

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL May 23, 2005	No. I05-003 (R04-011) Re: County Use of Highway User Revenue Funds
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TO: Debra Davenport, Auditor General

Question Presented

You have asked whether counties may expend Highway User Revenue Fund (“HURF”) monies to pay expenses such as:

- Legislative monitoring services
- Public outreach and community relations
- Regional and environmental planning
- Traffic and safety studies
- Development services including permitting, zoning and inspection
- Geographic Information System programming and analysis
- Administrative Costs
 - Transportation Department management and administrative support
 - Overhead for County central services such as accounting, payroll, human resources and procurement
 - Information technology support
 - County self-insurance premiums
 - Audit costs

Summary Answer

A county may spend HURF monies for the expenses in question only if the expenditure is directly related to a highway or street purpose under Article IX, § 14 of the Arizona Constitution. If an expenditure only partially relates to a highway or street purpose, counties may use HURF monies only for the portion that directly relates to that purpose.

Background

The revenues that the State receives from licenses, taxes, penalties, and fees for vehicle registration, driver's licenses, and fuel taxes are deposited into the HURF. Arizona Revised Statutes ("A.R.S.") § 28-6501. These restricted monies may only be spent for the purposes prescribed in Article IX, § 14 of the Arizona Constitution¹. The use of HURF monies is restricted to "highway and street purposes." Counties may use HURF monies for "highway and street purposes including costs of rights of way acquisitions and expenses related thereto, construction, reconstruction, maintenance, repair, roadside development, of county . . . roads, streets, and bridges and payment of principal and interest on highway and street bonds." Ariz. Const. art. IX, § 14. This list of the permissible uses of HURF in Article IX, § 14 monies is not exhaustive. Ariz. Att'y. Gen. Op. No. I92-004. HURF monies may be used for any activity that has a "highway or street purpose," even if the activity is not specifically enumerated in Article IX, § 14. *Id.*; *John E. Shaffer Enter. v. City of Yuma*, 183 Ariz. 428, 433, 904 P.2d 1252, 1257 (App. 1995).

This Office has previously advised that HURF monies may be used to "construct county highway offices, storage buildings, garages, appurtenances, fencing, and other related facilities to house county highway officials and employees so long as the duties of those officials and

¹ Monies placed in the HURF from the lottery and excess weight violation fines are not subject to the constitutional use restrictions. Ariz. Att'y. Gen. Op. No. I84-087.

employees are directly related to [highway or street purposes].” Ariz. Att’y. Gen. Op. No. I84-087. However, HURF monies may not be used to create an assurance fund for underground gasoline storage tanks because this does not serve a highway or street purpose. Ariz. Att’y Gen. Op. No. I89-085. There are also some significant differences between how state and counties may use HURF monies. The State may use HURF monies for “expenses of *state* enforcement of traffic laws and *state* administration of traffic safety programs.” Ariz. Const. art. IX, § 14 (emphasis added). The counties are not authorized to use HURF monies for these purposes. *Id.*; Ariz. Att’y. Gen. Op. No. I99-003.

The Auditor General or a contracted Certified Public Accounting firm annually audits each county. A.R.S. § 41-1279.21. Counties must provide financial information “that verifies that highway user revenue fund monies received by the county pursuant to title 28, chapter 18, article 2 and any other dedicated state transportation revenues received by the county are being used solely for the authorized transportation purposes.” A.R.S. § 41-1279.21(A)(1).

You have asked for an opinion on whether several categories of expenses are authorized County HURF expenditures.

Analysis

The key to analyzing the specific expenditures in your opinion request is whether they, in fact, relate directly to “street and highway purposes.” Most of the expenditures mentioned in your opinion request could, under some circumstances, be a permissible expenditure of HURF monies pursuant to Article IX, § 14 of the Arizona Constitution.

1. Public Outreach and Community Relations.

A public hearing must be held to benefit the residents and community before any highway is built using federal monies. 23 U.S.C. § 128. Pursuant to this federal requirement and

in other situations as a matter of policy, the Arizona Department of Transportation (“ADOT”) and county, city and town transportation departments hold public hearings regarding road construction projects. These hearings allow the transportation departments to learn about any concerns the community may have about the proposed project and help resolve these issues before construction begins. This type of public outreach and community relations is a permissible HURF expenditure, but only public outreach and community relations activities that relate directly to street and highway purposes are permitted HURF expenses.

2. *Geographic Information System Programming and Analysis.*

Geographic Information System programming and analysis used to plan design, maintain public roadways relates directly to a street and highway purpose and is a permitted HURF expense. Other uses of this technology that do not directly relate to street or highway purposes would not be a permissible use of HURF monies.

