



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>June 25, 2018</p>	<p>No. I18-005 (R18-005)</p> <p>Re: Use of Anti-Racketeering Revolving Fund Monies Under § 13-2314.03</p>
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To: Barbara LaWall
Pima County Attorney

Question Presented

You have requested an opinion concerning the following question:

When a board of supervisors, in its discretion, hires outside counsel as permitted under A.R.S. § 13-2314.03(E), may funds in the county attorney's anti-racketeering revolving fund ("ARRF") sub-account be expended to pay that lawyer's fees incurred in reviewing whether a county attorney's proposed use of ARRF funds, requested on or after August 9, 2017, is authorized by law?

Summary Answer

Yes. Arizona Revised Statutes ("A.R.S.") § 13-2314.03(F) provides that monies in the county anti-racketeering revolving fund established by A.R.S. § 13-2314.03 ("Fund")¹ may be used to fund "the costs of the reports and application and expenditure reviews and approvals

¹ For the purposes of this Opinion, the term "Fund" is used to refer to the entirety of the revolving fund established by A.R.S. § 13-2314.03, comprised of all agency sub-accounts therein. The term "sub-account" is used to refer to those monies in the Fund held for the benefit of the County Attorney's Office. "Sub-account" is not a statutory term, but derives from the administrative and accounting practice of segregating monies in the Fund on a per agency basis. A.R.S. § 13-2314.03(D) (stating that monies in the Fund are "held for the benefit of the agency or agencies responsible for the seizure or forfeiture to the extent of their contribution.").

required by this section.” Section 13-2314.03(E) provides that a county attorney’s own use of his own sub-account monies is subject to review and approval by the county board of supervisors and permits the board of supervisors to retain outside counsel to assist it with review and approval of the county attorney’s request to spend his own sub-account monies.

Where the necessity arises to employ outside counsel for this purpose, it is an expense that is attendant to the board of supervisors’ mandated review and determination. Therefore, it is a “cost[] of the . . . expenditure reviews and approvals . . . required by this section.” A.R.S. § 13-2314.03(F). Accordingly, funds held in the sub-account may be used to pay for outside counsel services incurred in connection with a board of supervisors’ review of county attorney expenditure requests.²

Background

The Arizona Racketeering Act, A.R.S. §§ 13-2301 to -2323 (“AZRAC”), and the Arizona Forfeiture Reform Act, A.R.S. §§ 13-4301 to -4316 (“AFRA”), empower both the Attorney General and each county attorney to: bring civil actions to prevent, restrain or remedy racketeering or a violation of A.R.S. § 13-2312 (discussing illegal control and conduct of an enterprise); seek forfeitures of property; and obtain civil judgments on behalf of the State and other persons injured by racketeering.

Each county has established a Fund, pursuant to the authority of A.R.S. § 13-2314.03(A), which the county attorney administers. Monies obtained as a result of a forfeiture or civil racketeering action and deposited in the Fund³ are held for the benefit of the responsible agencies. Monies held in the Fund and its sub-accounts are “designated statutory funds” and are

² The question presented here deals only with the use of a county attorney’s sub-account funds. No opinion is given concerning the funds in other agencies’ sub-accounts within the Fund.

³ The Attorney General also administers an anti-racketeering revolving fund, established by A.R.S. § 13-2314.01.

public funds—not funds held in trust by the county. *Arpaio v. Maricopa Cty Bd. of Supervisors*, 225 Ariz. 358, 363, ¶ 16 (Ct. App. 2010).

In 2017, the Legislature amended certain provisions of AZRAC and AFRA, including A.R.S. § 13-2314.03(E), to require that before a county attorney’s office uses its own sub-account funds, or within a reasonable time in the case of an emergency, the county attorney’s office “shall submit an application that includes a description of what the requested monies will be used for to the board of supervisors.”⁴ Section 13-2314.03(E) provides the following instructions concerning the board of supervisors’ mandated review process:

The board of supervisors shall approve the county attorney’s use of the monies if the purpose is authorized by this section, section 13-4315 or federal law.

...

The board of supervisors may retain outside counsel, if necessary, to approve, review or ratify the county attorney’s use of the monies.

