

DARRELL F. SMITH, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

September 22, 1967

DEPARTMENT OF LAW OPINION NO. 67 (R-96)

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REQUESTED BY: THEODORE G. HAWKINS, Commissioner  
Department of Finance  
By G. C. Hodges

QUESTIONS:

1. Is property purchased from special funds, such as the State Compensation Fund, state property within the meaning of the statutes relating to the State Division of Purchasing?
2. If it is not state property, does the Finance Department have the authority to authorize its disposal?
3. If the Finance Department has the authority to authorize its disposal, do proceeds received from such disposal revert to the general fund, or to the fund from which purchase was originally made?

ANSWERS:

1. Yes.
2. Answer not required.
3. Reverts to the State Compensation Fund. The scope of the answer is limited to the State Compensation Fund.

The State Workmen's Compensation law was enacted by the Arizona Legislature pursuant to Article 18, § 8 of the Arizona Constitution. Section 8 of Article 18 was held to be, however, not a grant of power to the Legislature, but a command directing it to exercise the power which it already possessed. Goodyear Aircraft Corp. v. The Industrial Commission, et al., 62 Ariz. 398. 158 P.2d 511. This law, A.R.S. § 23-901, et seq., contains a comprehensive plan and program to comply with the constitutional provision and to give financial protection and relief to injured or deceased employees and their families. The Legislature created the Industrial Commission of Arizona (A.R.S. § 23-101) to administer and enforce all laws relating

to Workmen's Compensation, (A.R.S. § 23-107). The compensation fund is established by A.R.S. § 23-981.

The Supreme Court in The Industrial Commission v. School District No. 48, 56 Ariz. 476, 108 P.2d 1004, described the fund in these words:

"This compensation fund is a trust fund the state has undertaken, through the agency of the Industrial Commission, to collect and distribute as in the compensation law prescribed. It is not made up of taxes levied and collected upon the citizenry at large but is collected from employers in the way of insurance premiums. While it is a public fund as against everybody except the employer and the employee, as to them it is a private trust fund to be administered for their use and benefit by the Industrial Commission." (Emphasis supplied)

There is no question but that the compensation fund is "public money" as defined in A.R.S. § 35-302 and it was so held in Robert Sims, et al. v. Benjamin B. Moeur, 41 Ariz. 486, 19 P.2d 679. In the Sims case the Supreme Court at page 502 of the Arizona Reports, said:

"While for some purposes the compensation fund might well be held not to be 'public money,' in its relation to the commission, however, it is certainly 'public money.' And, whosoever it is, it does not belong to the commissioners; it is not theirs, nor does it belong to the insured. The policy-holders in such fund do not own it and have no right to dictate its expenditure. That right is conferred upon the state and its agent, the commission. Nor can the commissioners, because certain individual policy-holders requested the expenditure, justify their conduct. The fund can be expended only for the purposes for which it is created and in the manner and upon the terms prescribed by the compensation law."

We will return to the nature of the compensation fund after examining one of the powers of the new Division of Purchasing. (A.R.S. § 35-131.11, et seq.). The legislative purpose of this new division was thoughtfully set out in Section 1 of Chapter 55, Laws 1967:

"It is the intention of this legislature: that a system of purchasing for state agencies be established in order to make state government more economical and efficient and that existing purchasing procedures of state agencies such as the board of regents be retained unless changes will result in greater economies; that the division of purchasing make a thorough study and investigation of the present standards and methods of acquisitions of particular items by budget units before acquisitions of such items are commenced by the division; and that the division consult with and obtain recommendations from each budget unit in the formulation of the policies and procedures for acquisition."

The specific powers involved in this question are granted the Commissioner of Finance in A.R.S. § 35-131.12(B)(4), which authorizes the Commissioner to:

"Transfer to or between budget units and sell, rent, trade in, condemn or otherwise dispose of supplies, materials and equipment of budget units which are surplus, obsolete or unused. In the case of a transfer to or between budget units any funds appropriated to the receiving budget unit for the purpose of acquiring the item transferred shall not thereafter be available to the budget unit for any purpose."

The term "budget unit" is defined in A.R.S. § 35-101(4) as a "department, commission, board, institution or other agency of the state organization receiving, expending or disbursing state funds or incurring obligations against the state." The Industrial Commission falls within this definition. It receives and expends state funds. (Ch. 134, Subd. 70, Laws 1967, General Appropriation Act.)

