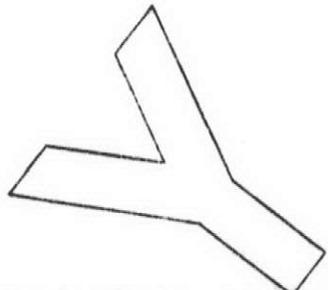


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686

November 13th, 1933.

Mr. William Wisdom,
Tucson,
Arizona.



Dear Mr. Wisdom:

In compliance with the request of Mr. Charles C. Irvin, City Treasurer and Ex-officio Tax Collector of the City of Tucson, made in your behalf, I have again considered the matter of your appointment as one of his deputies, and as affecting your office as legislator.

As stated in my opinion of October 6th, 1933, to Mr. Clarence Houston, County Attorney of Pima County, the same was predicated on the statement of facts as contained in his request therefor.

In the case of Winsor vs. Hunt, 29 Arizona, at page 504, the Supreme Court of this State has held that before a position or employment can be termed an office within the meaning of Article 4, Part 2, Sections 4 and 5, it must possess three elements, viz:

1. The specific position must be created by law.
2. There must be definite duties imposed by law on the incumbent.
3. Must exercise the sovereign power of the State or one of its subdivisions.

The Court further held, that a position which has these three elements is presumably an office, while one which lacks any of them is a mere employment.

I have also examined the provisions of the Charter of the City of Tucson, since my former opinion and find that the position of deputy Tax Collector is not created by it and that said charter does not impose or fix the

33-521

Mr. William Wisdom,
November 13th, 1933.

Page 2.

duties of any of the employees of the Tax Collector.

I have also been informed by the City Clerk of Tucson that there is no ordinance establishing the office or defining the duties of a deputy Tax Collector or deputy License Collector; that there is also no ordinance or other official requirement by the City Council for the taking of an oath or the making of a bond by you for the faithful performance of your duties.

I am, therefore, of the opinion, that in view of the foregoing, you have not vacated your office of legislator by accepting an appointment as Deputy Tax Collector of Tucson.

Yours very truly,

Attorney General.

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33-522