1979 U.S. Office of Personnel Management Report found eight filled exempt positions at ADES in violation of Federal merit system requirements.

Several exempt ADES employees in the past have been paid from funds requiring merit system coverage. Between July 1979 and January 1981, ADES paid 14 exempt employees, representing 54 percent of all exempt positions, from funds requiring merit system coverage.* These funds include:

* We were unable to determine whether the exempt status was appropriate based on duties performed. Some of these 14 employees may have performed duties warranting exempt status.

- State personal services monies appropriated for regular operations;

- State appropriations for developing the fixed nuclear facility emergency response plan, a statutory responsibility of the agency;

- A Federal grant for regular operations; and

- A Federal grant for upgrading the safety features on mobile homes used to house flood victims.

Effects of Improper Use - The improper use of exempt position undermines the credibility of the merit system and could jeopardize future Federal funding. Competitive recruiting and hiring procedures ensure inpartiality and fairness in hiring decisions. Circumvention of these practices creates, at a minimum, the appearance of favoritism--that which the system was designed to prevent. Further, Federal regulations provide that funding may be withheld if funds are not spent in accordance with regulations and grant conditions, including those regulations requiring merit system coverage.

Since ADES receives a substantial amount of Federal funding, the impact of such a withholding would be significant. ADES receives approximately 56 percent of its funding from Federal sources. During fiscal year 1977-78 through 1981-82, ADES received over $6 million in grants and agreements, excluding pass-through disaster relief funds. (See Table 1 in the Introduction for a breakdown of fund sources.)

ADES Employees Performed Work Unrelated to Official Duties

Our review also found problems which had not been previously identified by DOA-Personnel. ADES has used many employees for tasks not related to their official job duties. In some instances employees performed tasks supporting a private organization of which the former director was regional president. In other instances, employees performed Division-related tasks outside their specified job duties or program. As a result, the State has incurred excessive costs, and program effectiveness may have been adversely affected.

Private Work - Two Division employees' primary duties involved tasks supporting a private organization of which the former director was regional president. The employees performed secretary/treasurer tasks for the organization, planned meetings, organized cocktail parties and prepared mailings and invitations. This work occurred during regular ADES office hours. Both had been hired as planners at annual salaries of $26,000 and $21,000, respectively.

Other Misuse - Some employees performed tasks not related to their prescribed duties. In some instances, the jobs actually performed required less compensation than what was paid, according to State classification/compensation schedules. A planner whose salary was $19,000 per year worked as an accounting clerk, a position which would normally pay $13,300 per year. Another planner, paid $26,000 per year, performed Division public information officer duties at times. The public information officer position pays only $16,300 per year. A third planner performed training and education tasks.

Excessive Costs - As a result of this misuse of personnel, the State has incurred unnecessarily excessive costs. The salaries paid to the employees supporting a private organization are unjustified. Further, parts of the salaries paid to the three employees who performed tasks outside their job duties are excessive since proper classification and compensation for the duties actually performed would result in significant savings. Finally, position misuse may adversely impact the effectiveness of ADES' programs if employees hired to perform specific duties are not available to complete these tasks.

Personnel Problems Not Adequately Addressed

Many of the personnel problems at ADES identified by DOA-Personnel and substantiated by our review are still evident. ADES did not take adequate corrective action in response to DOA-Personnel recommendations. Moreover, several problems have yet to be addressed.

DOA-Personnel Actions - DOA-Personnel attempted to address some of the problems it identified in ADES (see page 46). A September 1981 DOA-Personnel audit of ADES verified the existence of many problems noted by DOA-Personnel staff. In late 1981, the DOA-Personnel assistant director required that any future exempt appointments at ADES be "cleared" through him personally. An accountant position was reclassified downward to its previous classification. One of the three employees with an enhanced job application was allowed to resign eight months after the enhancement was discovered.

ADES' Response to DOA-Personnel Audit Inadequate - ADES failed to properly correct problems identified by the DOA-Personnel audit of its personnel files. For example, ADES changed ratings on employee evaluations on file at ADES to agree with ratings reflected on personnel action forms submitted to DOA-Personnel to support merit increases. Some missing documents were located and placed in the files, however, employees were also allowed to correct "enhanced" applications. DOA-Personnel staff considered the ADES response inadequate and insufficiently documented.

Several ADES Personnel Problems Have Never Been Addressed - Several ADES personnel problems have yet to be addressed. The DOA-Personnel assistant director stated in an October 1, 1981, letter to the Department of Emergency Services and Military Affairs that he

> "View[ed] the number one priority to be the immediate classification review of the organizational structure, particulary the Emergency Services' use of exempt and limited appointment positions."

However, this classification review of the agency has never been conducted.

Other personnel problems also have yet to be addressed at ADES. First, the extent to which the agency is overstaffed has never been analyzed. Second, the problem of internal promotions has not yet been reviewed. Finally, the two deputy fire marshal positions filled by exempt employees since 1981 have yet to be filled competitively.

CONCLUSION

ADES circumvented the merit system, using exempt positions to perform regular Division activities. Further, some employees performed duties other than those related to their jobs, including tasks supporting a private organization. Many other personnel problems identified by DOA-Personnel have not been adequately resolved. These improper practices threaten merit system credibility, jeopardize future Federal funding, waste State monies and may adversely affect Division program effectiveness.

RECOMMENDATIONS

1. DOA-Personnel analysts should conduct a study to determine appropriate levels of staffing at ADES. This review should include a comprehensive classification study to determine a) whether all exempt status positions are appropriate and b) whether current classifications reflect duties performed.

2. ADES should fill the deputy fire marshal positions competitively.

3. ADES should implement a time reporting system which adequately reflects duties performed, including the specific project or emergency on which employees worked.

4. In conjunction with the recommendations contained in Finding I (see page 35), the Division should revise its accounting system to ensure employees are paid from funds related to the project on which they work. These revisions should include maintaining an adequate audit trail.

AREAS FOR FURTHER AUDIT WORK

During the course of our audit, we identified potential problems requiring further audit work in numerous areas of the Division of Emergency Services. Due to time and staffing constraints resulting from the extensive review of other issues required in the Division of Emergency Services, we were unable to review these areas. These potential issues are listed below.

1. Have professional services contracts been used to circumvent the State merit system?

2. Has all work required by professional services contracts been completed?

3. Are internal promotion procedures appropriate?

4. Is the Division overstaffed?

5. Has ADES met its goals, including completion of activities required by both State law and the terms of the Federal cooperative agreement?

6. Do ADES's activities actually protect the public? Specifically, can the nuclear emergency evacuation plan be effectively implemented and has the public been adequately informed of contingency plans?

7. Do ADES's duties and activities duplicate those performed by other agencies such as the Radiation Regulatory Agency?

8. Have rental receipts been reverted as required?

9. Is the physical inventory system adequate?

STATE OF ARIZONA
Department Of Emergency And Military Affairs
OFFICE OF THE ADJUTANT GENERAL

DIVISION OF MILITARY AFFAIRS
5636 EAST MCDOWELL ROAD
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TELEPHONE
602-273-9700
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April 15, 1983

APR 18 '83
AUDITOR GENERAL

Mr. Douglas Norton
Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Dear Mr. Norton:

Attached is my response to your letter dated March 24, 1983, regarding the Performance Audit of the Department of Emergency and Military Affairs. The response has been prepared in three parts. Part I covers the Division of Emergency Services, Part II is the State Fire Marshal's Office and Part III is the Division of Military Affairs.

I am gratified that the State Auditor conducted this thorough study. The audit has assisted us in identifying problem areas which need to be addressed. We have had no staff resource to perform an internal audit of our programs. This draft report from the State Auditor is of the scale that provides the information required to adjust our programs for improved management of all our divisions.

The program revisions and review will be ongoing, however due to the limited time for this initial response, please accept this as an interim report. Additional comments will be provided to your office after a detailed study of the report is completed.

Again, I commend you for your assistance and thank you and your staff for the cooperation received during the period of March 24 to April 15, 1983.

Sincerely,

J. G. SMITH, JR.
Major General, ArizARNG
The Adjutant General

Attachment

STATE OF ARIZONA

BRUCE BABBITT
GOVERNOR

ROBERT B. TANGUY
DIRECTOR

DIVISION OF EMERGENCY SERVICES
5636 EAST McDOWELL ROAD
PHOENIX, ARIZONA 85008
TEL. (602) 273-9880

April 14, 1983

Mr. Douglas R. Norton
Auditor General
111 West Monroe
Phoenix, Arizona 85007

Dear Mr. Norton:

The Division of Emergency Services has completed a preliminary review of your draft performance audit. The major conclusions and recommendations in the report support the priorities for change established by the new leadership of the Division since December, 1982. Our response is attached.

Major changes instituted in the Division's accounting system and procurement procedures have corrected the major deficiencies noted in those areas. In the case of personnel management, interim actions have been taken in preparation for a major reclassification and personnel review.

Individual program funds have been established. A proposal has been made for regular outside audits. Strict adherence to the State merit system has been directed by me to preclude recurrence of the deficiencies.

We will continue to review the details contained in your report as well as those areas identified for further audit attention.

Sincerely,

Robert B. Tanguy
Director

Enclosures

STATE OF ARIZONA

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April 14, 1983

FINDING ONE/CONCLUSION

Reference Recommendation #1

(Page 35) Nonconcur in part: The internal auditor capability for executive agencies should be established in the Department of Administration rather than in individual departments. This would provide a true and legitimate outside audit for each agency. The immediate interim solution could allow for the audit function within the Department of Military Affairs.

Reference Recommendation #2

(Page 36) Concur

Reference Recommendation #3

(Page 36) Concur: The Division has now programmed its accounting system to become integrated with the Arizona Financial Information System (AFIS) which provides specific program management, precise financial documentation, explanation of all transfers and other accounting functions. Individual program funding accounts now provide accurate and immediate audit.

STATE OF ARIZONA

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April 14, 1983

FINDING TWO/CONCLUSION

Reference Recommendation #1

(Page 46) Concur: The Division has instituted new internal controls for procurement which involve the use of the Military Department's Contracting Officer and the State Purchasing Office. All procurement by the Division is now processed through: 1) the program manager, 2) Division Accounting Office, 3) the Division Director, 4) Military Department's Contracting Officer, and finally 5) The Adjutant General for approval.