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It is the opinion of this office that the Legislature intended to subject the Industrial Commission to the powers of the newly created Division of Purchasing and that Section 1, heretofore cited, can be read in no other way.

Apparently, the primary reason that this opinion was requested is because the Legal Department of the Industrial Commission feels that it is not a budget unit within the meaning of these statutes. Set out in full below is a letter opinion signed by Mr. Robert K. Park, Chief Counsel to the Industrial Commission to the Department of Finance, dated July 26, 1967:

"Dear Mr. Hodges:

I have been handed your letter of July 17, 1967 regarding our June 30, 1967 personal property inventory.

Inasmuch as this Commission is not a budget unit of the State of Arizona, it operates on a calendar rather than a fiscal year. We do not, therefore, have a personal property inventory as of June 30, 1967. Our most current personal property inventory is as of December 31, 1966.

In our opinion, however, all of the personal property in the possession of The Industrial Commission of Arizona belongs to the State Compensation Fund and not to the State of Arizona. Our property was purchased wholly from money belonging to the State Compensation Fund and, therefore, comprises a part of the assets thereof. None of our property has been purchased from general tax appropriated funds. Although not directly on point, the case of Keefe v. Monroe (1966), 2 Ariz. App. 456, 409 P.2d 740, is somewhat analogous. In that case the Court of Appeals held that our employees were not "state employees" for the reason that they were not paid from general tax funds but were paid from funds belonging to the State Compensation Fund. In effect, the State Compensation Fund is a trust fund administered by The Industrial Commission of Arizona for the benefit of the Arizona employers and their employees. Industrial Commission v. School District No. 48 of Maricopa County (1941), 56 Ariz. 476, 108 P.2d 1004. For the foregoing reasons it is our considered

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opinion that A.R.S. § 35-131.2 (3) does not apply to the personal property in the physical operation of this Commission as trustee of the Compensation Fund created by A.R.S. § 23-981.

We would appreciate your comments.

Cordially,

s/ Robert K. Park

Robert K. Park,  
Chief Counsel

RKP:tjf"

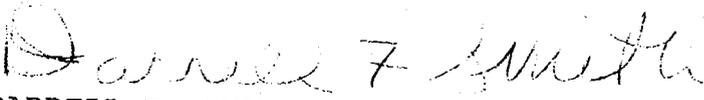
Returning now to our prior discussion of the nature of the fund, it seems to us that Mr. Park's letter fails to consider the statements of the nature of the fund set out in the School District No. 48 case, supra, and the Sims case, supra. This fund is a public fund. The Industrial Commission is a state agency created by the Legislature and responsible to the Legislature. Keefe, supra, p. 458. Until such time as the Legislature expressly excludes it from the effect of Division of Purchasing legislation, it is subject to the same requirements as every other state agency.

At first reading, this conclusion might appear in conflict with our Opinion No. 63-56-L of April 19, 1963. It is not. In that opinion we said that the Commission and its employees were not subject to the general state travel expense allowances contained in A.R.S. § 38-621, et seq., because the special statute, A.R.S. § 23-108, governed over the general statute, § 38-621. As we pointed out in that opinion, such is not always the case. The presumption can and is overcome when the legislative intent is plainly, clearly and unequivocally manifest, as we feel it is so manifest in the new Purchasing Division Act. Favor v. Frohmiller, 44 Ariz. 286, 36 P.2d 576. To this extent it is our opinion that the power of the Commissioners over the Compensation Fund (A.R.S. § 23-981) is modified by A.R.S. § 35-131.11 and that The Industrial Commission is subject to the authority of the Division of Purchasing (A.R.S. § 35-131.11) in

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the specified areas of purchase control and property disposal. The answer to your first question, therefore, is yes; the answer to your second question is not required because of our affirmative answer to the first question. With respect to your third question, the School District No. 48 case and Sims case indicate the trust nature of the compensation fund. Therefore, any money from the sale of old or used furniture or equipment, which can be identified as having been purchased from "Fund" monies, should be returned to the compensation fund as a credit.

Respectfully submitted,

  
DARRELL F. SMITH  
The Attorney General

DFS:cah