

December 7, 1960
61-3-L

Mr. Lloyd D. Brumage
Deputy Pinal County Attorney
Florence, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Brumage:

The Attorney General acknowledges receipt of your letter of December 5, 1960, with respect to an interpretation of A.R.S. § 13-250 in respect of the change of terminology in that statute by the 1956 Code.

Prior to the enactment of the 1956 Code, one who with malice aforethought assaults another with a deadly weapon while serving a life sentence was " * * * punishable by death." The last quoted terminology was changed in 1956 to read: " * * * is subject to punishment by death."

The writer of this letter was the Chief Counsel to the Arizona Code Commission during the major portion of the time the statutory laws were revised which became the 1956 Code. The change in the terminology, as indicated by your letter and as indicated by this letter, either occurred in the revision by the revision staff or occurred in one of the Houses of the Legislature in the enactment of the 1956 Code. Our research does not disclose where the change occurred but we must accept the fact that a change was made which is now law.

The Attorney General concludes, therefore, that as A.R.S. §13-250 now reads, it is optional for a jury, under circumstances indicated, which convicts a defendant who violates A.R.S. §13-250 to assess a punishment of death, or of life imprisonment, or for an assault with a deadly weapon as that defense is defined and punished by A.R.S. §13-249.

An incongruity appears in this conclusion in view of the fact that a defendant charged under A.R.S. § 13-250 was already serving a sentence of life imprisonment. However, the additional sentence of imprisonment for violation of A.R.S. § 13-250 could operate to increase the punishment of the defendant in the event he applied for commutation, parole or pardon.

Very truly yours,

LESLIE C. HARDY
Chief Assistant
Attorney General

LCH-et/dd