

ARIZONA LEGISLATIVE COUNCIL

MEMO

August 27, 2015

TO: Senator John Kavanagh
FROM: Ken Behringer, General Counsel
RE: Community College Expenditure Limits (R-52-39)

BACKGROUND

The Arizona Constitution prescribes limits on the expenditures by community college districts as follows:

The economic estimates commission shall determine and publish prior to April 1 of each year the expenditure limitation for the following fiscal year for each community college district. The expenditure limitations shall be determined by adjusting the amount of expenditures of local revenues for each such district for fiscal year 1979-1980 to reflect the changes in the student population of each district and the cost of living. The governing board of any community college district shall not authorize expenditures of local revenues in excess of the limitation prescribed in this section, except in the manner provided by law.

Constitution of Arizona, article IX, section 21, subsection (1) (emphasis added).

QUESTION

What latitude does the highlighted language above give the legislature in making adjustments to the expenditure limitation for community college districts?

ANSWER

Under a 2001 opinion by the attorney general, the legislature would have broad authority to make adjustments to the expenditure limitation for community college districts. However, this opinion appears to be contrary to the purpose of the constitutional expenditure limitation provisions and has several weaknesses. A more reasonable interpretation is that the highlighted language allows the legislature to establish procedures for the community college governing boards to adopt expenditure limitation overrides.

DISCUSSION

The Arizona attorney general opined concerning Constitution of Arizona, article IX, section 21, subsection (1) (referred to as Subsection (1)) in 2001 Ariz. Op. Atty. Gen. No. I01-015 (June 29, 2001). The question in this opinion was the validity of Arizona Revised Statutes (A.R.S.) section 15-1472, subsection F, which provides that monies in the workforce development account are not to be considered as local revenues for the purposes of the community college expenditure limitation. The attorney general stated:

The expenditure limit for community colleges provides that expenditures in excess of the constitutional limitation may be authorized in a "manner provided by law." . . . This provision authorizes the Legislature to make exceptions from the community college district expenditure limit set out in Art. IX, § 21. The broad grant of authority to the Legislature is not limited by the language of § 21 itself. Under its power to authorize expenditures in excess of the expenditure limit, the Legislature could, therefore, exclude monies from "local revenues" as it did in A.R.S. § 15-1472(F).

2001 Ariz. Op. Atty. Gen. No. I01-015 (June 29, 2001).

Under this interpretation of Subsection (1), it is difficult to imagine what limit there is on the legislature in making adjustments to the constitutional limitation. Since the legislature is not bound by the constitutional definitions, it could define the limit away.

This conclusion seems at odds with the purpose of the expenditure limitation. Constitution of Arizona, article IX, section 21 was part of an extensive package of constitutional changes referred to the voters in a special election held in June 1980. *See* Laws 1980, Second Special Session, S.C.R. 1001. The purpose of these expenditure limitations "was to limit expenditures of political subdivisions to fiscal year 1979-80 levels modified by annual adjustments to reflect changes in population and the cost of living." *La Paz County v. Yuma County*, 153 Ariz. 162, 167, 735 P.2d 772, 777 (1987). An interpretation that the legislature has broad authority to overcome the limitation on community college expenditures is contrary to the reasons for adopting the limitation.¹

In addition to being contrary to the purpose of the expenditure limitations, the attorney general opinion has several weaknesses. The first problem with the analysis is that it focuses on the wrong actor. The community college governing board is the subject of the last sentence in Subsection (1). The governing board may not exceed the expenditure limitation unless it does so in the manner provided by law. The legislature is

¹ The attorney general noted the purpose that was stated in *La Paz County* in her opinion and said that Constitution of Arizona, article IX, section 21 furthered this purpose by prohibiting expenditures of local revenues in excess of the constitutional limit. However, she ignored the fact that her opinion would allow the legislature to eviscerate the limitation by redefining what constitutes local revenues.

not authorized to cause the community college district to exceed the expenditure limitation. It may only prescribe the manner in which the governing board may do so.

The second problem with the attorney general's analysis is that it gives an overly broad reading to the word "manner." Words in the constitution are generally given their natural and ordinary meaning. *State ex rel. Morrison v. Nabours*, 79 Ariz. 240, 245, 286 P.2d 752, 755 (1955). "Manner" is a "mode of procedure or a way of acting." A synonym is "method." *Merriam Webster's Collegiate Dictionary* 756 (11th ed. 2006). "Method" includes "a way, technique, or process of or for doing something." *Id.* at 781. So the legislature may prescribe the procedures that a community college governing board must follow to make expenditures beyond the expenditure limitation. In other words, the legislature may prescribe the procedures that a governing board must follow to implement an override of the expenditure limitation.²

A comparison the attorney general made in her analysis supports this conclusion. Constitution of Arizona, article IX, section 21, subsection (2) prescribes the aggregate expenditure limitation for all school districts. This subsection provides that the aggregate expenditure limit may not be exceeded "except as provided in subsection (3) of this section." Constitution of Arizona, article IX, section 21, subsection (2). The attorney general concluded that because Subsection (1) did not include such a restriction, the legislature had broad freedom to change the community college expenditure limitation. 2001 Ariz. Op. Atty. Gen. No. I01-015 (June 29, 2001).

Looking further, however, subsection (3) prescribes the procedure for the legislature to authorize expenditures in excess of the aggregate expenditure limitation. Constitution of Arizona, article IX, section 21, subsection (3). Giving subsections (1), (2) and (3) a parallel (and more reasonable) reading, the constitution prescribes the procedures to be used to override the aggregate expenditure limitation, but the constitution leaves it up to the legislature to prescribe the procedures to be used by a community college governing board to exceed the community college expenditure limitation. The difference does not give the legislature unfettered authority to gut the community college expenditure limitation.

CONCLUSIONS

Under an existing attorney general interpretation of Subsection (1), the legislature would have great latitude in adjusting the expenditure limitation on community college districts. Despite the existence of this opinion, the more reasonable interpretation of Subsection (1) is that the legislature is only authorized to prescribe the procedures necessary for a community college governing board to adopt an expenditure limitation override.

² The legislature has in fact prescribed these procedures by enacting A.R.S. section 15-1471.