

November 3, 1953
Opinion No. 53-138-L

Mr. A. C. Wagner
Deputy Examiner
410 Capitol Annex
Phoenix, Arizona

Re: Whether or not state owned property
is subject to sanitary or improvement
district taxes.

Dear Mr. Wagner:

By way of background in answer to the above question, let us set forth the pertinent taxing status under the Sanitary District Act of 1941, as set forth in Section 68-1018, A.C.A., 1939, as amended:

"68-1018. Tax Levy to Pay Bonds.--(a) The principal of and interest on bonds issued pursuant to this act shall be paid out of revenue derived from an annual tax on the real property within the sanitary district issuing the same, and all such real property shall remain liable to taxes for payment of the bonds and interest until the same are paid in full. (b) The board of directors of a sanitary district shall annually, not less than fifteen (15) days before the first day of the month in which the board of supervisors of the county in which the district is located is required by law to levy county taxes, certify to the board of supervisors the amount necessary to pay the interest on the bonds of the district, and such portion of the principal thereof as will become due, during the ensuing year. The board of supervisors, at the time of levying general county taxes, shall levy and cause to be collected, in the manner prescribed by law for county taxes, a tax upon the real property within the sanitary district, based upon the current assessment roll, sufficient to pay the amount so certified by the board of directors. In the

event the board of directors of any sanitary district fails to certify to the board of supervisors the amount necessary, the board of supervisors shall ascertain the amount which should have been certified, as provided in this section, and shall levy and cause to be collected a tax sufficient to produce that amount." (Emphasis supplied)

Note that the above tax is "an annual tax on the real property within the sanitary district issuing same". It is apparent, therefore, that the tax contemplated under this Section is an ad valorem tax and not an excise tax.

Under Section 2 of Article 9 of the Constitution of Arizona, the following tax exemption is set forth:

"Section 2 (Tax Exemption) There shall be exempt from taxation all federal, state, county, and municipal property * * * (Emphasis supplied)

The above Constitutional Section was construed in case of CITY OF PHOENIX v. ELIAS (1946), 64 Ariz. 95, at page 98. The issue presented by that case was whether the lands of the State were subject to a levy of taxes by the City of Phoenix. The Court disposes of the issue in the following terms:

"* * * The constitution of Arizona expressly provides that the property of the state is not subject to any form of taxation. Sec. 2, Art. 9, Const. of Arizona. So long, therefore, as the land is owned by the state after tax deed is issued it is not subject to taxation for district purposes, and the tax lien for taxes thereon previously existing for those purposes is wiped out. We think, therefore, that so far as such lands are concerned the taxes which had been levied thereon are uncollectible."

The above general proposition of law has also been stated in ARIZONA LAND AND STOCK COMPANY v. A. I. MARKUS (1931), 37 Ariz. 530.

Therefore, it is the opinion of this office that the tax

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described in your letter is an ad valorem tax and, hence, State owned properties are subject to an exemption therefrom.

Very truly yours,

THADDEUS G. BAKER,
Assistant to the
Attorney General

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