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STATE CAPITOL
PHOENIX, ARIZONA

August 17, 1965

DEPARTMENT OF LAW LETTER OPINION NO. 65-32-L (R-79)

REQUESTED BY: D. J. HASTINGS, Supervisor
Financial Responsibility Branch,
Motor Vehicle Division,
State Highway Department

QUESTION: [1] May the security deposit pursuant to
A.R.S. §28-1147 be applied toward an un-
satisfied judgment without agreement or
release by the depositor?

[2] May such application be made by
the Financial Responsibility Branch upon
presentation of a certified copy of an
unsatisfied judgment, against the person
on whose behalf the deposit was made,
arising out of the accident?

[3] May the state issue warrants on
security deposited under A.R.S. §§28-1142-
1147, by application of a judgment creditor
pursuant to an unsatisfied judgment arising
out of the accident?

ANSWER: See body of Opinion.

QUESTION [1] A.R.S. §28-1147 provides:

"§28-1147. Custody, disposition and return of
security.

Security deposited in compliance with the require-
ments of §§28-1142 through 28-1147 shall be placed
by the superintendent in the custody of the state

treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of the accident, or within one year after the date of the deposit of any security under paragraph 3 of §28-1144 or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of the accident. The deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the superintendent has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged agreement, in accordance with paragraph 4, subsection A of §28-1143, whenever, after the expiration of one year from the date of the accident, or within one year after the date of deposit of any security under paragraph 3 of §28-1144, the superintendent is given reasonable evidence that there is no action pending and no judgment rendered in the action left unpaid."

There are no express provisions which indicate agreement or release by the depositor is essential to the application of the deposit to the payment of a judgment. The only agreement or release of the depositor provided for by the statute is with regard to the application of the deposit to settlement of claims arising out of the accident. Therefore, it would appear that applying the deposit toward an unsatisfied judgment does not require the depositor's release or agreement. This construction is fortified by the obvious reason for the deposit being security to which persons damaged or injured in the accident may look for satisfaction.

QUESTIONS [2] and [3] As noted above, §28-1147 is applicable only to the payment of a judgment rendered

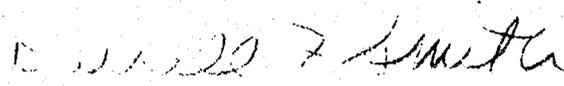
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against the person or persons on whose behalf the deposit was made arising out of the accident in question. The procedure whereby such "payment of a judgment" is made is reflected in A.R.S. §28-1174 which governs disposition of the proof of financial responsibility security deposit. Subsection B provides:

"B. The deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against the person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of a person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle [after the deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless the attachment or execution shall arise out of a suit for damages as aforesaid."

Therefore, though A.R.S. §28-1147 makes no provision for the procedure whereby judgment(s) arising out of the accident are to be paid, the deposit is intended as a protection for specific parties. On the other hand, A.R.S. §28-1174 provides a security for the general public, and provides that a judgment and execution or attachment is required before payment from the deposit. This section seems to be pertinent as indicated procedure for payment of claims against security deposits held under A.R.S. §28-1147, to-wit: by attachment or execution after judgment, and in our opinion is the procedure to be used in paying out security deposits.

Respectfully submitted,


DARRELL F. SMITH
The Attorney General

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