

February 26, 1999
No. I99-005(R98-012)

Question Presented

You have asked whether the Arizona State Parks Board ("Parks Board") may award Heritage Fund monies to federal agencies and Indian tribes pursuant to Arizona Revised Statutes Annotated ("A.R.S.") §§ 41-501 through -503.

Summary Answer

The Parks Board may award Heritage Fund grants to any entity, including a federal agency or Indian tribe, for projects that are consistent with the purposes set forth in the Heritage Fund legislation.

Background

Arizona voters created the Heritage Fund in 1990 by passing an initiative measure, Proposition 200.⁽¹⁾ The initiative enacted statutes that provide the Parks Board and the Arizona Game and Fish Commission with annual funding from State Lottery revenues.⁽²⁾ The declaration of policy in the informational pamphlet informed voters that the goals of the Heritage Fund would be to preserve, protect, and enhance certain natural and cultural values in Arizona:

The people of Arizona believe it is in the best interest of the general economy and welfare of Arizona and its citizens to set aside adequate state funds on an annual basis to preserve, protect and enhance Arizona's natural and cultural heritage, wildlife, biological diversity, scenic wonder and environment and provide new opportunities for outdoor recreation in Arizona.

Proposition 200, § 1, SECRETARY OF STATE'S 1990 PUBLICITY PAMPHLET at 60.

After the passage of the initiative, the Parks Board implemented a grant program. The Parks Department (which staffs the Parks Board) accepts applications for different types of grants, including grants for trails, parks, and historic preservation. Parks Department staff members review the applications and make recommendations to various advisory boards, which in turn make recommendations to the Parks Board. The Parks Board then awards the grant monies and distributes funds to the successful applicants.

Throughout this decade, the Parks Board has granted Heritage Fund monies to federal entities for trails and to Indian tribes for historic preservation projects and parks. For example, in the first Heritage Fund grant cycle (fiscal year 1990-91), the Parks Board granted \$159,000 to the Coronado National Forest for the development of Arizona Trail segments and \$50,500 to the Coconino National Forest for Arizona Trail developments and other projects. ARIZONA STATE PARKS FY 1991-92 ANNUAL REPORT at 17. In fiscal year 1992-93, the Parks Board granted \$199,825 to the Coronado and Kaibab National Forests

for various trails projects and \$17,760 to the Hualapai Tribe for the development of the Hualapai Diamond Creek Road Recreational Area (a park). ARIZONA STATE PARKS FY 1992-93 ANNUAL REPORT at 28 and 32. In 1996, the Parks Board granted \$95,000 to the Coconino National Forest for the development of the Red Rocks Pathways 4C-Bell Rock Trail that links the Village of Oak Creek and the Chapel of Sedona. ARIZONA STATE PARKS FY 1995-96 ANNUAL REPORT at 22. Also in 1996, the Parks Board granted \$104,300 to the Yavapai-Apache Tribe to benefit Heritage Park. *Id.* at 20.

Analysis

The Heritage Fund provisions that govern the expenditure of monies for grant purposes are A.R.S. § 41-503(A)(1), (A)(2), and (F). Those provisions direct that five percent of Heritage Fund monies be spent on "local, regional and state trails," thirty-five percent be spent on "local, regional or state parks, for outdoor recreation and open space," and seventeen percent be spent on "local, regional and state historic preservation projects."⁽³⁾ The question thus becomes whether the terms "local," "regional," and "state" refer to geographical location or instead to ownership.

1. The Plain Language of the Statutes Provides That Heritage Fund Grants Will Be Based on Location Rather Than Ownership.

