



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>November 16, 2015</p>	<p>No. I15-010 (R15-012)</p> <p>Re: Statutory Record Retention Obligations</p>
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To: Joan Clark
State Librarian and Director
Arizona State Library, Archives and Public Records

Questions Presented

You have asked the following questions about the statute establishing the Arizona State Library, Archives and Public Records (“State Library”), Arizona Revised Statutes Sections 41-151 through -151.24 (“State Library Statute”):

1. Is it accurate to interpret “agencies” when used alone to include both state and local agencies?
2. Are the records of an unincorporated city or town the property of the State? Are the records of Title 48 special taxing districts property of the State?
3. Is it accurate to state that Section 41-151.19, which concerns records disposition, applies beyond counties, cities and towns, and special taxing districts to also include “public bodies” as that term is defined at Section 39-121.01(A)(2)?

Summary Answers

1. No. While the term “agencies” occasionally appears unmodified in some sections of the State Library Statute, the plain language of subsequent provisions of those same sections make clear whether they apply to state agencies, local agencies, or both.

2. By the plain terms of Section 41-151.15, neither the records of unincorporated communities nor those of Title 48 special taxing districts are the property of the State. Because unincorporated communities are not “public bodies” under Arizona public records law, they are not subject to Section 41-151.15’s record preservation requirements. In contrast, Title 48 special taxing districts are public bodies and, accordingly, their records must be preserved as Section 41-151.15 requires.

3. Yes, all “public bodies” as defined by Section 39-121.01(A)(1) are subject to Section 41-151.19’s record disposition requirements. A.R.S. § 39-121.01(C).

Background

Although the State Library can trace its roots to the first Arizona Territorial Library in 1863, the Legislature established the State Library in its current form in 1976. 1976 Ariz. Sess. Laws 326-38. The State Library is required to contain “[c]opies of current official reports, public documents and publications of state, county and municipal officers, departments, boards, commissions, agencies and institutions, and public archives.” A.R.S. § 41-151.08(A)(1). The State Library also “is the central depository of all official books, records and documents not in current use of the various state officers and departments of this state, the counties and incorporated cities and towns.” A.R.S. § 41-151.09(A). The latter materials constitute the State Archives. *Id.* Whereas State officers must deposit State or territorial archival material with the State Library, “[a]ny county, municipal or other public official” has the option of either retaining

archival materials or depositing them with the State Library for preservation. *Cf.* A.R.S. § 41-151.09(B) *and* A.R.S. § 41-151.09(C).

The State Library’s Director is responsible for preserving and managing “records.” A.R.S. § 41-151.12(A). As defined by the Library Statute, “‘records’ means all books, papers, maps, photographs or other documentary materials . . . made or received by any governmental agency in pursuance of law or in connection with the transaction of public business.” A.R.S. § 41.151.18. Among other duties, the State Library’s Director must establish standards and procedures for managing, retaining, and disposing of “records” so defined. A.R.S. § 41-151.12(A)(1), (3).

The State Library Statute should be construed with Arizona public records statutes. Section 41-151.15 provides that every “custodian of public records shall carefully protect and preserve the records.” Section 41-151.19 provides that “[e]very public officer who has public records in the public officer’s custody shall consult periodically with the state library and the state library shall determine whether the records in question are of legal, administrative, historical or other value.”

These State Library Statute requirements correspond with the following public records law requirement:

Each public body shall be responsible for the preservation, maintenance and care of that body’s public records, and each officer shall be responsible for the preservation, maintenance and care of that officer’s public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to §§ 41-151.15 and 41-151.19.

A.R.S. § 39-121.01(C).

Analysis

1. **By Its Terms, The State Library Statute Makes Clear When the Term “Agencies” Applies to State Agencies, Local Agencies, or Both.**

“Our task in interpreting the meaning of a statute is to fulfill the intent of the legislature that wrote it.” *State v. Williams*, 175 Ariz. 98, 100 (1993). “In determining the legislature's intent, we initially look to the language of the statute itself.” *Bilke v. State*, 206 Ariz. 462, 464 ¶ 11 (2003). If the statute's language is clear, we apply it “unless application of the plain meaning would lead to impossible or absurd results.” *Id.*

The State Library Statute does not define the term “local agency.” Accordingly, the term “shall be construed to the common and approved use of the language.” A.R.S. § 1-213; *Circle K Stores, Inc. v. Apache Cnty.*, 199 Ariz. 402, 408, ¶ 18 (App. 2001) (“By declining to define a statutory term, the legislature generally intends to give the ordinary meaning to the word.”). *Black's Law Dictionary* defines the term “local agency” as follows: “A political subdivision of a state. Local agencies include counties, cities, school districts, etc.” *Black's Law Dictionary* 68 (8th ed. 2004).

