

October 7, 1947

Mr. Nasib Karam,
City Attorney,
Nogales, Arizona.

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Karam:

We have your request for our opinion regarding the construction of the Postwar Planning law in which you submit the following inquiry:

- "A. Under what circumstances and for what purpose may a City expend funds already collected for Postwar Projects?
- B. May a City, at the present time, give to a non-profit corporation any part of said funds for the purpose of establishing, building or developing of a War Memorial consisting of a park and general recreation area? This organization not being connected with or a part of the City Government but being established solely for public purposes and using City and County property."

Answering your question "A", we believe that no complete definition of the terms "public improvements and betterments" as used in the Postwar Planning statute, hereinafter quoted, could be given as each such improvement would have to be construed in the light of the object to be achieved. However, it is our opinion that any improvement or betterment which would be of benefit to the general public would qualify under this provision.

In answering your question "B", we must consider Article 9, Section 7, of the Constitution of Arizona, which reads:

"(Loan of public credit).- Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law."

It therefore becomes necessary to construe the following wording (underlined) in Section 1 of Chapter 37, Laws 1943, in the light of the above constitutional provision which reads:

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"Establishment and maintenance of local postwar public works reserve funds.-Notwithstanding any inconsistent provision of any general, special or local law, each city and county is authorized to establish and maintain a postwar public works reserve fund to provide funds for paying all or part of the cost of a long-range, postwar program of local public improvements and betterments, for execution by such city or county or by any public agency which such city or county is authorized to assist by any law, including capital acquisition, replacement, additions, improvements, construction, reconstruction, deferred maintenance, administrative, and other expenses of local planning and development agencies and such other purposes as are authorized by law. * * * * *"

While the postwar planning statute provides that planning and construction shall be carried out "notwithstanding any inconsistent provision of any general, special or local law", this statute is nevertheless controlled by the provisions of our Constitution quoted above.

It is therefore our opinion that the "public agency" referred to in the postwar planning statute could only be an agency to which some portion of the sovereign powers of the state had been given. In other words any agency which was to take over and expend public funds must be one which was actually representative of the people of a given area as a whole and not some segment of the public. A park board, created by a city or county, would be an example of such an agency.

Without having more detail as to the non-profit corporation to which you refer we are unable to decide as to its eligibility.

Trusting this answers your inquiry, we are,

Very truly yours,

JOHN L. SULLIVAN, Attorney General

PERRY M. LING, Asst. Attorney General

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