

October 17, 1962  
Opinion No. 62-34  
R-395

REQUESTED BY: J. R. Van Horn,  
State Highway Engineer  
State Highway Department  
Phoenix, Arizona

OPINION BY: Robert W. Pickrell  
The Attorney General

QUESTIONS:

1. Must a district, as defined in Sec. 45-2191, A.R.S., comply with the provisions of A.R.S. Sec. 45-702, et seq in the construction of a dam, as defined in Sec. 45-701, A.R.S., notwithstanding the provisions of Sec. 45-2192, A.R.S.?

2. Where plans and specifications are approved by the State Engineer, pursuant to Sec. 45-2192, A.R.S., is it necessary for the State Engineer to determine that the work is completed in accordance with the approved plans and specifications?

ANSWERS:

1. Yes.

2. Yes.

Sec. 45-701 to 45-716, inclusive, A.R.S., places dams as therein defined under the jurisdiction of the State Highway Engineer requiring approval of plans and specifications, payment of fees, inspection during construction, etc.

Sec. 45-2192, A.R.S. provides, in part:

"A. When any construction, repair, alteration, extension or improvement work for district purposes is to be performed according to plans and specifications prepared by or for a district, the governing body of the district may, if it so desires, make application to the state engineer for his approval in writing of the plans and specifications. . . ."

The State Highway Engineer asks if dams normally under his jurisdiction are removed therefrom because a district as defined

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

J. R. Van Horn  
State Highway Engineer

October 17, 1962  
Opinion No. 62-34  
Page 2

in Sec. 45-2191, A.R.S., is involved. We do not believe that it was the intent of the Legislature by the adoption of Secs. 45-2191 to 45-2195, inclusive, to alter or restrict the authority otherwise given the State Highway Engineer, but to provide a method whereby districts could restrict liability in respect to work not otherwise required to be done under the jurisdiction of the State Highway Engineer by bringing such work under his jurisdiction. This conclusion is obtained by application of the rules hereinafter set forth, together with a comparison and consideration of the statutes involved, and the reasons behind these statutes.

Regulation of dams is substantiated as a measure for the protection of life, health and property. Bent Bros. Inc. vs. Campbell, City Auditor, 281 Pac. 717. No basis in law or logic exists for waiving the protective requirements because a district is involved. No clearer statement of the State Highway Engineer's jurisdiction and of legislative intent could possibly be made than the following:

"Sec. 45-702. Jurisdiction of state engineer;  
personnel; rules and regulations

A. All dams shall be under the jurisdiction of the state engineer. Dams of the state, the United States, or any of their political subdivisions, or dams of public utilities, and all dams without exception are included within the jurisdiction conferred by this section. It is unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove or alter any dam except upon approval of the state engineer . . ."

(Emphasis supplied)

Sec. 45-2191 to 45-2195, inclusive, came into the law by Chapter 158, Laws of 1956. The title of this Act is quite indicative of the legislative purpose and intent and reads as follows:

"AN ACT  
RELATING TO WATERS; RELIEVING FROM LIABILITY PERSONS PERFORMING ANY CONSTRUCTION, REPAIR, ALTERATION, EXTENSION OR IMPROVEMENT WORK FOR IRRIGATION, DRAINAGE, FLOOD CONTROL, AGRICULTURAL IMPROVEMENT, ELECTRICAL, WATER CONSERVATION AND POWER DISTRICTS FOR DISTRICT PURPOSES WHICH HAS BEEN PERFORMED IN ACCORDANCE WITH PLANS AND SPECIFICATIONS APPROVED BY THE STATE ENGINEER, AND AMENDING CHAPTER 9,

J. R. Van Horn  
State Highway Engineer

October 17, 1962  
Opinion No. 62-34  
Page 3

TITLE, 45, ARIZONA REVISED STATUTES, BY ADDING  
ARTICLE 6."

78 If the legislative intent be not clear from the foregoing; three basic rules for the ascertaining of this intent, applicable to the present situation, as stated in the headnotes to Arizona Corporation Commission vs. Catalina Foothills Estates, 78 Ariz. 245; 278 P.2d 427, are: (1) a special or particular statute is not repealed by general statute unless the intent to repeal is made manifest; (2) repeals by implication are not favored and will not be indulged if there is any other reasonable construction, and (3) different statutes bearing upon the same subject matter should be so construed, if possible, as to give effect to all.

Particularly, is this latter rule applicable where the statutes have been enacted simultaneously as by the adoption of Arizona Revised Statutes.

In answer to Question 2, the same fees are set for services to be performed by the State Highway Engineer under the provisions of Secs. 45-2191 to 45-2195, as are established under Secs. 45-701 to 45-716, inclusive. In addition, Sec. 45-2192 provides that when plans and specifications are approved by the State Highway Engineer that "all work shall be performed strictly in accordance with the plans and specifications as approved."

It would, therefore, appear to be the legislative intent that the same duties are required of the State Engineer, whether he is proceeding under the provisions of §45-701, et seq or §45-2191, et seq. Insofar as protection of life, health and property is concerned, lack of supervision and enforcement defeats the whole purpose.

*Robert W. Pickrell*  
ROBERT W. PICKRELL *by use*  
The Attorney General

CCR:yda:nt  
R-395