

December 7, 1945

Mr. Ira L. Hart
Superintendent of Banks
Capitol Bldg.
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Hart:

In answer to your letter of 21 November 1945, requesting advice with respect to stock pledged under powers signed by the husband only, but owned by a husband and wife as joint tenants with right of survivorship, and not as tenants in common, we will advise you as follows:

A debtor or pledgor may pledge any interest he owns in property--he can pledge no more than he owns. The John W. Cannon, 24 Fed. 392.

During coverture the husband only may dispose of personalty belonging to the community--Sec. 63-301, Arizona Code Annotated, 1939. LaTourette vs. LaTourette, 137 Pac. 426.

The husband's agency, by law, to act for the community to pay community debt, to pledge or mortgage community property to secure community debt, is clear. The agency of the husband to encumber the wife's separate property is found in some cases from her acquiescence in his actions--Beard vs. Herndon, 203 Pac. 226, Eadus vs. Hunter, 228 N.W. 782.

Therefore, it is our opinion that the pledge herein described, disregarding the possible element of fraud, is enforceable against the whole of the stock held by husband and wife as joint tenants.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

ROBERT MURLLESS
Assistant Attorney
General

HARRY O. JULIANI
Chief Assistant
Attorney General