

*Heunter  
Stubbbs  
Bartlett*

**LAW LIBRARY  
ARIZONA ATTORNEY GENERAL**

April 12, 1954

Letter Opinion  
No. 54-101-L

Mr. James Griswold  
Superintendent of Home for Aged  
and Infirm Pioneers  
Prescott, Arizona

Re: Capital expenditures from earnings  
on state lands.

Dear Mr. Griswold:

This is in reply to your oral request for an opinion as to whether or not you may use endowment earnings on state lands and interest on the investment of the permanent land funds to refurbish the cemetery plot at the Pioneers' Home and construct a fence, concrete retaining walls, suitable entrance, cattle guard, grading and resurfacing a road.

The appropriation for the Pioneers' Home, Laws 1953, Chapter 132, Subdivision 36, provides as follows:

"Subdivision 36. Pioneers' Home	
Personal Services	\$ 57,795.00
State Travel	700.00
Other Current Expenditures	84,150.00
Subscriptions and Organization Dues	500.00
Fixed Charges	12.00
Total Appropriation	<u>\$143,157.00</u>

Earnings on state lands and interest on the investment of the permanent lands funds of the Pioneers' Home and the Hospital for Disabled Miners are appropriated in compliance with the Enabling Act and the Constitution."

From a reading of the foregoing appropriation it is not clear as to whether or not earnings on state lands are appropriated in addition to the itemized appropriations totalling \$143,157, or the foregoing figure is an appropriation from the earnings on state lands. This form of appropriation has been in use for a number of years previous to the 1953 Appropriation Act. The method used for appropriating earnings on state lands for the Pioneers' Home is also used in making the appropriation for the Prison (Subdivision 37), the State Department of Health

Mr. James Griswold, Superintendent  
Home for Aged and Infirm Pioneers

April 12, 1954  
Page Two

(Subdivision 39), Arizona State College at Flagstaff (Subdivision 42), Arizona State College at Tempe (Subdivision 43), Arizona State School for the Deaf and Blind (Subdivision 44), and the University of Arizona (Subdivision 48).

The administrative interpretation by the auditor and the post auditor of this form of appropriation has been that the earnings on state lands are in addition to the itemized appropriation set out in the Appropriation Act. In light of this form of interpretation and construction on previous appropriation bills the Legislature has seen fit to continue this method of appropriation and, therefore, it is evident that the earnings on state lands are appropriated, in addition to the itemized amounts, to be used in compliance with the Enabling Act and the Constitution. Where the Legislature re-enacts a statute after uniform construction by the officers required to act under it, the presumption is that the Legislature knew of such construction and adopted it in re-enacting the statute. *COPPER QUEEN CONSOL. MIN. CO. v. TERRITORIAL BOARD OF EQUALIZATION OF ARIZONA*, 27 S.Ct. 695, 206 U.S. 474, 51 L.Ed. 1143, affirming 84 P. 511. *VAN VEEN v. GRAHAM CO.*, 108 P. 252, 13 Ariz. 167. It, therefore, becomes necessary to determine whether or not the Enabling Act and the Constitution allow the earnings on state lands to be used for capital expenditures. The pertinent provisions of Section 25 of the Enabling Act provides:

"§25. \* \* \* the following grants are hereby made, to-wit: \* \* \* for miners' hospitals for disabled miners, fifty thousand acres; for normal schools, two hundred thousand acres; for state charitable, penal, and reformatory institutions, one hundred thousand acres; \* \* \*"

Section 28 of the Enabling Act provides:

"§28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to said territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

Disposition of any of said lands, or of any

Mr. James Griswold, Superintendent  
Home for Aged and Infirm Pioneers

April 12, 1954  
Page Three

money or thing of value directly or indirectly derived therefrom, for any object other than for such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this Act, shall be deemed a breach of trust."

Article 10, Section 2 of the Constitution of the State of Arizona provides, as follows:

"§2. (Lands to be used for objects designated.) --Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands (or the lands from which such money or thing of value shall have been derived) were granted or confirmed, or in any manner contrary to the provisions of the said Enabling Act, shall be deemed a breach of trust."

The Legislature of the State of Arizona has enacted specific legislation providing for the use of these funds. Section 11-1105, A.C.A. 1939, provides:

"11-1105. Other lands funds.--\* \* \* Said funds shall be and remain perpetual funds for the benefit and support of the institutions heretofore or hereafter established corresponding to the purposes of the said funds, except as otherwise provided in the Enabling Act, and the interest only of such funds together with the moneys derived from the rental of said lands and property, shall be used." (Emphasis supplied)

From a reading of the foregoing provisions of the Enabling Act, the Constitution and the statutes of the State of Arizona, it appears that the rule to be followed in making expenditures for the Pioneers' Home is that such expenditures be for the benefit and support of the Pioneers' Home.

The Supreme Court of Utah, in May of 1953, had before it the question of what was meant by "support and maintenance". In light of the Constitution and Enabling Act the court said at page 371 of CONDER v. UNIVERSITY OF UTAH et al, 257 P.2d 367:

Mr. James Griswold, Superintendent  
Home for Aged and Infirm Pioneers

April 12, 1954  
Page Four

"\* \* \* However, plaintiff admits that more recent cases from other jurisdictions have held the term 'support and maintenance' authorized the construction of buildings. There is nothing in the wording of the enabling act nor in Sec. 5, Art. 10 of the State Constitution which compels us to find that the income from the permanent funds can only be used for current expenses of the University. Buildings are a necessary part of a University and the terms 'support' or 'maintenance' do not necessarily exclude the right to repair or construct them. \* \* \*"

The Utah Court cited *ARNOLD v. BOND*, 47 Wyo. 236, 34 P.2d 28, and quoted from page 31 at length, as follows:

"\* \* \* the conclusion that the term "support" excludes the right to use any part of the money for erecting buildings does not necessarily follow. The meaning of the term "support" was discussed in the case of *State v. Board*, 8 Wyo. 104, 55 P. 451, 461, and it was held that it included the erection of buildings as well. The court speaking, through the late Chief Justice Potter, said: "The statutes of this state have for many years provided that there shall be levied annually a tax 'for the support of the common schools.' \* \* \*" 26 Stat. 222. Would it be contended, in the absence of express, adverse legislative provision, that school houses could not be erected or repaired from the proceeds of the tax, or the income, or avails from the donated public lands? Is not the erection of suitable buildings as necessary a part of the support of the common schools as the employment of teachers? What feature in the support of any public institutions is more essential than providing a house in which its operations may be carried on, or in making such repairs as its condition demands?"

The Utah Court concluded that its Enabling Act which restricted the use of such funds to the "purpose of such university", and the Constitution which restricted the use of such funds to the "support and maintenance" did not preclude the use of such funds for the erection or repair of buildings.

Mr. James Griswold, Superintendent  
Home for Aged and Infirm Pioneers

April 12, 1954  
Page Five

Based upon the foregoing discussion it is our opinion that the earnings on state lands and interest on the investment of the permanent land funds of the Pioneers' Home and Hospital for Disabled Miners may be used for the capital outlay necessary to refurbish the Home's cemetery plot.

Yours very truly,

JEH:RM

JAMES E. HUNTER  
Assistant to the  
Attorney General