

CHAPTER 4
PUBLIC MONIES

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CHAPTER 4

PUBLIC MONIES

4.1 Scope of This Chapter. This Chapter discusses the law applicable to the receipt, custody, control, and expenditure of "public monies," which are defined as "money belonging to, received or held by state . . . officers in their official capacity." A.R.S. § 35-302. That law may be found generally in Chapters 1 and 2 of Title 35, Arizona Revised Statutes. This Chapter will deal with revenues raised by operation of state law, monies received from the State's participation in programs sponsored by the United States government, and monies contributed voluntarily to support the activities of the State and its officers and employees.

4.2 Collection of Revenues Raised by Operation of State Law.

4.2.1 Current Record of Revenues. The Arizona Department of Administration (ADOA) is directed to "keep current a completely detailed list of all sources from which monies accrue to the [S]tate." A.R.S. § 35-150(A). The list must be "classified according to the budget units¹ and other agencies responsible for the collection of public monies" and must show for each of the revenue-collecting agencies "the various kinds of taxes, fees, permits and other public monies collected or to be collected." *Id.*

4.2.2 Collection of Fees. "Fees for licenses, permits, certificates of any kind and other amounts due any budget unit shall be collected at the time such licenses, permits or certificates are issued." A.R.S. § 35-143(A).

4.2.3 Collection of Taxes, Assessments, and Claims. "All other monies accruing to the various budget units or to the [S]tate . . . shall also be collected at the time services are rendered, or at the time of accrual." *Id.*

4.2.4 Failure to Collect Public Monies. The ADOA is empowered to take any action necessary, including court action, to enforce the collection and deposit of state monies. A.R.S. § 35-150(B). Indeed, an officer or other person who neglects to collect state monies shall be liable to the State personally and on his or her bond for the amount not collected. A.R.S. § 35-143(B). Because the acceptance of checks as payment for fees, taxes, assessments, and services has become commonplace, every state officer and employee responsible for collecting state monies should be advised that the State has not been paid money owed to it until a check accepted for payment

¹ The term "budget unit" is defined as "any department, commission, board, institution or other agency of the state organization receiving, expending or disbursing state funds or incurring obligations against the [S]tate." A.R.S. § 35-101(7).

has been paid by the bank on which the check is drawn. If a check is dishonored and not paid and the State ultimately suffers a loss from the nonpayment, the officer or employee who accepted the worthless check when he or she could have demanded cash may be held liable to the State for the loss. State officers and employees should therefore for their own protection verify the sufficiency of a check or wait until a check has been paid before taking action that could result in a loss to the State.

4.3 Deposit of Monies Received.

4.3.1 Deposit into the State Treasury. Unless a statute specifically provides otherwise, a state officer or employee must promptly deposit any money received in his or her official capacity into the state treasury, irrespective of its source or the purpose for which it was received. A.R.S. §§ 35-142, -146. Without express statutory authority, no state officer or employee may hold, use, or deposit any money received in his or her official capacity in any personal or special bank account. A.R.S. § 35-146(A).

4.3.2 Treasurer's Deposits and Receipts. When depositing money with the State Treasurer, the head of each budget unit or his or her authorized agent must use forms that the Treasurer has authorized and that ADOA has issued to the budget units. A.R.S. § 35-147(A), (B). The deposit must be delivered to the Treasurer together with the remittance or proof of prior deposit with the state servicing bank.² A.R.S. § 35-147(B). The Treasurer shall validate the deposit and provide a confirmation to the budget units. *Id.* The Treasurer's confirmation must show the amount, the date deposited, and "a unique identifying number that will link the deposit to accounting documents and fund details maintained in the statewide accounting system." *Id.* The administrative head of each budget unit is accountable for each deposit. *Id.*

4.4 Disposition of Monies Received into the State Treasury.

4.4.1 General Fund. Unless exempted, "[a]ll monies received for and belonging to the [S]tate shall be . . . credited to the state general fund." A.R.S. § 35-142(A). The general fund consists of "all money received into the state treasury except money designated by law for other statutory funds." A.R.S. § 35-141. "[W]hen money belonging to the [S]tate comes into the possession of a state officer, by recovery at law or otherwise, and no provision of law exists for disposition of the money, it shall be deposited pursuant to sections 35-146 and 35-147 in the state general fund." A.R.S. § 35-148(B).

