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PHOENIX, ARIZONA

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DEPARTMENT OF LAW LETTER OPINION NO. 67-7-L (R-43)

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REQUESTED BY: DENNIS McCARTHY, Director  
Arizona State Parks

- QUESTIONS:
1. When do the provisions of House Bill 239, Ch. 116, 27th Legislature, Second Regular Session, relating to the State Lake Improvement Fund become effective?
  2. Do monies in the State Lake Improvement Fund credited to the accounts of the State's fourteen counties prior to the effective date of House Bill 239, Ch. 116, 27th Legislature, Second Regular Session, still remain credited to the counties until expended by them for qualifying projects?
  3. Are all monies in the State Lake Improvement Fund upon the effective date of House Bill 239, Ch. 116, 27th Legislature, Second Regular Session, now considered to be "in one General Fund" to be expended in accordance with Section 5-315 Arizona Revised Statutes as amended?

- ANSWERS:
1. November 29, 1966.
  2. No.
  3. Yes.

QUESTION 1: The effective date of House Bill 239, Chapter 116, 27th Legislature, Second Regular Session, was considered in Department of Law Opinion 67-4 wherein the Attorney General concluded,

"House Bill 239, Chapter 116, of the 27th Legislature relating to the registration and imposition of license tax on watercraft had a conditional

enactment clause which provided that the act would not become effective until such time as the Constitution of Arizona was amended by vote of the people to impose a license tax in lieu of an ad valorem property tax on watercraft registered for operation in Arizona. Under the provisions of Article 4, part 1, § 1(5) the license tax amendment to the Constitution became effective upon the proclamation of the Governor on November 29, 1966. Accordingly, November 29, 1966, is the effective date of House Bill 239, Chapter 116, of the 27th Legislature."

QUESTIONS 2-3: To render a dispositive answer to these questions, reference must briefly be had to the legislative history of the State Lake Improvement Fund. In 1958 legislation was enacted regulating the use of watercraft. Laws 1958, Chapter 100, A.R.S. § 5-301 through § 5-313. In 1959, A.R.S. §§ 5-306.05 through 5-306.07, requiring registration and identification numbers, were added. However, no provision was enacted controlling the distribution of the fees collected in this registration. Laws 1959, Ch. 146, § 1, Subdivision 80.1. Laws 1960, Substitute House Bill No. 20, Ch. 130, amended Title 5, Ch. 3, Article 1, A.R.S. by adding §§ 5-314 and 5-315. These two sections, A.R.S. §§ 5-314 and 5-315, provided for the original State Lake Improvement Fund and its administration. In pertinent part A.R.S. § 5-314 then provided:

"The monies in the State Lake Improvement Fund resulting from fees paid into the watercraft license fund shall be apportioned for the use of each county based on its proportionate share of fees collected by the Motor Vehicle Division pursuant to section 5-306.05."

The administration of this fund was placed by A.R.S. § 5-315(B) in the Motor Vehicle Division. Laws 1962, House Bill No. 191, Ch. 21, amended A.R.S. § 5-315 to read as follows:

"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

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agency of the state, county or school district  
or from any private individual or agency."

As indicated in your letter, in compliance with these statutes,  
a proportionate share of the monies received by the fund were credited  
to the accounts of the State's fourteen counties.

In answer to a question presented to this office by Dennis  
McCarthy, Director of State Parks Board, in Opinion No. 64-20, the  
following conclusion was reached:

"A.R.S. § 35-321 defines state monies as all  
monies in the treasury of the state or coming  
lawfully in the possession or custody of the  
state treasurer. As set forth in the statutes  
A.R.S. § 5-314 and A.R.S. § 5-315(A), monies  
in the State Lake Improvement Fund are placed  
in the custody of the State Treasurer to hold  
for the use of the various counties. Title to  
monies in the fund vests in the various counties  
subject to the terms of the said statutes."

With this history in mind, the legislative scheme for the  
collection of monies and administration of the State Lake Improvement  
Fund, as articulated in Laws 1966, Ch. 116, 27th Legislature, become  
easily understandable. This latest amendment changes the basic struc-  
ture of the fund. The above-quoted portion of A.R.S. § 5-314 as  
originally adopted has been amended by deletion of the requirement  
that funds be proportionally apportioned to the counties. A.R.S.  
§ 5-315, as amended by Laws 1962, Ch. 21, has been amended to delete  
reference to this accounting procedure in Subsections (B) and (C).

In essence, then, the Legislature has, by amendment, repealed  
the apportionment scheme of distribution and has added a distributional  
program structured only by the seven authorized projects listed in  
A.R.S. § 5-315(A) and the availability of funds. The effect of such  
an amendment by repeal is quite aptly put in 1 Sutherland Statutory  
Construction 439:

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"In accordance with the rule applicable to repealing acts, the general rule against the retrospective construction of statutes does not apply to those provisions of the original act repealed by the amendment, whether affecting substantive or procedural rights. In the absence of a saving clause or statute, or some other clear indication that the legislative intent is to the contrary, all rights dependent on the repealed provisions of the original act which had not vested or been prosecuted to completion prior to the enactment of the amendment are destroyed." (Emphasis added).

As the premises of the questions indicate that, prior to the adoption of Laws 1966, Ch. 116, monies which were credited to the accounts of the several counties had not been withdrawn by the counties, the right to a proportionate share of these monies had been destroyed. However, by this we do not mean to infer that counties which had submitted plans and had received approval may not, after November 29, 1966, obtain monies from the State Lake Improvement Fund based on these plans if monies are available. The conclusion we reach affects the system of proportionate allotments only. Monies on hand as of November 29, 1966, are no longer credited to the accounts of the counties but rather are credited to the State Lake Improvement Fund, to be distributed in accordance with the presently existing format of A.R.S. §§ 5-314 and 5-315.

Respectfully submitted,

  
DARRELL F. SMITH  
The Attorney General

DFS:cah