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Opinion No. 63-80-L
R-263
June 20, 1963

REQUESTED BY: DENNIS MCCARTHY
State Parks Director

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: May monies in the State Lake Improvement Fund credited to a county, under the Lake Improvement Act, A.R.S. § 5-315, be committed and used by counties to retire revenue bonds that are to be "floated" by counties to provide recreational facilities and improvements?

ANSWER: No.

Monies that comprise the State Lake Improvement Fund are State monies. There is no provision in the pertinent sections of the Arizona Code, excluding Title 5, which permits State monies to be used to retire county revenue bonds without ultimate reimbursement from the county to the State. See A.R.S. § 35-429.

If there is such a provision it must be found within Title 5, wherein the Director of the State Parks Board is permitted to expend monies on lakeshore improvements.

"§ 5-315. Lake improvement fund; administration

"A. There shall be a state lake improvement fund and monies therein shall be credited to the account of each county in the same proportion that the number of registered watercraft in the county bears to the number of registered watercraft in the state determined as of January 1 for each year. Such monies shall be used only for the improvement of lakes where boats are permitted and shall be limited to the following:

1. Public launching ramps.
2. Public piers, marinas, or marine stadia.
3. Public toilets and sanitation facilities.
4. Public picnic tables and facilities.
5. Public parking areas.
6. Lake construction or improvement.

7. Marking buoys or other facilities to aid enforcement of this title.

"B. The state lake improvement fund shall be administered by the director of the state parks board. Plans for projects involving expenditure of monies from such fund shall be submitted to the director by the board of supervisors of any county to whose account monies have been credited. The director shall examine such plans to determine if they come within those projects authorized and to determine if there are sufficient monies available for such project. If he finds the projects qualify and monies are available, he shall approve such plans and disburse such monies as claims against the state.

"C. Counties may expend monies deposited to their credit in the lake improvement fund in any county on projects that will benefit residents of the credited county, and priority shall be given to projects where matching funds are made available from any agency of the federal government or any agency of the state, county or school district or from any private individual or agency. Added Laws 1960, Ch. 130, § 2, as amended Laws 1962, Ch. 21, §2." (Emphasis supplied)

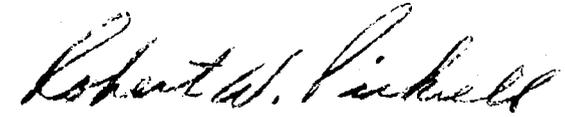
The items enumerated in subsection A do not include an authorization permitting credited monies to be used for the retirement of county revenue bonds.

The quoted section amends the previous section, A.R.S. § 5-315 (Ch. 130, Session Laws 1960), which required the county to provide an equivalent amount on any expenditure made out of the State Lake Improvement Fund. The new section quoted above limits this requirement to subsection C which commands the Director to give priority in the use of the credit to a project for which other monies have been made available by other agencies including the county. Clearly these considerations show that the legislature intended to stimulate the counties to make monies available from their own sources and did not intend to make the counties depend heavily on fuel tax and license fee revenue derived from boat owners alone. See also A.R.S. §§ 11-937

Opinion No. 63-80-L
R-263
June 20, 1963
Page 3

and §42-306(A) which empowers counties to levy taxes for the purpose of park improvements.

Advantages may be gained by permitting the counties to capitalize their State Lake Improvement Fund credit in order to make lump sums available for authorized projects. Advantages may be gained by prohibiting the counties from capitalizing their State Lake Improvement Fund credit in order to stimulate the counties to make funds available that are in addition to the credit, for the Director may approve projects that the credit may not cover alone so long as the credit and other available monies are sufficient. The Legislature has determined that the latter advantages are more desirable.



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