4.4.2 Separate Statutory Funds and Accounts. The separate funds and accounts into which monies received into the state treasury should be credited are listed in A.R.S. § 35-142(A). For example, the unexpendable principal of monies received from federal land grants, as well as interest, rentals, and other expendable money

² Arizona Revised Statutes § 35-315 provides for a state servicing bank.

received as income from federal land grants must be placed in separate funds and accounts. A.R.S. § 35-142(A)(1), (2). Likewise, all private and quasi-private monies authorized to be paid to or held by the Treasurer are required to be placed in separate accounts. A.R.S. § 35-142(A)(3). All monies that the Game and Fish Department collects must be deposited in the "state game and fish protection fund." A.R.S. § 35-142(A)(6). A number of regulatory agencies are funded through special state funds as prescribed in the statutes that establish the agencies. These special funds are not considered a part of the general fund. A.R.S. § 35-142(A)(8).

4.4.2.1 Statutory Revolving Funds. Several agencies are funded wholly or partially through separate statutory funds in the treasury known as revolving funds.³ Under a revolving fund statute, certain designated monies that a budget unit collects are credited to the revolving fund when they are paid to the Treasurer. The statute establishing the fund governs and limits the purposes for which monies in the revolving fund can be spent. For example, A.R.S. § 6-135(A) establishes a Banking Department revolving fund that the Superintendent of Banks administers. Under that statute, investigative costs, attorney's fees, and civil penalties recovered for the State in actions brought under Arizona Revised Statutes Title 6 are deposited in the Banking Department revolving fund, where they are held for the Superintendent of Banks and the Attorney General to use for investigations and for civil actions brought to enforce Title 6. A.R.S. § 6-135(B), (C); see Section 4.5.1.2; see *also, e.g.*, A.R.S. § 41-2813 (establishing a revolving fund that the Director of the Department of Juvenile Corrections controls for monies received pursuant to agreements with federal or other state governments for youth rehabilitation programs); A.R.S. § 17-261.01(A) (establishing a permanent Game and Fish Revolving Fund for making cash outlays for minor disbursements that the statute authorizes).

4.4.3 Federal Monies. All monies "granted and paid to the [S]tate by the federal government shall be accounted for in the accounts or funds of the [S]tate in the necessary detail to meet federal and state accounting, budgetary and auditing requirements." A.R.S. § 35-142(C).

4.4.3.1 Reimbursement from Federal Monies or Other Monies. When state monies are appropriated to a budget unit for a specific program and are to be reimbursed in whole or in part from federal monies or other monies, as noted in the appropriation act authorizing the expenditure of the state monies, the budget unit must upon receiving the reimbursement "deposit the monies, pursuant to sections 35-146 and 35-147, in the state general fund or the fund from which the appropriation was originally made." A.R.S. § 35-142.01(A). However, if the reimbursement was not noted in the appropriation act, it may nonetheless be credited to the account from which the

³ These statutory revolving funds are distinguishable from the revolving funds that ADOA may provide to any budget unit to pay operating expense items. See A.R.S. § 35-193; Ariz. Att'y Gen. Op. I90-015.

expenditure was incurred if the head of the budget unit determines that "reimbursement within the fiscal year is necessary for operation of the budget unit and was not specifically considered and rejected by the [L]egislature at the time of appropriating monies to the budget unit." *Id.* The budget unit's director must give written notification of such a determination to the Joint Legislative Budget Committee, the Governor's Office of Strategic Planning and Budgeting, and the State Comptroller. See also Section 4.5.2.

