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DEPARTMENT OF LAW OPINION NO. 71-14 (R-46)

REQUESTED BY: THE HONORABLE THOMAS N. GOODWIN
Arizona State Representative

QUESTION: Is an appropriation for procurement of an
item of equipment specified by brand name
constitutional?

ANSWER: No.

The constitutional provisions of the Arizona Constitu-
tion which are pertinent to the answer of this question are
Art. 2, § 13, pertaining to equal privileges; Art. 4, Pt. 2,
§ 19, paragraphs 13 and 20, pertaining to special laws; and
Art. 4, Pt. 2, § 20, pertaining to appropriation bills.
These provisions are as follows:

Art. 2, § 13:

"No law shall be enacted granting to any
citizen, class of citizens, or corporation
other than municipal, privileges or immunities
which, upon the same terms, shall not equally
belong to all citizens or corporations."

Art. 4, Pt. 2, § 19:

"No local or special laws shall be
enacted in any of the following cases, that
is to say:

* * *

"13. Granting to any corporation,
association, or individual, any special or
exclusive privileges, immunities, or fran-
chises.

* * *

"20. When a general law can be made applicable."

Art. 4, Pt. 2, § 20:

"The general appropriation bill shall embrace nothing but appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt. All other appropriations shall be made by separate bills, each embracing but one subject."

If a statute is plainly intended for a particular case, and looks to no broader application in the future, it is special, and since such laws are prohibited, it is unconstitutional. Luhrs v. City of Phoenix, 52 Ariz. 438, 83 P.2d 283 (1938). The court had occasion to construe statutes providing for contracts for advertising and printing in Prescott Courier, Inc. v. Moore, 35 Ariz. 26, 274 P. 163 (1929). The County Board of Supervisors had sent out an invitation for bids which lumped together the county's publishing and advertising requirements and its printing requirements for ballots, poll lists, annual reports and forms. The publication and advertising had to be done by a newspaper located in the county while the printing could be done by any job printing establishment.

The court concluded that the statute contemplated the letting of public printing in such manner that all persons equally qualified to do each class of work should be given an opportunity to bid for it and that the lumping together of the advertisement and printing requirements in the same invitation for bids in effect limited bids to the newspapers and, therefore, failed to comply with the statute. If the statute had permitted the lumping together of such diverse requirements to thus limit bidding, it would have violated § 13, Art. 2, the equal privileges and immunities clause, and subdivision 13 of § 19, Pt. 2, Art. 4 of the Arizona

Constitution, which prohibits special laws granting to any corporation or individual any special or exclusive privileges.

Under the reasoning of the Prescott Courier case, supra, an appropriation by brand name would grant an exclusive privilege to the manufacturer of the brand, thus violating subdivision 13 of § 19, Pt. 2, Art. 4 of the Constitution. Although the question wasn't raised in the Prescott Courier case, such an appropriation would probably also violate subdivision 20, § 19, Pt. 2 of Art. 4, which prohibits special laws when a general law can be made applicable. In this case A.R.S. § 35-131.13, which provides that purchases in excess of \$1,000.00 shall be based on sealed competitive bids does apply. A brand name appropriation measure is in conflict with this section which contemplates competition in procurement. Exceptions to the rule of competitive bid ought to be by general legislation and a general law could be made applicable to this subject.

In this state the courts have consistently taken the position that the Legislature cannot enact substantive legislation in the general appropriation bill. Where the Legislature failed to appropriate an amount sufficient to make payments which the Old Age Pension Act required, it was held that this failure to make sufficient appropriations could not have the effect of amending or repealing or suspending the general law which was applicable in this case. Carr v. Frohmiller, 47 Ariz. 430, 56 P.2d 644 (1936).

In State of Arizona v. Angle, 54 Ariz. 13, 91 P.2d 705 (1939), the question arose whether a minimum wage law was repealed by an appropriation measure providing for payment of lesser amounts. The court held that the general appropriation bill can contain nothing but the appropriation of money for specific purposes, and such other matters as are merely incidental and necessary to seeing that the money is properly expended for that purpose only. Any attempt at other legislation in the bill is void. Accordingly, the court held that

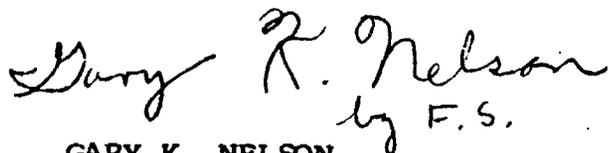
the state was legally indebted to the plaintiffs in the amount of the difference between the salaries called for in the appropriation bill and that required by the minimum wage law.

The court again faced the same question in Caldwall v. Board of Regents, 54 Ariz. 404, 96 P.2d 401 (1939). A general appropriation bill contained a proviso prohibiting employment of a husband and wife at the same time. The court held that since the proviso is in substance an attempt to enact general legislation establishing a new qualification for state employees whose salaries are paid under the general appropriation bill and, since such general legislation is expressly forbidden by Art. 4, Pt. 2, § 20, the proviso was unconstitutional and void.

An appropriation for procurement by brand name conflicts with the provisions of A.R.S. § 35-131.13 providing that all purchases in excess of \$1,000.00 shall be based on sealed competitive bids, and invitations to bid shall be in sufficient detail to permit competition. Since such an appropriation would amend or suspend this statute, it violates Art. 4, Pt. 2, § 20 of the Arizona Constitution.

On the basis of the foregoing authorities, it is our opinion that an appropriation for procurement of an item of equipment by brand name would also be unconstitutional, because it would violate Art. 2, § 13 of the Arizona Constitution and Art. 4, Pt. 2, § 19, paragraphs 13 and 20 of the Arizona Constitution.

Respectfully submitted,


by F.S.

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