



**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>August 6, 2018</p>	<p>No. I18-009 (R18-002)</p> <p>Re: Use of the Medical Marijuana Fund for Drug Addiction Treatment</p>
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To: Senator Sylvia Allen  
Arizona State Senate

**Questions Presented**

You have requested an opinion concerning the authorized uses of the fees and fines collected by the Arizona Department of Health Services (“ADHS”) and maintained in the Medical Marijuana Fund (“Fund”) that was established in Arizona Revised Statutes (“A.R.S.”) § 36-2817. Specifically, you have asked:

1. Could the Legislature, through the budget process, direct the ADHS Director to appropriate some of the Fund monies to help people addicted to drugs?
2. Does this issue need to be placed on the ballot for a vote of the people?

**Summary Answers**

1. Yes. The Legislature may direct the ADHS Director to spend Fund monies for programs to help people addicted to drugs if: (1) the

appropriation is passed with a three-fourths vote of each legislative chamber; (2) the appropriation does not deplete the Fund and leave insufficient revenues to cover the immediate and future costs of the initiative; and (3) the appropriation furthers the purpose of the AMMA, *i.e.*, it relates, in some way, to medical marijuana.

2. No. If the proposed appropriation meets the requirements in question one, it is not necessary to place the question on the ballot.

### **Background**

In 2010, Arizona voters enacted the Arizona Medical Marijuana Act (“AMMA”) using the ballot initiative process. *State v. Gear*, 239 Ariz. 343, 344, ¶ 2 (2016); *see also* Proposition 203, 2011 Ariz. Sess. Laws 2724, 2724-2750, codified at A.R.S. §§ 36-2801 to 36-2819. The AMMA created the Fund and tasked ADHS with the implementation and administration of the AMMA. A.R.S. §§ 36-2801 to 36-2819. Because the Fund falls within one of the Voter Protection Act’s enumerated categories of protected legislation, its monies cannot be “appropriate[d] or diverte[d]” unless the new use furthers the purposes of the AMMA and wins the approval of three-fourths of each house of the Legislature. *See* Ariz. Const. art. IV, pt. 1, § 1(6)(D).

### **Analysis**

#### I. Arizona Constitutional Considerations.

The Voter Protection Act, added to the Arizona Constitution by voters in 1998, places limitations on the Legislature’s authority to amend voter-approved initiatives. One of its provisions applies to “funds created or allocated to a specific purpose by an initiative.” Ariz. Const. art. IV, pt. 1, § 1(6)(D). For funds of this sort, the Legislature can “appropriate or divert”

money only if it has a three-fourths vote of each legislative chamber and if the Legislature's action furthers the initiative's purpose. *Id.*; *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469, ¶ 6 (2009).

The Arizona Constitution requires that any fund established by initiative for any specific purpose or to allocate funding for any specific purpose “*must* also provide for an increased source of revenues sufficient to cover *the entire immediate and future costs* of the proposal,” without drawing on the general fund. Ariz. Const. art. IX, § 23(A) (emphasis added). Thus, if the Legislature authorizes the ADHS Director to appropriate Fund monies, it must also ensure that sufficient revenues remain in the Fund to administer and implement the AMMA to meet not only immediate costs, but future costs as well. *See* Ariz. Const. art. IX, § 23(A).<sup>1</sup>

## II. Statement of Findings

Assuming that the measure has passed each legislative chamber by a three-fourths vote and the appropriation would not deplete the Fund, the next question is whether the appropriation furthers the purpose of the initiative. We may look to both the statement of findings passed with the measure and the measure's text to determine its purpose. *See Ariz. Early Childhood Dev. & Health Bd.*, 221 at 471, ¶ 14. According to the statement of findings contained within the measure, the purposes of the Act include: “mak[ing] a distinction between the medical and nonmedical uses of marijuana and . . . protect[ing] patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana.” Proposition 203, § 2(G), 2011 Ariz. Sess. Laws at 2725; *see State v. Maestas*, 417 P.3d 774, 778-779, ¶ 20 (Ariz. 2018) (recognizing that the primary, but not necessarily the sole, purpose of

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<sup>1</sup> A.R.S. § 36-2817(C) provides that excess monies do not revert to the general fund. The proposed appropriation would come out of anticipated surplus monies in the Fund.

the AMMA is to protect patients from prosecution). Simply put, the findings provide that Fund monies can be spent on actions or activities distinguishing between medical and nonmedical uses of marijuana or protecting patients and providers from criminal prosecution.