Section 13-2314.03(F) lists permissible Fund expenditures, which include explicit authorization that monies in the Fund “may be used for . . . the costs of the reports and application and expenditure reviews and approvals that are required by this section.” A.R.S. § 13-2314.03(F).

Analysis

Arizona Revised Statutes § 11–532(A)(9) provides that the county attorney of each county shall “[a]ct as the legal advisor to the board of supervisors[.]” The county attorney shall also, “[w]hen required, give a written opinion to county officers on matters relating to the duties of their offices.” A.R.S. § 11–532(A)(7).

⁴ The board of supervisors only reviews the county attorney’s proposed use of its own sub-account funds. An agency other than the county attorney seeking to utilize its monies in the Fund “must submit an application in writing to the county attorney that includes a description of what the requested monies will be used for. The county attorney may deny an application that requests monies for a purpose that is not authorized by this section, section 13-4315 or federal law.” A.R.S. § 13-2314.03(E).

With respect to the county attorney's use of his own sub-account funds, however, A.R.S. § 13-2314.03(E) provides that the "board of supervisors may retain outside counsel, *if necessary*, to approve, review or ratify the county attorney's use of the monies." (Emphasis added.) The question presented here contemplates the situation where the board of supervisors has determined the necessity threshold was met and has hired outside counsel for legal advice in reviewing the county attorney's request to expend its sub-account monies. Therefore, the sole question to be answered is whether the cost of outside legal counsel services retained at a board's discretion pursuant to A.R.S. § 13-2314.03(E) is properly considered within "the costs of the reports and application and expenditure reviews and approvals that are required" and, consequently, is eligible to be funded through the sub-account of the Fund pursuant to A.R.S. § 13-2314.03(F). For the reasons discussed below, the answer is yes.

The "best and most reliable index of a statute's meaning is its language," *Janson on Behalf of Janson v. Christensen*, 167 Ariz. 470, 471 (1991), and where the language is plain and unambiguous, courts must follow the text as written. *Mid Kansas Fed. Sav. & Loan Ass'n of Wichita v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128 (1991); *see also Balestrieri v. Hartford Acc. & Indem. Ins. Co.*, 112 Ariz. 160, 163 (1975).

Here, the statutory language is unambiguous. Under the 2017 amendments to the statute, the board of supervisors is required to review and approve the county attorney's own sub-account expenditure requests. Fund monies "may be used for . . . the costs of the reports and application and expenditure reviews and approvals that are required by this section" and A.R.S. § 13-2314.03(E), (F). Section 13-2314.03(E) provides express authority for the board of supervisors to retain outside counsel, when necessary, to perform these functions. These provisions then work together in situations where the board of supervisors determines it is

necessary to retain outside counsel and to allow Fund monies to be used to pay for outside counsel.

In other words, the 2017 statutory amendments require board of supervisors' review of sub-account expenditure requests. Concomitantly, the Legislature expanded the eligible expenses that may be paid from the Fund to include the expenses associated with the performance of the mandate.

Considering the plain statutory language requiring the board of supervisors to conduct eligibility review of county attorney applications and the Legislature's explicit grant of authority to hire outside counsel as necessary for this purpose, this language unambiguously provides that sub-account monies, as monies within the Fund, may be used for this purpose. "Statutes should be interpreted, whenever possible, so that no clause, sentence, or word is rendered superfluous, void, contradictory, or insignificant." *Cont'l Bank v. Arizona Dep't of Revenue*, 131 Ariz. 6, 8 (Ct. App. 1981) (citing *State v. Deddens*, 112 Ariz. 425 (1975)). It would be far too tortured a reading to separate the authority to retain, as necessary, outside counsel to review sub-account expenditure applications from the authority to use the Fund to pay outside counsel for those legal services.

Therefore, A.R.S. § 13-2314.03(F), as amended, authorizes the use of monies in the Fund, and therefore the sub-account monies therein, to be used to pay outside counsel fees arising from the board of supervisors' review of county attorney expenditure requests. This conclusion is supported by the clear, unambiguous text of the statute.

Conclusion

Funds in the county attorney's sub-account may be expended to pay the fees of outside counsel retained to perform the review required by A.R.S. § 13-2314.03(E).

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