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August 14, 1933.

Mr. George K. Rubel,  
Arizona State Highway Dept.,  
Phoenix, Arizona.

Dear Sir:

Pursuant to your oral request for an opinion as to whether or not you should pay the claim of O. S. Stapley Company copy of which you left with me, I advise you as follows:

I would say that the claim of the O. S. Stapley Company is satisfactory with the exception that the company is not entitled to receive from you the Government Processing Tax or the State Privilege Sales Tax. When the Highway Department purchases materials as a consumer, it is not subject to either the Government Processing Tax or the State Privilege Sales Tax and any claim which shows upon its face that such taxes are to be paid by you should be refused. This does not mean that commodities sold to the Arizona Highway Department are exempt from the Privilege Sales Tax, nor does it mean that the seller cannot increase the sale price of his commodities in a sufficient amount to cover the Privilege Sales Tax.

You also requested an opinion as to whether or not the Highway Department should pay the State Sales Tax on the amount of the freight on articles purchased in Phoenix and shipped to Holbrook.

You are advised that you should not pay the State Sales Tax on a freight charge or on the price of the articles sold to the State. The seller, if he so desires, may make the price of the article sold an FOB price at Holbrook but is not entitled to bill you for any part of the Sales Tax.

I enclose herewith copy of the O. S. Stapley invoice which you left with me.

Very truly yours,

Attorney General.

JRM:H

33-372 Assistant Attorney General.