STATE OF ARIZONA

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April 14, 1983

FINDING THREE/CONCLUSION

Concur: Division personnel have been assigned to specific tasks associated with a legitimately funded State/Federal program. Job descriptions, reclassifications, regrades and other administrative actions necessary to support these personnel realignments are in process. Training and education has been ordered for employees and supervisors in order to improve administration of PP&Es, to insure proper counseling, and in general, to provide for management of personnel matters in strict accordance with the State Personnel Merit System.

The State Personnel Office has just completed a personnel records audit and has been requested to conduct a complete classification review of the Division to determine that proper staffing levels exist and duties being performed reflect grade levels and positions.

DEPARTMENT OF EMERGENCY
AND MILITARY AFFAIRS
OFFICE OF FIRE MARSHAL

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SUMMARY

The Office of the Auditor General has conducted a limited review of the Department of Emergency and Military Affairs, Division of Emergency Services, Office of Fire Marshal in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This review was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Office of Fire Marshal and the Fire Advisory Council were created by the Legislature in 1972 to ". . . promote public health and safety and to reduce hazards to life, limb and property. . . ."

The Office is responsible for statewide fire prevention and protection activities. Specifically, the fire marshal is required to 1) assist in the enforcement of State and local fire prevention laws and ordinances, 2) conduct periodic building safety inspections, 3) prescribe minimum fire prevention standards, and 4) ensure establishment of school evacuation programs.

The eight-member Fire Advisory Council has no specific statutory authority or responsibility. The director of the Division consults with the Council before rules and regulations are promulgated.

The Office's programs are generally consistent with the legislative mandate. However, the Office has not met its inspection goals (see page 4). Further review is needed to determine:

- the impact of inappropriate Division personnel practices on the fire marshal inspection program (see page 5);
- whether the Office operates efficiently (see page 3); and
- the need for the Fire Advisory Council (see page 9).

Due to time and staffing constraints resulting from the extensive review required of issues in the Division of Emergency Services, we were unable to address fully these concerns.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a limited review of the Department of Emergency and Military Affairs, Division of Emergency Services, Office of Fire Marshal in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This review was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Office of Fire Marshal and the Fire Advisory Council were created by the Legislature in 1972 to ". . . promote public health and safety and to reduce hazards to life, limb and property . . . ." Until transferred to the Division on January 1, 1982, the Office was under the direction and control of the Industrial Commission.

The fire marshal is responsible for statewide fire prevention and protection activities. Arizona law requires the fire marshal to 1) assist in the enforcement of State and local fire prevention laws and ordinances, 2) conduct periodic building safety inspections, 3) prescribe minimum fire prevention standards and 4) ensure establishment of school evacuation programs. The fire marshal has authority to investigate potential arson cases and provide fire prevention and fire fighting training.

The eight-member Fire Advisory Council has no specific statutory authority or responsibility. The director of the Division consults with the Council before rules and regulations are promulgated. The Council has met six times since 1972, most recently in 1980.

The Office is funded by General Fund appropriations. Actual and estimated expenditures for fiscal years 1980-81 through 1982-83 are shown in Table 1.

TABLE 1

ACTUAL EXPENDITURES FOR FISCAL YEARS 1980-81 AND 1981-82

	1980-81	1981-82
Personal services	$182,400	$327,300
Employee-related expenses	39,200	71,400
Professional and outside services	10,000	20,200
Travel:		
In-State	29,300	59,400
Out-of-State	300	700
Other operating expenses	29,300	34,600
Equipment	1,600	7,000
Fire training school	15,000	20,000
Total	$307,100	$540,600

Source: Joint Legislative Budget Committee 1982-83 Appropriation Report and Department of Administration - Finance Division budget records

Audit Scope

Our audit was limited to reviewing the Sunset factors and identifying potential problem areas where further audit work is needed. Due to time and staffing constraints resulting from the extensive review required of issues in the Division of Emergency Services, we were unable to review these areas in detail. Areas requiring further review are discussed in the Sunset Factors section.

The Auditor General and staff express gratitude to the Adjutant General, the director of the Division of Emergency Services, State Fire Marshal and members of their staffs for their cooperation and assistance during the course of the audit.

SUNSET FACTORS

Eleven factors were reviewed to determine if the Department of Emergency and Military Affairs, Division of Emergency Services, Office of Fire Marshal should be continued or terminated in accordance with Arizona Revised Statutes (A.R.S.) §41-2354, subsection D.

1. Objective and purpose in establishing the agency

The Legislature established the Office of Fire Marshal and the Fire Advisory Council in 1972 to ". . . promote public health and safety and to reduce hazards to life, limb and property. . . ."

Agency goals and objectives are consistent with statutory intent. The agency's stated goals are

> "The promotion of public health and safety and the reduction of hazards to life, limb and property due to fire by providing code enforcement, fire/arson investigation, fire prevention and suppression training, public education, fire incident reporting and resource programs at the state level."

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which the agency has operated

The Office's programs are generally consistent with the legislative mandate. However, the Office has not met its inspection goals. Further review is needed to determine whether the Office operates efficiently.

The fire marshal is responsible for statewide fire prevention and protection activities. A.R.S. §26-335, subsection A prescribes the fire marshal's duties:

> "1. Assist in the enforcement of state laws and ordinances of cities and counties relating to fire prevention and protection.
>
> 2. Prescribe minimum standards for fire prevention throughout the state.
>
> 3. Cooperate and coordinate with other state agencies in the administration of the state fire prevention code."

A.R.S. §26-336, subsection A also requires the fire marshal to conduct periodic safety inspections of buildings and premises. Finally, A.R.S. §26-337, subsection A requires the fire marshal to

> ". . . enforce rules and regulations for establishing programs for evacuating school buildings and for instructing all students in public and private schools as to proper methods of fire prevention and control. . . ."

To fulfill its statutory duties, the Office has established a comprehensive fire protection and prevention program. The program is divided into four functional areas: 1) code enforcement, including facility inspections and construction plan reviews; 2) arson investigation; 3) training and education, including training fire-fighters, providing resources for public education and consulting with local jurisdictions; and 4) fire incident reporting.

Our review revealed that the Office has not met its inspection goals. The Office periodically inspects approximately 2,470 schools, health-care facilities, day care centers and foster homes, as well as State buildings. Although not statutorily required to do so, the fire marshal has given priority to schools and attempts to inspect all schools annually. The Office has not met this goal. According to the fire marshal, 25 percent of public schools were not inspected between October 1981 and February 1983.

Improper personnel practices within the Division may have adversely impacted the Office's effectiveness. Two employees did not perform required deputy fire marshal duties, including inspections, for at least nine months.* During this period, the Office was, in effect, understaffed. Further review is needed to determine the full impact of these personnel practices on the Office's work load.

3. The extent to which the agency has operated within the public interest

Agency operations serve the public interest by eliminating safety hazards in schools and other institutions, by providing for more effective fire-fighting capabilities through training and by increasing public awareness through school safety programs. During fiscal year 1981-82, the Office conducted 58 classes attended by almost 2,500 fire fighters. Further, training and education programs increase public awareness of fire prevention and protection. The Office provides audiovisual materials and educational literature to local fire departments for use in their educational programs for school children.

4. The extent to which rules and regulations promulgated by the agency are consistent with the legislative mandate

The rules and regulations, which constitute the State fire code, fulfill the Office's statutory responsibility to "[p]rescribe minimum standards for fire prevention throughout the State." The State fire code consists of the 1979 Uniform Fire Code formulated by the International Conference of Building Officials and the Western Fire Chiefs Association.

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* Improper personnel practices are discussed in Finding III of the Division of Emergency Services section.

5. The extent to which the agency has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

The agency's efforts to solicit public input and inform the public of its actions are generally adequate. The Fire Advisory Council, consisting of representatives of State agencies and local jurisidictions that the regulations will affect as well as a public member, provides input when rules are promulgated. Our review indicates that the Council has met most Open Meeting Law requirements. However, the Council should implement additional means of notifying the public.

State law requires public bodies to provide sufficient public notification of meetings. A.R.S. §38-431.02, subsection A requires public bodies to post notices and provide

> ". . . such additional and public notice as is reasonable and practicable as to all meetings."

In an August 19, 1975, memorandum* to all State agencies, the Attorney General noted that the Open Meeting Law was not clear as to required notice. As a result, the Attorney General provided guidelines describing adequate notice. In addition to the specific requirements prescribed by law, the Attorney General guidelines encouraged agencies to use press releases, paid legal notices, articles or notices in professional or business publications and mailed notices.

The Fire Advisory Council has not utilized additional notification procedures as recommended by the Attorney General. Notices are posted, but the Council uses no other means of notification such as sending notices to the press rooms in the Capitol area or notifying other agencies or public interest groups.

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* Appendix VII contains the memorandum text.

The fire marshal has sought input from the public on program activities. For example, the fire marshal has met with architects, engineers, fire service personnel and school officials to discuss problems encountered in school inspections.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction

The Office is not specifically responsible for complaint investigation and review. However, this role is inherent, stemming from the authority to inspect for fire hazards and enforce the State fire code. The Office receives complaints from citizens concerning code violations. These complaints are resolved as part of the Office's enforcement program or are referred to other appropriate authorities.

We were not able to evaluate the adequacy of the fire marshal's investigation and resolution procedures because we could not determine the number and type of complaints received. According to the fire marshal, the Office receives over 1,000 inquiries and complaints each month. However, the Office does not maintain a complaint log or complaint files.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

The Office has adequate enforcement powers. The statutes allow the director of the Division to issue cease and desist orders and seek injunctions against persons violating the fire code. Although the fire marshal's enabling legislation does not specifically provide that the Office of the Attorney General prosecute actions, A.R.S. §41-192, subsection A, paragraph 1 requires that the Attorney General provide legal assistance to other agencies.

8. The extent to which the agency has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

Although the fire marshal believes several statutory changes are needed, the Office has not sponsored legislation to address these concerns.

According to the fire marshal, the following changes are needed to enable the Office to fulfill its statutory mandate:

- Require the director of emergency services to promulgate rules and regulations and specifically provide for fire marshal input. Currently, rules are promulgated at the director's discretion.

- Require schools to submit new construction and major renovation plans to the Office for review and approval.

- Permit the fire marshal, rather than the director of emergency services, to issue cease and desist orders, file court actions and conduct hearings.

As of February 28, 1983, bills addressing these concerns had not been introduced.

