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ARIZONA ATTORNEY GENERAL

Opinion No. 63-19  
R-229  
April 17, 1963

REQUESTED BY: The Honorable JOHN VANLANDINGHAM  
State Representative

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTIONS: 1. To what extent and by whom can case reports of the Arizona Supreme Court be copyrighted?  
2. From whom must permission be secured in order to reproduce case reports of the Arizona Supreme Court?

ANSWERS: 1. See Body of Opinion.  
2. See Body of Opinion.

I.

AUTHORITY FOR PUBLICATION OF COURT OPINIONS

The authority for rendition of written opinions by the Arizona Supreme Court is the Arizona Constitution. Article VI, § 2 thereof, provides that decisions of the Supreme Court shall be in writing and the grounds stated. Article VI, § 8 thereof, provides that provision shall be made by law for the speedy publication of opinions and they shall be free for publication by any person.

Implementing legislation provides that the Supreme Court shall publish its decisions as soon as practicable after they are announced. While the statute provides that the decisions shall be published in suitable volumes containing appropriate headnotes, tables of cases, tables of statutes cited, and construed, digests of law, and words and phrases, the statute is silent regarding who shall compose these research aids. A.R.S. § 12-107. Legislation further regulates the manner in which the decisions may be printed and sold. A.R.S. § 12-108.

II

STATUS OF ARIZONA REPORTS

Volumes 1 through 14 of the Arizona Reports were copyrighted and published by the Bancroft Whitney Company of San Francisco. Although volumes 15 through 63, inclusive, were published by the same company, volumes 15 through 42, inclusive, indicate that various official court reporters of the Supreme Court copyrighted the volumes, "for the benefit of the State of Arizona." The syllabi and indexes in volumes 43 through 62, inclusive, were copyrighted by West Publishing Company, although apparently published by Bancroft Whitney. Volumes 64 through 91, inclusive, (and presumably future volumes) are copyrighted and published by the West Publishing Company, of St. Paul, Minnesota.

III

COPYRIGHTABLE ASPECTS OF COURT OPINIONS

For purposes of copyright, there are three distinct portions of Supreme Court opinions as they finally appear in printed volume form. The copyrightable aspects of each are as follows:

A.

THE DECISION OF THE COURT

Dictum in Gould v. Banks, 53 Conn. 415, 2 Atl. 86 (1885), indicated that a state may lawfully be the proprietor of a copyright upon decisions. The present Federal Copyright Statute, 17 U.S.C.A., contains no language prohibiting state copyright. However, public policy prohibits copyright of the decision by one other than the State. This prohibition extends not only to the text but to syllabi, statement of fact, etc., prepared by the judges. The judges can neither copyright the decisions, nor confer a right to copyright them. 18 C.J.S. Copyrights, §§ 37 and 62, State v. Mitchell, 74 P.2d 417 (Mont. 1937); Banks v. Manchester, 128 U.S. 244, 9 S.Ct. 36, 32 L.Ed. 425.

B.

ANCILLARY PORTIONS OF DECISIONS

Nonjudicial ancillary additions to the reports (e.g., headnotes, syllabi, analyses, abridgments, digests, arguments

of counsel, synopses, etc.) composed by the court reporter or a publisher clearly can be copyrighted by the author thereof in the absence of prohibitive legislation. 18 C.J.S. Copyrights, § 62, Am. Jur. Literary Property, § 47, Callaghan v. Myers, 128 U.S. 617, 32 L.Ed. 547, 556-557, 9 S. Ct. 177.

The office of Supreme Court Reporter existed by virtue of the Arizona Constitution, Article 6, § 14, prior to the adoption of the new judicial amendment in November 8, 1960. Under the new amendment, no provision is made for a Supreme Court reporter.

C.

ARRANGEMENT OF REPORTED CASES

The arrangement of reported cases in sequence, the pagination thereof, and the distribution into volumes is not copyrightable. 18 C.J.S., Copyrights, § 111, 34 Am. Jur., Literary Property, § 47, Callaghan v. Myers, supra, Banks v. Lawyers Co-op, 169 F. 386 (2 Cir. 1909).

IV.

PERMISSIVE USE OF  
COPYRIGHTED PORTIONS OF REPORTS

A.

OPINIONS

Since the text of a Supreme Court opinion cannot be copyrighted, except possibly by the State, and since the nature of the opinion is that of a public document, there would certainly appear to be no objection to a release of the texts of the opinions themselves by the State of Arizona to any interested person for publication or other use. The proper state officers to grant such use would appear to be: (a) The Chief Justice of the Supreme Court, prior to publication of the opinions, and (b) The Secretary of State, subsequent to publication of the opinions in volume form, both by authority of his custodial capacity of the reported decisions (A.R.S. § 12-108) and by the very nature of his office. A.R.S. § 41-121, et seq.

B.

OTHER MATERIAL

As to matters in the reported cases other than the opinions themselves, (e.g., headnotes, syllabi, condensations, of arguments, etc.) it would appear that reproduction of those portions would be dependent upon permission of the respective publishers-copyright owners for volumes 1 through 14 and volumes 43 and on.

With respect to the ancillary matter contained in volumes 15 through 42, a more difficult problem is presented. The headnotes, etc. in those volumes were copyrighted by the various court reporters for the benefit of the state. The Attorney General's office has not been advised of the formal assignments of the copyrights by the reporters in favor of the state. If such assignments had been executed, they would have to have been in writing, signed by the copyright owner, and in compliance with all the formal requisites of the Federal Copyright Statute, Title 17, U.S.C.A. Assuming that valid assignments of the copyrights were not executed by the various Supreme Court Reporters, the next question is what interest, if any, the State of Arizona has in the headnotes, etc.?

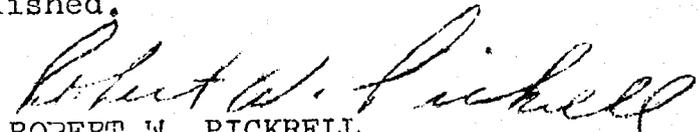
The mere phrase "for the benefit of the state" is probably insufficient to have passed any equitable rights in any copyrights to the State of Arizona. While equitable title to a copyright can be vested in one other than the owner of the legal title thereof, (See Harms v. Stern, 229 F. 42, 2 Cir. (1915); and Silverman v. Sunrise Pictures Corp., 273 F. 909, 2 Cir. (1921)) it does not appear, in these facts, that the state has equitable title. Moreover, while the phrase "for the benefit of the State of Arizona" is in the nature of an admission against ownership by the reporters, nevertheless, in the absence of any better evidence of title in the state, there may remain certain residual rights to the copyrights in the reporters or their heirs. Moreover, the state has no way of knowing whether the court reporters may have made assignments of the copyrights to parties other than the state, which they could have legally accomplished.

V.

CONCLUSION

Accordingly, it is the opinion of this office that:  
(a) During the time that the Arizona Supreme Court employed

a court reporter, the court reporter could properly copy-right matters ancillary to the opinions, of which the reporter was the author. (b) No one other than, possibly, the State of Arizona could be the copyright proprietor of the opinions themselves. (c) In view of the uncertain status of the copyrights in volumes 15 through 42, and the relatively clear status of copyright ownership in the publishers in volumes 1 through 14 and 43 through the present, the authority of the State of Arizona, acting through the Chief Justice or the Secretary of State, as the case might be, to grant permission for reproduction of the reports would be limited to (1) the texts of the opinions themselves, including the title of the case, number, and names of counsel, and (2), the number of the volume and pages in which those opinions were published.

  
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The Attorney General

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