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ARIZONA ATTORNEY GENERAL

Opinion No. 64-20

R-98

September 24, 1964

REQUESTED BY: DENNIS McCARTHY
Director, State Parks Board

OPINION BY: ROBERT W. PICKRELL
The Attorney General

- QUESTIONS:
1. Since the monies in the state lake improvement fund set up under A.R.S. §5-314 have been determined to be "State monies," does the State of Arizona claim title to all improvements made under provisions of A.R.S. §5-315.
 2. Referring to question No. 1, do the improvements made under the provisions of A.R.S. §5-315 become the property of the agency controlling the land surface or water surface wherever these improvements may be made?
 3. Are plans for a project costing over \$10,000.00 which is to be paid for out of the state lake improvement fund required to be submitted to the state planning and building commission in accordance with A.R.S. §41-571.12?
 4. May the state parks director, as administrator of the state lake improvement fund, reimburse an agency of the United States government or a successful contractor upon demand, from a county's share of the fund for portions of the project undertaken and completed by said agency or contractor.

- ANSWERS:
1. No. (See body of opinion)
 2. No. "
 3. No. "
 4. No. "

Statutes covering the state lake improvement fund are as follow:

A.R.S. §5-314, 1960, provides for 1) the disposition of fees for watercraft registration received under this statute and sets up the state lake improvement fund; 2) said fees to be placed in the custody of the state treasurer; and 3) said fees to be distributed to the counties as set forth in A.R.S. §5-314 and A.R.S. §5-315 (A).

A.R.S. §5-315, 1960, as amended 1962, provides for 1) the apportionment of money from the state lake improvement fund set up in A.R.S. §5-314 among the various counties; 2) the particular uses to be made of the monies in said fund; and 3) the administration of said fund. The statute reads as follows:

§5-315. Lake improvement fund; administration

A. There shall be a state lake improvement fund and monies therein shall be credited to the account of each county in the same proportion that the number of registered watercraft in the county bears to the number of registered watercraft in the state determined as of January 1 for each year. Such monies shall be used only for the improvement of lakes where boats are permitted and shall be limited to the following:

1. Public launching ramps.
2. Public piers, marinas, or marine stadia.
3. Public toilets and sanitation facilities.
4. Public picnic tables and facilities.
5. Public parking areas.
6. Lake construction or improvement.
7. Marking buoys or other facilities to aid enforcement of this title.

B. The state lake improvement fund shall be administered by the director of the state parks

board. Plans for projects involving expenditure of monies from such fund shall be submitted to the director by the board of supervisors of any county to whose account monies have been credited. The director shall examine such plans to determine if they come within those projects authorized and to determine if there are sufficient monies available for such project. If he finds the projects qualify and monies are available, he shall approve such plans and disburse such monies as claims against the state.

C. Counties may expend monies deposited to their credit in the lake improvement fund in any county on projects that will benefit residents of the credited county, and priority shall be given to projects where matching funds are made available from any agency of the federal government or any agency of the state, county or school district or from any private individual or agency. Added Laws 1960, Ch. 130, §2, as amended Laws 1962, Ch. 21, §2.

1. A.R.S. §35-321 defines state monies as all monies in the treasury of the state or coming lawfully into the possession or custody of the state treasurer. As set forth in the statutes A.R.S. §5-314 and A.R.S. §5-315 (A) above, monies in the state lake improvement fund are placed in the custody of the state treasurer to hold for the use of the various counties. Title to monies in the fund vests in the various counties subject to the terms of said statutes.

It is our opinion therefore that the State of Arizona cannot claim title to any improvement made under the state lake improvement fund. If the improvements are placed on state-owned land or water, title would vest as provided in the plan for the project to which the state would be a necessary party. If on the other hand the plan provided for county ownership of improvements, which would be the usual case, the county would be the sole owner.

2. As stated hereinabove title to improvements made by a county under A.R.S. §5-315 vest in the county unless the plan for the project submitted by said county and approved by the director provides for title or any part thereof to vest in another party to said project.

Under A.R.S. §5-315 (C) above set forth, a county is authorized to make expenditures in another county and to accept matching funds for the financing of said projects. In such cases, it is important that plans for the project spell out in detail where title to each improvement shall vest. If this is not done, it is our opinion that title to the improvement vests in the county which plans the project and finances or helps to finance the project.

3. A.R.S. §5-315 is a special act which vests in the director of the state parks board sole responsibility for approving plans submitted by the various counties and disbursing funds for said plans. This special act takes precedence over the general act embodied in A.R.S. §41-571.12. Furthermore, A.R.S. §41-571.01 through §41-571.15 provides that the commission shall have charge of those activities which are specifically authorized by the legislature as a project or improvement to be undertaken by the commission. There is no provision in A.R.S. §5-315 for the state lake improvement fund to come under the supervision of said commission. As above stated A.R.S. §5-315 (B) specifically provides for the administration of the fund to come under the director of the state parks board. It is our opinion, therefore, that plans for projects under the state lake improvement fund do not come under the jurisdiction of the state planning and building commission.

4. Under A.R.S. §5-315 (B) the director of the state parks board is specifically authorized to disburse money as follows: "If he finds the projects qualify and monies are available, he shall approve such plans and disburse such monies as claims against the state." This authorizes the director to disburse monies in the state lake improvement fund credited to a county in the manner provided in A.R.S. §35-181.01.

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The director may approve a claim submitted by the county for work performed against its share of the state lake improvement fund. The Auditor's warrant would then be drawn in favor of the county who would disburse the funds through the county treasurer.

Under A.R.S. §5-315 B, after the director approves the project, the county assumes full responsibility for the proper completion of said project.

Robert W. Pickrell

ROBERT W. PICKRELL
The Attorney General

RWP:FNW:md