

*James  
Clayton  
Benn  
Pickrell*

March 20, 1954  
Letter Opinion  
No. 54-67-L

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

The Honorable Frank Robles  
House of Representatives  
State Capitol Building  
Phoenix, Arizona

Re: Immunity of a Legislator from  
the Service of Legal Process

Dear Mr. Robles:

This is in reply to your request for an opinion in which you ask if a state legislator is immune from service of "legal process" while the Legislature is in session, and as per your request, we will consider only when the process is on the state legislator and not on the state.

Assuming that when you use the term "legal process" you mean to include both civil and criminal process, both will be discussed.

The courts have had little difficulty with criminal process and the immunity extended to legislators as it has been deemed that a strong public policy requires that a legislator be free to perform their lawmaking duties for the state and, hence, they are immune except for those offenses that are expressly excepted in our Constitution which are treason, felonies and breaches of the peace.

In Arizona we are not faced with the same problems that have confronted most of the courts in solving the problem of immunity from civil process, for in most states the constitutions or statutory provisions do not use the exact words "civil process" and the courts must then decide whether by implication the legislator is immune from civil process when the words used are "shall be immune from arrest", or a similar phrase.

However, Article 4, Part 2, Section 6 of the Arizona Constitution states:

"§6. (Privileges of members)--Members of the legislature shall be privileged from arrest in all cases except treason, felony, and breach of the peace, and they shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session." (Emphasis supplied.)

The language used in the Arizona Constitution seems to leave little doubt that a legislator is immune from service during the session of the Legislature and fifteen days prior to the commencement of each session.

Undoubtedly, due to the precise wording used in the Constitution, there have been no cases in Arizona dealing with this particular subject. However, in Kansas a like provision was discussed and the Kansas Supreme Court in *COOK v. SENIOR*, (1896) 3 Kan. App. 278, 45 P. 126, stated that the provision was applicable to any session of either branch of the Legislature which is required to be held by the provisions of the Constitution, and the court held that if process was served upon any member of the Legislature during the period, the service was void and would give the court no jurisdiction over the person of the legislator.

We therefore conclude that due to the express wording in the Arizona Constitution a legislator is not subject to civil process during the period the Legislature is in session and fifteen days prior to the commencement of each session.

Very truly yours,

ELDON R. CLAWSON  
Assistant to the  
Attorney General

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