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Arizona Department of Commerce

December 30, 1999
N^o. 199-030 (R99-036)

Questions Presented

You have asked whether (1) the Work Force Recruitment and Job Training Fund ("Fund") can be used to reimburse grant recipients for costs relating to the recruitment of new employees; and (2) in light of the limitations in article IX, § 10 of the Arizona Constitution, corporations that own or operate private or parochial schools may receive grants from the Fund to train teachers or school administrators.

Summary Answer

- (1) The Fund is to be used only for costs relating to job training, which does not include recruitment.
- (2) To ensure compliance with article IX, § 10 of the Arizona Constitution, corporations operating private or parochial schools should not receive grants from the Fund for training teachers or school administrators.

Background

In 1993, the Legislature established the Work Force Recruitment and Training Program ("Program") within the Department of Commerce ("Department"). 1993 Ariz. Sess. Laws ch. 1 (codified in A.R.S. §§ 41-1541 through -1544). The Program provides grants to businesses for training, which may be provided through the State community college system, a private post-secondary educational institution, a community college operated by a tribal government, or, if the employer requests another qualified training provider. A.R.S. §§ 41-1541(B), (E). The Work Force Recruitment and Job Training Council ("Council") develops guidelines for the Program. A.R.S. § 41-1542(C). The Legislature also established the Fund, consisting of "legislative appropriations, gifts, grants and other monies." A.R.S. § 41-1544(A). Monies in the Fund are spent at the direction of the Department's Director, using the Council's guidelines and procedures. A.R.S. § 41-1544(C).

When the Legislature considered this 1993 legislation, there was testimony that Arizona was one of only five states without State-funded job training programs and that the availability of job training funds would assist efforts to attract business to the State and encourage expansion of businesses already here. *Hearing on H.B.2164: Senate Committee on Commerce and Economic Dev.*, 41st Legis., 1st Reg. Sess. 2-3 (Ariz. 1993); Fact Sheet for H.B. 2164 Staff Senate, 41st Legis., 1st Reg. Sess. (Ariz. 1993). Consistent with the goal of using job training to encourage expansion, the Legislature required that a business already operating in this State "must maintain or exceed its current level of training expenditures" before it is eligible to receive training monies under the Program. A.R.S. § 41-1541(F).

Analysis

A. Monies in the Work Force Recruitment and Job Training Fund Must Be

Used for Costs Related to Training, Which Does Not Include Recruiting.

The primary objective of statutory construction is to ascertain and give effect to the intent of the Legislature. *Mail Boxes, Etc. v. Industrial Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The plain and natural meaning of a statute's language is to be followed whenever possible. *State v. Arthur*, 125 Ariz. 153, 155, 608 P.2d 90, 92 (App. 1980). The statutory language here indicates that monies in the Fund should be spent on job training.

The Legislature specifically provided that "[a]ll monies for the program shall be expended *only for the costs related to training*." A.R.S. § 41-1544(B) (emphasis added). This is consistent with the Program's purpose, which is to "provide *training and retraining*" for specific employment opportunities with "new and expanding businesses and businesses undergoing economic conversion." A.R.S. § 41-1541(A) (emphasis added). The statutes governing the Program include other references to using Fund monies specifically for training. For example, A.R.S. § 41-1541(C) refers to "the business receiving monies for training and the provider of training" and bases the recipient's share of program costs on "the estimated cost of the proposed training or retraining." A.R.S. § 41-1541(C). The Legislature dedicated specific percentages of the amount appropriated for the Program "to provide training to businesses" in rural areas and to businesses with fewer than 100 employees. A.R.S. §§ 41-1544(D), (E). Also, a business already located in Arizona must "maintain or exceed its current level of training expenditures" before it is

eligible "to receive training monies." A.R.S. § 41-1541(F). The statutory application criteria specifically requires the Director of the Department to consider the "training cost" per employee, the ability to "leverage other job training resources," "the quality of jobs that will result from the training or retraining proposal," and the number of jobs resulting "from the training proposal." A.R.S. §§ 41-1543(1), (2), (3), (7).