A number of State Library Statute sections apply expressly to both state and local agencies. Specifically, Section 41-151.07 applies to “state and local institutions and governmental units.” A.R.S. § 41-151.07(2). Section 41-151.08 applies to “state, county and municipal . . . agencies.” A.R.S. § 41-151.08(A)(2). Section 41-151.09 applies to “the various state officers and departments of this state, the counties and incorporated cities and towns.” A.R.S. § 41-151.09(A). Section 41-151.14 applies to “[t]he head of each state and local agency” and “[t]he governing body of each county, city, town or other political subdivision.” A.R.S. § 41-151.14(A), (B), (C). Section 41-151.15 applies to “this state or the counties and incorporated cities and towns of this state.” A.R.S. § 41-151.15(A). And Section 41-151.16

applies to “[e]ach agency of this state or any of its political subdivisions.” A.R.S. § 41-151.16(A).

The term “agencies” appears unmodified in only three State Library Statute sections. But in each case, provisions directly following the term’s initial use clarify the extent to which the subsection applies to local agencies.

The first provision, Section 41-151.05 provides that “[a]fter consultation with other agencies,” the State Library Director will “adopt rules as provided by statute.” A.R.S. § 41-151.05(A)(7). Whether this consultation requirement applies to State agencies, local agencies, or both depends on the context that Section 41-151.05’s subsections provide. On the one hand, the Director must adopt rules as provided by Section 11-910, which concerns supervision of county free libraries, and Section 34-502, which charges the Director with adopting rules to enforce the technology protection measures for public access computers in all public—that is, not exclusively State—libraries. A.R.S. § 41-151.05(A)(7)(b), (d); *see also* A.R.S. § 35-502(B), (D). On the other hand, Section 41-151.05 also requires that the Director adopt rules “for the . . . [d]escription of state publications in all formats,” which unlike the two subsections previously mentioned, would not require consultation with local agencies. A.R.S. § 41-151.05(A)(7)(a).

The second provision, Section 41-151.12, which concerns records management, charges the Director with “[o]btain[ing] such reports and documentation from agencies as are required for the administration of this program.” A.R.S. § 41-151.12(A)(6). Subsequent provisions in this subsection make clear that the agencies participating in the Director’s records management program include local as well as State agencies. *See* A.R.S. §§ 41-151.12(7) (applying to “agencies of the state or its political subdivisions”); 151.12(9) (applying to “state agencies, political subdivisions of the state and other governmental units of this state”); and 151.12(10)

(also applying to “state agencies, political subdivisions of the state and other governmental units of this state”).

The third provision, Section 41-151.21 applies to “[a]n agency” that has or acquires furniture, equipment or other personal property that is over 50 years old or of known historical interest. A.R.S. § 41-151.21(A). However, this section subsequently defines “agency” as “any branch, department, commission, board or other unit of the state organization that receives, disburses or extends state monies or incurs obligations against this state.” A.R.S. § 41-151.21(F). By providing this definition, the Legislature intended Section 41-151.21 to apply to State agencies only.

In conclusion, the plain terms of the State Library Statute show which of its provisions the Legislature intended to apply to State agencies, local agencies, or both.

2. Section 41-151.15’s Application to Unincorporated Communities and Title 48 Special Taxing Districts.

a. The Records of Unincorporated Communities and Title 48 Special Taxing Districts Are Not Property of the State Under Section 41-151.15.

Section 41-151.15 of the State Library Statute provides that “[a]ll records made or received by public officials or employees of this state or the counties and incorporated cities and towns of this state in the course of their public duties are the property of this state.” A.R.S. § 41-151.15(A). Neither unincorporated communities nor Title 48 special taxation districts are listed among the public entities whose records are State property under Section 151.15(A). The Legislature’s omission of unincorporated communities and Title 48 special taxation districts suggests the intent to exclude them. *See Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 202, ¶ 7, 150 P.3d 773, 775 (App. 2007) (citing *Estate of Hernandez v. Ariz. Bd. of Regents*, 177 Ariz. 244, 249, 866 P.2d 1330, 1335 (1994)); *see also State v. Ault*, 157 Ariz. 516, 519, 759 P.2d 1320, 1323 (2008) (“Generally, when the legislature expresses a list, we assume the exclusion of items

not listed.”). Therefore, the records of unincorporated communities and Title 48 special taxing districts are not property of the State under Section 41-151.15.

b. Title 48 Special Taxing Districts Are Public Bodies That Must Comply with Section 41-151.15 While Unincorporated Communities Are Not.

