

8 January 1947

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ARIZONA ATTORNEY GENERAL

Mr. E. W. Tillinghast, Superintendent  
Arizona State School for the Deaf and the Blind  
Tucson, A r i z o n a

Dear Mr. Tillinghast:

We have your letter of 27 December 1946, which requests an opinion regarding the following facts you set forth:

"Enclosed is a copy of a letter we have on file regarding an agreement with an architect made in September 1938. At that time the appropriation referred to in the letter was received from the Legislature to be matched by P.W.A. funds. However, the matching P.W.A. funds were never secured and the P.W.A. later went out of existence. The state appropriation then reverted to the General Fund in April 1943."

The question arises whether your department is still bound by the contract of 1938 or whether it is now free to negotiate further in the matter.

Regardless of the effect under the old law, by the terms of Section 10-930, A.C.A. 1939, the appropriation lapsed in 1943 when the above Act went into effect, thereby rendering it legally impossible for you to perform the conditions of your contract. The obligation of a contract, performance of which depends upon the continued existence of a thing which is assumed as the basis of the agreement, is terminated by the destruction of that thing by the enactment of a law. Greil Bros. Company v. Matson, 179 Ala. 444; 60 So. 876. Besides, the three-year statute of limitations provided in Section 29-203 bars any rights the architect may have had under the contract, since at least that length of time has elapsed since a reasonable performance date under the 1938 agreement.

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-2-

It is therefore our opinion that the contractual obligations arising from the agreement you set forth have expired.

Very truly yours,

JOHN L. SULLIVAN  
Attorney General

WILLIAM P. MAHONEY, Jr.,  
Assistant Attorney General

WPM:prb

47-4