

May 19, 1959

Mr. Joel H. Baldwin
County Assessor
Yavapai County
Prescott, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Baldwin:

This correspondence is in regard to your letter of May 12, 1959, requesting our observation in the W. J. Henson matter as it pertains to assessment of personal property by two or more counties.

Arizona Revised Statutes § 42-202 provides:

"This title shall not be construed to require or permit double taxation.* * *"

Arizona Revised Statutes § 42-603(B) provides:

"Transient property used in business or commerce within the state shall be assessed where found."

The case of Packard Contracting Co. v. Roberts, 70 Ariz. 411, 222 P.2d 791, would seem to be exactly in point with the W. J. Henson matter. In that case, the defendant was engaged in road construction work having its bases of operation located in Cochise County but certain machinery was moved to Yuma County to be used on a job. The County Assessor of Yuma County levied an assessment on the machinery and subsequent thereto, Cochise County levied an assessment. The defendant paid the Cochise County assessment but refused to pay the assessment of Yuma County. In holding the defendant accountable for the Yuma County assessment the court said:

"* * * § 73-1820, supra, (now A.R.S. § 42-601) orders the county assessor to assess personal property throughout the year whenever it is discovered. Furthermore, § 73-1833, ACA 1939, (now A.R.S. § 42-603) authorized taxation of transient property used in business or commerce within the state wherever found.* * *"

"We hold that Cochise County had no valid or existing lien upon the property with which we are here concerned at the time that the Yuma County assessment was made and completed. Therefore the defendant in paying the tax to Cochise County was a mere volunteer. Its duty was to pay the tax where it was first assessed and levied. For this reason the general

Mr. Joel H. Baldwin

Page 2.

statutory prohibition against double taxation in § 73-201,
ACA 1939, (now A.R.S. § 42-202) is not applicable.
(Emphasis ours)

It is therefore the opinion of the Attorney General that both counties had the power to levy an assessment against W. J. Henson, but only the first assessment is valid, whether it be the home base county where the property is ordinarily kept or in the county where the property was being temporarily used depending on which county first ascertained the amount of the tax due and assessed the tax.

Very truly yours,

WADE CHURCH
The Attorney General

FLOYD P. NEITERT
Assistant Attorney General

FFN:edw