Accordingly, the Legislature can appropriate Fund monies to create a program to treat people addicted to drugs so long as the appropriation furthers one of the aforementioned purposes. Fund expenditures on drug addiction education, prevention and treatment would likely further both purposes if the proposed programs relate, in some way, to medical marijuana. A program on drug addiction education, prevention or treatment that has the stated purpose of “making a distinction between the medical and nonmedical uses of marijuana” would further the purpose of the AMMA.

### III. Textual Limitations

In addition to examining the stated purpose of the AMMA, we need to examine the authorized uses of the Fund. A statute’s text is “the best and most reliable index of a statute’s meaning.” *State v. Christian*, 205 Ariz. 64, 66, ¶ 6 (2003).

Arizona Revised Statutes § 36-2817 establishes the Fund. The statute provides:

- A. The medical marijuana fund is established consisting of fees collected, civil penalties imposed and private donations received under this chapter. [ADHS] shall administer the fund. Monies in the fund are continuously appropriated.
- B. The director of [ADHS] may accept and spend private grants, gifts, donations, contributions and devises to assist in carrying out the provisions of this chapter.
- C. Monies in the medical marijuana fund do not revert to the state general fund at the end of a fiscal year.

Subsection A identifies the sources of monies collected in the Fund (*i.e.*, fees, civil penalties (fines), and private donations) and authorizes ADHS to “administer the [F]und.”

Subsection B allows ADHS to collect and spend additional private sources of money (*i.e.*, grants, donations, gifts) to “carry out the provisions of this chapter.” Subsection B contains limiting language regarding how such voluntary contributions can be used, but the limiting language applies only to “private grants, gifts, donations, contributions and devises.” A.R.S. § 36-2817(B). Subsection C makes it clear that the monies in the Fund accumulate over time and do not revert to the State general fund at the end of each fiscal year.

Because the question presented relates to “fees and fines,” it is necessarily directed to the monies collected pursuant to Subsection A. Subsection A does not contain any language specifically directing the use of these monies, but it also does not contain any language limiting the use of these monies.

Other portions of the AMMA also provide guidance on how “fees and fines” monies in the Fund can be spent. Arizona Revised Statutes § 36-2803(A)(5)(a), (d) provides that “[t]he total amount of all fees shall generate revenues sufficient to *implement and administer* this chapter, except that fee revenue may be offset or supplemented by private donations[]” and “[t]he total amount of revenue from nonprofit medical marijuana dispensary application and renewal fees and registry identification card fees for nonprofit medical marijuana dispensary agents shall be sufficient to *implement and administer* the nonprofit medical marijuana dispensary provisions of this chapter, including the verification system, except that the fee revenue may be offset or supplemented by private donations.” (Emphasis added.) This provision serves primarily to confirm that the AMMA complies with Article IX by assuring minimally sufficient revenue to cover current and future program costs. Of course, nothing in this section precludes “fee revenue” in excess of what is necessary to administer the AMMA.

For funds in excess of the Article IX minimum, the law merely requires that they be used to further the AMMA's various purposes. Ariz. Const. art. IV, pt. 1, § 1(6)(D).

Turning to your second question, as discussed above, the Legislature has constitutional authority to authorize the ADHS Director to appropriate money from the Fund for purposes related to the AMMA. As a result, the Legislature does not have to place this issue before the voters.

### **Conclusion**

The Legislature may direct the ADHS Director to expend monies from the Fund for programs to help people addicted to drugs if: (1) the appropriation is passed with a three-fourths vote of each house; (2) the appropriation does not deplete the Fund and leave insufficient revenues to cover the immediate and future costs of the initiative; and (3) the appropriation furthers the purpose of the AMMA. To that end, an appropriation for activities related to distinguishing between medical and nonmedical uses of marijuana, protecting patients and providers from criminal prosecution, or carrying out, implementing, or administering the AMMA would meet this criterion. If these requirements are met, it is not necessary to submit an appropriation request to Arizona's voters.

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