The Legislature's mandate that monies in the fund be expended only for costs related to job training requires that the Fund be used in a manner related to job skill instruction. The Legislature did not define "job training," and, absent a statutory definition, words are to be given their ordinary meanings. A.R.S. § 1-213. "Training" is the "development of a particular skill or group of skills, instruction in . . . [a] profession or occupation."⁽¹⁾ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2424 (1993). In contrast, "recruitment" means "the act of offering inducement to qualified personnel to enter a particular job or profession," and is a distinctly separate act from "training." *Id.* at 1899.

The phrase "related to job training" should not be read so broadly to include activities that are distinct from training. *Cf. Yslava v. Hughes Aircraft Co.*, 188 Ariz. 380, 384, 936 P.2d 1274, 1278 (1997) (in the context of a statute limiting joint and several liability, "relating to" means based on or predicated on); *Cella Barr Assoc. v. Cohen*, 177 Ariz. 480, 485, 868 P.2d 1063, 1068 (App. 1994) (professional malpractice action for failure to discover hazardous waste not an action "relating to" hazardous waste). You note in your opinion request that recruitment and training are considered distinct and independent activities. The separate references to training and recruitment in the name of the Program supports the conclusion that the Legislature recognized training and recruitment as distinct activities. Other than incorporating the word "recruitment" in the names of the Program, Council and Fund, the Legislature used a form of the word "recruit" only once in the relevant statutes -- requiring the Council's annual report to specify the "number of businesses recruited." A.R.S. § 41-1542(D). The statutes governing the Program do not describe grants for employee recruitment, nor do they allocate funds for employee recruitment. Instead, the statutes describe a program that uses job training grants to help recruit businesses and encourage business expansion.

Contrary to this Opinion's conclusion that the statutes do not authorize expenditures from the Fund for employee recruitment, the regulations establishing "allowable project costs" specifically permit recovery of recruitment costs. *See* A.A.C. R20-1-109. Although deference is given to State agencies in rulemaking, that deference is not appropriate if the rule exceeds the agency's statutory authority. *See Dioguardi v. Superior Court*, 184 Ariz. 414, 417, 909 P.2d 481, 484 (App. 1995). An agency's authority is strictly limited by statute. *Boyce v. City of Scottsdale*, 157 Ariz. 265, 267, 756 P.2d 934, 936 (App. 1988). To the extent the rules permit reimbursement for recruitment costs, those regulations are inconsistent with the Legislature's express requirement that the Fund be expended on costs relating to training. To be consistent with the statutory authority, any future expenditures should be limited to costs related to training.⁽²⁾

B. To Ensure Compliance with Article 9, § 10 of Arizona's Constitution, Grants Should Not Be for Training Private or Parochial School Teachers or Administrators.

You also inquired about the ability of the Department to use the Fund for grants to private corporations that own or operate private or parochial schools and seek job training assistance from the Program to help train teachers or school administrators. Specifically, you asked whether article IX, § 10 of the Arizona Constitution limits the Department's ability to use the Fund for these purposes.

Article IX, § 10 of Arizona's Constitution provides: "No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation." It is broader than the other "religion clauses" of Arizona's Constitution in that it also applies to private nonsectarian schools and to public service corporations.⁽³⁾ *Cf.* Ariz. Const. art II, § 12 (prohibiting use of public money or property for religious instruction); Ariz. Const. art XI,

§ 7 (prohibiting sectarian instruction in any public school). To be subject to article IX, § 10, there must be (1) a tax "laid" or an "appropriation of public money made" (2) "in aid of" a church, or private or sectarian school or a public service corporation.

