

March 7, 1938

Mr. James R. McDougal,
Assistant Commissioner,
State Board of Social Security & Welfare,
C/o State Fair Grounds,
Phoenix, Arizona.

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ARIZONA ATTORNEY GENERAL

Dear Mr. McDougal:

We have your letter of March 3 wherein you ask for our opinion on the following question:

"Therefore, we should appreciate it if you would request the Attorney General of Arizona to inform us whether the appropriation for old-age assistance of an unspecified amount for the fiscal year ending June 30, 1938, contained in Chapter 70 is limited to the amount of \$200,000, in view of the provisions of Chapter 75, appropriating that amount for the fiscal year ending June 30, 1938, for old-age pensions."

Section 24, Chapter 70, Laws of the Regular Session of 1937 is as follows :

"APPROPRIATION. For the fiscal year ending June 30, 1937, there is hereby appropriated to the old age assistance fund to be used for the purposes of this act and necessary administrative expenses the following amounts:

"1. From moneys in the general fund not otherwise appropriated two hundred thirty six thousand dollars:

"2. All money received pursuant to the provisions of this act.

"For the fiscal year ending June 30, 1938, and each fiscal year thereafter, there is hereby appropriated to the old age assistance fund, to be used for the purposes of this act and necessary administrative expenses, the following amounts, provided that the sum from sources of state taxation expended in any such fiscal

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year for administrative expenses shall not exceed five per cent of the state's total contribution to the old age assistance fund for the payment of old age assistance.

"(a) All moneys received pursuant to the provisions of this act;

"(b) All moneys received from taxes levied as follows: Prior to the first day of July of each year, the state board shall prepare and certify to the state tax commission an estimate of the total amount of money required to be raised by direct taxation for the ensuing fiscal year for the payment of old age assistance and necessary administrative expenses. Such estimate shall be made by estimating the total money needed for old age assistance and necessary administrative expenses and deducting therefrom the amounts, or estimated amounts, that will be received in such fiscal year from sources other than direct taxation.

"The state tax commission, as a party of the annual tax levy, shall levy a tax sufficient to produce the amount shown by such certified estimate as required to be raised by direct taxes."

Subdivision 57, Chapter ¹³ Laws of 1937 (General Appropriation Bill) is as follows:

"Subdivision 57. OLD AGE PENSIONS.

	For the 26th Fiscal year	For the 27th Fiscal Year
Pensions-----	\$900,000.00	\$900,000.00
	\$1,800,000.00"	

The answer to your inquiry depends upon the interpretation and construction of the two sections above mentioned. You will note that by the provisions of said Section 24,

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the Legislature made an appropriation to your Board of all money received pursuant to this section. The section further provides in subdivision (b) that your Board shall certify to the State Tax Commission an estimate of the total amount of money required to be raised by direct taxation for the ensuing fiscal year for the payment of old-age assistance and necessary administrative expenses, and then provides that the Tax Commission shall levy a tax sufficient to produce the amount shown by the certified estimate of the Board.

It is our opinion that said section 24 constitutes a continuing appropriation of all money raised pursuant to a levy made by the State Tax Commission upon the estimate made by the Board and that the amount of the appropriation provided for in said Section 24 is not limited by the general appropriation act. In other words, section 24 is a general law of the state which could not be amended, repealed or modified by the general appropriation bill. The question presented by you has been determined by the Supreme Court of this state in the case of Carr v. Frohmiller, 56 P.(2d) 644. The facts in the Carr-Frohmiller case were that under the old-age pension law, Chapter 54, Laws of 1933, the Legislature had made an appropriation of the amount levied by the Tax Commission for old-age pensions, and in the general appropriation bill of 1935, the Legislature attempted to appropriate for old-age pensions a sum less than the amount levied by the Tax Commission for old-age pensions. The court held that the entire amount levied by the Commission was appropriated by the old-age pension act and could not be limited by the appropriation of a specific sum in the general appropriation bill.

If the Tax Commission levied a tax for an amount in excess of \$900,000.00 for the payment of old-age assistance for the fiscal years 1937 and 1938, then the entire amount raised from direct taxation pursuant to such levy by the Commission would be available to the Board for old-age assistance regardless of the amount specified in the general appropriation bill.

Yours truly,

JOE CONWAY
Attorney General

EARL ANDERSON
Special Assistant
Attorney General

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