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February 17, 1961

Honorable Paul Fannin
Governor
State of Arizona
Capitol Building
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Governor Fannin:

In reply to your letter of January 27, 1961 requesting our opinion as to where the responsibility of the Planning and Building Commission ends and the responsibility of the Department of Public Buildings and Maintenance starts.

The jurisdiction of the Superintendent of Public Buildings Maintenance is set forth in A.R.S. §41-972, which was enacted in 1960. The responsibility of the Superintendent is for the maintenance, alteration and renovation of the existing Capitol buildings and grounds, including the House and Senate wings thereto and various other state offices and buildings

In A.R.S. §41-571.11 the Planning and Building Commission is charged with the construction or erection of new buildings and the alteration, enlargement, rehabilitation or repair of existing buildings used or to be used by the state or any state agency which are specifically authorized by the legislature as a project or improvement to be undertaken by the Commission.

It is further provided in A.R.S. §41-571.14 (B) that programs, projects or improvements by any state agency shall be exempt from the provisions of the article pertaining to planning and building if it appears from the estimates of cost made by the state agency that the total cost of the proposed improvement or project will not exceed \$10,000.00.

The \$10,000.00 exemption would not appear to place a limitation on the jurisdiction of the Superintendent of Public Buildings Maintenance. There was no provision made in the statute which created this department for the \$10,000.00 limitation or any other limitation to apply. If a limitation was intended it could easily have been provided for by the legislature and should not be read into the statute unless manifestly intended.

"* * * Courts cannot read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself. A departure from this rule is to alter the statute and legislate, and not to interpret." State v. Anway, 87, Ariz. 206.

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Further, the powers and duties of the Superintendent of Public Buildings Maintenance as set forth in A.R.S. §41-973 would make it appear that no limitation of authority was intended, especially the provisions of paragraph (B) which gives the Superintendent authority to establish rules and regulations for the operation and maintenance of the buildings within his jurisdiction.

"§41-973, Powers and duties of superintendent

- A. The superintendent of public buildings maintenance shall:
1. Employ engineers and other maintenance personnel as required, including a chief custodian for the state office building in Tucson.
 2. Fix the compensation, subject to legislative appropriation available therefor, and determine hours of duty and assignment of personnel.
- B. The superintendent may establish rules and regulations for the operation and maintenance of capitol buildings and grounds and any space used by a state department or agency as provided in §41-972. Added Laws 1960, Ch. 97, §2. "Effective March 25, 1960."

To the extent that the responsibility of the Planning and Building Commission and the Department of Public Buildings Maintenance conflicts, then, A.R.S. §41-972, being the later statute, controls.

"It is the universal rule of statutory construction that when a subsequent act of the legislature is in conflict with a prior act, it, by implication, repeals so much of the prior act as is in conflict with the latter law." City of Bisbee v. Cochise County, 44, Ariz. 233.

Of course, if the later and former statute can be construed to give both effect, then such a construction should be applied. This could be done in the present situation by limiting the exclusive responsibility of the Superintendent of Public Buildings Maintenance to only those buildings and office spaces enumerated in A.R.S. §41-972. As to all other buildings and offices, the Planning and Building Commission is responsible for alteration, enlargement, rehabilitation or repair when specifically authorized by the legislature as a project or improvement to be undertaken by the Commission and the estimates show that the project will exceed \$10,000.00.

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The Superintendent of Public Buildings Maintenance by virtue of A.R.S. §41-973 has exclusive jurisdiction as to the allocation of space for the buildings specified in A.R.S. §41-972. For buildings not specified therein, the Superintendent would have authority to allocate space only if the building was limited to housing state agencies indicated in A.R.S. §41-972. Beyond this, the statutes are not clear as to the authority for allocating space.

Therefore, it is the opinion of the Attorney General that the Department of Public Buildings Maintenance has exclusive responsibility for the maintenance, alteration, renovation and allocation of space for the buildings and offices enumerated in A.R.S. §41-972, and that the Planning and Building Commission's responsibility for buildings and offices enumerated in A.R.S. §41-973, and that the Planning and Building Commission's responsibility for buildings and offices enumerated in A.R.S. §41-972 terminates with the construction or erection of the buildings indicated in this statute. To the extent that it is inconsistent, this opinion overrules Attorney General Letter Opinion No. 60-57-L.

Sincerely,

ROBERT W. PICKRELL
Attorney General

ALVIN LARSON
Assistant Attorney General

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