

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL November 28, 2001	No. I01-021 (R01-037) Re: Emergency Expenditures
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To: Michael P. Austin, Director
Arizona Division of Emergency Management

Questions Presented

Section 35-192 of the Arizona Revised Statutes ("A.R.S.") authorizes the Governor to declare emergencies and to authorize expenditures related to those emergencies. You have asked whether, pursuant to A.R.S. § 35-192, expenditures for an emergency may be authorized only in the fiscal year in which the emergency is declared.

Summary Answer

Pursuant to A.R.S. § 35-192, expenditures may be authorized for an emergency in a fiscal year after that emergency is declared, provided that expenditures authorized for that subsequent fiscal year do not exceed \$4 million and otherwise comply with applicable statutes and rules.

Background

Section 35-192, A.R.S., enables the Governor to declare emergencies and incur liabilities related to those emergencies.¹ When the Governor declares an emergency, "specific liabilities and expenses . . . are authorized to be incurred and to be paid against the State from unrestricted monies from the general fund ." A.R.S. § 35-192(B). The types of emergencies covered by A.R.S. § 35-192 include: (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; and (5) wild land fires, but only after all necessary authorizations under A.R.S. § 37-623.02 are exhausted. A.R.S. § 35-192(B).

There are limits on the Governor's ability to authorize expenditures for emergencies pursuant to A.R.S. § 35-192. Liabilities of more than two hundred thousand dollars for a single disaster require the consent of a majority of the members of the State Emergency Council.² A.R.S. § 35-192(F)(2). Funds are also available under A.R.S. § 35-192 only if (1) no appropriation or other authorization is available; (2) an appropriation is insufficient to meet the contingency or emergency; or (3) federal monies available for . . . [the] contingency or emergency require the use of state or other public monies. A.R.S. § 35-192(F)(4). In addition, "[t]he aggregate amount of all liabilities incurred . . . shall not exceed four million dollars for any fiscal year." A.R.S. § 35-192(F)(3).

¹The Adjutant General or director of the division of emergency management at the Department of Emergency and Military Affairs may, under certain circumstances, authorize expenditures for emergencies. *See* A.R.S. §§ 26-302 (delegations from Governor), -303(H) (authority of adjutant general in emergencies); 35-192(B) (referring to authority under A.R.S. § 26-303(H)).

²The State Emergency Council is established by A.R.S. § 26-304. Its members include the Governor, Secretary of State, Attorney General, Adjutant General, the director of the emergency management division and directors of other specified State agencies, or their designees.

The Department of Emergency and Military Affairs ("DEMA") coordinates the State's emergency management responsibilities and attempts to mitigate the impact of disasters or emergencies. A.R.S. § 26-305(B), (C). The director of the division of emergency management within DEMA is responsible for developing rules governing the administration of expenditures for emergencies pursuant to A.R.S. § 35-192. A.R.S. § 35-192(G).

Analysis

Your question concerns the Governor's ability to authorize expenditures in a fiscal year after the one in which a disaster is initially declared. When interpreting a statute, the first consideration is the statute's language. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). Section 35-192(B) provides:

When the Governor . . . determines that a contingency or disaster so justifies and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund.

In addition, "[n]o liability shall be incurred against the monies authorized without the approval of the Governor" or, in some circumstances, the Adjutant General. A.R.S. § 35-192(F)(1). DEMA rules further provide that "[t]he Governor shall prescribe in the Governor's proclamation the maximum amount for which the state will be liable for the emergency that is the subject of the proclamation." Ariz. Admin. Code ("A.A.C.") R8-2-306(C). In addition, an "[e]xpenditure . . . as a result of a particular proclamation shall not exceed the amount authorized in the proclamation unless an additional amount is authorized by the [state emergency] council." A.A.C. R8-2-308.

The statute and the related rules do not require a single authorization of expenditures for a particular emergency. Moreover, nothing in the pertinent statute or rules suggests that all authorizations for expenditures must occur in the same fiscal year that the Governor declares the

emergency. The Legislature's failure to require that all authorizations occur in the same fiscal year in which the disaster is declared suggests that the Legislature did not intend to impose such a restriction. *Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976) (there is a presumption that what the Legislature means it will say).

Statutes are also to be interpreted "in a manner consistent with the Legislature's apparent purpose." *Boomer v. Frank*, 196 Ariz. 55, 59, 993 P.2d 456, 460 (App. 1999). Subject to certain limits, Section 35-192 enables the Governor to authorize expenditures of general fund monies to address emergency situations. As your opinion request notes, "large scale disasters frequently span fiscal years or occur near the end of a fiscal year" when it is not possible "to estimate or authorize adequate funding to responsibly mitigate the event." This Office also previously noted that declarations of emergency commonly cover more than one fiscal year. Ariz. Att'y Gen. Op. I97-009. Reading the statute to permit authorizations for expenditures in fiscal years after the Governor declares an emergency is consistent with language as well as the purpose of A.R.S. § 35-192.

Any authorization for expenditures, however, must comply with the \$4 million limit and the other requirements in statute and rule. *See generally* A.R.S. § 35-192, A.A.C. R8-2-301 to R8-2-612. Because of recent amendments, some explanation of the \$4 million limit may be useful. In a 1998 amendment to the applicable statutes, the Legislature made clear that the \$4 million limit is calculated based on the year the expenditure is authorized, regardless of when the monies are actually spent: "Monies authorized for disasters and emergencies in prior fiscal years, and expended in subsequent fiscal years . . . apply toward the four million dollar liability limit for the fiscal year in which they were authorized." A.R.S. § 35-192(F)(3); *see* 1998 Ariz. Sess. Laws ch.134, § 3. The 1998 amendments also changed the language from a limit on liabilities "*in any fiscal year*" to a limit

on liabilities "*for any fiscal year.*" 1998 Ariz. Sess. Laws ch. 134, § 3 (emphasis added). These changes were made in response to a 1997 Attorney General's Opinion, Ariz. Att'y Gen. Op. I97-009, which concluded that the statutory language in effect at that time limited DEMA expenditures under A.R.S. § 35-192 to \$4 million in any fiscal year. *See Hearing on SB 1123 Before the House Committee on Appropriations, 43rd Legis., 2nd Reg. Sess. 2 (April, 14, 1998) (testimony of Michael Austin, Director of DEMA).* As amended in 1998, A.R.S. § 35-192(F)(3) permits actual *expenditures* under that statute to exceed \$4 million in a particular fiscal year if some of the expenditures were authorized in earlier fiscal years, but the total *authorizations* for a fiscal year cannot exceed \$4 million. *See A.R.S. § 35-192(F)(3); 1998 Ariz. Sess. Laws. ch. 134, § 3.*

Conclusion

The statutes do not require that all authorizations for expenditures relating to emergencies pursuant to A.R.S. § 35-192 be made in the same fiscal year that the Governor declares the emergency. Any authorizations must comply with the \$4 million limit for the fiscal year in which the funds were authorized and the other requirements in statute and rule.

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