

September 5, 1950

Op. No. 50-323

Mr. J. W. Kelly
State Treasurer
State House
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Sir:

Wilson

We have your letter concerning the sum of \$45, 137.45 which you have on deposit in a Suspense and Agency Fund which has been accumulated by virtue of the Motor Vehicle License Tax, Section 66-902 covering Interstate Motor Carriers.

It appears that this money accumulated as a result of fees which were paid for several years by various interstate truck operators. In the case of Lebeck v. State, 62 Ariz. 171, the court held the tax involved was one in lieu of an ad valorem tax and applied only to those operators who had previously paid such ad valorem tax. Inasmuch as interstate operators had not theretofore paid this tax, they were not liable for the fees imposed by the new law.

However, a number of operators who were not liable paid the fees for several years before being advised of their non-liability. These fees built up the fund which you now have.

Because these fees were not paid under protest, there is no method by which the truckers may seek to recover the money paid, and therefore it is our opinion that this money should be distributed in accordance with the provisions of Section 66-902 and made available for use by the various departments entitled to the same.

Trusting this answers your inquiry, we are

Very truly yours,

FRED O. WILSON
Attorney General

PERRY M. LING
Chief Assistant
Attorney General

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