Three bills that became law in 1980, 1981 and 1982 concerning financial report formats for fire districts and certification for entities receiving fire insurance premium taxes did not address these issues, either.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in the subsection

Further review is needed to address this factor. Due to time and staffing constraints resulting from the extensive review of issues required in the Division of Emergency Services, we were unable to address this factor.

10. The extent to which termination of the agency would significantly harm the public health, safety or welfare

Termination of the Office of Fire Marshal would harm the public health, safety and welfare by eliminating a source of expertise in fire prevention at the State level. Fire marshal activities do not duplicate activities performed by other entities. The fire marshal has exclusive jurisdiction over State buildings, including university facilities, schools and other institutions such as correctional facilities. Local jurisdictions do not inspect these structures for code compliance. Further, fire departments in nonmetropolitan areas may lack sufficient expertise to inspect for fire safety. The fire marshal reviews plans for institutions in unincorporated areas which are not subject to review by county officials. Last, the Office's training programs provide fire fighters in small districts or volunteer fire departments with needed expertise they may not otherwise obtain.

The Fire Advisory Council, however, has no specific statutory responsibilities or authority and has met infrequently since 1972. Whether the Council is needed is an issue for further audit work.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate

This factor is not applicable. The Office is not a regulatory agency.

STATE OF ARIZONA

BRUCE BABBITT
GOVERNOR

Robert B. Tanguy
DIRECTOR

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TEL. (602) 273-9880

OFFICE OF THE STATE FIRE MARSHAL

TO Robert B. Tanguy, Director April 14, 1983

FROM B. Paul Saunders, State Fire Marshal B.P.S.

RE Sunset Audit Report - State Fire Marshal's Office

I concur with the findings of the audit report but would like to comment on specific items.

Page 3, #2 - "effectiveness and efficiency"

The following three changes will greatly enhance the efficiency of our operations:

1. All personnel have been assigned Fire Marshal duties only.
2. The new Director's policy on budget control will give each Program Manager the authority and responsibility for managing his programs.
3. Physical realignment will place all Phoenix-based staff together.

Page 4 - "has not met its inspection goals"

All public schools have been inspected as of March 15, 1983.

Page 5 - "impact of improper personnel practices within the Division

Personnel actions have been taken as of December 1, 1982. One employee has been assigned full time deputy fire marshal duties in plans review. One employee has been transferred to another position within the Division of Emergency Services.

BPSjl

DEPARTMENT OF EMERGENCY
AND MILITARY AFFAIRS
DIVISION OF MILITARY AFFAIRS

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SUMMARY

The Office of the Auditor General has conducted a limited review of the Department of Emergency and Military Affairs, Division of Military Affairs in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This review was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2357 through 41-2379.

The Department of Emergency and Military Affairs was created by the Legislature in 1972. The Department consists of two divisions: the Division of Emergency Services and the Division of Military Affairs, constituting the Arizona National Guard.

The Arizona National Guard, established by the State Constitution, acts in a dual State-Federal status. The Guard serves as the organized component of the State militia, and when mobilized, reports to the Governor as commander-in-chief. As members of the U.S. Army or Air Force Reserve component, guardsmen may be called to active duty by the President during national emergencies.

Our review revealed that the Division has complied with most of the Sunset factors. The Guard is generally effective and efficient and has served the public interest. However, the agency should implement additional means of notifying the public concerning meetings in order to fully comply with Open Meeting Law requirements (see page 8).

Further review is needed in two areas. We identified potential problems concerning 1) the efficiency of armory construction and maintenance programs (see page 7) and 2) the appropriateness of some calls to active duty (see page 7). Due to time and staffing constraints resulting from the extensive review required of issues in the Division of Emergency Services, we were unable to review these areas.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a limited review of the Department of Emergency and Military Affairs, Division of Military Affairs in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This review was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Department of Emergency and Military Affairs was created by the Legislature in 1972. The Department consists of two divisions: the Division of Emergency Services and the Division of Military Affairs, constituting the Arizona National Guard. The Adjutant General is the administrative head of the Department.

The National Guard, established by the State Constitution, consists of

> ". . . such organized military bodies as now exist under the laws of the Territory of Arizona or as may hereafter be authorized by law."

The Guard serves as the organized component of the State militia and, when mobilized, reports to the Governor as commander-in-chief. The Adjutant General is responsible for day-to-day operations between mobilizations.

The Guard has a Federal as well as a State mission. Arizona National Guardsmen are members of the U.S. Army or Air Force Reserve component. As part of the reserve component, they may be called to active duty by the President during national emergencies. The Arizona Army National Guard served in both World Wars. The Air National Guard was called to active duty during the Korean conflict and, although not mobilized at the time, flew airlift missions to Vietnam.

The Guard receives both State and Federal funding. State appropriations account for only 5 percent of expenditures, including capital outlay.

These funds pay for recruiting, training, administration, armory maintenance and a portion of new construction. Funds received under five Federal service contracts provide for maintenance, utility and other operating expenses for three Air National Guard facilities, one Army National Guard facility and a weekend training site. Additional Federal expenditures, totaling over $220 million during the past five fiscal years, cover salaries for active National Guard personnel providing support services and active Army and Air Force advisors, equipment, a portion of new construction and other operating expenditures. Sources of funds for all expenditures and expenditures of State appropriations are shown in Tables 1 and 2.

TABLE 1

SOURCES OF FUNDING FOR NATIONAL GUARD OPERATIONS DURING FISCAL YEARS 1977-78 THROUGH 1981-82

Expenditures*	1977-78 Amount	1977-78 Percentage of Total	1978-79 Amount	1978-79 Percentage of Total	1979-80 Amount	1979-80 Percentage of Total	1980-81 Amount	1980-81 Percentage of Total	1981-82 Amount	1981-82 Percentage of Total
State funded - Appropriations	$ 2,166,900	6%	$ 1,877,100	6%	$ 2,467,100	6%	$ 3,240,700	5%	$ 2,919,400	4%
Federal funded - Contracts and other support	34,307,300	94	32,259,200	94	40,306,400	94	56,456,500	95	64,023,500	96
Total	$36,474,200	100%	$34,136,300	100%	$42,773,500	100%	$59,697,200	100%	$66,942,900	100%

Source: Division of Military Affairs Annual Reports.

* Include capital outlay.

TABLE 2

ACTUAL EXPENDITURES FROM STATE FUNDS FOR FISCAL YEARS 1977-78 THROUGH 1981-82

	1977-78	1978-79	1979-80	1980-81	1981-82
Personal services	$ 520,300	$ 584,500	$ 646,200	$ 720,000	$ 794,200
Employee-related expenditures	103,300	123,800	137,000	159,200	176,500
Professional and outside services	3,700	4,600	2,800	3,700	3,100
Travel:					
In-State	15,600	14,600	16,500	22,800	23,700
Out-of-State	1,300	2,400	1,900	1,300	2,200
Other operating expenses	557,900	516,500	609,900	757,400	827,300
Food	500	500	500	600	600
Equipment	34,200	44,500	46,300	90,000	52,400
Guardsmen to active duty	2,600	5,000	293,300	5,700	6,000
Service contracts	318,300	295,800	257,700	349,800	410,900
Education reimbursement	-0-	19,700	16,400	25,000	27,000
Facility maintenance**	8,900	12,400	-0-	-0-	-0-*
Total	$1,566,600	$1,624,300	$2,028,500	$2,135,500	$2,323,900

Source: Department of Administration - Finance Division budget records

* Included in "other operating expenses."
** Excludes capital outlay for new construction and major renovation.

Audit Scope

Our audit was limited to reviewing the Sunset factors and identifying potential problem areas where further audit work is needed. Due to time and staffing constraints resulting from the extensive review required of issues in the Division of Emergency Services, we were unable to review these areas in detail. Areas requiring further review are discussed in the Sunset Factors section.

The Auditor General and staff express gratitude to the Adjutant General and members of his staff for their cooperation and assistance during the course of the audit.

SUNSET FACTORS

Eleven factors were reviewed to determine if the Department of Emergency and Military Affairs, Division of Military Affairs should be continued or terminated, in accordance with Arizona Revised Statutes (A.R.S.) §41-2354, subsection D.

1. Objective and purpose in establishing the agency

The Arizona National Guard was established by the State Constitution. The Guard serves as the organized component of the State militia and, when mobilized, reports to the Governor as commander-in-chief. The Guard's purpose as stated in its 1981 annual report is:

> ". . . to provide personnel trained and equipped to function when necessary in the protection of life and property, and the preservation of peace, order, and the public safety. . . ."

The Guard is part of the reserve component of the U.S. Army and Air Force and can be called into active Federal service by the President during national emergencies. The Guard provides the armed services with trained, equipped units in case of such a national emergency.

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which the agency has operated

The Arizona National Guard has met its objectives and functions efficiently. However, some improvements may be needed to ensure facilities are maintained adequately.

The Guard has fulfilled its objectives by maintaining adequate troop strength and readiness and has responded to numerous emergencies. According to Federal officials who review the Guard's operations, the agency's performance is adequate.

According to the National Guard Bureau, troop strength and retention levels are adequate. Between fiscal years 1976-77 and 1980-81, actual troop levels averaged over 90 percent of authorized levels. As of August 31, 1982, the Guard's retention rate was 53 percent. Although these statistics are lower than the national average, Arizona's recruiting practices are adequate.

According to a senior Army advisor, the Guard has developed and met training schedules which provide skills appropriate to the Guard's missions. Although readiness evaluations are classified documents not open to Auditor General review, an Air National Guard executive officer informed us that the Arizona Air National Guard maintains the highest degree of readiness required by the U.S. Air Force.

The Guard has utilized its expertise in responding to numerous emergencies. During the past five years, the Guard has assisted in fire suppression activities, moved and stored hazardous materials and helped to provide flood relief throughout the State.

The manner in which Arizona National Guard operations are funded provides for efficiency. Federal funds support 95 percent of agency operations, including equipment acquisition and maintenance costs. As a result, the State receives numerous benefits from a relatively small investment. These benefits include a trained and equipped militia capable of responding to State emergencies. Further, income and sales taxes and purchases by military personnel provide economic benefits to local communities.

Further review is needed to evaluate the efficiency of armory construction and maintenance programs. Due to time and staffing constraints, we were unable to fully review this area.

