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Opinion No. 64-15-L
R-58
April 6, 1964

REQUESTED BY: JOHN E. SMITH, CHAIRMAN
Arizona Power Authority

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Are the Arizona Power Authority Commissioners entitled to reimbursement for their necessary travel expenses as established by §30-106(B), A.R.S., or are they subject to the limitations of §38-624, A.R.S. ?

ANSWER: See body of opinion.

The Power Authority Commissioners are not subject to the limitations set forth in § 38-624, Arizona Revised Statutes, 1956.

Section 30-106, Arizona Revised Statutes prescribes in pertinent part as follows:

"§ 30-106. Organization of commission; compensation; oath; bond.

* * *

"(B) Members of the commission shall receive a per diem of fifteen dollars for time actually spent in the service of the authority, and shall receive necessary traveling expenses, but the total compensation shall not exceed three thousand dollars per annum, exclusive of allowable expenses"

Section 38-621, Arizona Revised Statutes, provides as follows:

"§ 38-621. Persons eligible to receive travel expenses.

"The provisions of this article (Travel expenses for public officers and employees) shall apply to every public officer, deputy

or employee of the state, or of any department, institution or agency thereof, and to a member of any board, commission or other agency of the state when traveling on necessary public business away from his designated post of duty and when issued a proper travel order." (Parenthetical material added)

For many years prior to 1949, the mileage and traveling expenses allowed to public officers in the state were set forth in § 12-713, Arizona Code Annotated, 1939, and preceding legislation which carried substantially the same language. Specific legislation relating to the Arizona Power Authority and in particular the provisions relating to traveling expenses for members of the Power Authority Commission was passed in 1944 (Sections 9-11, Chapter 32, Laws 1944, Second Special Session).

It is a general rule of statutory construction that where special provisions of a statute deal with the same subject as a general statute, the special provisions prevail. Moeur v. Chiricahua Ranches Co., (1936) 48 Ariz. 226, 61 P.2d 163; State v. Lumbermen's Indemnity Exchange, (1922) 24 Ariz. 306, 209 P.294; Indian Fred v. State, (1929) 36 Ariz. 48, 282 P. 390; State v. Dickens, (1947) 66 Ariz. 86, 183 P.2d 148. Hence, at this point in our law, to-wit, from 1944 to 1949, the special legislation creating the Arizona Power Authority together with its provisions relating to necessary traveling expenses of the commissioners was in no way delimited by § 12-713, Arizona Code Annotated, 1939, since the special enactment controlled the general statute covering the subject of travel expenses.

Chapter 26, Section 1, Laws 1949, for the first time sought to encompass, by general legislation, all public officers and members of any board or commission of the state within the restrictions as to amount of expenses allowable to such officers and commission members. The act provided in subsection (f):

"Who may travel. The provisions of this section shall apply to any public officer, deputy or employee of the state or of any department, institution, or agency thereof and to any member of any board, commission or other agency of the state

when traveling on necessary public business when issued a proper travel order."

Without more, even the broadening of § 12-713, Arizona Code Annotated, 1939, might not have affected the Power Authority special legislation relating to traveling expenses, for, as was noted in the analogous case of Favour v. Frohmiller, (1934) 44 Ariz. 286 at page 291, 36 P.2d 576:

"While a special act may be impliedly repealed by a general one, if that be the legislative intention, the presumption is to the contrary. To overcome this presumption the legislative intent must be plainly, clearly and unequivocally manifest."

One might therefor say that since the 1949 act was general in nature, it had no effect whatsoever on the special legislation creating and prescribing the law relating to the Arizona Power Authority. However, a close reading of Section 2, Chapter 26, Laws of 1949, indicates a contrary legislative intent:

"Sec. 2. REPEAL. Any law or parts of law in conflict herewith are hereby repealed. Section 12-715, Arizona Code of 1939, as amended, is hereby repealed. Section 12-716, Arizona Code of 1939, as amended, is hereby repealed."

It would seem clear that from and after the enactment of Chapter 26, Laws of 1949, up to January 9, 1956, the travel expense provisions for the Arizona Power Authority Commissioners were in conflict with the general provisions of the statute concerning travel expenses for other public officers and were by specific legislative intent repealed, thus leaving the Power Authority Commissioners subject to the restrictions set forth in Chapter 26, Laws of 1949. (Later carried forward, in part, as Section 38-624, Arizona Revised Statutes, 1956, infra.)

However, the statutes of the State of Arizona were completely revised by legislative enactment effective 12:00 o'clock noon, January 9, 1956, as specified by Section 1-102, Arizona Revised Statutes, 1956. Effective on that date and at that time

each and all of the laws and statutes as contained in the revised code were specifically enacted by the Legislature, Section 1-103, Arizona Revised Statutes, 1956.

It will be observed that the exact language contained in Section 75-911, Arizona Code Annotated, 1939, 1952 Supplement, relating to the travel expense of the Commissioners, was carried forward into the 1956 Revised Statutes, to the effect that the Commissioners shall receive, in addition to other compensation, "necessary traveling expenses." See Section 30-106, Arizona Revised Statutes, 1956, *supra*.

Our Supreme Court in the case of Southern Pacific Company v. Gila County, (1941), 56 Ariz. 499, 109 P.2d 610, held that all sections of a revised code are entirely new measures and not a mere carrying forward of some previous legislation and depend for validity solely on the action of the Legislature at that time and not on previous legislation. The Court further held that the provisions of statutes as re-enacted in a revised code are of equal validity.

Therefore, again by specific legislative enactment and without reference to any limitations, the Legislature of the State of Arizona granted to the members of such commission their necessary traveling expenses. As noted in the above citations the special provisions of a statute will prevail over a general statute in such a situation.

In view of the foregoing reasons, it is the opinion of the Department of Law that the members of the Arizona Power Authority Commission should be reimbursed for their necessary traveling expenses and they are not subject to the limitations as set forth in Section 38-624, Arizona Revised Statutes, 1956, which provides in part as follows:

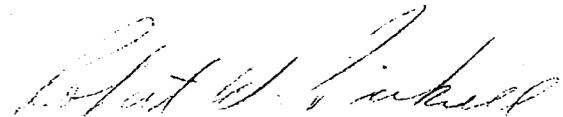
"§38-624. SUBSISTENCE.

"A. Reimbursement for subsistence may be claimed for actual and necessary expenses not to exceed twelve dollars for travel within the state for

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each twenty-four hour day for each person.

"B. Reimbursement for subsistence may be claimed for actual and necessary expenses not to exceed fifteen dollars for travel without the state, for each twenty-four day for each person."



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The Attorney General

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