

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

GARY K. NELSON, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

April 2, 1970

DEPARTMENT OF LAW OPINION NO. 70-8 (R-54)

---

REQUESTED BY: CARTER A. CLARK  
Chief Right of Way Agent  
Arizona Highway Department

QUESTION: Did the 1969 amendment to A.R.S. § 42-1612 nullify or repeal the prohibition contained therein that the affidavit of legal value is not a public record nor available for public inspection?

ANSWER: Yes.

The question presented is a problem of statutory construction of A.R.S. § 42-1612(C) as amended.

A.R.S. § 42-1612(C) as originally passed by the Legislature in its Laws of 1967, Third Special Session, Chapter 11, Section 2, provided as follows:

"C. The county recorder shall not record the affidavit filed under this section but shall transmit it immediately to the county assessor who shall forward a copy of it to the department. The affidavit shall not be a public record and shall not be available for inspection by the public but it may be used by the county assessor or the department in any hearing involving the valuation of the property or any part thereof which is the subject of the affidavit." (Emphasis supplied.)

Thereafter, the Legislature amended A.R.S. § 42-1612 in its laws of 1968, First Regular Session, Chapter 78, Section 1, by repealing and deleting that portion of subsection C relating to the above prohibition that "the affidavit shall not be a public record and shall not be available for inspection by the public . . ." As amended, A.R.S. § 42-1612(C) now reads as follows:

"C. The county recorder shall transmit the original affidavit to the county assessor and a copy to the department which shall be maintained in a permanent file. Upon receipt, the county recorder shall place the fee number of the recorded instrument on the original affidavit appended thereto and shall make the department's copy of the affidavit by use of photostatic, photographic machines or by a system of microphotography. Neither the recorder nor the assessor shall be required to maintain a file of such affidavits. When such copy has been filed then the assessor may destroy the original affidavit." (Emphasis supplied.)

In instances requiring statutory construction, the fundamental rule is to ascertain and give effect to the intention of the Legislature as expressed in the particular statute. Automatic R. M. Co., Inc. v. Pima County, 36 Ariz. 367, 285 Pac. 1034 (1930); Isley v. School District No. 2 of Maricopa County, 81 Ariz. 280, 305 P.2d 432 (1956). Further, in arriving at the intention of the Legislature in passing a statute, resort may be had to the words, context, subject matter, effects and consequences, spirit and reason of the law, and other acts which might be interpreted in pari materia. Coggins v. Ely, 23 Ariz. 155, 202 Pac. 391 (1921).

The Legislature in amending A.R.S. § 42-1612 only one year after its original passage has manifestly expressed its intention that its previous prohibition that the affidavit of value shall not be a public record and shall not be available for inspection by the public should no longer be interpreted as having any force or effect. This is consistent with the well recognized rule of statutory construction that in amending a statute, the Legislature is presumed to have intended to modify or change the existing law on a particular subject. Accordingly, courts have the obligation and duty to uphold and give unquestioned effect to such amendments. Brown v. White, 2 Ariz.App. 295, 408 P.2d 228 (1965).

Opinion No. 70-8  
(R-54)  
April 2, 1970  
Page Three

In light of the legislative intent as contained in the express statutory language of A.R.S. § 42-1612(C) as amended, it is our opinion that the affidavit of the seller in a real estate transaction, which must be appended to either a deed evidencing a transfer of title or a contract relating to the sale of real property is a public record and, by reason of its recordation, must be made available for inspection by the public. See Mathews v. Pyle, 75 Ariz. 76, 251 P.2d 893 (1952) and People v. Tomalty, 14 Cal.App. 224. As thus interpreted, we feel there is no irreconcilable conflict between the 1967 passage of A.R.S. § 42-1612(C) and its amended version passed in 1968.

Respectfully submitted,

 FS.

GARY K. NELSON  
The Attorney General

GKN:RVK:hc