The National Guard has been unable to adequately maintain its armories and incurs significant costs for operating the facilities. At present, some of the Arizona Army National Guard's 29 permanent facilities are in poor condition, despite the $770,000 spent for maintenance and repair during the past five years. Further, operating costs are high: during fiscal year 1981-82, the Guard spent $250,000, or 25 percent of the operating expense budget, for utilities alone.

Additional construction may further impair the Guard's ability to maintain and operate the armories. During the next five years, the agency plans to construct 13 new facilities costing $7.2 million. At completion, the Guard will be responsible for all operating and maintenance expenses. Because the National Guard is having difficulty maintaining existing facilities, the planned construction may not be an efficient use of resources.

The National Guard maintains that armories provide economic benefits to the communities in which they are located. Members of local units receive payments for guard duty and are provided training which may be valuable in civilian life. Further review is needed to evaluate the costs and benefits of proposed armory construction.

3. <u>The extent to which the agency has operated within the public interest</u>

The Arizona National Guard has operated within the public interest by responding to declared emergencies and participating in search and rescue missions. During fiscal years 1977-78 through 1981-82, the Guard was mobilized for 34 declared emergencies and participated in 52 search and rescue missions. Activities during emergencies included moving and storing hazardous materials and assisting in forest fire suppression.

Further audit work is needed to determine whether all calls to active duty are appropriate. Due to time and staffing constraints, we were unable to review this area.

Calls to active duty for participation in National Guard Association conferences may be inappropriate. The Association is a private organization of National Guard officers. At the State level, the Association is primarily a social organization whose activities include hosting an annual conference. Our review revealed that the conference is discussed at official staff meetings and Guard members have been called to active duty for the conference. While on active duty, Guardsmen provide administrative support and photographic services. The costs for these services are funded by State monies.

4. The extent to which rules and regulations promulgated by the agency are consistent with the legislative mandate

The rules and regulations are consistent with statutory requirements. A.R.S. §26-102 requires the Adjutant General to promulgate rules and regulations necessary for Department operations. To fulfill this requirement, the agency has promulgated both administrative and internal regulations.

According to the Attorney General's Office, use of internal regulations is appropriate. These regulations are not considered "rules" under the Administrative Procedures Act because they concern internal management procedures only.

5. The extent to which the agency has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

The National Guard has complied with most Open Meeting Law requirements. However, the agency should implement additional means of notifying the public.

National Guard general staff meetings are subject to the requirements of A.R.S. §38-431 et. seq. regarding public notice of meetings. The general staff, consisting of the Adjutant General and four National

Guard officers appointed by the Governor, meets regularly twice a year and at the call of the Governor. The body advises the Governor on military matters. Further, the staff has authority to promulgate regulations, purchase or lease property and approve construction projects.

State law requires public bodies to provide sufficient public notification of meetings. A.R.S. §38-431.02, subsection A requires public bodies to post notices and provide

> ". . . such additional public notice as is reasonable and practicable as to all meetings."

In an August 19, 1975, memorandum* to all State agencies, the Attorney General noted that the Open Meeting Law was not clear as to required notice. As a result, the Attorney General provided guidelines describing adequate notice. In addition to the specific requirements prescribed by law, the Attorney General's guidelines encouraged agencies to use press releases, paid legal notices, articles or notices in professional or business publications and mailed notices.

The agency has not utilized additional notification procedures recommended by the Attorney General. Notices are posted within Division headquarters, but the agency uses no other means of notification such as sending notices to the press rooms in the Capitol area or notifying other agencies or public interest groups.

6. <u>The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction</u>

This factor is not applicable. The National Guard is not a regulatory agency and does not have statutory authority or responsibility for investigating and resolving complaints.

---

* Appendix VII contains the memorandum text.

7. The extent to which the Attorney General with any other applicable agency of State government has the authority to prosecute actions under enabling legislation

Enabling legislation does not specifically authorize the Attorney General or any other agency to prosecute actions. The statutes provide for courts-martial for guardsmen. Courts-martial are governed by the National Defense Act, Uniform Code of Military Justice and various Federal and State statutes and regulations.

8. The extent to which the agency has addressed deficencies in the enabling statutes which prevent it from fulfilling its statutory mandate

The National Guard has sought substantive statutory change three times during the past five years. Senate Bill 1026, passed in 1980, allowed the Guard to sell excess real estate. Two bills introduced in 1979 to amend military leave provisions did not pass.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in the subsection

Our review indicates that no statutory changes are needed.

10. The extent to which termination of the agency would significantly harm the public health, safety or welfare

Termination of the National Guard would harm the public health, safety and welfare by limiting the State's ability to respond to situations posing immediate danger to life and property. The Guard provides the State with trained personnel, specialized equipment and an organizational structure which facilitate immediate response to emergency situations. In the absence of the National Guard, other State agencies would be unable to effectively coordinate their

efforts and may lack specialized equipment for dealing with emergencies. Acquisition could require excessive time and would not be supported with Federal funds. Although the Governor may call State residents into service, it is unlikely that an unorganized militia could adequately respond without the National Guard's command structure.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate

This factor is not applicable because the National Guard is not a regulatory agency.

STATE OF ARIZONA
Department Of Emergency And Military Affairs
OFFICE OF THE ADJUTANT GENERAL

DIVISION OF MILITARY AFFAIRS
5636 EAST McDOWELL ROAD
PHOENIX, ARIZONA 85008

TELEPHONE
602-273-9700
AUTOVON 853-8810

April 15, 1983

Mr. Douglas Norton
Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Dear Mr. Norton:

In response to your letter of March 24, 1983, my interim response to the Division of Military Affairs portion of the audit is attached.

Additional response, if indicated after further study of your preliminary report draft, will be provided.

Sincerely,

J. G. SMITH, JR.
Major General, ArizARNG
The Adjutant General

Attachment

DIVISION OF MILITARY AFFAIRS

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1	Requires no comment
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SUNSET FACTOR 2 THE EFFECTIVENESS WITH WHICH THE AGENCY HAS MET ITS OFJECTIVE AND PURPOSE AND THE EFFICIENCY WITH WHICH THE AGENCY HAS OPERATED. Sub-paragraph 8-10

a. A review of the Arizona Army National Guard structure, its stationing, the population trends of Arizona and the known available units was conducted during the period January through March 1978, as part of our continuing review and projection of the direction to be taken by the Arizona Army National Guard. In the review, the following strengths and weaknesses were noted:

(1) Arizona's Population Support of the Guard. In areas where we had National Guard Armories, the support of the Guard had been outstanding, in some cases supporting 1 Guard Member per 173 population (25 mile radius of Armory) (average Guard Member lived within 25 miles of Armory) to 1 per 300 (50 mile radius). Average support is 1 per 541 (25 mile radius). Approximately 390,000 citizens currently lived more than 50 miles from an Armory and 290,000 lived more than 25 miles, but less than 50 miles from an Armory, or a total of 680,000 lived more than 25 miles from an Armory. At 1 per 511 (average at 50 mile radius), this population would equal 1,330 potential Guard Members. Arizona continued to show a younger population, with the largest group (10.9% of population) in the 15 - 19 year old group. The 10 - 14 year old group was 9.4% of the population.

(2) Facilities. Current facilities had served, and would continue to serve the Guard well. What had happened is that with the growth of the State, the population was moving outward, new communities were developing and we did not have the Guard represented in those areas. This had hampered those citizens wishing to belong to the Guard and wanting to take advantage of the many benefits offered by the Guard. Our reaction time to assist those areas was lengthened because the Guard was not represented there. Command and control was especially weak statewide and nonexistent in Northern Arizona.

(3) Units. Arizona's Troop Structure was very sound to carry out the State Mission, with the exception that additional command and control units were needed to enhance the program, facilitate growth, and was imperative in Northern Arizona. We did not have a Battalion Level Command north of Phoenix. Arizona could support additional units, and with projections of the population doubling by the year 2000 (at a rate of 70,000, or 137 potential Guard Members per year), all indications were that we needed to begin to develop our Guard Structure. Units were hard to secure from the National Guard Bureau, and we were in competition with all other states for the units that did become available.

b. As a result of the 1978 review, during the timeframe of 1978-82 (5 years) the Arizona Army National Guard was reorganized and structured with the State/Governor's approval, from an authorized strength of 3,392 in 1978 to 5,126 in 1982.

This represents an increase of 1,734 or 51% in reorganizing and structuring the Arizona National Guard. During this time the Guard went from 25 armory facilities to 38 (permanent and temporary) armory facilities. This reorganization resulted in the ability to be more responsive to state emergencies, in providing increased opportunities for Guard membership to the citizens of Arizona, and it provided organized, trained and equipped units which are needed in the modern Total Army. It also increased federal funding support to the State as indicated on your Table I as follows:

TABLE 1

SOURCES OF FUNDING FOR NATIONAL GUARD OPERATIONS DURING FISCAL YEARS 1977-78 THROUGH 1981-82

	1977-78		1978-79		1979-80		1980-81		1981-82	
Expenditures*	Amount	Percentage of Total	Amount	Percentage of Total	Amount	Percentage of Total	Amount	Percentage of Total	Amount	Percentage of Total
State funded - Appropriations	$ 2,166,900	6%	$ 1,877,100	6%	$ 2,467,100	6%	$ 3,240,700	5%	$ 2,919,400	4%
Federal funded - Contracts and other support	34,307,300	94	32,259,200	94	40,306,400	94	56,456,500	95	64,023,500	96
Total	$36,474,200	100%	$34,136,300	100%	$42,773,500	100%	$59,697,200	100%	$66,942,900	100%

Source: Division of Military Affairs Annual Reports.

* Include capital outlay.

c. During this same period the funds requested for maintenance of facilities has been appropriated at an average of 25% less than requested. There has been no maintenance manpower increase since 1974. The existing personnel freeze has, for two years, left the agency with three fulltime employee Building Maintenance Worker vacancies. The priorities for maintenance of existing facilities and construction of new facilities is an ongoing program which will continue to receive detailed management review.

d. The National Guard of Arizona has always met the challenge of expansion. Our normal expansion parallels the population expansion of the state. This expansion met the demands of our dual mission which is to be a viable component of the Total Force Policy of the nation's Armed Forces, and to provide the Governor with quicker and larger response capabilities to state emergencies.

