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December 9, 1999
Nº 199-026 (R99-041)

Questions Presented

You have asked (1) whether the Arizona Department of Transportation ("ADOT") has the authority to borrow funds from an Indian tribe to advance a highway improvement project; and, (2) if so, what terms can be included in such an agreement.

Summary Answer

The Legislature has not authorized ADOT to borrow money from an Indian tribe to advance a highway improvement project. Accordingly, it is not necessary to address your second question.

Background

Apart from the Arizona State Transportation Board's ("the Board") authority to issue bonds and grant anticipation notes, ADOT's only authority to borrow money is in Arizona Revised Statutes ("A.R.S. ") Title 28, Chapter 21, Article 5 (A.R.S. §§ 28-7671 to 28-7678).⁽¹⁾ This article establishes the State Infrastructure Bank ("SIB"), from which ADOT, political subdivisions and Indian tribes may borrow money for highway projects. *See* A.R.S. § 28-7676 (enacted in 1998 Ariz. Sess. Laws ch. 263). This article also includes a statute that authorizes ADOT to enter into agreements with a city or town in which the city or town advances monies to ADOT to accelerate the right-of-way acquisition, design or construction of a project. A.R.S. § 28-7677.

Analysis

The ultimate goal in statutory interpretation is to discern the intent of the Legislature. *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993). A statute's language is the most reliable index of its meaning. *Calmat v. State ex rel. Miller*, 176 Ariz. 190, 193, 859 P.2d 1323, 1326 (1993).

The Legislature specifically authorized ADOT to enter agreements with cities or towns advancing money to ADOT. A.R.S. § 28-7677. However, the Legislature provided no similar authorization relating to Indian tribes. The Legislature's express authority regarding advances from cities and towns, and the absence of any similar authority regarding Indian tribes, indicates ADOT is not authorized to accept advances from Indian tribes. *See Pima County v. Heinfeld*, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982) (the expression of one or more items of a class in a statute indicates the Legislature's intent to exclude all items of the same class which are not expressed).

A review of 1998 legislation that authorized cities and towns to advance ADOT money further supports the conclusion that ADOT is not authorized to borrow money from Indian tribes. *See Goulder v. Arizona Dep't of Transp.*, 177 Ariz. 414, 416, 868 P.2d 997, 999 (App.1993) (statutory provisions are to be read in the context of related provisions and of the overall statutory scheme). The Legislature adopted A.R.S. § 28-7677, which addresses advances from cities and towns, as part of the legislation that created the SIB. 1998 Ariz. Sess. Laws ch. 263. This 1998 legislation expressly authorized Indian tribes to receive loans or other financial assistance from the SIB and established specific requirements for SIB loans to Indian tribes. A.R.S. § 28-7676(B), (F)(6). Although the Legislature specifically included Indian tribes in the portions of legislation concerning the SIB, it did not include them in A.R.S. § 28-7677, which authorized ADOT to accept advances from cities and towns.⁽²⁾

Moreover, the statutes governing ADOT expenditures do not expressly authorize payments to Indian tribes for advances. ADOT cannot make an expenditure for any purpose during a fiscal year in excess of the amount appropriated by the Legislature for

that purpose, except for repayment of loans from SIB and repayment of advances and interest on advances made to cities and towns pursuant to A.R.S. § 28-7677. A.R.S. § 28-6999.⁽³⁾ A review of the statutes authorizing ADOT to make expenditures reveals that the Legislature has not authorized ADOT to use the funds available for highway construction projects to repay loans from Indian tribes. See A.R.S. §§ 28-6303 (Regional Area Road Fund), -6993 (State Highway Fund), -6501 to -6503 (Highway Users Revenues), -7005 (Revolving Account), -7006 (Transportation Department Equipment Fund), -7509 (Highway Bond Proceeds Fund), -7615 to -7616 (Grant Anticipation Notes Fund), and -8101 to -8104 (Local Transportation Assistance Fund). In contrast, the Legislature specifically authorized the use of the State Highway Fund for "repayment of loans and other financial assistance, including repayment of advances and interest on advances made to the department pursuant to A.R.S. § 28-7677," which is the statute authorizing advances from cities and towns. A.R.S. § 28-6993.

An agency may not act without express statutory authority. *Corella v. Superior Court*, 144 Ariz. 418, 420, 698 P.2d 213, 215 (App. 1985). In addition, an agency can only incur indebtedness when authorized by a statute or the Arizona Constitution. See *Le Febvre v. Callaghan*, 33 Ariz. 197, 204, 263 P. 589, 591 (1928). Because of the lack of legislative authorization, ADOT cannot accept advances from Indian tribes to accelerate a highway project.

Conclusion

The Legislature has not authorized ADOT to enter into agreements with Indian tribes providing for an advance of monies to ADOT to accelerate a highway project. Accordingly, it is not necessary to address the second part of your question regarding the conditions of such agreements.

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1. Your question concerning a loan from an Indian tribe does not relate to the Board's bonding authority. The Board can issue bonds, designate the project for which the proceeds are to be used, and sell the bonds at public or private sales. See A.R.S. §§ 28-7501 to -7517 and -7561 to -7573.

2. The legislation also gave cities and towns the authority to advance monies to ADOT and to enter into loan repayment agreements with ADOT. 1998 Ariz. Sess Laws ch. 263, §1 (codified as A.R.S. § 9-500.17). In contrast, counties, which are eligible for SIB loans, were authorized to enter repayment agreements with ADOT but were not given the authority to advance monies to ADOT. *Id.* at § 3 (codified as A.R.S. § 11-269.03).

3. There are also exceptions for construction contracts and right of way acquisitions. See A.R.S. §§ 28-7000 and -7001.

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