4.4.4 Private Monies, Contributions, and Suspense Funds. The disposition of private monies or contributions that a budget unit receives for its support is governed by A.R.S. § 35-149(A). A budget unit may take in other receipts that may be subject to refund or that have not yet accrued to the State. These "other receipts" are called "suspense funds" because their ultimate disposition is not known at the time of their receipt. See *id.* When depositing these "private monies or contributions" or "other receipts" with the State Treasurer, the budget unit must certify to ADOA the source of the monies, the terms and conditions under which and the purposes for which the monies were received, the names of the trustees or administrators of the funds or contributions, and the name of the person authorized to approve expenditures from each fund. *Id.* Each such contribution or receipt must be kept separate from all other monies in the state treasury. A.R.S. § 35-149(B). A budget unit may receive private monies and contributions only for the support of activities that it is statutorily authorized to perform. Ariz. Att'y Gen. Ops. 78-78, 179-247.

4.5 Authorization to Expend Monies from the State Treasury.

4.5.1 General and Special Statutory Funds. Money in the general fund and other funds subject to the Legislature's appropriation power may be paid out of the treasury only pursuant to an appropriation. Ariz. Const. art. IX, § 5 ("No money shall be paid out of the state treasury, except in the manner provided by law."); *Cockrill v. Jordan*, 72 Ariz. 318, 319, 235 P.2d 1009, 1010 (1951) (construing the quoted portion of article IX, section 5). "Salaries of state officers . . . clerks and employees, and expenses incident to the offices thereof, shall be paid from the general fund or the respective fund indicated when and as authorized in the general appropriation act or any other appropriation enacted by the [L]egislature." A.R.S. § 35-141.

4.5.1.1 Self-Supporting Regulatory Agency Special Funds. "All monies deposited in special agency funds of self-supporting regulatory agencies . . . [for use] by such agency for administration and enforcement, shall be subject to annual legislative appropriation." A.R.S. § 35-143.01(A). For examples of special funds of self-supporting regulatory agencies, see A.R.S. § 32-1406 (Board of Medical Examiners' Fund); A.R.S. § 32-1907 (Board of Pharmacy Fund); and A.R.S. § 32-2205 (Veterinary Medical Examining Board Fund). Before A.R.S. § 35-143.01's enactment, many self-supporting regulatory agencies were authorized by statute to expend their entire special fund. See Ariz. Att'y Gen. Op. 72-9. Self-supporting regulatory agencies are now, however,

prohibited from expending more than the amount annually authorized by legislative appropriation. A.R.S. § 35-143.01(B).

4.5.1.2 Statutory Revolving Funds. Monies in special statutory revolving funds may be expended for the purposes listed in the statutes creating the funds without any further legislative action if the statutes creating such funds also authorize expending the monies. See, e.g., A.R.S. § 35-193.02 (ADOA special services revolving fund). Such statutory authorizations are deemed to be continuing appropriations. Cf. Ariz. Att'y Gen. Op. 72-9 (holding that a now-superseded version of A.R.S. § 32-1107(A), which provided that monies in the contractors' license fund were "appropriated to enforce the provisions of this chapter," provided for a continuing appropriation). An agency must examine the specific statutes establishing a revolving fund to ascertain the restrictions on the agency's authority to expend monies from the fund. See Section 4.4.2.1.

4.5.1.3 Interagency Service Agreements. Although monies earmarked for a special fund may be received, retained, and expended for the purpose for which the fund was established, monies in a special fund retain their separateness only until the time of expenditure. This means that absent a statute providing the contrary, any amount that one state budget unit pays to another from a special fund loses its separate character upon payment to the payee agency and is credited to the general fund upon receipt by the payee agency. Thereafter, the payee budget unit may expend such money only pursuant to a legislative appropriation, unless a special fund of the payee agency has been designated by law to receive the money or the agencies have entered into an interagency service agreement under A.R.S. § 35-148.⁴ Ariz. Att'y Gen. Op. 74-12.