SUNSET FACTOR 3 THE EXTENT TO WHICH THE AGENCY HAS OPERATED WITHIN THE PUBLIC INTEREST

In response to this item please note the expenditure in your report for Active Duty for 1979-80 includes personnel, travel, petroleum-oil-lubricants, spare parts, rations, etc. for the following:

$ 26,420.99	1978 Flood
171,063.13	Tritium hazard
84,737.55	1980 floods
4,871.53	5,000 Division of Military Affairs appropriation
4,810.53	Search and rescue
$291,903.73	

The amount referred to as 'participation in National Guard Association Conference' is not correct. I do authorize Active Duty for personnel such as drivers for Department of Defense, Air Force, Army and National Guard Bureau personnel attending the conference in an official capacity. In addition, a photographer is normally provided in an Active Duty status, in conjunction with our Public Information Office program.

I find no expenditure of funds for the above purpose in FY 77-78, the amount of $200.46 in 78-79, no expenditure in 79-80, $111.10 in 80-81, and $454.58 in 81-82.

SUNSET FACTOR 5 THE EXTENT TO WHICH THE AGENCY HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC.

Public notices of date, time and location of all General Staff meetings will be provided to the news media in the form of press releases and paid advertisements in addition to the already established practice of notification to the Secretary of State, posting on bulletin boards in the Headquarters Building, and publication in the National Guard Information Bulletin.

APPENDIX I

ATTORNEY GENERAL OPINION

I81-103

SEPTEMBER 11, 1981

Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

September 11, 1981

INTERAGENCY
The Honorable Thomas N. Goodwin
Chairman, Joint Legislative Budget Committee
1716 West Adams
Phoenix, Arizona 85007

Re: I81-103 (R81-098)

Dear Representative Goodwin:

We are writing in response to your letter of June 30, 1981, in which you requested our opinion concerning two legislative appropriations.

Your first question concerns the status of an appropriation in Chapter 126, 1981 Sess. Laws (First Req. Sess.) to the Department of Water Resources. Chapter 126 provided for an emergency appropriation, the pertinent portions of which are as follows:

> Section 1. Purpose
>
> This state has recently taken decisive steps to institute the efficient and effective management of both surface water and groundwater. The purpose of this act is to provide funds and hiring authority to the department of water resources for the purpose of expediting the implementation of these programs.
>
> Section 2. Appropriation; purpose
>
> A. The sum of one million eight hundred eighty-nine thousand seven hundred dollars is appropriated from the state general fund to the department of water resources.
>
> B. Of the amount appropriated in subsection A, one million seven hundred fifty thousand dollars is for

> mailing notices to prospective claimants in the adjudication of the state's surface waters, ninety-three thousand seven hundred dollars is for twelve positions to augment the adjudication staff and forty-six thousand dollars is for six new positions to expedite the water management program of the department.

Section 3 of the Chapter provided that the appropriation would be non-lapsing until June 30, 1983, at which time any unencumbered or unexpended monies would revert to the general fund.

After April 15, 1981, the effective date of the Act, the Legislature apparently decided to eliminate the non-lapsing aspect of that portion of the appropriation concerning funding for the eighteen positions. In the general appropriation bill, Ch. 316, subdivision 92, 1981 Ariz. Sess. Laws (First Req. Sess.), the Legislature attached the following footnote to the appropriation to the Department for Water Management:

> "Includes funds for eighteen positions identified in H.B. 2411 [Ch. 126]. Any monies unexpended and unencumbered from the funds allocated for the eighteen positions under H.B. 2411 shall revert to the general fund on June 30, 1981."

The question, then, is whether this footnote effectively amended the non-lapsing provision in Chapter 126. The answer depends, in turn, on whether Chapter 126 is characterized as an appropriation or as substantive legislation.

Generally, the Legislature has the exclusive power over appropriations. Webb v. Frohmiller, 52 Ariz. 128, 79 P.2d 510 (1938). This power extends to the right to modify or to repeal, as well as enact an appropriation. Hudson v. Brooks, 62 Ariz. 505, 158 P.2d 661 (1945). In the Hudson case, a general bill repealing all continuing appropriations was held not to apply to a special statute providing for a continuing appropriation of the State Highway Fund to the Highway Department. The court stated that the Legislature could repeal the appropriation, but in the absence of a clearly-articulated intent to do so, the continuing appropriation was not repealed. In the situation at hand, although by no means forthrightly stated, the intent to repeal the non-lapsing provision is evidenced by the footnote specifying the reversion

of all monies allocated pursuant to Chapter 126, on June 30, 1981, coupled with a statement that the appropriation for fiscal year 1981-82 includes monies for the positions identified in Chapter 126.

The legislative appropriation power is, however, subject to constitutional restrictions. Crane v. Frohmiller, 45 Ariz. 490, 45 P.2d 955 (1935). One such restriction is contained in Article 4, part 2 § 20 of the Arizona Constitution, which limits the scope of subjects that may be included in a general appropriation bill to appropriations only. In other words, the Legislature may not include substantive legislation in a general appropriation bill. Caldwell v. Bd. of Regents, 54 Ariz. 404, 96 P.2d 401 (1939). The Caldwell court struck down a provision in the appropriation to the Board of Regents that said a husband and wife could not both be employed by the state. See also Cochise Cty v. Dandoy, 116 Ariz. 53, 567 P.2d 1182 (1977); Sellers v. Frohmiller, 42 Ariz. 239, 24 P.2d 666 (1933). The footnote to Chapter 316 only reverted monies allocated in a prior appropriation. This action does not appear to constitute substantive legislation, as defined by applicable case law.

The repeal (or amendment) of a continuing appropriation may be invalid if it adversely impacts on an office or salary established by statute. Thus, in McDonald v. Frohmiller, 63 Ariz. 479, 163 P.2d 671 (1945), the court held that a general bill repealing all continuing appropriations could not apply to a state officer whose salary was established by statute. See also State v. Angles, 54 Ariz. 13, 91 P.2d 705 (1939). In the situation at hand, Chapter 126 established funding for various positions. Inasmuch as neither statutory duties nor salaries were specified, these positions do not constitute offices under McDonald and thus may be affected by an appropriation. In any case, Chapter 316 does incorporate funding for these positions in the general appropriation. The only change has been in the duration of the appropriation for these positions.

In light of the above analysis and discussion, we think the footnote to subdivision 92 of the general appropriation to the Department of Water Resources for Water Management in Chapter 316, 1981 Ariz. Sess. Laws (First Req. Sess.), effectively amends the non-lapsing appropriation of Chapter 126, 1981 Ariz. Sess. Laws (First Req. Sess.).

Your second question asks whether an appropriation to the Flood Control District of Maricopa County may be expended for purposes other than those specifically stated in the appropriation. Ch. 193, § 2.F, 1981 Sess. Laws (First Req. Sess.) appropriated monies for flood control work in specified areas. However, an engineering study has determined that work in an area other than those specified would best accomplish the legislative objectives.

An appropriation is "the setting aside from the public revenue of a certain sum of money for a specified object, in such a manner that the executive officers of the government are authorized to use that money, and no more, for that object and no other." Hunt v. Callaghan, 32 Ariz. 235, 257 P.648 (1927). We think, therefore, that monies may be expended only for work specified by the terms of the appropriation and that legislative action will be necessary to authorize an expenditure for any other work.

Sincerely,

BOB CORBIN
Attorney General

BC:LPS:ta

APPENDIX II

LEGISLATIVE COUNCIL MEMORANDUM

0-82-19

DECEMBER 27, 1982

ARIZONA LEGISLATIVE COUNCIL

MEMO

December 27, 1982

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-82-19)

This is in response to a request submitted on your behalf by Bill Thomson in a memo dated December 3, 1982.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 26-303 allows the governor to declare a state of emergency when certain conditions exist. When the governor declares an emergency, specific liabilities and expenses are authorized to be incurred under the provisions of A.R.S. section 35-192. Executive Order 79-4, dated June 14, 1979, designates the director of the division of emergency services as the state official responsible for administering monies made available under the provisions of A.R.S. section 35-192. The executive order also details the power and duties of the director in this capacity.

When a disaster is declared, the governor directs that a specified amount of money be made available to the director of emergency services ". . . to be expended in accordance with established emergency procedures." (See attached Emergency Proclamations.) The division establishes a separate account for each declared emergency. These monies are transferred to other accounts and/or expended directly from the emergency account. (A.R.S. section 35-173 allows transfers in some situations.) In some instances, the expenditures do not appear to be related to the declared emergency. For example, the division has expended funds from an emergency account for 1) vans to be used as communications centers in future emergencies and 2) a conference held by a private association of emergency management officials.

QUESTIONS PRESENTED:

1. Under the provisions of A.R.S. section 35-192, Executive Order 79-4, the emergency proclamation, and related Attorney General Opinion I81-103, may monies from an account established for a specific emergency be transferred to:

(a) Another account established for a different emergency for which funds were made available under the provisions of A.R.S section 35-192?

(b) An account established for a specific project funded by general fund appropriations?

(c) A special revenue fund established for federal grant-in-aid monies?

(d) A special revenue fund established for joint state and federal monies?

(e) An account in the division of military affairs used to pay expenses incurred by the national guard during an emergency?

2. For what purposes may available funds be spent? Specifically, may monies made available under the terms of A.R.S. section 35-192 be expended for:

(a) Items unrelated to the declared emergency but possibly related to prevention of or recovery from future emergencies, such as the communications vans?

(b) Items unrelated to the declared emergency and unlikely to be related to any future emergencies?

3. Assuming that state monies have not been used in accordance with the statutes, would the provisions of A.R.S. sections 35-154, 35-196, 35-197, 35-211 and 35-301 be potentially applicable?

DISCUSSION:

The statutory framework of A.R.S. section 35-192 creates, in effect, a continuing appropriation of up to one hundred thousand dollars which may be expended for each contingency or emergency declared by the governor. 64 Op. Att'y. Gen. 19 (1964). As such, this continuing appropriation is subject to the limitations prescribed by Arizona law. Appropriated monies may be expended only for the purposes and items specified by the terms of the appropriation. Webb v. Frohmiller, 52 Ariz. 128, 79 P.2d 510 (1938); Hunt v. Callaghan, 32 Ariz. 235, 257 P. 648 (1927); 81 Op. Att'y. Gen. 103 (1981).