In passing the initiative measure that created the Heritage Fund, the voters in the 1990 election did not provide specific definitions of the terms "local," "regional," or "state." When the Legislature (or in the case of an initiative, the public) has not offered its own definition of words, and it does not appear from the context that a special meaning was intended, words are to be given their ordinary meaning. *See Mid Kansas Fed. Sav. and Loan Ass'n v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991).⁽⁴⁾ The ordinary definition of the term "local" means "pertaining to or characterized by place or position in space." WEBSTER'S UNABRIDGED DICTIONARY 840 (1989). "Regional" means "of or pertaining to a region of considerable extent; not merely local." *Id.* at 1208. One of the many definitions of the word "state" is "the territory, or . . . territories, of a government." *Id.* at 1388.

As the above definitions demonstrate, the terms "local," "regional," and "state" ordinarily refer to geographical location and not ownership. Thus, the mere fact that these words are contained within A.R.S. § 41-503 does not mean that Heritage Fund grant applicants or recipients must be municipal, county, or state entities. Under the plain language of the Heritage Fund provisions, the Parks Board may expend Fund monies on all projects that meet the statutory criteria and that serve local, regional, and state areas. The Board need not exclude otherwise eligible applicants simply because they are federal or tribal entities.

2. The Intent of the Initiative, as Reflected by the Voter's Declaration of Policy and the Resulting Statutory

Framework, Is That Grants Should Be Based on Location Rather Than Ownership.

The intent of the initiative in this case reinforces the conclusion that Heritage Fund grants should be based on a project's location, and not on who may own, possess, or control the land. A determination of legislative intent necessarily requires an examination of several factors, including the statute's context, its language, subject matter and historical background, its effects and consequences, and its spirit and purpose. *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994). Here, both the policy behind the initiative and the overall statutory scheme governing trails, parks, and historic preservation reveal that the intent of Proposition 200 is consistent with the plain language interpretation as set forth above.

First, the declaration of policy in the 1990 Publicity Pamphlet supports an interpretation that does not preclude awards to federal and tribal entities.⁽⁵⁾ The purpose of the Heritage Fund is to provide grant monies to "preserve, protect, and enhance Arizona's . . . cultural heritage, wildlife, . . . scenic wonder and environment and provide new opportunities for outdoor recreation." Neither the statutory language nor the Publicity Pamphlet restricts the grants to land owned by certain types of governmental entities. The policy statement instead supports the conclusion that the Parks Board is charged solely with identifying those projects and resources that meet the stated criteria for eligibility, regardless of which individuals or entities own the resources.

Second, the statutory scheme governing trails, parks, and historic preservation programs sheds additional light on the objectives of the Heritage Fund. Because the statutes governing these programs relate to the same subject matter and have the same general purpose, they should be construed together so that they constitute one body of law. *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970); *U.S. Xpress, Inc. v. Arizona Tax Court*, 179 Ariz. 363, 366, 879 P.2d 371, 374 (App. 1994).

For example, A.R.S. § 41-503(A)(1) directs that the Parks Board expend five percent of Heritage Fund monies on "local, regional and state trails." "Trails" are broadly defined as "those trails for non-motorized use nominated for inclusion in the state trails system, including urban, cross-state, recreation, interpretive or historic trails." A.R.S. § 41-501(2). The statewide trail systems plan, as explained in A.R.S. § 41-511.22, does not contemplate that all of the trails in this system be under the ownership of the Parks Board, or even another governmental entity. To the contrary, the legislative direction in establishing state trails is for the trails system to be comprised of trails located throughout the State, which will necessarily be owned by many different entities or individuals. See A.R.S. §§ 41-511.22(A)(1) (the plan must "identif[y] on a **statewide** basis the general location and extent of significant trail routes, areas and complementary facilities")(emphasis added); 41-511(A)(4) (referring to "adopting" trails in the system, and not to acquiring or purchasing such trails); 41-511.22(A)(5) (requiring that the Parks Board "recommen[d] to federal, state, regional, local and tribal agencies and the private sector actions that will enhance the trail systems").