4.5.2 Federal Monies. Monies from a purely federal source are not subject to the Legislature's appropriation power. *Navajo Tribe v. Ariz. Dep't of Admin.*, 111 Ariz. 279, 281, 528 P.2d 623, 625 (1974). Therefore, any budget unit authorized by statute to accept and expend federal monies or to otherwise participate in a federally funded

⁴ Arizona Revised Statutes § 35-148(A) provides:

Interagency service agreements entered into between budget units may provide for reimbursement for services performed or advancement of funds for services to be performed. In either instance, monies received by the budget unit performing the services shall be credited to its appropriation account for its use in performing the services. If funds are advanced, the agency performing the services shall make an accounting of expenditures and return any advances not used to the appropriation account of the advancing agency.

program may expend the federal monies received without a legislative appropriation. However, when state monies are appropriated to a budget unit for a specific program and the appropriation act provides for reimbursement of the state monies from federal monies, the federal monies received under such reimbursement circumstances become state monies and are thereafter subject to expenditure only when authorized by an appropriation act. A.R.S. § 35-142.01; see *also* Section 4.4.3.1.

4.5.3 Private Monies. A statute empowering a budget unit to accept private monies and contributions to support its statutorily authorized activities authorizes the budget unit to expend such funds for the purposes for which the monies were received without a separate legislative appropriation. See, *e.g.*, A.R.S. § 17-231(A)(7) (authorizing the Game and Fish Commission to "[p]rescribe rules for the expenditure . . . of all funds arising from . . . gifts"); A.R.S. § 27-107(A)(6) (authorizing the Board of Governors of the Department of Mineral Resources to "accept gifts . . . for use pursuant to the direction of the donor"); A.R.S. § 3-107(A)(3) (authorizing the Director of the Department of Agriculture to "accept, expend and account for gifts"); A.R.S. § 41-1274 (authorizing the Joint Legislative Budget Committee to "accept and expend in the name of the [L]egislature public and private gifts and grants"); A.R.S. § 41-1304.04 (authorizing the Legislative Council to "accept and expend in the name of the [L]egislature public and private gifts and grants"); A.R.S. § 41-1105(A) (authorizing the Governor or either presiding officer of the Legislature to "accept and expend public or private gifts, grants, donations or monies"); A.R.S. § 41-703(8) (authorizing the Director of the ADOA to "[a]ccept and disburse grants, gifts, donations, matching monies and direct payments").

4.5.4 Funds Not Subject to Appropriation. Receipts that may be refunded or returned to the sender and receipts that have not yet accrued to the State are deemed not to be state monies subject to the Legislature's appropriation power. Such receipts may therefore be refunded or returned or otherwise properly disposed of in accordance with the understanding attached to their receipt without a legislative appropriation. See *Navajo Tribe v. Dep't of Admin.*, 111 Ariz. 279, 280-81, 528 P.2d 623, 624-25 (1974), and the cases on which the *Navajo Tribe* court relied; see *also* Section 4.4.4.

4.6 Authorized Expenditures.

4.6.1 Classification of Appropriations. The Legislature frequently specifies the purposes for which money may be expended and the exact amount that may be expended for each purpose. Expenditures must be made in accordance with these appropriations.

At other times, the Legislature does not divide appropriations. These undivided appropriations are called "lump sum" appropriations. A budget unit is authorized to expend state money as necessary within the limits of the total appropriation to carry out the budget unit's statutory duties.

4.6.2 Allotment of Appropriations. Before a budget unit may obligate any monies that it is authorized to expend, ADOA must approve and establish an allotment schedule detailing expenditures for a full fiscal year. A.R.S. § 35-173(B). The allotment schedule is based on the budget unit's estimated annual requirement, and it distributes the available spending authority to cover the budget unit's operation for the entire fiscal year. *Id.*

4.6.3 Transfer of Appropriated Funds. If a budget unit determines that the amounts that the Legislature has allocated to the various expenditure classes or programs in the budget unit's appropriations will not meet its anticipated requirements, the budget unit may, after receiving the Director of ADOA's prior approval, transfer funds from one expenditure class to another or transfer funds between and within programs. A.R.S. § 35-173(C). A budget unit may also transfer funds to or from any appropriation for personal services or employee-related expenditures with the Joint Legislative Budget Committee's recommendation and the Director of ADOA's approval. A.R.S. § 35-173 (E). Except as provided in A.R.S. § 35-173 or another statute, neither the ADOA's Director nor the Joint Legislative Budget Committee may approve or take any other action to acquiesce in a budget unit's expenditure that is inconsistent with the law or the appropriations for the budget unit.