The purpose of A.R.S. section 35-192 as described by the division of emergency services is "to provide an orderly and continuing means of assistance to State agencies and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, and to repair essential public facilities damaged in major disasters." A.C.R.R. R8-2-33. A.R.S. section 35-192, subsections B and C provide that specific liabilities and expenses may be incurred and paid from the general fund to meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.

2. Epidemics of disease or plagues of insects.

3. Floods or floodwaters.

4. Acts of God or any major disaster.

5. Certain specified search and rescue operations.

A.R.S. section 35-192, subsection F, paragraph 4 provides that emergency monies may be obligated only when:

1. No appropriation is available to meet the contingency or emergency.

2. An appropriation is insufficient to meet the contingency or emergency.

3. Federal funds available for such contingency or emergency require the use of state funds or other public funds.

This statute supplies a mechanism to provide emergency relief funds quickly without waiting for the legislature to act or even to be called into session to appropriate the needed monies. The language used in this section evidences an intent that monies allocated pursuant to each emergency declaration may be used only for expenses incurred in relation to that particular emergency and for no other purpose unless authorized by law.

In light of the foregoing discussion, the answers to your specific questions are as follows:

1. (a) Monies allocated for one emergency cannot be used for another emergency. Such a transfer is not authorized by the terms of A.R.S. section 35-192.

(b) A.R.S. section 35-192, subsection F, paragraph 4, subdivision (b) permits an obligation of emergency funds where "an appropriation is insufficient to meet the contingency or emergency." Depending on the facts of the particular situation, it is possible for emergency funds to be used to supplement general appropriation monies to provide reimbursement of expenses for a specific project. That project would have to be related to the particular emergency or contingency declared by the governor.

(c) and (d) A.R.S. section 35-192, subsection F, paragraph 4, subdivision (c) authorizes an obligation of emergency funds where federal funds available for the particular emergency require such use. Once the declared emergency is over the state monies allocated for that emergency could not continue to be transferred to the special revenue funds described above.

(e) A.C.R.R. R8-2-38, paragraph 1, subdivision (b), item (ii) provides that the director of the division of emergency services "shall provide for payment of expenses incurred by the National Guard during emergency mobilization". This provision also requires the adjutant general to certify that the expenses were necessary and were actually made in the emergency. See also A.R.S. section 26-173 which provides that statutory authorization for this rule.

2. (a) As discussed above, A.R.S. section 35-192 provides only for reimbursement of expenses related to the declared emergency. Approval of funding for items designed for prevention or recovery from future emergencies should be sought through the regular legislative appropriations process.

(b) A.R.S. section 35-192 does not permit the obligation of emergency funds for items unrelated to the declared emergency and unlikely to be related to any future emergencies.

3. A.R.S. sections 35-154, 35-196, 35-197, 35-211 and 35-301 provide as follows:

35-154. Unauthorized obligations; effect; liability

A. No person shall incur, order or vote for the incurrence of any obligation against the state or for any expenditure not authorized by an appropriation and an allotment. Any obligation incurred in contravention of this chapter shall not be binding upon the state and shall be null and void and incapable of ratification by any executive authority to give effect thereto against the state.

B. Every person incurring, or ordering or voting for the incurrence of such obligations, and his bondsmen, shall be jointly and severally liable therefor. Every payment made in violation of the provisions of this chapter shall be deemed illegal, and every official authorizing or approving such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received.

35-196. Illegal withholding or expenditure of state monies; civil liability

Any state officer or employee who illegally withholds, expends or otherwise converts any state money to an unauthorized purpose shall be liable, either individually or on his bond, for the amount of such money, plus a penal sum of twenty per cent thereof, and an action may be instituted by the assistant director for the division of finance or the attorney general immediately upon the discovery thereof.

35-197. Violations; classification

Any officer, agent or employee of the state who knowingly fails or refuses to comply with any of the provisions of this chapter is guilty of a class 1 misdemeanor.

35-211. Approval, allowance or payment of unauthorized claim; liability of parties; penalty

When any person who is obligated to approve, audit, allow or pay claims or demands upon the state, approves, audits, allows or pays, or consents to, or connives at, approving, auditing, allowing or paying a claim or demand against the state not authorized by law, such person, and the person in whose favor the claim or demand was made, shall be liable for any funds procured in such manner, plus twenty per cent of such amount and legal interest upon the amount paid from date of payment.

35-301. Duties and liabilities of custodian of public monies; violations; classification

A public officer or other person, including justices of the peace and constables, charged with the receipt, safekeeping, transfer or disbursement of public money is guilty of a class 4 felony who:

1. Without authority of law, appropriates it, or any portion thereof, to his own use, or to the use of another.

2. Knowingly loans it, or any portion thereof.

3. Knowingly fails to keep it in his possession until disbursed or paid out by authority of law.

4. Without authority of law knowingly deposits it, or any portion thereof, in a bank, or with a banker or other person, except on special deposit for safekeeping.

5. Knowingly keeps a false account, or makes a false entry or erasure in an account of, or relating to it.

6. Alters, falsifies, conceals, destroys or obliterates such an account with an intent to defraud or deceive.

7. Knowingly refuses or omits to pay over, on demand, public monies in his hands, upon presentation of a draft, order or warrant drawn upon such monies by competent authority.

8. Knowingly omits or refuses to transfer the money when a transfer is required by law.

9. Knowingly transfers the money when not authorized or directed by law.

10. Knowingly omits or refuses to pay over to an officer or person authorized by law to receive it, any money received by him when a duty is imposed by law to pay over the money.

The sections listed above would be potentially applicable to any situation where state monies are not used in accordance with state law. The facts and circumstances of each case would determine the specific applicability of each of these statutes to a given situation.

cc: Bill Thomson, Manager
Performance Audit Division

ARIZONA LEGISLATIVE COUNCIL

MEMO

April 23, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-81-20)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated April 9, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 41-729, subsection A, paragraph 2 defines the duties of the state purchasing section and states:

> A. The purchasing section shall have the following duties:
>
> * * *
>
> 2. Prescribe standards of quality, standard specifications and methods for the acquisition, delivery, acceptance, storage, retention and distribution of all supplies, materials, equipment and contractual services of budget units.

The state purchasing section has not promulgated administrative rules and regulations. Required procedures for purchasing activities by both purchase authorized and non-purchased authorized agencies are contained in a policy and procedures manual issued by the state purchasing section.

QUESTIONS PRESENTED:

1. Does the issuance of a policy and procedures manual in lieu of administrative rules and regulations satisfy the requirements of A.R.S. section 41-729, subsection A, paragraph 2?

2. Are the requirements set forth in the policy and procedures manual legally binding upon a) the purchasing section, b) non-purchase authorized agencies and c) purchase authorized agencies?

ANSWERS:

1. Yes. In this instance, the legislature has not specifically required the issuance of regulations to set purchasing standards, specifications and methods. The purchasing section itself does not have authority to promulgate regulations although the assistant director for finance who heads the division of which the purchasing section is a part may issue regulations. A.R.S. section 41-722, subsection B, paragraph 5. To accomplish the legislative intent we

believe that the purchasing section could either promulgate regulations through the assistant director for finance or, as is the case, issue a policy and procedures manual.

2. The requirements prescribed by the policies and procedures manual are binding in each of the situations described. The language of A.R.S. section 41-729 is both clear and all-encompassing. The standards, specifications and methods set forth in the manual apply to all supplies, materials, equipment and contractual services of budget units. To infer that the manual is not binding on the purchasing section would lead to an absurd result. In construing statutes, Arizona courts will attempt to give them a sensible construction which will accomplish the legislative intent and at the same time avoid an absurd result. A.R.S. section 1-211; State v. Valenzuela, 116 Ariz. 61, 567 P.2d 1190 (1977). The authority to prescribe such standards was contained in Laws 1967, chapter 55 which enunciated clear legislative intent "that a system of purchasing for state agencies be established in order to make state government more economical and efficient". A reasonable construction of A.R.S section 41-729 can lead to only one conclusion. The purchasing standards prescribed by the purchasing section must apply to the section itself to fit within the scheme of making government purchasing more economical and efficient.

If the standards apply to the purchasing section, then a fortiori they must apply to those state agencies which are not authorized to make their own purchases but rather have their purchases made by the purchasing section.

Similarly, purchase authorized agencies are also subject to the manual's directives. Since their authority is derived from that belonging to the purchasing section these "other budget units are bound by all the procedures and restrictions that govern purchasing by the purchasing section." 75 Op. Att'y Gen. 75-11 (1975).

CONCLUSIONS:

1. The policy and procedures manual does satisfy the requirements of A.R.S. section 41-729, subsection A, paragraph 2.

2. The manual requirements apply to the purchasing section, non-purchase authorized agencies and purchase authorized agencies.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX IV

LEGISLATIVE COUNCIL MEMORANDUM

0-82-20

DECEMBER 27, 1982

ARIZONA LEGISLATIVE COUNCIL

MEMO

December 27, 1982

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-82-20)

This is in response to a request submitted on your behalf by Bill Thomson in a memo dated December 6, 1982.

FACT SITUATION:

The division of emergency services is a purchase-authorized budget unit under the provisions of Arizona Revised Statutes (A.R.S.) section 41-729, subsection B, paragraph 2. A.R.S. sections 41-730 and 41-1051 through 41-1056 require competitive bidding for purchases of supplies, materials, equipment, contractural services and contracts for professional outside services except when such requirements are formally waived by the assistant director for finance during an emergency situation. Attorney General Opinion 75-11 states that purchase-authorized budget units must follow competitive bidding procedures.

Through Executive Order 79-4, the governor delegated to the director of the division of emergency services responsibility for administering funds made available during a declared emergency under the terms of A.R.S. section 35-192. The executive order authorized the director to:

> "pursuant to State of Arizona procurement procedures, develop, negotiate and consummate contracts or leases . . . to prevent or minimize loss of lives or property, to ease the suffering of disaster victims or to effect repairs, restoration and other assistance to eligible applicants." (Emphasis added.)

Funds authorized under the provisions of A.R.S. section 35-192 are expended until the emergency is terminated. Some states of emergency have not been terminated for as long as three and one-half years after the declaration.

QUESTIONS PRESENTED:

1. Is the division subject to competitive bidding requirements set forth in A.R.S. sections 41-730 and 41-1051 through 41-1056 for purchases of materials, supplies and outside professional services from funds authorized by:

(a) Annual appropriations for operating functions and capital expenditures?
(b) Other appropriations made for specific projects or programs?
(c) A.R.S. section 35-192 during a declared emergency?

