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5/13/51

May 7, 1951

Op. No. 51-130

Miss Zilpha Fuller  
Merit System Supervisor  
104 Winters Building  
39 West Adams Street  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Miss Fuller:

We have your letter of May 2, 1951, wherein you request an opinion of this office upon the following question:

"May we have your opinion on whether or not under the Merit System rule a classification and compensation plan can be recommended and approved retroactively if such retroactive action occurs within a current payroll period?"

We will first consider any general prohibition against retroactive acts or legislation. In Vol. 11, Am. Jur., page 1193, Section 365, it is stated:

"The Constitution of the United States does not in terms prohibit the enactment by the states of retrospective laws which do not impair the obligation of contracts or partake of the character of ex post facto laws \* \* \* In the absence of an expressed constitutional inhibition, retrospective laws are not prohibited as such. Such a law cannot be held invalid unless it violates some other constitutional provision. \* \* \*"

In the California case of In re Tait Meyer's Estate, 141 P. 2d 504, 60 Cal. App. 2d 699, a fair statement of the law concerning retrospective acts is found. It is therein stated:

"Neither the federal constitution nor the constitution of California prohibits the enactment of retrospective laws, but a retrospective act may not be given effect to deprive one of a completely vested property right.

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There is nothing in the Constitution of Arizona that prevents retrospective acts, with the exception of ex post facto laws and acts which impair contract obligations. The retrospective action asked about in your question would not come within either of these limitations. There is also nothing in the Arizona Code or Merit System regulations which would prohibit the retroactive action which you desire to take.

Therefore, it is our opinion that if the Merit System Council and the Welfare Board agree to make the approval of the compensation plan concerning welfare employees retroactive to April 16, 1951, as long as such retroactive action is within the current payroll period, there is no objection to doing the same.

Very truly yours,

FRED O. WILSON  
Attorney General

KENT A. BLAKE  
Assistant Attorney General

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