4.6.4 Encumbrance Documents. Budget units are required to issue forms called "encumbrance documents" to cover all actual or anticipated obligations, except for gross payrolls and related employee expenses and, under procedures that the ADOA's state accounting manual prescribes, expenditures not exceeding \$1,000. A.R.S. § 35-151(A). However, notwithstanding the exceptions listed in subsection A, any administrative adjustment pursuant to A.R.S. § 35-191 must be encumbered. A.R.S. § 35-151(D). The encumbrance document must be processed in the State's accounting system before the budget unit issues a purchase order or an encumbrance document to cover an obligation. A.R.S. § 35-151(A). The budget unit processes the encumbrance document by entering it in the State's accounting system and certifying that the proposed expenditure is authorized by appropriation and allotment and that the amount involved does not exceed the appropriation's unencumbered and unexpended balance. *Id.* The statute places the burden on the person in charge of the budget unit to disallow the proposed certified expenditure if it exceeds the appropriation's unencumbered and unexpended balance or if it is contrary to law. *Id.* If the encumbrance is found to be in order, it is submitted or electronically transmitted to ADOA's central accounting system, which must not accept an encumbrance in excess of the appropriation. *Id.* The Arizona Department of Administration "may require encumbrances for all funds of the [S]tate, except for the investment of public monies or permanent endowment funds, which are not appropriated but are held in custody by the state treasurer." A.R.S. § 35-151(B).

4.6.5 Public Purpose. Article IX, Section 7, of the Arizona Constitution (the "Gift Clause") prohibits the State and its subdivisions from giving or lending credit in aid of, or making any donation or grant to, any person or entity. This section's purpose is to

prevent governmental bodies from expending public monies to give special interests an advantage or from engaging in nonpublic enterprises. This prohibition may apply even to transactions that have surface indicia of serving a public purpose if the amount of public monies paid exceeds the value of the direct consideration that the public is to receive. Anticipated indirect benefits are not consideration under the Gift Clause. *Turken v. Gordon*, 223 Ariz. 342, 350-52, 224 P.3d 158, 166-68 (2010). Whether the Gift Clause bans a particular transaction depends upon the circumstances. The head of a budget unit who is uncertain about whether a proposed expenditure is consistent with the Gift Clause should consult legal counsel.

4.7 Payment of Claims for Authorized Expenditures. This section deals with the payment of claims by those who have sold goods or rendered services to the State. A claim is "a demand against the [S]tate for payment for either [g]oods delivered or . . . [s]ervices performed." A.R.S. § 35-101(9). Payment of a claim is accomplished only through a warrant or an electronic funds transfer voucher that the ADOA has issued. A.R.S. § 35-142(B) (providing that money may be withdrawn from the state treasury *only* for payment of such a warrant or electronic funds transfer voucher). Before a warrant is issued, a budget unit and a claimant must satisfy the statutory procedures prescribed for paying the State's contractual obligations. The ADOA's Director "may prescribe procedures for prepayment for goods or services if it is the industry standard or if it is in the best interests of this [S]tate." A.R.S. § 35-181.01(A); see Chapter 13.

4.7.1 Presentation of Claims. "All claims against the [S]tate for obligations authorized, required or permitted to be incurred by [a budget unit] shall be paid in accordance with procedures prescribed by the director of the department of administration." A.R.S. § 35-181.01(A). Those procedures include presenting the ADOA with a claim form that is appropriate to the type of claim, signed by the claimant, and certified by the budget unit incurring the obligation. A.R.S. § 35-182. A claim that has been made and approved contrary to the procedures that the ADOA's Director has established may, in the absence of fraud or bad faith, be amended at any time during the fiscal year in which it was originally submitted so as to conform it to the Director's requirements. A.R.S. § 35-181.01(B).

4.7.2 Audit and Settlement of Claims. The ADOA's Director must audit, adjust, and settle all claims against the State payable from the State's funds unless another statute expressly authorizes some other officer to perform those functions. A.R.S. § 35-181.02(A). In auditing a claim, the ADOA's Director must determine whether funds are available for payment and whether the appropriate budget unit representative has signed the claim form. *Id.* The ADOA's Director must also establish procedures for returning and resolving any claim for which funds are not available or for which payment would be contrary to law. A.R.S. § 35-181.02(B).