Thus, the Heritage Fund statutes authorize the Parks Board to expend Heritage Fund monies on trails that are of the types set forth in A.R.S. § 41-503(A)(1) and that are nominated for inclusion in the state trails system. The statutes do not in any way designate or circumscribe the types of entities that can apply for and receive these grants.

Moreover, due to the interspersed and sometimes checkerboard land ownership patterns in Arizona, a comprehensive trail system must necessarily cross lands belonging to different owners. This would include not only state land, but also federal and tribal land, private land, and land owned by municipal governments and other entities as well. Indeed, a comprehensive statewide trail system would not be possible without the inclusion of lands owned by these various entities. So long as the trails that they are developing or improving are for non-motorized use and are nominated for inclusion in the state trails system, a statutory interpretation which allows Heritage Fund grants to be made to various entities therefore advances the possibility of a statewide trails system and is consistent with the purpose of the Heritage Fund initiative, which is, among other things, "to provide new opportunities for outdoor recreation in Arizona."

The statutes governing the parks grant program also support this result. In addition to the initiative's requirement that thirty-five percent of Heritage Fund monies be spent on local, regional, or state parks for outdoor recreation and open space, A.R.S. § 41-503(A)(2), the statutes direct that seventeen percent of the monies be spent on "acquisition of natural areas" and four percent on the "maintenance, operation and management of natural areas administered by the state parks board." A.R.S. § 41-503(D)(1) and (2). Similarly, seventeen percent of Heritage Fund monies are to be spent on state park acquisition or development. A.R.S. § 41-503(D)(4).

All of these statutes refer to properties maintained, operated, managed, acquired, and developed by the Parks Board. If the voters had intended in A.R.S. § 41-503(A)(2) to restrict Heritage Fund expenditures to properties owned and operated by municipal governments, county governments, or the Parks Board, they would have done so.⁽⁶⁾

Likewise, the historic preservation statutes in Title 41 do not limit their coverage to state-owned sites.⁽⁷⁾ The term "historic preservation" is defined in A.R.S. § 41-501(4) as all "archeological or historic properties listed on or eligible for listing on the Arizona register of historic places that require funding for easements, stabilization, rehabilitation, education and preservation program development, reconstruction, restoration, interpretive development, acquisition and maintenance." Under A.R.S. § 41-511.04(A)(9), the Parks Board is charged with the responsibility of keeping the Arizona register of historic places (the "Register"), which is to be comprised of "districts, sites, buildings, structures and objects significant in this state's history, architecture, archaeology, engineering and culture which meet criteria which the [Parks] board establishes or which are listed on the national register of historic places."

Even a cursory review of these statutes makes clear that Heritage Fund grants are available to any historic preservation project that qualifies for a Register

listing. A.R.S. §§ 41-501(4) and -503(F). Eligibility for the Register is *not* contingent upon the ownership or location of the site, but rather is based upon the site's historical, architectural, archaeological, engineering, or cultural significance. *See* A.R.S. § 41-511.04(A)(9). The Legislature thus intended that sites owned by private, federal, state, tribal, municipal, or other entities may be eligible for listing on the Register.⁽⁸⁾ Considering that a multitude of types of entities own Register-eligible properties as defined by statute, the Parks Board is authorized to grant Heritage Fund monies pursuant to A.R.S. § 41-503(F) for eligible historic preservation projects and is not required to disqualify grant applications filed by tribal or federal entities.

3. Long-standing Administrative Interpretation and Legislative Acquiescence Thereto Reflect That Grants Should Be Disbursed Based on a Project's Location Rather Than Its Ownership.

Finally, during the past eight years, the Parks Board has itself interpreted the Heritage Fund grant program as allowing for grants to federal agencies and Indian tribes. The Parks Board's annual reports, filed with the Legislature pursuant to A.R.S. § 41-503(F), have consistently and repeatedly reflected these grants. Thus, the Legislature has known of the Parks Board's administrative interpretation and application for several years, and has not made any material change to the Heritage Fund statutes.

