

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 (AADOA) is directed to "keep current a completely detailed list of all sources from which monies accrue to the state." 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 for each of the revenue-collecting agencies must show "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 state . . . 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. 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 may be personally liable to the State 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 has been paid by the bank on which the check is

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 state." A.R.S. § 35-101(7).

drawn. If a check is dishonored and not paid, and if 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. Therefore, state officers and employees, for their protection, should 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 in State Treasury. Unless a statute specifically provides otherwise, a state officer or employee, upon the receipt of any money in his or her official capacity, irrespective of its source or the purpose for which it was received, must promptly deposit the money in the state treasury. 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. The head of each budget unit or an authorized agent, when depositing money with the state treasurer, must use forms authorized by the Treasurer and issued to the budget units by ADOA. 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 *Id.* § (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 state 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 state 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 received as income from federal land grants, must be placed in separate funds and accounts. *Id.*

² A.R.S. § 35-315 provides for a state servicing bank.

§ (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. *Id.* § (A)(3). All monies collected by the Game and Fish Department are deposited in the "state game and fish protection fund." *Id.* § (A)(6). A number of regulatory agencies are funded through special state funds as prescribed in the statutes establishing such agencies. These special funds are not considered a part of the general fund. *Id.* § (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 collected by a budget unit 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 is administered by the Superintendent of Banks. Under that statute, investigative costs, attorney's fees, and civil penalties recovered for the State in actions brought under Title 6, Arizona Revised Statutes, are deposited in the Banking Department revolving fund where they are held for use by the Superintendent of Banks and the Attorney General for investigation and for pursuit of 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 controlled by the Director of the Department of Juvenile Corrections 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 authorized by the statute).

4.4.3 Federal Monies. All monies "granted and paid to the state by the federal government shall be accounted for in the accounts or funds of the state 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, upon receipt of the reimbursement, is required to "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. However, if the reimbursement was not noted in the appropriation act, it may nonetheless be credited to the account from which the 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 legislature at the time of appropriating monies to the budget

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.

unit.” *Id.* The director of the budget unit 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 received by a budget unit for its support is governed by A.R.S. § 35-149(A). A budget unit may also receive 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. *Id.* § (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 appropriation power of the legislature 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 9, 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 legislature." 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); or A.R.S. § 32-2205 (Veterinary Medical Examining Board Fund). Prior to the enactment of A.R.S. § 35-143.01, many self-supporting regulatory agencies were authorized by statute to expend the total of the agency's special fund. See Ariz. Att’y Gen. Op. 72-9. Self-supporting regulatory agencies are now, however, prohibited from expending more than the amount authorized annually 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 expenditure of the monies. See, e.g., A.R.S. § 35-193.02 (Department of Administration 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 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 appropriation power of the legislature. *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 otherwise participate in a federally funded 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, when received under such reimbursement circumstances, become state monies thereafter subject to expenditure only when authorized by an appropriation act. A.R.S. § 35-142.01. See Section 4.4.3.1.

⁴ A.R.S. § 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.

4.5.3 Private Monies. A statute empowering a budget unit to accept private monies and contributions for the support of its statutorily authorized activities authorizes the budget unit, without a separate legislative appropriation, to expend such funds for the purposes for which the monies were received. For example, A.R.S. § 41-776 authorizes all state departments or agencies to “accept gifts and donations from public and private entities for the conduct of employee recognition programs.” Other examples include: 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. § 27-152.02(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 legislature 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 legislature 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 Department of Administration to “[a]ccept and disburse grants, gifts, donations, matching monies and direct payments”).

4.5.4 Suspense Funds. 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 appropriation power of the legislature. 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. This conclusion is suggested by *Navajo Tribe v. Dep’t of Admin.*, 111 Ariz. 279, 528 P.2d 623 (1974), and the cases relied on by the *Navajo Tribe* court. See Sections 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 by dividing the appropriations authorizing the expenditures of state monies into various classes or programs. The common classes are "personal services," "employee related expenses," "outside services," "travel," "other operating expenses," and "equipment." Expenditures must be made in accordance with the classes into which appropriations are divided. A.R.S. § 35-172.

