

LETTER

Les Hardy

I Concur

Wade Church

I Concur

April 6, 1960

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ARIZONA ATTORNEY GENERAL

Honorable Lloyd C. Helm
Cochise County Attorney
County Courthouse
Bisbee, Arizona

Dear Mr. Helm:

The Attorney General acknowledges receipt of your letter of April 5, 1960, relative to the proposal to disincorporate the municipality of Huachuca City.

Certain problems are raised with respect to the qualifications of voters at the disincorporation election and accordingly you desire the opinion of the Attorney General on the following questions:

- "(1) Under the provisions of Section 9-102, A.R.S., concerning disincorporation, do the words 'person paying property tax' include persons owning no real property but paying personal property tax through the Sheriff?
- (2) Do the above words include a person paying a lieu tax on automobiles?"

In respect to Question No. 1, it is the opinion of the Attorney General that "person paying property tax" under the provision of A.R.S. § 9-102, includes persons who pay taxes on real property, but also persons who pay taxes on personal property to the sheriff or any public official authorized to collect taxes on personal property. This conclusion is supported by Stults Eagle Drug Co. v. Luke, 48 Ariz. 467, 62 P. 2d. 1126.

With respect to Question No. 2, it is the opinion of the Attorney General that the words "person paying property tax" do not include a person paying a lieu tax on automobiles.

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Article 9, Section 11, Arizona Constitution, provides the method for taxing motor vehicles and specifically provides that:

" * * * a license tax is hereby imposed upon vehicles registered for operation upon the highways in Arizona, which license tax shall be in lieu of all ad valorem property taxes on any vehicle subject to such license tax.
* * * "

Thus, by express words, the tax there imposed is not a property tax but is a license tax falling in the category of excise taxes. California has a statute quite similar to the Arizona constitutional provision. That statute was construed in Ingels v. Riley, 5 Cal. 2d. 154, 53 P. 2d. 939, 942, 103 A.L.R. 1, note page 19. The decision was cited with approval in Stults Eagle Drug Co. v. Luke, supra, and quoted from as follows:

"An excise and a property tax, when the two approach each other, ordinarily may be distinguished by the respective methods adopted of laying them and fixing their amounts. If a tax is imposed directly by the legislature without assessment, and its sum is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer, irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise; but if the tax is computed upon a valuation of property, and assessed by assessors either where it is situated or at the owner's domicile, although privileges may be included in the valuation, it is considered a property tax.'
Society for Savings v. Coite, 6 Wall. 594, 18 L. Ed. 897."

In sum, it is the opinion of the Attorney General (1) that "person paying property tax" as used in A.R.S. § 9-102 includes persons paying a real property tax or a personal property tax, or both; and (2) that the quoted words do not include a lieu tax paid on automobiles.

Very truly yours,

WADE CHURCH
The Attorney General

LESLIE C. HARDY
Chief Assistant
Attorney General

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