

January 21, 1936

Hon. Mit Simms
State Treasurer
State House
Phoenix, Arizona

Dear Mr. Simms:

I have your inquiry of January 21st requesting an opinion as to whether you, as State Treasurer, have authority under the law to waive interest due on an inheritance tax under the provisions of Section 3164, Revised Code of Arizona, 1928.

The section above referred to definitely provides the conditions under which such interest shall be paid and the rate thereof. It is a rule of law so well known that the citation of authority is unnecessary that a public official has only such powers as are expressly granted by statute or are necessarily implied in order to carry out expressed powers. There is no statutory authority for the State Treasurer to waive or remit any interest that accrues under said Section 3164, and there is no occasion for the implying of such a power to enable you to carry out any of your expressed powers.

The only condition under which a composition of taxes may be made by the State Treasurer is under the provisions of Section 3179, Revised Code of Arizona, 1928, wherein, in general, it is provided that the county treasurer with the consent of the State Treasurer may enter into an agreement with the representative of the estate when the estate is of such a nature that the taxes are not presently payable, or when the interest of the legatee or devisee is not ascertainable.

Even if the statute did attempt to authorize you to remit or waive the interest under the provisions of said Section 3164, it is very doubtful that such a statute would be constitutional. Section 7 of Article IX of the Constitution of Arizona provides, among other things, that the State shall not make any donation or grant to any individual. The Supreme Court of this state, under this provision, ruled that the legislature could not pass a law which would relinquish interest on loans of institutional funds, *Rowlands vs. State Loan Board*, 24 Ariz. 116.

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Under a provision of a constitution somewhat similar to ours, the Supreme Court of Mississippi in the case of McDonald vs. State Tax Commission, 130 Southern 473, ruled that the legislature could not pass a law which would remit an inheritance tax already accrued.

It is my opinion, therefore, that you, as State Treasurer, have no power to waive any interest which has accrued under the provisions of said Section 3164.

Respectfully submitted,

JOHN L. SULLIVAN
Attorney General

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Attorney General