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June 1, 1950

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ARIZONA ATTORNEY GENERAL

Floyd Crowley, Clerk
Board of Supervisors
Mohave County
Kingman, Arizona

Dear Mr. Crowley:

Please accept our apologies for having failed to answer at an earlier date your letter of May 10. The press of business here in the office has precluded us from doing so until this time.

In your letter you ask our opinion on the following question:

The Kingman Volunteer Fire Department proposes to purchase under a plan advanced by a certain fire truck manufacturing company a piece of fire fighting equipment by entering into a five year lease for the same and paying a yearly rental for the equipment; the title to said equipment being conveyed to the Department at the end of the period covered by the lease. Would such a proposal be legal? Would acquisition of this equipment require the submission of bids?

It is our opinion that a purchase of this nature does not fall within any of the statutory provisions requiring bids for the furnishing of property to be purchased by the state, however we are compelled to advise you that the proposed "lease-purchase" arrangement mentioned in your letter is contrary to law.

Volunteer fire departments are created by compliance with the provisions of Article 20, Chapter 16, Arizona Code Annotated, ACA 1939, and we assume that the Kingman Volunteer Fire Department was created pursuant to these statutes. Sec-

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tion 16-2007, ACA 1939 provides for the method of acquiring money by the department for the purchase of equipment and in effect requires the setting up of a budget for the next ensuing year not later than the 10th day of July of each year. This section also provides, and is in and of itself, an appropriation of certain tax money to the Volunteer Fire Company Fund. It is apparent on the face of this section that any agreement binding the Board of Supervisors or the Fire Company for more than one year would be contrary to the terms of the same.

Inasmuch as this section provides for an appropriation and a definite method of expending the same for the enumerated purposes, any acts done in spending the money or encumbering the Fund necessarily fall within the state financial code and we call your attention to the provisions of Section 10-923 which provide:

"Unauthorized obligation.--No person shall incur, order or vote for the incurrence of any obligation against the state or for any expenditure not authorized by an appropriation and an allotment. Any obligation so raised in contravention of this act shall not be binding against the state but shall be null and void and incapable of ratification by any executive authority to give effect thereto against the state. But every person incurring, or ordering or voting for the incurrence of such obligations, and his bondsmen, shall be jointly and severally liable therefor. Every payment made in violation of the provisions of this act shall be deemed illegal, and every official authorizing or approving such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received."

Thus it can be seen from reading this section that a five-year agreement would be contrary to the same, since Section 16-2007 provides an allotment for only one year.

These statutory provisions cause us to conclusively believe that the proposal mentioned in your letter could not be followed without violating the provisions of these statutes and an attempt to carry out this proposal might subject the contracting party or parties to personal liability. Section 10-923, ACA 1939.

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We can appreciate the problem which confronts you, however we know of no way to sustain the legality of this proposal.

We can find no statute or rule of law which would prohibit the department from entering into a lease for the use of fire fighting equipment for a period not to exceed one year. An option to renew for a like term could be granted the department in the lease. Then in the last such renewal lease passage of the title might be provided for.

We trust that this will serve to answer your inquiry.

Very truly yours,

FRED O. WILSON
Attorney General

CALVIN H. UDALL
Assistant Attorney General

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