

26 June 1946

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ARIZONA ATTORNEY GENERAL

Mr. Lon B. Walters, Warden
Arizona State Prison
P. O. Box B
Florence, A r i z o n a

Dear Mr. Walters:

We acknowledge receipt of your letter of 25 June 1946, regarding the expenditure of monies accumulated in the operation of a commissary within the prison.

It is our understanding that these monies represent profits accrued from the operation of this commissary within the prison whereby notions and confections are sold to prisoners.

We believe that this money is not State money for the reason that it has not accrued under any color of office or authority. Nor are we aware of any provision of law declaring such funds public money.

We further believe that the money is in the position of trust funds, which are held for the use and benefit of the persons from whom the funds were derived; in this case, the prisoners of the Arizona State Prison. The fund is somewhat analagous to "company funds" in the army, inasmuch as those funds are also derived from various activities and are held for the use and benefit of the men of the company.

For these reasons we feel that your position is that of a trustee holding these funds for the use and benefit of the prisoners under your charge and that the proper custodian of this fund is the warden of the state penitentiary.

The next question is: What is the proper use of the funds so held? We have stated that these funds are for the use and benefit of the prisoners and they may be used for projects which embrace those purposes. Your inquiry is directed to whether it is proper to build a theater auditorium within the prison walls from this fund.

We feel that this is a proper use of the money and one that would benefit the prisoners. This is supported by the fact that 526 prisoners out of a total of 684 have requested that the money be devoted to such use. However, we feel there must be certain restrictions.

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First, we feel that you cannot expend more than the money presently accumulated, inasmuch as you have no power to obligate further profits which are purely speculative and might or might not accumulate. Therefore, your project must be limited in its total cost to the amount of money now on hand. Secondly, we feel that you cannot obligate the State of Arizona in any manner, and that the completion of your project is purely contingent on its being paid for out of the trust funds and the contractors or materialmen and labor cannot look to the State of Arizona for reimbursement in the event any bills are unpaid. It must be clearly understood that the State is not liable for any expenditures of the project. This is true, we feel, in spite of the fact that the building once erected will become the property of the State of Arizona.

We feel further that in constructing this building you should follow the statutory procedure as to calling for bids and securing a bond for the completion of the work.

Our opinion in regard to the matters presented in your letter cannot be construed as going further--it must be limited to specific matters we have referred to herein.

In view of the unusual situation of this trust fund, we feel that we should caution you on a most careful accounting in the handling of all expenditures.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

JOHN W. ROOD
Assistant Attorney General

JWR:s

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