

Opinion No. 63-8-L
R-74
December 17, 1962

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

REQUESTED BY: THE HONORABLE F. A. "JAKE" HIGGINS and
THE HONORABLE ELMER T. BURSON
House of Representatives

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Is A.R.S. § 5-306.05(H) as amended an
impairment of contract obligation con-
trary to Art. 2, Sec. 25, of the Arizona
Constitution?

ANSWER: No.

Article 2, Section 25 of the Arizona Constitution states
that:

"Sec. 25 Bills of attainder; ex-post-facto laws;
impairment of contract obligations

Section 25. No bill of attainder, ex-post-facto law,
or law impairing the obligation of a contract, shall
ever be enacted."

A.R.S. Sec. 5-306.05(G) as enacted in 1959 and as continued
in the amendment of 1962 reads as follows:

"G. Every certificate of number awarded pursuant
to this article shall continue in full force and effect
for a period of three years unless sooner terminated
or discontinued in accordance with the provisions of
this article. Certificates of number may be renewed by
the owner in the same manner provided for in the initial
securing of the same."

A.R.S. Sec. 5-306.05(H) enacted in 1959 states:

"H. The motor vehicle division shall fix a day and
month of the year on which certificates of number due
to expire during the calendar year shall lapse and no
longer be of any force and effect unless renewed pur-
suant to this article."

Subsection H was amended in 1962 to read as follows:

"H. All certificates of number shall expire on July 1, 1962, and every three years thereafter. All certificates due to expire or that have expired shall be renewed before August 1 following the day of expiration."

Certificates of number issued in 1959 were due to expire in 1962, and those issued in 1960 and 1961 were due to expire in 1963 and 1964 respectively. Subsection G states that the certificate may be sooner terminated in accordance with the provisions of the article. Subsection H was amended to terminate every certificate previously issued on July 1, 1962. Consequently those individuals who obtained their certificates in 1960 or 1961 had their certificates terminated earlier than they had reason to expect.

When a certificate of number is acquired for a particular watercraft and when the other conditions required in A.R.S. §5-306.05 as amended are fulfilled the certificate holder is permitted to use the particular watercraft on designated waters of the state. The certificate holder has a license to use said watercraft in the manner allowed.

At 33 Am. Jur. Licenses Sec. 21 the statement is made that:

". . . A license itself is not a contract between the sovereignty and the licensee, and is not property in any constitutional sense. It does not confer a vested, permanent or absolute right, but only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed. Free latitude is reserved by the governmental authority to impose new or additional burdens on the licensee. . . ."

New and additional burdens were placed upon these licensees since their original \$3.00 payment did not cover three years. The manifest purpose of the amendment was to provide a simpler and cheaper method of registration of boats by causing an expiration date to fall due every three years on the same day for every license rather than to fall due every year. In order to

inaugurate such a plan, previously issued licenses had to be terminated earlier than originally provided. True, a credit could have been allowed licensees upon the fee required on 1960 and 1961 licenses when obtaining their new licenses. But the Legislature did not so provide. Indeed such a credit would not provide for the individual who intended to use his original license for the three year period only. This individual is compelled to obtain a new license for another three year period to take advantage of the three years of intended use. No pro-rating is allowed. Under Subsection H as amended a license obtained after July 1, 1962, and before July 1, 1965, will expire on July 1, 1965, even when the new license is obtained one month before July 1, 1965. The additional burdens are minimal and are the kind of additional burdens that may be reasonably imposed on police power licensees. Heslep v. State Highway Department of South Carolina, 171 S.E. 913; State v. Zimmerman, 196 N.W. 852 (Wis. 1928).

In Heslep v. State Highway Department of South Carolina, 171 S.E. 913, the registration of automobiles was required every year. The registration expiration date fell on December 31st of each year. On May 22, 1933, a law went into effect which provided that the expiration date would fall on October 31st. The plaintiff had paid a \$24.00 registration fee on his Packard and he had paid an \$11.00 six-months' registration fee on his Auburn. He complained there was a contract between him and the state that was impaired by the subsequent law. The Supreme Court of South Carolina held that no contract was made between the state and the licensee. Particular emphasis was placed on the fact that the licensee was not a tax revenue raising measure but a fee imposed to meet the cost of administering a law enacted as a police measure. A pre-rated credit was allowed on a registration fee that was paid to cover a whole year. No credit, however, was allowed on any six months' registration fee.

In State v. Zimmerman, 196 N.W. 848, 852 (Wis. 1928), the above argument was also made.

"It is argued that section 5 of chapter 320 is invalid because, on July 1, 1923, it required a re-registration of the vehicles specified in "paragraphs (c), (d), (e) and (f) of subsection 4 of section 85.04. This argument is based on the claim that it

Opinion No. 63-8-L
R-74
December 17, 1962
Page - 4 -

violates the obligation of contracts; that where a license was issued at the beginning of 1923 the state in effect entered into a contract with the person to whom the license was issued; that it was effective for the whole of the year 1923. The law seems to be otherwise. As to a privilege, quasi revenue, or police measure, the state does not enter into a contractual relation with the person upon whom the tax is imposed. It may recall such privilege at any time it sees fit, and impose new and additional burdens to begin at a specified time. . . . (Emphasis added).

The reason for the rule that the imposition of license privilege or revenue tax on property does not involve a contractual relation is that there need be no assent or agreement on the part of the person or property upon whom the tax is imposed to pay any tax. The state by virtue of its sovereign power at its own will imposes the tax. It is not required to ask the owner of the property to agree to it. There is therefore no element of a contract in its imposition or collection. Cooley on Taxation (3 Ed.) 17."

The fee for the identification number is clearly not a revenue tax. See the distinction between a fee and tax revenue measure drawn in Stewart v. Verde River Irr. and Power Dist., 49 Ariz. 531, 544, 68 P.2d 329. The identification number is required in order to enforce the various police measures enacted by A.R.S. § 5-301 through 315 for the purpose of protecting and guarding the health and safety of the boat users of Arizona. A.R.S. § 5-314. There is no impairment of a contract obligation outlawed by Art. 2, Sec. 25 of the Arizona Constitution.

Robert W. Pickrell
ROBERT W. PICKRELL
The Attorney General

RWP:WOH:ls:vbk