Although courts are not bound by administrative interpretations of statutes, they do give considerable weight to such interpretations. *See Long v. Dick*, 87 Ariz. 25, 29, 347 P.2d 581, 584 (1959) (citing *Chee Lee v. Superior Court*, 81 Ariz. 142, 147, 302 P.2d 529, 533 (1956)) (adopting the administrative interpretation and application of a statute made by the Superintendent of Public Instruction over a twelve-year period). Accordingly, courts will not adopt a different construction than that accepted by the Legislature over long periods of time, if not manifestly erroneous. *See id.* (citing *Bohannon v. Corp. Comm'n*, 82 Ariz. 299, 313 P.2d 379 (1957)). The acquiescence of the Legislature to the Parks Board's administrative interpretation and application of the Heritage Fund provisions may therefore be viewed as its endorsement. *See id.*

Conclusion

The Parks Board may award Heritage Fund grants to federal agencies and Indian tribes for projects and resources that are consistent with the purposes set forth in the Heritage Fund statutes.

APPENDIX

Attorney General Opinion No. I99-005

A.R.S. § 41-501. Definitions

In this article:

1. "Natural areas" means parcels of land or water that contain examples of unique natural terrestrial or aquatic ecosystems, rare species of plants and animals or unusual or outstanding geologic or hydrologic features.
2. "Trails" are those trails for non-motorized use nominated for inclusion in the state trails system, including urban, cross-state, recreation, interpretive or historic trails.
3. "Environmental education" means educational programs dealing with basic ecological principles and the effects of natural and man related processes on natural and urban systems and programs to enhance public awareness of the importance of safeguarding natural resources.
4. "Historic preservation" means archeological or historic properties listed on or eligible for listing on the Arizona register of historic places that require funding for easements, stabilization, rehabilitation, education and preservation program development, reconstruction, restoration, interpretive development, acquisition and maintenance.

A.R.S. § 41-502. Establishment of fund

A. The Arizona State Parks Board Heritage Fund is established in the office of the state treasurer consisting of monies deposited from the state lottery fund pursuant to § 5-522 and interest earned on those monies.

B. The fund shall be administered by the Arizona State Parks Board and is not subject to appropriation. Expenditures from the fund are not subject to additional approval notwithstanding any provision of § 41-511.05, § 41-511.11 or any other statutory provision to the contrary. Monies received pursuant to § 5-522 shall be deposited directly with the Arizona State Parks Board Heritage Fund. On notice from the Arizona State Parks Board, the state treasurer shall invest monies in the fund as provided in § 35-311. The state treasurer shall credit monies earned from those investments to the fund.

C. The board shall not use its rights of eminent domain under § 41-511.06 to acquire property to be paid for with monies from the Arizona State Parks Board Heritage Fund.

D. All monies in the Arizona State Parks Board Heritage Fund shall be spent by the Arizona State Parks Board only for the purposes and in the percentages set forth in this article. In no event shall any monies in the fund revert to the state general fund and monies in the fund are exempt from the provisions of § 35-190, relating to lapsing of appropriations.

A.R.S. § 41-503. Expenditures from fund; purpose and amounts

A. Monies in the fund for local, regional and state trails, parks, outdoor recreation and open space shall consist of:

1. Five per cent of monies received pursuant to § 5-522 shall be spent on local, regional and state trails.
2. Thirty-five per cent of monies received pursuant to § 5-522 shall be spent on local, regional or state parks, for outdoor recreation and open space.

B. Arizona state parks board heritage fund monies allocated pursuant to subsection A, paragraphs 1 and 2 of this section shall be spent in accordance with § 41-511.25 and shall be available as matching funds.

C. No entity receiving funds under subsections A and B of this section shall receive more than twenty per cent of the monies available in any fiscal year.