On the other hand, the legislature sometimes 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, the Director of 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 estimated annual requirement of the budget unit and distributes the available spending authority to cover the operation of the budget unit 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, with the prior approval of the Director of ADOA, may transfer funds from one expenditure class to another or between and within programs. A.R.S. § 35-173(C). Also, a budget unit, with the recommendation of the Joint Legislative Budget Committee and the approval of the Director of ADOA, may transfer funds to or from any appropriation for personal services or employee-related expenditures. *Id.* § (E). Except as provided in A.R.S. § 35-173 or another statute, neither the Director of ADOA nor the Joint Legislative Budget Committee is authorized to approve or take any other action to acquiesce in an expenditure by a budget unit in a manner 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 prescribed in the state accounting manual of ADOA, 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. *Id.* § D. The encumbrance document must be processed in the State's accounting system before the budget unit issues a purchase order or encumbrance document to cover an obligation. *Id.* § (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 unencumbered and unexpended balance of the appropriation. *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 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.* ADOA "may require encumbrances for all funds of the state, except for the investment of public monies or permanent endowment funds, which are not appropriated but are held in custody by the state treasurer." *Id.* § 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 of the constitution prevents governmental bodies from expending public monies to give advantage to special

interests or to engage in nonpublic enterprises. This prohibition may apply—even though the transaction has surface indicia of public purpose—if the amount of public monies paid exceeds the value of the direct consideration to be received by the public. Anticipated indirect benefits are not consideration under the Gift Clause. *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158 (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 of those who have sold goods or rendered services to the State. A claim is "a demand against the state for payment for either [g]oods delivered or . . . [s]ervices performed." A.R.S. § 35-101(9). "The director [of ADOA] 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 state." A.R.S. § 35-181.01(A). Payment of a claim is accomplished only through a warrant or electronic funds transfer voucher issued by ADOA. 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). Prior to the issuance of a warrant, a budget unit and a claimant must satisfy the statutory procedures prescribed for the payment of contractual obligations of the State. See Chapter 13.

4.7.1 Presentation of Claims. "All claims against the state 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 the presentation to ADOA of a claim form 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 established by the Director of ADOA 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 the claim to the requirements of the Director. A.R.S. § 35-181.01(B).

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

4.7.3 Issuance and Payment of Warrants and Electronic Funds Transfer Vouchers. After approving a claim, the Director of ADOA issues a warrant or electronic funds transfer voucher to the claimant. The warrant or voucher authorizes the State Treasurer to disburse monies in the state treasury in the amount set forth in the warrant or

voucher. A.R.S. § 35-185(A). The State Treasurer is obligated to issue a check on a state depository bank or authorize the transfer of monies by the state depository bank in payment of the warrants or vouchers. *Id.* If the state treasury lacks sufficient monies to pay a warrant or voucher presented to the Treasurer, the State 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. No warrant upon the state treasury may be paid after two years from the date of issue. A.R.S. §§ 35-184(B). Under procedures established by the Director of ADOA, the Director may issue duplicate warrants to replace those lost or destroyed prior to payment or not presented for payment within the time specified on the face of the warrant. A.R.S. § 35-186(A).

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

4.8 Lapsing of Appropriations. After expiration of the one-month period discussed in Section 4.7.4, "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 for 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. *Id.* § (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. *Id.* § (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 state . . . 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 [state'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 not received or performed until the next fiscal year is subject to administrative adjustment upon approval of the Director of ADOA. 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. 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 Director of ADOA 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), (D).

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 Director of ADOA 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 not exceeding \$300 from a prior fiscal year 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 best interest of the State and obtaining the approval of the Director of ADOA, 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 Contract Claims Arising from Administratively Determined Liability. A contract claim that has been administratively adjusted, see Section 4.9.1.3, is payable "from the appropriation for the year in which the liability is determined in accordance with the procedures established by the department of administration." A.R.S. § 35-191(F).

4.9.2.5 Refunds. If a claim for refund of any fee, license, permit, or erroneous payment is approved, 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 Person or Property. A claim for damages for injury to a person or 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 received four fiscal years or more before the presentation of the claim 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.

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.

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 next regular session of the legislature. A.R.S. § 35-189. In *O'Neil v. Goldenetz*, 53 Ariz. 51, 85 P.2d 705 (1938), the Supreme Court held that A.R.S. § 35-189 (then Section 35, Rev. Code 1928) was applicable to an obligation authorized by law, but for which no funds were appropriated and available for its 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 Section 10-923, A.C.A. 1939) had been enacted in 1943 and provided in substance that "any obligation incurred against the state by any person not authorized by previous appropriation and an allotment is null and void." 70 Ariz. 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 be a claim for money recognized by the law.

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 made by the legislature solely for the closed fiscal year. See Sections 4.7.4, 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. § w35-154. Moreover, an obligation incurred without authorization is null and void and incapable of ratification by any executive authority. *Id.* See Section 4.10.

4.11.4 Illegal Expenditures. An expenditure made without authorization is an illegal act resulting in joint and several liability to 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 Director of ADOA 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 state 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 requested to do so, a taxpayer of the State 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 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. Section 35-301, A.R.S., provides:

[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.