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Questions Presented

You have asked (1) how the proceeds of Grant Anticipation Notes ("GANs") and the revenues from grant agreements pledged by the Arizona State Transportation Board ("the Board") for repayment of GANs can be invested; and (2) whether earnings on those investments must be credited to the State's general fund.

Summary Answer

Proceeds of GANs and the revenues from the grant agreements the Board pledges for repayment of the GANs constitute trust monies, as that term is used in A.R.S. § 35-310(5), and must be invested according to the directives of A.R.S. § 35-313(A). Interest accruing from those investments is not credited to the State general fund, but instead may be used as provided by A.R.S. § 28-7615.

Background

The Arizona Department of Transportation ("ADOT") may enter into grant agreements with the Federal Highway Administration under which ADOT receives federal monies to pay costs for eligible highway projects. A.R.S. §§ 28-334, -7341 to -7344. After ADOT enters a grant agreement, the Board may issue GANs in anticipation of ADOT's receipt of the federal grants.

The legislation authorizing the issuance of GANs provides specific directives regarding the uses of "grant revenues." *See* A.R.S. § 28-7615. "Grant revenues" include: (1) "any revenues the director [of ADOT] will receive under a grant agreement;" (2) proceeds of GANs; and (3) "income and gain from the investment of these revenues and proceeds." A.R.S. § 28-7611(3). When authorizing the issuance of GANs, the Board must determine the use of grant revenues. A.R.S. § 28-7615(A). At that time, the Board must require that grant revenues either be: (1) paid into the GANs Fund; (2) held to pay costs of the project to which the grant application relates; or (3) used to reimburse the ADOT Director for monies previously spent on the project. A.R.S. §§ 28-7615(A)(1) through (3). The legislation authorizing the issuance of GANs also specifically directs ADOT regarding the use of proceeds from the sale of GANs. *See* A.R.S. § 28-7616. The Director of ADOT may use the proceeds from the sale of GANs for expenditures related to the construction project, the costs of issuing the GANs, and to refinance any prior obligations issued to finance the project. *Id.* As long as GANs are outstanding, monies in the GANs Fund must be used to pay principal and interest on the GANs. A.R.S. § 28-7615(B).

Analysis

The proceeds of GANs and the revenues from the grant agreements are both included in grant revenues. *See* A.R.S. § 28-7611(3). To establish what investments are proper for these grant revenues, it is necessary to determine whether the grant revenues are treasury monies and, if so, whether the grant revenues are trust monies or operating monies.

Treasury monies include "all monies in the treasury of this state or coming lawfully into the possession or custody of the state treasurer." A.R.S. § 35-310(4). Unless otherwise provided, the State Treasurer is the custodian of all "special funds." A.R.S. §§ 35-142(A). There are two categories of treasury monies: operating monies and trust monies. A.R.S. § 35-310. "Operating monies" are monies on which the interest is paid to the State's general fund. A.R.S. § 35-310(2). "Trust monies" are "treasury monies other than operating monies, that are entrusted to the state treasurer for preservation and investment." A.R.S. § 35-310(5). The Legislature has directed the State Treasurer regarding permissible investments of "trust monies." *See* A.R.S. § 35-313. The Legislature has also provided that interest realized on any investment of treasury monies not otherwise apportioned by law is

credited to the State's general fund. A.R.S. § 35-317(F).

Applying these statutes to the laws governing GANs establishes that grant revenues are treasury monies and, more specifically, trust monies. The Legislature established the GANs Fund as a "special fund." A.R.S. § 28-7615(A)(1). In addition, the statute establishing the GANs Fund does not provide that the GANs Fund will be in the custody of an official other than the State Treasurer. Thus, the GANs Fund is a special fund of the State treasury, and the monies in it are treasury monies. *See* A.R.S. §§ 35-142(A) (establishing the State Treasurer as custodian of special funds, unless otherwise provided), - 310(4) (defining treasury monies).

Grant revenues received by the Director of ADOT under a grant agreement but not deposited in the GANs Fund are also treasury monies. These grant revenues that are not paid into the GANs Fund may be either (1) "[h]eld for application to the payment of the costs of the project to which the grant agreement relates," or (2) "[a]ppplied to reimburse the director for monies previously spent with respect to the project." A.R.S. § 28-7615(A)(2) and (3). The statutes governing the State Highway Fund establish that "monies in the custody of an officer or agent of this state from any source that [are] . . . to be used for the construction, improvement or maintenance of state highways or bridges" are included in the State Highway Fund ("Highway Fund"). A.R.S. § 28-6991(6). Thus, grant revenues that are not paid into the GANs Fund are part of the State Highway Fund. Because the Highway Fund, like the GANs Fund, is a special fund within the State treasury, grant revenues in the Highway Fund are also "treasury monies." *See* A.R.S. §§ 35-142(A), -310(4).

Proceeds from the sale of GANs, which are also grant revenues, may be used for project-related expenditures, the costs of issuing and debt service on the GANs, and "[p]ayment of the principal, premium or interest on other obligations, all or a portion of the proceeds of which were or are to be applied to the financing of the project to which the grant agreement relates." A.R.S. § 28-7616(5). Because GANs proceeds must be used for highway construction costs or to pay debt service and transaction costs relating to the GANs, the GANs proceeds must either be placed in the GANs Fund or the Highway Fund. Therefore, these monies are also treasury monies.

The next step in the analysis requires determining whether the grant revenues are operating monies or trust monies. This depends on whether the income earned on the monies is deposited in the general fund or whether it is "otherwise apportioned." *See* A.R.S. §§ 35-310(2), (5) (defining operating monies and trust monies), -317(F) (requiring that interest on treasury monies not otherwise apportioned is credited to the general fund). Grant revenues expressly include "income and gain from the investment of [revenues received under a grant agreement and proceeds of GANs]." A.R.S. § 28-7611(3). By including income in the definition of grant revenues, the Legislature has "otherwise apportioned" this income and, therefore, the income is not credited to the general fund. *See* A.R.S. § 35-317(F). Instead, income earned on revenues from grant agreements and GANs proceeds may be used as provided in A.R.S. § 28-7615.

In addition, because the income earned on revenues from grant agreements and GANs proceeds is not paid to the general fund, grant revenues are trust monies. *See* A.R.S. § 35-310(2) and (5). As trust monies, grant revenues may be invested in any of the items listed in A.R.S. § 35-313(A), which incorporates by reference the securities and deposits set forth in A.R.S. § 35-312.

Conclusion

GANs proceeds and the revenues from grant agreements the Board has pledged for repayment of the GANs are trust monies that may be invested as described in A.R.S. § 35-313(A). The earnings on these investments are not deposited in the general fund, but instead may be used as provided in A.R.S. § 28-7615(A).

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