

May 1, 1944

Arizona State Tax Commission
Hon. Thad M. Moore, Chairman
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Gentlemen:

We have your request for an opinion on the following:

"This commission is continually receiving requests for emergency levies, etc., particularly in connection with postwar planning as provided for in chapter 37, Regular Session 1943. This Act provides: 'Notwithstanding any inconsistent provision of any general, special or local law each city and county is authorized to establish and maintain a postwar public works reserve fund, etc.'

"Your opinion is requested as to whether this provision above quoted would permit city councils or boards of supervisors to budget an amount for this fund even though it might exceed by such amount the 10% limit permitted by law over the previous year's budget."

Chapter 37, Regular Session Laws, 1943, is a definite legislative mandate authorizing each city and county to

"establish and maintain a postwar public reserve fund to provide funds for paying all or part of the cost of a long range, postwar program of local public improvements and betterments, for execution by such city or county or by any public agency which such city or county is authorized to assist by any law," etc.

It is also provided in the Act:

"The creation and maintenance of such fund shall be deemed a proper public purpose for which the moneys of the political subdivision may be expended and appropriated."

Section 2 of the Act, provides:

"Maintenance and investment. A fund established pursuant to this Act shall be kept entirely separate and apart from all other funds. The city or county treasurer, with the approval of the governing body of the city or county, shall invest all moneys belonging to the fund in such securities as are legal for the investment of other funds of the city or county. The interest and income from the investments shall be a part of the fund."

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Thus it is apparent that the Legislature has provided that the postwar planning fund, and its use, is for a "proper public purpose" as provided for in said Act; and that

"notwithstanding any inconsistent provision of any general, special or local law, * * * * *

each city and county is authorized to proceed to the execution of the legislative mandate for the purposes stated in this Act, entitled "An Act relating to Postwar Planning; providing for the establishment of Postwar Public Works Reserve Funds by Cities and Counties; and declaring an Emergency."

It is the sole province of the Legislature to declare the public policy of the State in the premises, and it has done so in this Act, and by express language has provided that cities and counties in so carrying out the legislative mandate shall not be restricted or circumvented by any general, special or local law.

Chapter 38, Session Laws, 1943, amending Section 73-503, Arizona Code of 1939, provides for "Hearings on Estimates and Adoption" of Budgets for counties and cities, and fixing the limits of expenditures.

In said amended section it is provided -

" * * * * * When such hearing has been concluded, the estimate as finally determined upon shall be adopted, and shall constitute the budget of the county or city for the fiscal year, but the total of amounts in such budget proposed for expenditure shall not exceed by ten (10) per cent the aggregate of actual expenditures for the previous year exclusive of expenditures for school, bond, special assessment and district levy purposes."
* * * *

Chapter 38, Session Laws, 1943, amending Section 73-503, Arizona Code, 1939, is a general law.

The "Budget Law" is a creation of the Legislature and it may be conditioned by that body, within constitutional limitations, as it may deem wise or expedient to meet the declared public policy of the State.

The purpose of the "Budget Law" is to establish the plan of "paying as you go"; also to allow the taxpayer an opportunity to object to any proposed expenditure, or the amount thereof, when not specifically authorized by the Legislature. It seems clear that the prohibitions in the "Budget Law" are directed at those items of city or county

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expense which the board of supervisors, or the city authority, as the business and fiscal agents of their respective political subdivisions, are authorized to incur by contract in the usual course of their duties for the city or county, and not to items and charges directed to be incurred and expended by positive legislative Act and mandate, and in furtherance of a plan approved by the Legislature and by it deemed for a proper public purpose.

We, therefore, are of the opinion:

1. That it is the legislative mandate that cities and counties proceed under Chapter 37, Session Laws, 1943, relating to postwar planning, and in accordance with the authority and plan therein provided by the Legislature, and

The Act provides that the fund established pursuant to the Act shall be kept entirely separate and apart from other funds, and such is a special fund for a particular purpose, to-wit: a long range postwar program of local public improvements and betterments, deemed necessary and expedient by the Legislature as a result of the present war emergency.

Any inconsistent provision of any law, general, special or local must give way for this emergency plan and purpose.

2. That the limitation in Chapter 38, Session Laws 1943, "such budget proposed for expenditure shall not exceed ten (10) per cent the aggregate of actual expenditures for the previous year" by such cities and counties, has no application to postwar planning under Chapter 37, Session Laws, 1943.

Respectfully,

JOE CONWAY
Attorney General

EARL ANDERSON
Chief Assistant
Attorney General

THOMAS J. CROAFF
Assistant Attorney General