4.7.3 Issuance and Payment of Warrants and Electronic Funds Transfer Vouchers. After approving a claim, the ADOA's Director issues a warrant or an

electronic funds transfer voucher to the claimant. The warrant or voucher authorizes the State Treasurer to disburse monies from the state treasury in the amount that the warrant or voucher sets forth. A.R.S. § 35-185(A). The State Treasurer is obligated to issue a check on a state depository bank or to authorize the transfer of monies by the state depository bank in payment of the warrants or vouchers. *Id.* If the state treasury has no monies to pay a warrant or voucher presented to the State Treasurer, the Treasurer must issue, in lieu of a check, a treasurer's warrant note or notes equal to the sum of the face value of the warrants or vouchers presented for payment. *Id.*; A.R.S. § 35-185.01. Warrants that the ADOA has issued are void two years from the date of issue. A.R.S. § 35-184(B). Under procedures that the ADOA's Director has established, after sending a stop payment notice, the Director may issue duplicate warrants to replace those lost or destroyed before payment or not presented for payment within the time specified on the warrant's face. A.R.S. § 35-186(A).

4.7.4 Incurring Obligations After the Close of the Fiscal Year. Unless otherwise specifically authorized by statute, no agency shall incur, order, or approve any obligation, expenditure, or charge to an appropriation for any fiscal year that is expired when the obligation or charge is incurred. A.R.S. § 35-190(A)

4.7.5 Payment of Obligations Incurred During the Fiscal Year After the Close of the Fiscal Year. The ADOA may issue warrants against appropriations made for a fiscal year for a period of one month after the close of that fiscal year to pay obligations properly incurred during the fiscal year, as determined by the ADOA's Director. A.R.S. § 35-190(B).

4.8 Lapsing of Appropriations. After the one-month period discussed in Section 4.7.5 expires, "all balances of appropriations for the prior fiscal year shall lapse and no further payments shall be made" under the authority of the lapsed appropriations, except for those appropriations and funds specifically provided for in A.R.S. § 35-190 and those claims subject to administrative adjustment pursuant to A.R.S. § 35-191. A.R.S. § 35-190(C). Appropriations for construction or other permanent improvements do not lapse unless the purpose for which the appropriation was made has been accomplished or abandoned or the appropriation was available for an entire fiscal year without an expenditure from or an encumbrance on the appropriation. A.R.S. § 35-190 (D). Federal monies or the balance of any special fund, private fund, or suspense fund remaining at the close of a fiscal year will not revert to the general fund unless a statute specifically provides otherwise. A.R.S. § 35-190(E); Ariz. Att'y Gen. Op. 75-121.

4.9 Administrative Adjustment of Claims.

4.9.1 Claims Subject to Administrative Adjustment.

4.9.1.1 Untimely Filed or Technically Defective Contract Claims. "A [contract] claim against this [S]tate ... which has not been paid because of [a

claimant's] failure to file within the time prescribed by law, or because of any other technical defect not affecting the validity or the [(S)tate's liability under the contract], is subject to administrative adjustment." A.R.S. § 35-191(A).

4.9.1.2 Claims for Goods or Services Received in Subsequent Fiscal Years.

A claim arising from the procurement of goods or services that were ordered during one fiscal year but were not received or performed until the next fiscal year is subject to administrative adjustment upon approval of the ADOA's Director. A.R.S. § 35-191(A).

4.9.1.3 Contract Claims Arising from Administratively Determined Liability.

A contract claim against the State that has not been paid because the State's liability on the claim cannot be determined until after the fiscal year during which the contract was made is subject to administrative adjustment in accordance with ADOA procedures if the claim is resolved administratively after one fiscal year and will be paid from the appropriation for the year in which the liability is determined. A.R.S. § 35-191(F).

4.9.1.4 Refunds. "A claim for refund of any fee, license, permit or erroneous payment, the revenue [from which has] been placed in any separate fund, or the general fund" is subject to administrative adjustment if another statute does not specifically provide for a refund. A.R.S. § 35-191(E).