2. Do exemptions to the bidding statutes, if any, for funds available under A.R.S. section 35-192 apply to all purchases made during the emergency period, regardless of the nature of the purchase or length of time after the declaration?

DISCUSSION:

1. Arizona bidding and purchasing requirements are clearly spelled out in Arizona law. A.R.S. section 41-730, subsection A requires in part that:

> All purchases of supplies, materials, equipment, risk management services, insurance and contractual services made by any budget unit having an estimated cost in excess of five thousand dollars per transaction shall be based on sealed, competitive bids.

The legislature has provided an exception to this requirement for emergency situations in A.R.S. section 41-730, subsection D:

> Notwithstanding any provision of law to the contrary, the assistant director for finance may waive compliance with this section and may authorize emergency procurements if there exists a threat to public health, welfare or safety, except that such emergency procurements must be made with such competition as is practicable under the circumstances. The state budget unit shall request approval and provide written documentation of the existence of a threat to public health, welfare or safety. The budget unit shall keep on file the written documentation and authorization by the assistant director for finance.

A.R.S. section 41-1051, subsection A also requires that contracts for outside professional services follow the bidding requirements specified in A.R.S. Title 41, chapter 6.1, article 1. A similar exception for emergency procurements is authorized under A.R.S. section 41-1054, subsection B.

> If an actual emergency exists which makes compliance with section 41-1052 or the notice requirements of this section impracticable, unnecessary or contrary to the public interest, a state budget unit may, with approval of the department of administration assistant director for finance, contract for professional services without complying with such requirements. The state budget unit shall provide a written memorandum stating the specific justifications for noncompliance with section 41-1052 or the notice requirements of this section. The memorandum shall be kept on file by the state budget unit, together with the written approval of the assistant director of finance for the department of administration.

Executive Order No. 79-4 authorizes the director of the division of emergency services to take certain actions under a declared state of emergency including entering contracts or leases. The governor specifically requires the director to follow "State of Arizona procurement procedures" (A.R.S. section 41-730 and title 41, chapter 6.1).

Regardless of the source of emergency monies, the director of emergency services is required to comply with Arizona procurement procedures. The director must comply with the special procurement procedures in the event of an emergency situation.

2. Under A.R.S. sections 41-730 and 41-1054, the assistant director for finance may approve particular emergency procurements. A.R.S. section 35-192 permits reimbursement of certain expenses arising from a declared emergency. Monies spent by the state pursuant to A.R.S. section 35-192 would also be subject to the limitations prescribed in the procurement statutes. The assistant director for finance and not the director of emergency services is responsible for determining whether the threat to public health, welfare or safety is such that emergency procurement procedures must be used.

It is conceivable that while a declared emergency may last up to three years, for example, the assistant director for finance could determine that the threat to public safety is not so immediate as to justify dispensing with competitive bidding for the entire three year period. The purpose of A.R.S. section 35-192 is to provide quick relief in situations in which current funds are unavailable or insufficient to meet the emergency. Once the period of immediate danger is past, the assistant director for finance could reasonably determine that competitive bidding be reinstated. That determination would, of course, have to be made on a case by case basis.

cc: Bill Thomson
Performance Audit Manager

Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

February 4, 1980

Mr. John T. Hestand
Deputy Pinal County Attorney
Courthouse
Florence, AZ 85232

Re: I80-015 (R79-335)

Dear Mr. Hestand:

We have reviewed your opinion dated December 13, 1979, to the Sacaton Elementary School District concerning the purchase of learning laboratories. Your opinion responds to the following issues:

1. Consulting services are purchased after a specific technique or model has been identified and only one source nationally or regionally is available. How can the bid procedure be dealt with?

2. In purchasing a consulting service on an "as needed" basis, it could be possible to incur an expense in excess of the limitation without being able to identify that total figure at the onset. Would such service need to cease when the limitation was reached?

3. If such services were available from other sources, that would assure expenditures within the limitation. Again, as in question 1, if there is only one source regionally, would such service have to stop until a new fiscal year begins?

4. If specific technology or process is purchased in the form of equipment, supplies, materials, and those items are available only from a regional or state center or distributorship, is the bid process a cost with no hope of benefit to the district?

With respect to your response to the first question, we concur in your conclusion that competitive bidding for the purchase of items in excess of $5,000 must be utilized even if the district believes that the item to be purchased can be acquired from only one source. See A.R.S. § 15-102.A.27; A.C.R.R. R7-2-701.D.

While we are unable to discern precisely what the school district is asking in questions 2 and 3, if, as your opinion indicates, these questions are whether a consulting service may be purchased over a period of time utilizing separate warrants which aggregate to $5,000 or more, we concur in your conclusion that splitting a purchase must have a reasonable basis and may not be split for the purpose of avoiding the bidding statutes. See Secrist v. Diedrich, 6 Ariz.App. 102, 420 P.2d 448 (1967). We decline to comment on the specific contracts which appear to have generated the opinion request to your office.

We believe that the fourth question does not ask for a legal opinion, but simply questions the advisability of having competitive bidding statutes. We wish to emphasize our statements in Ariz.Att'yGen.Op. No. 75-11:

> . . . The lack of competitive bidding in our experience generates abuse and in most instances results in higher cost. Moreover, we believe that all public officials with authority to expend public funds have a fiduciary obligation to do so in the most economical and feasible manner.
>
> * * *
>
> . . . [P]roprietary specifications may be permissible if they are supported by strong technological justifications and one manufacturer's product is truly unique in a technological sense. It should be noted, however, that there is a heavy presumption against the use of proprietary specifications and familiarity with the product, past success in the product's performance, traditional purchasing practices or the inconvenience of drawing specifications do not justify the use of proprietary specifications.

In that connection we would like to point out that numerous instances investigated by this office show the use of proprietary specifications without sufficient technoligical justification.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC/mm

APPENDIX VI

LEGISLATIVE COUNCIL MEMORANDUM

0-82-21

DECEMBER 27, 1982

ARIZONA LEGISLATIVE COUNCIL

MEMO

December 27, 1982

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-82-21)

This is in response to a request submitted on your behalf by Bill Thomson.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 41-771 limits the use of exempt positions. During a declared emergency, Executive Order 79-4, dated June 14, 1979, allows the director of emergency services to ". . . employ necessary additional personnel by exempt appointment . . . within the availability of disaster-related funds . . . " made available under the provisions of A.R.S. section 35-192. Additionally, A.R.S. section 41-784 requires state agencies receiving federal funds to comply with applicable conditions concerning personnel for federal grants.

The Director of the division of emergency services and the state fire marshal hold exempt positions. Additionally, the division has established numerous positions to be used during declared emergencies when 24-hour service to the public is necessary. Currently, two persons hold such positions. In the past numerous persons have held exempt positions and have been paid with funds from various sources, including annual general fund appropriations for specific projects such as development of emergency response plans for fixed nuclear facilities and federal grant-in-aid monies for various projects. In some instances, persons holding exempt positions perform duties which are part of regular emergency services operations, such as deputy fire marshal or county emergency services coordinator duties.

QUESTIONS PRESENTED:

1. Are the exempt positions established by the division of emergency services appropriate under the provisions of A.R.S. sections 41-771 and 41-784 and Executive Order 79-4?

2. From what sources may these positions be funded:

(a) Annual general fund personal services appropriations;

(b) Monies made available under the provisions of A.R.S. section 35-192 during a declared emergency;

(c) General fund appropriations for a specific project;

(d) Federal grant-in-aid monies; and

(e) Monies transferred to a special revenue fund established for joint state and federal monies.

3. May persons holding exempt positions peform duties which are part of regular emergency services operations?

DISCUSSION:

1. The laws establishing the state personnel system create a presumption that state employees are included in the system unless exempted pursuant to A.R.S. title 41, chapter 4, article 5. See, e.g., the definitions of "employee" and "state service" in A.R.S. section 41-762. Several classes of exempt employment are listed in A.R.S. section 41-771. Consistent with the enumerated exempt classification, A.R.S. section 26-305, subsection F provides, with respect to the division of emergency services, "/e/mployees other than the director and the fire marshal are employees as defined by section 41-762." In other words, only the director and fire marshal are exempt by law.

The governor's emergency powers are stated in A.R.S. sections 26-303, subsection E and 35-192. Neither statute explicitly authorizes the governor to establish exempt personnel positions in an emergency. However, the emergency powers are necessarily broadly stated to grant the authority necessary to cope with the crisis. Since emergencies are temporary in nature and since temporary or part-time personnel may be exempt (A.R.S. section 41-771, subsection C, paragraph 4), a reasonable interpretation of the words "/t/he governor shall have complete authority" during a state of emergency (A.R.S. section 26-303, subsection E, paragraph 1) would allow him to establish exempt temporary employment positions in emergencies. Conversely, it is impossible to state that as a matter of law he is prohibited from establishing temporary positions exempt from the state personnel system.

Executive Order 79-4, as it relates to exempt personnel, is not strictly limited to the existence and duration of a state of emergency. It purports to authorize the director of emergency services to:

> employ necessary additional personnel by exempt appointment or individual contract, within the availability of disaster-related funds, to effect full recovery measures, or to provide training and public information to enhance protection, survival and recovery from future disasters.

To the extent that this order authorized employment of exempt personnel during a state of emergency it is probably valid. However, there is no authority to extend its application beyond the limits of a state of emergency, and any attempt to do so contravenes the legislature's intent in delegating emergency powers to the governor:

(a) The legislature has specifically limited regular exempt positions in the division to the director and the fire marshal. The only exceptions possible to this limitation must be based on the governor's powers during state of emergency under A.R.S. section 26-303. Executive Order 79-4 purports to delegate powers based on A.R.S. section 26-302. That section, however, specifically prohibits the delegation of any powers vested under A.R.S. section 26-303, including the power to establish exempt personnel positions.

Therefore, any exempt positions in addition to the director and fire marshal must be established by the governor himself (not by delegation) under his emergency powers and only for the duration of the specific emergency.

