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February 9, 1962

LETTER OPINION NO. 62-18-L

REQUESTED BY: JUSTIN HERMAN, Director
State Highway Department

OPINION BY: JOHN T. AMEY

QUESTION: May the State Highway Department legally expend funds from its appropriation for archaeological and paleontological salvage?

CONCLUSION: No.

REASONING:

However laudable the reasons for expenditure of such funds may be, it is our opinion that such expenditure cannot legally be made from the Highway Department appropriation without specific legislative authorization for the reason that archaeological and paleontological salvage do not constitute proper Highway purposes.

The current Highway appropriation, without specification or delineation of the expenditure of archaeological or paleontological funds, contains the following concluding paragraph:

"Any balance and collections in the State Highway Fund in excess of the specific amounts set forth above for the purposes designated, are hereby appropriated exclusively for construction of state highways, including (1) National system of Inter-State Highways within Arizona, (2) state primary system, (3) state secondary system, (4) county secondary (or primary) system, (5) urban area routes; the acquisition of right-of-way; the cost of field administration, field engineering and engineering on construction projects." (underlining ours)

The above language, without more, would seem to preclude the expenditure of money from the Highway appropriation for such salvaging activities. However, other limitations exist. Since the following language constitutes an excellent statement, it is quoted without paraphrasing:

"Public funds raised, acquired, or appropriated for general or

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"specific highway purposes cannot be legally expended or disbursed for another purpose, and they must be used in the manner provided by the constitution or statutes, or designated by the voters. This rule has been applied to highway funds derived from various sources, including general or special property taxes, gasoline or motor vehicle license taxes, proceeds of bond issues, or funds allocated by the state to political subdivisions."

40 C.J.S. Highways, Sec. 176, Page 17.

Some typical examples of expenditures which courts have held to properly lie within Highway purposes are as follows: (1) machinery, (2) bridge construction, and (3) safety devices to promote the efficient movement of traffic.

Additionally, A.R.S. Sections 41-771 through 11-776, while designed to preserve these artifacts and their locations do not permit their excavation by the expenditure of highway moneys.

In view of the above referenced authorities, it is our opinion that, since the salvage of archaeological or paleontological artifacts is not appropriately connected with and necessarily incidental to a legitimate Highway purpose, specific legislative authorization is required before funds appropriated for highway purposes may be expended.

ROBERT W. PICKRELL
The Attorney General

JOHN T. AMEY
Assistant Attorney General

JTA: bg