4.9.2 Payment of Claims Subject to Administrative Adjustment.

4.9.2.1 Contract Claims from the Prior Fiscal Year. If a contract claim as described in Section 4.9.1.1 or 4.9.1.2 is presented to the ADOA's Director within one year following the fiscal year in which the claim accrued and if a balance sufficient to pay the claim remains in the lapsed appropriation applicable to the claim, the Director, after approving of the claim, will draw a warrant to pay the claim from the fund to which the lapsed appropriation reverted. A.R.S. § 35-191(B).

4.9.2.2 Contract Claims More than One Fiscal Year Old. If a contract claim as described in Section 4.9.1.1 or 4.9.1.2 is presented to the ADOA's Director more than one but fewer than four fiscal years following the fiscal year in which the claim accrued and if a balance sufficient to pay the claim remains from the lapsed appropriation applicable to the claim, the Director will present the claim to the Legislature for an appropriation authorizing payment. A.R.S. § 35-191(C).

4.9.2.3 Contract Claims Not Exceeding \$300. If a contract claim as described in Section 4.9.1.1 or 4.9.1.2 from a prior fiscal year does not exceed \$300 and is presented to a budget unit for payment by June 30 of the fourth fiscal year following the fiscal year in which the claim accrued, the budget unit, upon determining that payment is in the State's best interest after obtaining the Director of ADOA's approval, may certify the claim for payment from an available current-year appropriation to the budget unit. A.R.S. § 35-191(D).

4.9.2.4 Refunds. Unless otherwise prescribed by law, payment of an approved claim for refund of any fee, license, permit, or erroneous payment is made from any unexpended or unappropriated balance in the fund in which the revenue to be refunded was placed. A.R.S. § 35-191(E).

4.9.3 Claims Not Subject to Administrative Adjustment.

4.9.3.1 Claims for Damages for Injury to a Person or to Property. A claim for damages for injury to a person or to property is not subject to administrative adjustment. A.R.S. § 35-191(H). Such a claim is subject to payment only as provided in A.R.S. §§ 12-820 to -826; see Chapter 13.

4.9.3.2 Contract Claims More than Four Fiscal Years Old. A contract claim for payment for goods or services that were received four fiscal years or more before the claim was presented is not subject to administrative adjustment. A.R.S. § 35-191(H). A claimant's only recourse in such a situation is to petition the Legislature to pass a special appropriation act for the claimant's relief, subject to the Arizona Constitution's requirements. See Ariz. Const. art. IV, pt. 2, § 19; art. IX, § 7.

4.9.3.3 Claims Against Insufficient, Lapsed Appropriations. If the balance remaining in a lapsed appropriation applicable to a claim presented after the close of the fiscal year, see Section 4.9.2.1, or to a claim presented more than one but fewer than four years after the fiscal year in which the claim accrued, see Section 4.9.2.2, is not sufficient to pay the claim, the claim may not be paid through administrative adjustment, see A.R.S. § 35-191(B), (C). The claimant's only recourse respecting such a claim is to petition the Legislature to enact a special appropriation for the claimant's relief, subject to the Arizona Constitution's requirements. See Ariz. Const. art. IV, pt. 2, § 19 and art. IX, § 7.

4.10 Claims for Which No Appropriation Has Been Made. If the law recognizes a claim against the State, but the Legislature has not appropriated money for its payment, the claimant may present the claim to ADOA, which shall audit and adjust the claim, give the claimant a certificate of the amount thereof, and report it to the Legislature's next regular session. A.R.S. § 35-189. In *O'Neil v. Goldenetz*, 53 Ariz. 51, 85 P.2d 705 (1938), the Arizona Supreme Court held that A.R.S. § 35-189 (then Ariz. Rev. Code § 35 [1928]) applied to an obligation that had been authorized by law, but for which there were no funds appropriated and available for payment. *Id.* at 59, 85 P.2d at 708. In *Eide v. Frohmiller*, 70 Ariz. 128, 216 P.2d 726 (1950), however, the supreme court held that a certificate of indebtedness would not issue when no appropriation had been made to pay for an obligation. The court noted that A.R.S. § 35-154 (then Ariz. Code Ann. § 10-923 [1939]) had been enacted in 1943 and provided in substance that "any obligation incurred against the [S]tate by any person not authorized by previous appropriation and an allotment is null and void." *Id.* at 135, 216 P.2d at 731. Hence, *Eide* casts doubt on the viability of A.R.S. § 35-189 because under A.R.S. § 35-154, an

obligation for which there is no appropriation available cannot by law be recognized as a claim.