(b) The power to establish exempt positions cannot be derived from the governor's general executive authority. As stated in Litchfield Elementary School District, etc. v. Babbit, 125 Ariz. 215 at 220 (App. 1980):

> It is a basic tenet of our system of government that the governor, or executive, has only such powers as are conferred upon him by our constitution or by validly enacted statute. The lawmaking power is vested in the legislature. Ariz. Const. art. 4, pt. 1, section 1. None of the branches of government may exercise powers which are granted to another branch. Ariz. Const. art. 3. While the governor is charged with the duty of faithfully executing the laws, Ariz. Const. art. 5, section 4, and must be accorded powers reasonably commensurate with such a broad responsibility, this is not a source from which the power to make legislative decisions can be created. (Citations omitted.)

As discussed above, the governor's emergency powers may be sufficient authority to override the legislative decision, relating to exempt positions during an emergency, but his general executive powers are not.

(c) The establishing of exempt positions and hiring exempt personnel is subject to any federal rules, regulations or standards governing federal monies which may be used to support the agency. A.R.S. section 41-784. The legislature intended by this provision to maintain the source of federal monies by complying with federal requirements. A generalized statement of federal standards was given in a 1979 evaluation of the state personnel division by the United States Office of Personnel Management:

> /A/ll State and local personnel engaged in the administration of grant-in-aid programs, except those exempted in section 900.609-1, /must/ be covered by its (the federal Standards') provisions. In implementing the 1979 Standards, the intent was to afford States the flexibility necessary to effectively manage and direct their programs while maintaining a career service based on merit. To this end appropriate numbers of top level positions may be exempt if they both determine and publicly advocate substantive program policy. In addition, positions which provide legal counsel or are required to maintain a direct confidential working relationship with a key exempt official may be exempt. (Emphasis added.)

The division of emergency services receives substantial revenue from sources such as the Federal Emergency Management Agency (FEMA) and other federal disaster prevention and relief agencies. Consistent with the desire to preserve these revenue sources, the legislature has authorized only the two exempt positions already mentioned. Any other exempt position or personnel, other than as authorized by the governor to respond to a specific emergency, jeopardizes the federal monies and violates A.R.S. sections 26-305 and 41-784.

2. This office is not aware of any generalized restrictions on personnel practices tied directly to categorical sources of funding. Such a detail is more likely to be attached to an individual appropriation or grant and would have to be imposed and considered on a case-by-case basis. Federal grantor agencies (such as FEMA) may routinely require compliance with the Office of Personnel Management standards. This does not, however, imply that exempt positions or even that their agencies are disqualified from these sources of funding. Each individual consideration would have to include, at least, the language of and authority for the appropriation or grant, the personnel structure of the agency, the nature of the specific exempt position and all sources of its funding and any special or extenuating circumstances, such as a declaration of an emergency.

3. All regularly employed employees of the division (except the director and fire marshal) must be under the state personnel system, as indicated by the foregoing discussion. If there are "exempt" personnel performing regular division operations, the violation is their designation as exempt, rather than their duty assignments. In other contexts, however, the exempt positions are prescribed by statute and, except as expressly provided by the statute, there is no general rule prohibiting exempt personnel from performing the same duties as covered employees.

CONCLUSIONS:

1. The only exempt positions which are authorized for the division of emergency services are the director, the fire marshal and such other positions as may be authorized by the governor pursuant to his emergency powers, to be filled only for the duration of the emergency.

2. The funding or any prohibition on funding of exempt positions can only be determined on a case-by-case consideration of each source of funding as it applies to each position.

3. There is no general limitation on the duties which legally exempt employees may perform.

cc: Bill Thomson
Performance Audit Manager

August 19, 1975

MEMORANDUM

TO: All State Agencies

FROM: Bruce E. Babbitt, Attorney General

RE: The Public Notice and Minute Taking Requirements Under Arizona's Open Meeting Act, as amended Laws 1975

Several questions have arisen as to the specific requirements imposed by Arizona's Open Meeting Act with respect to the giving of notice of public meetings. In addition, the Legislature, in its last regular session, amended the Open Meeting Act by including specific requirements with respect to the taking of minutes of public meetings. This memorandum is designed to clarify the public notice requirements imposed under the Act and to inform all state agencies of the recently enacted minute taking requirements.

If you have any questions regarding this memorandum, please call Roderick G. McDougall, Chief Counsel of the Civil Division at 271-3562.

PUBLIC NOTICE REQUIREMENTS

It has been stated that an "open meeting" is open only in theory if the public has no knowledge of the time and place at which it is to be held. 75 Harv.L. Rev. 1199 (1962). The right to attend and participate in an open meeting is contingent upon sufficient notice being given. Like other acts, Arizona's Open Meeting Act affords few statutory requirements for the mechanics of giving notice of meetings of governing bodies.

A.R.S. § 38-431.02, added Laws 1974, which sets forth the public notice requirements, provides as follows:

A. Public notice of all regular meetings of governing bodies shall be given as follows:

1. The state and its agencies, boards and commissions shall file a statement with the secretary of state stating where all

notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

2. The counties and their agencies, boards and commissions, school districts, and other special districts shall file a statement with the clerk of the board of supervisors stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

3. The cities and towns and their agencies, boards and commissions shall file a statement with the city clerk or mayor's office stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

B. If an executive session only will be held, the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session.

C. Meetings other than regularly scheduled meetings shall not be held without at least twenty-four hours' notice to the members of the governing body and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

D. A meeting can be recessed and held with shorter notice if public notice is given as required in paragraph A of this section.

The Open Meeting Act when originally enacted in 1962 made no specific provision for the giving of notice. While the requirements set forth in the 1974 amendments provide some guidelines, the particular mechanics of giving notice have not been set forth. Moreover, the language used in the 1974 amendments relating to notice is ambiguous, confusing and often contradictory. Without engaging in a long discussion of the many problems involved, we offer the following guidelines to be followed in complying with the notice requirements of A.R.S. § 38-431.02. Although an agency in following these guidelines will in some cases do more than required by the Act, it should never fall short of the Act's requirements. Being over-cautious is certainly justified, however, in view of the serious consequences for violating the Act. For example, a decision made in a meeting for which defective notice was given may likely be declared null and void by reason of A.R.S. § 38-431.05.

A. Statement to Secretary of State

Each state agency which is a governing body as defined in A.R.S. § 38-431 must file a statement with the Secretary of State stating where notices of all its meetings and the meetings of its committees or subcommittees will be posted. See Appendix A for a sample statement. The purpose of the statement is to provide information to the public regarding the place where it can find notices of the governing body's meetings. Generally, a governing body will post notices of its meetings directly outside the door to its offices or on a bulletin board in the lobby of the building in which the governing body's offices are located. Governing bodies which hold regular meetings on the same day of each month may post notices of such meetings by providing the information under the body's name in the building directory. For example, the directory listing in the lobby of the building might look as follows:

Arizona Accountancy Board Room 202
(Regular meetings every 2nd Monday of each month)

B. Regular Meetings

Regular meetings are generally those required to be conducted on a regular basis by statute and the dates of which are set by statute, rule, ordinance, resolution or

custom. For each regular meeting, the governing body must post a Notice of Regular Meeting at the place described in the statement filed with the Secretary of State as described above. See Appendix B for a sample Notice of Regular Meeting. The posting of this notice must be done as far in advance of the regular meeting as is reasonable and in no event less than 24 hours prior to the meeting. In addition, the governing body must give additional notice as is reasonable under the circumstances. Several types of additional notices which might be given are described in Paragraph F below.

C. Special Meetings Other Than Emergency Meetings

Special meetings are all meetings other than regular meetings. For each special meeting, the governing body must post a Notice of Special Meeting at the place described in the statement filed with the Secretary of State. See Appendix C for a sample Notice of Special Meeting. The governing body should also give such additional notice as is reasonable under the circumstances. See Paragraph F below. This additional notice must include notice both to the general public and each member of the governing body. The several notices given, including the Notice of Special Meeting posted as described above, must be accomplished at least 24 hours prior to the time of the special meeting, except in the case of an emergency meeting covered under Paragraph D below.

D. Emergency Meetings

Emergency meetings are those special meetings in which the governing body is unable to give the required 24 hours notice. In the case of an actual emergency, the special meeting may be held "upon such notice as is appropriate to the circumstances". The nature of the notice required in emergency cases is obviously subject to a case by case analysis and cannot be specified by general rules. However, any relaxation or deviation in the normal manner of providing notice of meetings, either to the general public or to members of the governing body, must be carefully scrutinized and can be justified only for compelling practical limitations on the ability of the governing body to follow its normal notice procedures.

E. Executive Sessions

An executive session is nothing more than a meeting (regular or special) wherein the governing body is allowed under the Open Meeting Act to discuss and deliberate on matters in secret. See A.R.S. § 38-431.03. Separate notice need not be given of an executive session if it is held in conjunction with a properly noticed regular or special meeting. However, where only an executive session will be held, all notices of the meeting must state the specific provision of law authorizing the executive session, including a reference to the appropriate paragraph of Subsection A of A.R.S. § 38-431.03. See Appendix D for a sample Notice of Executive Session.

F. Additional Notice

In deciding what types of notice shall be given in addition to posting governing bodies should consider the following:

1. Newspaper Publications

In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. Mailing List

Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list.

3. Articles or Notices in Professional or Business Publications

In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field of regulation.

It is not necessary that all of these types of notices be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used.

REQUIREMENTS FOR TAKING WRITTEN MINUTES

The first requirement for taking written minutes of meetings of governing bodies was included in the Open Meeting Act by the Legislature in 1974. The 1974 amendment, however, provided very little detail as to what the minutes must include. The original minute taking requirement read as follows:

> * * *B. Governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their meetings. Such minutes shall be properly and accurately recorded as to all legal action taken and open to public inspection except as otherwise specifically provided by statute.
>
> A.R.S. § 38-431.01.

In its last regular session, the Legislature amended this section to read in part as follows:

> * * *B. All governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their official meetings. Such minutes shall include, but not be limited to: (1) the day, time and place of the meeting, (2) the numbers of the governing body recorded as either present or absent, (3) an accurate description of all matters proposed, discussed or decided, and the names of members who proposed and seconded each motion.
>
> C. The minutes or recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article. * * *
>
> A.R.S. § 38-431.01, as amended Laws 1975 (eff. 9/12/75).

You should note that this section requires that the minutes or recording be open to public inspection, except as otherwise specifically provided by this article. The specific exception referred to is the provision in A.R.S. § 38-431.03 which provides that minutes of executive sessions shall be kept confidential.

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