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January 29, 1954
Letter Opinion
No. 54-20-L

Mr. John M. Scott, Vice-Chairman
Arizona Highway Commission
Show Low, Arizona

Mr. Fred D. Schemmer, Member
Arizona Highway Commission
Prescott, Arizona

Re: Construction and maintenance of motor vehicle inspection stations.

Questions: 1. Whether the manner in which the inspection stations are maintained by the Highway Department throughout the State is a diversion of funds contrary to Article 9, Section 14 of the Arizona Constitution.

2. Whether the use of highway funds for the construction of the proposed inspection station on Highway 66, located at either Sanders or Lupton would constitute a diversion of funds under the aforementioned constitutional provision.

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Gentlemen:

You orally requested an opinion from this office as to whether or not there presently was any diversion of highway funds as a result of the manner in which the motor vehicle inspection stations throughout the state were being operated. You have further requested our opinion as to whether use of highway funds for the construction of the proposed inspection station to be located at either Lupton or Sanders would constitute a diversion of funds under the Arizona Constitution.

Article 9, Section 14 of the Arizona Constitution reads as follows:

> "§14 (USE OF HIGHWAY TAXES.)-No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion

> of such vehicles, shall be expended for other than cost of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, cost of construction, reconstruction, maintenance and repair of public highways and bridges, county, city and town roads and streets, and for distribution to counties, incorporated cities and towns in an amount not less than that as provided by law on July 1, 1952, to be used by them only for the purposes permitted by law on that date, expense of state enforcement of traffic laws, and payment of costs for publication and distribution of Arizona Highway Magazine, provided, however, that this section shall not apply to moneys derived from the automobile license tax imposed under section 11 of Article 9 of the Constitution of Arizona."

Before entering into a discussion of the first question set forth above, it might be well to point out that the question as to whether an inspection station may be erected for the joint use of the Highway Department and the Department of Agriculture and Horticulture where the source of all the funds for the construction of such a station is the Highway Fund, has been answered in a letter opinion dated December 22, 1953, addressed to the Honorable Robert W. Prochnow and written by Mr. James E. Hunter, Assistant to the Attorney General. We quote with full approval a portion of said opinion:

> "The agricultural inspection stations are established to prevent the introduction of any crop pest or disease into the State of Arizona. It is apparent from reading the foregoing Constitutional Amendment that the moneys derived from the sources set forth in the Amendment may not be used for the prevention of the introduction of any crop pest or disease into the State of Arizona, but may be used only for those specific purposes set forth in the Amendment. Nowhere in this Amendment is there any category of allowed expenditures which could be interpreted to allow the expenditure of the listed highway taxes for such an agricultural purpose."

Mr. Hunter concluded that highway tax money cannot be used to construct an inspection station for use as an agricultural inspection station or to make special provisions to meet the requirements of an agricultural inspection station. However, Mr. Hunter did say that if an inspection station was built for highway purposes only, with no special consideration having been given to the needs of the Department of Agriculture and Horticulture at the time of its construction, it

would be permissible for the Highway Department to consent to share the use of such station with said department providing the latter would agree to pay its share of the added cost of maintaining such a station by virtue of the combination of both departments.

The first question set forth above can best be answered by taking an established station as an example and scrutinizing its make-up so as to see if the funds expended in operating this station are being used solely for the purposes set forth in Article 9, Section 14 of the Arizona Constitution.

The inspection station located at San Simon was completed sometime in July, 1953. The total office space therein amounts to approximately 926 square feet. The Department of Agriculture and Horticulture occupies approximately 453 square feet of this office space, or roughly, 49% of the total office area. This station is only one of many throughout the state, varying in size, where the Motor Vehicle Department and the Department of Agriculture and Horticulture share about equally the facilities. The plans and specifications which were used in the building of the San Simon Inspection station indicate that special consideration was given to the needs of the Arizona Department of Agriculture and Horticulture.

It is the opinion of this office that whenever an arrangement of the nature described above is to continue between the two state departments, there must be a proportionate sharing of the expenses in maintaining and operating such a station, if on no other basis than the amount of area each department occupies.

The plans for the proposed inspection station at Lupton or Sanders are identical with those of the San Simon Station. Thus, approximately one half of the building will be occupied by the Department of Agriculture and Horticulture. There is nothing to prevent the Highway Department and the Department of Agriculture and Horticulture from sharing the facilities of one inspection station if the cost of construction and maintenance are shared in proportion to the amount of space occupied by each.

Therefore, if a joint operation between the two departments is desired at Sanders or Lupton, it is the opinion of this office that this station may not be constructed wholly from the Highway Fund, but an appropriation is necessary from the General Fund to pay the proportionate share of construction and maintenance for the Department of Agriculture and Horticulture.

Yours very truly

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EARL E. WEEKS
Assistant to the
Attorney General

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