4.11 Unauthorized Obligations and Illegal Expenditures of Public Monies.

4.11.1 Close of Fiscal Year. Except as provided in A.R.S. §§ 35-190 and -191, after the close of a fiscal year, a state budget unit may not incur an obligation or make an expenditure under any appropriation that the Legislature has made solely for the closed fiscal year. See Sections 4.7.5, 4.8, 4.9.1.1 to 4.9.1.3.

4.11.2 No Public Purpose. Every governmental expenditure must have a public purpose. See Section 4.6.5.

4.11.3 Lack of Appropriation. No person may obligate the State to expend public monies unless the Legislature has authorized the obligation or expenditure by an appropriation. A.R.S. § 35-154. Moreover, an obligation incurred without authorization is null and void and incapable of ratification by any executive authority. *Id.*; see also Section 4.10.

4.11.4 Illegal Expenditures. An expenditure made without authorization is an illegal act resulting in the joint and several liability of the state official or employee authorizing or approving the payment and the person receiving the payment. A.R.S. § 35-154. "Any state officer or employee who illegally withholds, expends or otherwise converts any state money to an unauthorized purpose [is individually liable] for the amount of such money, plus a penal sum of twenty per cent thereof." A.R.S. § 35-196. Either the ADOA's Director or the Attorney General may institute an action against the officer or employee violating this provision. *Id.*; see also Sections 4.12, 4.13.

4.12 Recovery of State or Public Monies Illegally Paid. Any person who, acting under authority, "approves, audits, allows or pays, or consents to, or connives at, approving, auditing, allowing or paying a claim or demand against the [S]tate not authorized by law . . . and the person in whose favor the claim or demand was made, shall be liable for [the illegal payment] plus twenty per cent of such amount and legal interest." A.R.S. § 35-211. The Attorney General or--upon the Attorney General's failure to act for sixty days after being asked to do so--a state taxpayer may institute an action to enjoin the illegal payment of public monies or, if the money has been paid, to recover the money plus twenty percent of the amount paid, and interest and costs. A.R.S. §§ 35-212(A), -213. For this purpose, public money is defined as "all monies coming into the lawful possession, custody or control of state agencies, boards, commissions or departments or a state officer, employee or agent in his official capacity, irrespective of the source from which, or the manner in which, the monies are received." A.R.S. § 35-212(B).

4.13 Criminal Liability of Custodians of Public Monies. Arizona Revised Statutes § 35-301 provides as follows:

[a] public officer or other person . . . charged with the receipt, safekeeping, transfer or disbursement of public money is guilty of a class 4 felony who:

1. Without authority of law, appropriates it, or any portion thereof, to his own use, or to the use of another.
2. Knowingly loans it, or any portion thereof.
3. Knowingly fails to keep it in his possession until disbursed or paid out [lawfully].
4. Without [statutory] authority . . . knowingly deposits it, or any portion thereof, in a bank, or with a banker or other person, except on special deposit for safekeeping.
5. Knowingly keeps a false account, or makes a false entry or erasure in an account of, or relating to it.
6. Alters, falsifies, conceals, destroys or obliterates such an account with intent to defraud or deceive.
7. Knowingly refuses or omits to pay over, on demand, public monies in his hands, upon presentation of a draft, order or warrant drawn upon such money by competent authority.
8. Knowingly omits or refuses to transfer the money when a transfer is required by law.
9. Knowingly transfers the money when not authorized or directed by law.
10. Knowingly omits or refuses to pay over to an officer or person authorized by law to receive it, money received by [the officer] when a duty is imposed by law to pay over the money.