SUMMARIES OF ATTORNEY GENERAL OPINIONS

The Secretary of State's Office is required to publish summaries of Attorney General Opinions under A.R.S. § 41-1013(B)(4). The following Attorney General Opinions were issued between July 1 and December 31, 2010. For copies of these opinions, call (602) 542-5025 or view them online at the Attorney General's web site:

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Opinion number	Date of opinion	Opinion summary
I10-006	October 5, 2010	Re: Applicability of Soft Capital Budget reductions in Fiscal Years 2008-2009 and 2009-2010 to Joint Technology Education Districts 1. Soft capital allocation reductions passed the Legislature for fiscal year 2008-2009 (2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 6) and for fiscal year 2009-2010 (2009 Ariz. Sess. Laws, 4th Spec. Sess., ch.2, § 2) apply to JTEDs. 2. The Department should reduce the soft capital allocations made to JTEDs for fiscal years 2008-2009 and 2009-2010 pursuant to A.R.S. § 15-962. The session laws administering the budget reductions state that the soft capital allocation reductions apply to specific fiscal years to address budget shortfalls. Thus, prospective application of the reductions would give no effect to the soft capital allocation reductions for fiscal years 2008-2009 and 2009-2010.
I10-007	October 29, 2010	Re: Length of Written Guarantee of Qualified Provider Under A.R.S. § 15-213.01 An energy cost-savings contract between a school district and a qualified provider must include the qualified provider's written guarantee that either the energy or the operational costs savings—or both—will meet or exceed the expenses of the energy cost-savings measures implemented over the expected life of those measures or within twenty-five years, whichever time period is shorter.
I10-008	December 28, 2010	Re: Public Benefits and A.R.S. §§ 1-501 and -502 1. Does the language "state or local benefit" as used in Arizona Revised Statutes ("A.R.S.") § 1-502 include grants, contracts or loans with the state or local government? **Answer:** "State or local public benefit" as used in A.R.S. § 1-502(A) includes grants, contracts and loans. 2. Does the term "person" in A.R.S. §§ 1-501 and -502 apply to individuals only or to fictitious persons such as business entities as well? **Answer:** The term "person" in A.R.S. §§ 1-501(A) and -502(A) is limited to indivisuals. 3. Do A.R.S. §§ 1-501 and -502 apply to all employees, volunteers, contractors, subcontractors and vendors alike? **Answer:** The verification requirements apply to employees of government agencies and to private entities contracting with those agencies to determine eligibility. The reporting requirements and associated criminal penalties in subsections E of A.R.S. §§ 1-501 and -502 apply to government employees of agencies who are administering public benefits. 4. If the State administers a benefit program funded by a private funding source, do the requirements in A.R.S. § 1-502 still apply? **Answer:** The requirements of A.R.S. § 1-502 apply to state or local public benefits that are provided by state or local government even if they are funded through private sources. 5. How do A.R.S. §§ 1-501 and -502 affect doing business with companies that are headquartered outside the United States.

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I10-008 *continued*		**Answer:** Because A.R.S. §§ 1-501 and -502 apply only to natural persons, they do not affect companies headquartered outside the United States. 6. Does a permanent resident card qualify as an "employment authorization document" pursuant to sections A.R.S. §§ 1-501(A)(7) and -502(A)(7)? **Answer:** Because lawful permanent residents are authorized to work in the United States, presentation of proof of lawful permanent residence would suffice as evidence of work authorization for the purposes of A.R.S. §§ 1-501 and -502. 7. Would including a section regarding compliance with E-verify in grant agreements demonstrate compliance with A.R.S. §§ 1-501 and -502? **Answer:** Including a section in a grant requiring E-verify does not satisfy A.R.S. §§ 1-501 and -502 because E-verify is for use by employers in hiring employees; it is not for use when verifying immigration status of an applicant for a public benefit. 8. The documents listed in A.R.S. §§ 1-501 and -502 do not appear to meet the requirements for providing federal and state public benefits, as defined in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). Please provide guidance regarding compliance with current state statutes and PRWORA. **Answer:** The documents listed in A.R.S. §§ 1-501 and -502 do not all satisfy the citizenship or immigration status requirements that the federal government has established for public benefits other than Medicaid. The lists also fail to include other documents that would suffice for proof of U.S. citizenship or the required immigration status. For federal public benefits, agencies should comply with A.R.S. § 1-502 and take additional steps as necessary to ensure the recipients of the benefits satisfy the eligibility requirements in 8 U.S.C. § 1621. 9. Must the sworn affidavits required in A.R.S. §§ 1-501 and -502 be notarized statements? If so, some agencies do not have notaries on staff and would be required to use notaries who may charge fees. Is is permissible to charge applicants or contractors the notarization fees? **Answer:** Agencies must comply with federal requirements and limitations as to establishing eligibility for federal public benefits. For state and local public benefits, agencies may, but are not required to, obtain notarized statements as to the authenticity of documents presented. If the entity determining eligibility for the state or local public benefit decides to require a notarized affidavit, it may charge an applicant or contractor a notary fee not to exceed $2.00. 10. With regard to privacy matters, is it permissible to include the documentation and affidavits in the employee or applicant's file? In other words, please provide guidance regarding storage and retention of the required documentation and affidavits. **Answer:** Documentation my be placed in case or other files relating to the application.