By statute, "public money" includes money "belonging to, received or held by state . . . officers in their official capacity." A.R.S. § 35-302; *see also State v. Mecham*, 173 Ariz. 474, 481, 844 P.2d 641, 648 (App. 1992). Thus,

monies in the Fund are "public money."

A grant from the Fund also involves an "appropriation," within the meaning of article IX, § 10, because "appropriation" encompasses "executive and administrative contracts and disbursements." *Community Council v. Jordan*, 102 Ariz. 448, 455, 432 P.2d 460, 467 (1967).

The final issue is whether a training grant from the Fund would be "in aid of" a private or sectarian school. Article IX § 10 does not prohibit all payments of public money to organizations subject to that article's restrictions. *Id.* at 451, 432 P.2d at 463; *see also Kotterman v. Killian*, 193 Ariz. 273, 289, 972 P.2d 606, 622 (1999), *cert. denied*, 67 U.S.L.W. 3671 (U.S. Oct. 4, 1999) (No. 98-1716). For example, article IX, § 10 does not prohibit the government from using a religious organization merely as a "conduit" for providing certain services when the "true beneficiaries" of the government expenditure are the recipients of the services. *Community Council* at 455-456, 432 P.2d at 467-468. Based on this reasoning, the Arizona Supreme Court upheld a contract between the State and the Salvation Army that reimbursed the Salvation Army for 40% of its expenditures to provide services to people in emergency situations. *Id.*

However, the Program is not structured so that the organization receiving the grant is merely a "conduit" through which the State provides a service to its citizens, as in *Community Council*. Rather, this Program focuses on the business receiving the grant, more than the individual receiving the training. In that way, it differs from other job training services referenced in statute that are targeted at a specific population, such as juveniles or adults on probation, A.R.S. §§ 8-371(A)(2), 12-299.01(D)(3), people who are developmentally disabled, A.R.S. §§ 36-554(A)(1), -558(C)(2), or recipients of cash assistance, A.R.S. §§ 46-101(23), -294(C), -299. Given the nature of the Program, to ensure compliance with article IX, § 10, training grants should not be provided for personnel working in private or parochial schools. This would apply whether the training grant is for classroom teachers or employees who perform administrative functions related to the operation of the school.⁽⁴⁾

Conclusion

The Fund is to be used only for costs relating to job training, which does not include recruitment. To ensure compliance with article IX, § 10 of the Arizona Constitution, corporations operating private or parochial schools should not receive grants from the Fund for training teachers or school administrators.

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1) Consistent with the ordinary meaning of the term "training," the regulations governing the Program define "training" as "job skill instruction given to trainees by training providers either on-the-job, in a classroom, or any combination thereof . . . and intended to provide the trainees with the specific skills required to perform specified jobs." Arizona Administrative Code ("A.A.C.") R20-1-101(29).

2) An agency must follow its own rules and regulations. *Clay v. Arizona Interscholastic Ass'n, Inc.*, 161 Ariz. 474, 476, 779 P.2d 349, 351 (1989). Therefore, prior expenditures made in good faith reliance on the rules governing the Program are not affected by this Opinion. *See Austin v. Campbell*, 91 Ariz. 195, 203, 370 P.2d 769, 775 (1962).

3. State benefits to any private business may be subject to scrutiny under the gift prohibition in article IX, § 7, but article IX, § 10 establishes an additional limitation for the State's support of private schools and public service corporations. *See John D. Lesly, The Arizona State Constitution: The Making of the Arizona Constitution, A Reference Guide*, 216 (1993) (noting article IX, § 10 is a more targeted and potentially more stringent limitation than the prohibition against subsidies to private entities in article IX, § 7).

4. You also inquired whether the Fund may be used to train employees who do not work at the school and are not involved in the operations of the school, but serve a corporate function. This issue cannot be decided in the abstract. Instead, a case-by-case assessment is necessary to determine whether a training grant is sufficiently attenuated from a corporation's private or parochial school operation to avoid implicating article IX, § 10.

 [Back to 1999 Opinions](#)