3. *Transportation Management and Administrative Support and Information Technology Support.*

Expenses for transportation management and administrative support and information technology support for county transportation departments relates directly to “highway and street” purpose and are therefore, permitted HURF expenses. Counties may use HURF funds for administrative expenses that support the maintenance, repair or construction of highways or streets. *See Shaffer Enterprises*, 183 Ariz. at 432-433, 904 P.2d at 1256-57. Arizona and other states have recognized that “maintenance” in state constitutional provisions regarding highway funds is a broad term that includes “the doing of everything necessarily and appropriately connected with and incidental to the laying out, opening, and the construction of public roads

and the maintenance of an efficient road system.”² Ariz. Att’y Gen. Op I84-087 (citing *State ex rel. King County v. Murrow*, 93 P.2d 304, 307 (Wash. 1939)). Based on this reasoning, various administrative expenses related to county highway and road purposes are legitimate HURF expenditures, but similar services that are unrelated to the county’s work constructing, repairing and maintaining streets and highways are not legitimate HURF expenditures.

4. *Regional and Environmental Planning.*

Expenses of regional and environmental planning that directly relate to a “highway and street purposes” are allowable HURF expenses. This might include for instance, expenses paid to research the region and the environment in which the county plans to build a road, and studies to determine how to best construct the road. As is true of other expenditures, regional and environment planning unrelated to highway and street purposes are not appropriate HURF expenditures.

5. *Legislative Monitoring Services.*

Because “everything necessarily and appropriately connected with and incidental to the laying out, opening, and the construction of public roads and the maintenance of an efficient road system” is an allowable HURF expense, Ariz. Att’y Gen. Op. I84-087, certain “legislative monitoring” expenses may be permissible HURF expenditures.

For instance, in the 2004 legislative session, the Legislature amended A.R.S. § 11-269.03 to allow political subdivisions to enter into agreements with ADOT for accelerated right of way acquisitions, design or construction of eligible projects and to pledge excise taxes to secure borrowing for advance monies to ADOT. 2004 Ariz. Sess. Laws Ch. 167. Monitoring this legislation could directly relate to street and many highway purposes. Only “legislative

² See also *Shaffer Enterprises*, 183 Ariz. at 433, 904 P.2d at 1257; *Rich v. Williams*, 341 P.2d 432, 437 (Idaho 1959); *Crow v. Tinner*, 47 S.W.2d 391, 392-93 (Tex. Civ. App. 1932).

monitoring services” directly related to street and highway purposes is a legitimate HURF expenditure.

6. *Development Services Such as Permits, Zoning and Inspection.*

The phrase “development services” typically applies to services relating to commercial or residential development. The term does not generally encompass services that are directly related to “construction, reconstruction, maintenance, repair, [or] roadside development [] of county . . . roads, streets, and bridges” Ariz. Const. art. IX § 14. Assuming that this understanding of the term “development services” is correct, these services would not be permissible HURF expenditures. To the extent that a county could establish that the development services are, in fact, directly related to highway and street purposes (rather than those activities traditionally associated with this term), they would be allowable HURF expenditures.

7. *Overhead for County Central Services – Payroll, Human Resources, and Procurement.*

Overhead expenses for centralized county services are allowable HURF expenses only to the extent that they are directly related to street and highway purposes. HURF monies may be used to reimburse a department that actually performs operational and overhead support for ‘highway and street purposes’.” *Shaffer, 83 Ariz. at 434, 904 P.2d at 1258.*

8. *County Self-Insurance Trust Fund Premiums.*

Counties may self-insure against “property loss sustained or lawful claim of liability or fortuitous loss made against the . . . county . . . or its elected or appointed officials, employees or officers.” A.R.S. § 11-981(A)(2). The funds to pay for this insurance are set aside in a trust fund. *Id.* at (B). This self-insurance trust fund is also used to pay “[h]ealth, accident, life or disability benefits for the employees or officers of the . . . county . . . and their dependents.” *Id.*,

at (A)(1). Courts in other jurisdictions have held that funds similar to HURF may not be used to pay personal injury judgments *State ex rel. Varnado v. Louisiana Highway Comm'n*, 147 So. 361 (La. 1933). It follows, therefore, that HURF monies may not be used to pay premiums related to this type of liability. To the extent, however, the trust fund covers insurance for employees whose work directly relates to highways and streets, those costs would be legitimate HURF expenditures.

9. *Traffic and Safety Studies*

Traffic and safety studies conducted to determine the effect of specific construction projects or road closures on the flow of traffic or driver safety are incident to construction and a permissible HURF expense. However, counties may not use HURF monies for traffic and safety studies directed toward the creation or implementation of traffic safety programs or the enforcement of traffic laws. Only the State is specifically authorized to use HURF monies for such purposes. Ariz. Att'y Gen. Op. I99-003.

10. *Audits*

Annual audits are performed to ensure HURF monies are used solely for authorized transportation purposes set forth in the Arizona Constitution, Article IX, § 14. A.R.S. § 41-1279.21(A)(1). Although the audit verifies whether the HURF expenditures were consistent with constitutional requirements, the audit itself does not typically further the county's work to construct, maintain or repair its roadways. As is true for other expenses, a county would have to establish that audit expenses were directly related to street and highway purposes to be a legitimate HURF expenditure.

Conclusion

Counties may use HURF monies only for “highway and street purposes including costs of rights of way acquisitions and expenses related thereto, construction, reconstruction, maintenance, repair, [and] roadside development of county, city and town roads, streets and bridges.” In general, a fact-specific analysis of the purpose of specific expenditures is necessary to determine whether HURF monies may be used for all or a portion of certain expenses.

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