Although their records are not property of the State, unincorporated communities and Title 48 special taxing districts may nevertheless be subject to Section 41-151.15’s record preservation requirements if they are “custodian[s] of public records.” A.R.S. 41-151.15(A). (“[T]he director and every other custodian of public records shall carefully protect and preserve the records.”) Whether an entity is a custodian of public records turns on whether it is a “public body” under Arizona public records law. *See* A.R.S. § 39-121.01(C) (“Each public body shall be responsible for the preservation, maintenance and care of that body’s public records.”) Unincorporated communities do not come within the statutory definition of “public body.” However, as both “political subdivision[s]” and “tax-supported district[s] in the state,” Title 48 taxing districts are public bodies subject to Arizona public records law and Section 41-151.15 record preservation requirements. A.R.S. § 39-121.01(A)(2).

i. Unincorporated communities are not public bodies.

Under Section 39-121.01(A)(2), any city or town is a “public body.” But in Arizona, a community must be incorporated to become a city or town. *See* A.R.S. § 9-101. An unincorporated community is “a locality in which a body of people resides in more or less proximity having common interests in such services as public health, public protection, fire protection and water which bind together the people of the area, and where people are acquainted and mingle in business, social, educational, and recreational activities.” A.R.S. § 9-101(A). Neither communities nor localities are listed among the entities that Section 39-121.01(A)(2) includes in the definition of “public body.” We therefore assume the Legislature intended to

exclude unincorporated communities from the reach of public records law and Section 41-151.15. *Accord Ault*, 157 Ariz. at 519, 759 P.2d at 1323.

ii. Title 48 special taxing districts are public bodies.

Under Section 39-121.01(A)(2), any political subdivision or tax-supported district in the State is a “public body.” Title 48 special taxing districts are public bodies by either classification. The Arizona Constitution states that “[i]rrigation, power, electrical, agricultural improvement, drainage, and flood control districts, and tax levying public improvement districts . . . shall be political subdivisions of the state.” Ariz. Const. art. XIII, §7. The Legislature has established Title 48 special taxing districts as tax-supported districts. *See* A.R.S. § 48-101, et seq. Accordingly, this Office has reasoned that as an agricultural improvement and power district established as a special taxing district under Title 48, SRP is both a political subdivision and a tax-supported district and, therefore, a public body under Section 39-121.01(A)(2). *See* Ariz. Att’y Gen. Op. I90-0444 at 2 (1990). Consequently, this Office concluded that SRP was subject to Section 41-151.15’s predecessor statute,¹ among other statutes governing the preservation and public access to public records. *Id.* The same reasoning applies to all special taxing districts: as public bodies, Section 41-151.15’s public records preservation requirements apply to them.

3. Section 41-151.19 Applies to All “Public Bodies” as Defined by Section 39-121.01(A)(1).

Section 41-151.19 provides as follows:

Every public officer who has public records in the public officer’s custody shall consult periodically with the state library and the state library shall determine whether the records in question are of legal, administrative, historical or other value. . . . Those records determined to be of no legal, administrative, historical or other value shall be disposed of by such method as the state library may specify.

¹ Section 41-1347 was the predecessor of Section 41-151.15. 1976 Ariz. Sess. Law 335-37.

A “public officer” obligated to adhere to these requirements is “any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.” A.R.S. § 39-121.01(A)(1). As previously discussed, “public bodies” include “this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.” A.R.S. § 39-121.01(A)(2). Thus, public officers of any of these listed public entities are obligated to consult with the State Library for determinations of records value and disposition as set forth in Section 41-151.19.

Conclusion

1. The plain language of the State Library Statute shows which of its provisions the Legislature intended to apply to State agencies, local agencies, or both.
2. The records of unincorporated communities and Title 48 special taxing districts are not State property under Section 41-151.15. However, Title 48 special taxing districts are public bodies subject to Arizona public records law and Section 41-151.15’s record preservation requirements.
3. All public bodies as defined by Section 39-121.01(A)(1) are subject to Section 41-151.19’s consultation and record disposition requirements.

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