D. Monies received pursuant to § 5-522 shall be spent as follows:

1. Seventeen per cent on acquisition of natural areas.
2. Four per cent on maintenance, operation and management of natural areas administered by the Arizona state parks board.
3. Seventeen per cent on local, regional and state historic preservation projects. Monies provided under this paragraph shall be administered by the Arizona state parks board through the state historic preservation officer.
4. Seventeen per cent on state park acquisition or development.
5. Five per cent on environmental education.

E. All monies earned as interest on monies received pursuant to § 5-522 shall be spent only in the percentages and for the purposes described in subsections A through D of this section or for costs of administering the Arizona state parks board heritage fund in such amounts as determined by the Arizona state parks board.

F. On or before December 31 each year the board shall submit its annual report to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on natural resources and agriculture, or their successor committees.

The annual report shall include information on:

1. The amount of monies spent or encumbered in the fund during the preceding fiscal year and a summary of the projects, activities and expenditures relating to:

(a) Local, regional and state trails.

(b) Local, regional or state parks for outdoor recreation and open space.

(c) Natural areas, including acquisition and maintenance, operation and management of natural areas.

(d) Local, regional and state historic preservation projects.

(e) State park acquisition and development.

(f) Environmental education.

2. The number and location of parcels of property acquired during the preceding fiscal year.
3. For personal and real properties acquired with fund monies during the

preceding fiscal year, the amount of property tax revenue paid to each taxing jurisdiction during the last full tax year prior to acquisition.

4. The amount of money spent from the fund during the preceding fiscal year for employee personal services.
5. The number of full-time employees employed in the preceding fiscal year in connection with property acquisition, including survey, appraisal and other related activities.

¹ The Arizona Constitution reserves power to the people to propose and enact laws at the polls. Ariz. Const. art. IV, pt. 1, § 1(1).

² The Heritage Fund statutes, A.R.S. §§ 41-501 through -503, are attached hereto as Appendix A.

³ The remaining forty-three percent of the Heritage Fund monies are to be distributed for acquisition of natural areas (17%), operation and maintenance of natural areas administered by the Parks Board (4%), state park acquisition or development (17%), and environmental education (5%). See A.R.S. § 41-503(D), (E), (G), and (H).

⁴ The same rules of construction that apply to legislative enactments apply to initiatives. 2A, Norman J. Singer, *Sutherland Statutory Construction* § 48.19 (5th ed. 1992).

⁵ Explanatory or informative materials, such as voting pamphlets on propositions, are considered relevant legislative history for purposes of construction of a measure after its enactment. 2A Norman J. Singer, *Sutherland Statutory Construction*, § 48.19 (5th ed. 1992); see also *Legislature of California v. Eu*, 816 P.2d 1309 (Cal. 1991).

⁶ For example, the statutory language governing Law Enforcement and Boating Safety Fund grants by the Parks Board specifically restricts the pool of eligible applicants to counties. See A.R.S. § 5-383(B) ("[t]he board of supervisors of **any county** may apply for law enforcement and boating safety fund grants") and § 5-383 (the Arizona Outdoor Recreation Coordinating Commission -- an advisory body to the Parks Board -- may "distribute grant monies . . . **to counties**") (emphasis added). Significantly, no such restriction was set forth in the Heritage Fund statutes.

⁷ Again, seventeen per cent of Heritage Fund monies received must be spent on local, regional, and state historic preservation projects. A.R.S. § 41-503(D) (3).

⁸ In fact, the Register lists the Tumacacori National Monument, the Casa Grande Ruins National Monument, and the Pipe Springs National Monument, all of which are located on federal land; Mission San Xavier del Bac, Fort Apache, and the Awatovi Ruins National Historic Landmark, all of which are located on tribal lands; and the Beet Sugar Factory, approximately 67 historic districts, the Alpine Elementary School and the Arizona Inn, all of which are

located on private land.

¹ Also, the State and the county each pay one-half the salary of a regularly-elected judge of the superior court. A.R.S. § 12-128.

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