



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>June 30, 2009</p>	<p>No. I09-004 (R08-014)</p> <p>Re: Treatment of SWBPI Funds Received by Counties Under A.R.S. § 42-17106</p>
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To: The Honorable Michael B. Whiting
Apache County Attorney

Question Presented

The United States Bureau of Justice Assistance Southwest Border Prosecution Initiative (SWBPI) provides funds to eligible jurisdictions in the four southwest border states to reimburse costs of prosecuting cases that the federal government initiated but subsequently referred to a state agency for prosecution. You have asked whether a county may treat SWBPI monies as grant funds and spend them in the fiscal year the funds are received, or whether the county must include them in the budget.

Summary Answer

A county must include the SWBPI funds in the budget before spending them. Section 42-17106(A), Arizona Revised Statutes (“A.R.S.”), prohibits a county from spending money in excess of the amount stated for each purpose in the county’s adopted budget regardless of whether the county has received at any time, or has on hand, monies or revenue in excess of the amount required to meet expenditures, debts, obligations, and liabilities that are incurred under the budget. A county may expend federal grant monies that are not in the budget if the county is merely a conduit for those funds. Here, however, the county is not merely a conduit for these monies because there are no limitations on how the county may spend the SWBPI funds.

Background

In 2005, Congress provided thirty million dollars for the SWBPI through the Department of Justice Appropriations Act. These funds are to “to reimburse State, county, parish, tribal, or municipal governments only for costs associated with the prosecution of criminal cases declined by local United States Attorneys offices.” Pub. L. No. 108-447, 118 Stat. 2809, 2863 (2004). The SWBPI provides funds to eligible jurisdictions in the four southwest border states using a uniform amount for qualifying criminal cases that were resolved after October 1, 2004. Pub. L. No. 107-77, 115 Stat. 748, 762-63 (2001); Bureau of Justice Assistance, Southwest Border Prosecution Initiative Program (SWBPI), <http://www.ojp.usdoj.gov/BJA/grant/southwest.html>. County and state governments in the four border states of Arizona, California, New Mexico, and

Texas are eligible for the program, and the local governments receiving funds may use them for any lawful purpose. See Office of the Inspector General, Audit Report GR-60-07-002, *Office of Justice Programs Southwest Border Prosecution Initiative Funding Received by the Yuma County Attorney's Office* (March 2007). Federally initiated criminal cases that are referred to a county are eligible if prosecuted by a state or county prosecutor and resolved during one of the prescribed periods. *Id.*

Analysis

Section 42-17106(A)(1) prohibits counties, cities, and towns from spending money for any purpose not included in its budget. Section 42-17106(A)(2) precludes local governments from spending money or incurring a debt in excess of the amount set aside for each purpose in its budget, "regardless of whether the county, city or town has received at any time, or has on hand, monies or revenue in excess of the amount required to meet expenditures" in its budget.¹

This office previously concluded that this statute governs a county's expenditure of funds received from the federal government as payment in lieu of taxes. See Att'y Gen. Op. 78-132. In that opinion, the Attorney General noted that, under pre-1943 statutes, "if funds were available from a source other than taxes levied by the local government, the funds could be spent even though not included in the budget." See Ariz. Att'y Gen. Op. 78-132 (citing *Pima County v. Grossetta*, 54 Ariz. 530, 97 P.2d 538 (1939); *American-La France & Foamite Corp. v. City of*

¹ The governing body can transfer monies between budget items if certain conditions apply. See A.R.S. § 42-17106(B).

Phoenix, 47 Ariz. 133, 54 P.2d 258 (1936)). In 1943, however, the Legislature specifically amended those statutes to preclude expenditures in excess of the budget “irrespective of whether the county or city at any time has received or has on hand funds or revenues in excess of those required to meet debts, obligations and liabilities incurred under such budget.” *Id.* (quoting 1943 Ariz. Sess. Laws, ch. 38).

Opinion 78-132 distinguished a prior opinion, Attorney General Opinion 67-15, in which the Attorney General opined that federal grant money falls outside statutory budget limitations:

[W]e do not believe that the result of [Attorney General Opinion 67-15 is] necessarily incorrect. The federal objectives sought by each grant must be analyzed to determine the purpose of the expenditure. If the county is merely a conduit for expenditure of the funds, the federal objective governs the expenditure. Since the legislative intent of the Budget Law would not be frustrated where the county is merely a custodian of federal funds and thereby a conduit for their expenditure, such grants need not be anticipated in the budget.

Ariz. Att’y Gen. Op. 78-132. In concluding that funds that the county receives from the federal government in lieu of tax payments must be included in the county budget, the Opinion noted that the federal statute setting forth the scheme for payments to local governments explicitly stated that the local governments could use the funds for “any governmental purpose.” *Id.* (quoting 31 U.S.C. § 1601 (Pub. L. No. 94-565, 90 Stat. 2662 (1976))). Thus, because the counties were not directed by the federal government to use the monies from federal payments in lieu of taxes for any particular purpose, they were not mere custodians or conduits for the federal funds. Therefore, the monies had to be included in the budget.

That conclusion comports with the result reached in *Navajo Tribe v. Arizona Department of Administration*, 111 Ariz. 279, 528 P.2d 623 (1974). In that case, the Navajo Nation, the City of Phoenix, and the City of Tucson each separately contracted with the U.S. Department of Labor for the administration of a Navajo-focused job training and employment program through the Arizona Department of Economic Security (“DES”), which entered into a subcontract with the tribe and cities for that purpose. *Navajo Tribe*, 111 Ariz. at 280, 528 P.2d at 624. Under the terms of the contracts, the tribe and cities were to reimburse DES with federal funding for the costs of administering the program. *Id.* However, once the Nation and cities provided reimbursement from federal funds to the state, the Arizona Department of Administration refused to pay DES without an appropriation. *Id.* The tribe and City of Phoenix brought a special action lawsuit against the Department of Administration to force the payment of the funds to DES for the administration of the program. *Id.* The Court held that, because the contractual language with the U.S. Department of Labor mandated that certain of the funds would be used to reimburse the subcontracting agency, DES, for administrative costs, the monies had never become “public funds” over which the State had control. *Id.* Therefore, the court concluded that the Department of Administration should pay DES the federal monies that agency incurred in fulfilling its contractual duties and for which specific purpose the federal government had made those funds available. *Id.* at 280-81, 528 P.2d at 624-25.

In this particular case, Apache County is receiving SWBPI funds as reimbursement for monies it already has spent on criminal prosecutions referred to the County by the federal government. Like the federal in-lieu-of-taxes payments analyzed in Opinion 78-132, the federal government has placed no restrictions on the use of SWBPI funds. Nor is there a guarantee that the County will be fully compensated for expenditures incurred in prosecuting cases referred by the federal government. Given the nature of SWBPI funds, the County must include these monies in the budget as A.R.S. § 42-17106 requires.

Conclusion

Pursuant to A.R.S. § 42-17106, a county must include SWBPI monies in the budget before the county may spend those monies.

Terry Goddard
Attorney General