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RC
May 9, 1951
Op. No. 51-132

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Honorable Robert H. Forbes
Member, Board of Directors
Arizona Pioneers' Historical Society
105 Olive Road
Tucson, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Dr. Forbes:

We have your two letters dated April 12, wherein you ask for an opinion of this office in connection with the Arizona Pioneers' Historical Society's Building Fund.

For the sake of clarity and to prevent any possible misunderstanding concerning the questions asked in your two letters, we will restate the questions to read as follows:

1. What procedure should be followed by the Arizona Pioneers' Historical Society to activate and make available for disbursement the Society's building fund through the office of the auditor?
2. Can the Society's building fund be used for the purpose of leasing University land adjacent to the University campus?
3. Can the Society's building fund be used for the purpose of constructing a suitable building for the housing of its collections and libraries to be located on University land adjacent to the University campus?
4. Can the Society's building fund be used to buy land near the University campus, being immediately adjacent thereto and enclosed on two sides by University ground, for the purpose of constructing a suitable building for the housing of the society's collections and libraries on such land?

5. Can the Society's building fund be used to construct a building for the housing of its collections and libraries on a site near the University campus, being immediately adjacent thereto and enclosed on two sides by University ground?

In answer to your first question, Section 3, Chapter 7, Laws of 1951, Regular Session, states:

"If, within seven years from March 13, 1947, the Arizona pioneers' historical society shall deposit with the state treasurer, to be placed in the Arizona pioneers' historical society building fund, not less than forty thousand dollars derived from sources other than state appropriation, an amount equal to such deposit, not to exceed seventy-five thousand dollars, shall become available from this appropriation for the purpose stated in section 4, and all moneys appropriated by this Act and standing to the credit of the Arizona pioneers' historical society building fund shall be subject to disbursement, to the extent that it is matched by the moneys deposited in the fund by the Arizona pioneers' historical society, as provided by law."

Under the provisions of this section all that is necessary to activate the building fund is for the Society to deposit with the State Treasurer not less than \$40,000 derived from sources other than state appropriation and have the Treasurer place this sum in the Arizona Pioneers' Historical Society's building fund.

In answer to Question No. 2, it is our opinion that money from the Society's building fund, composed in part of state money, cannot be used for the purpose of leasing University land immediately adjacent to the University campus.

Section 7-105 ACA 1939, as amended, states:

"Purpose.-- The conditional appropriation made under the terms of section 3 (§ 7-104) is for the purpose of enabling the Arizona pioneers' historical society to cause to be erected and equipped on or

near the grounds of the University of Arizona, a building for the use of the society, and to house and render available for research the society's collections of historical and scientific material."

It is specifically set forth in this section that the Society's building fund can only be used for the purpose of erecting and equipping a building for the use of the society. To construe these words to mean the fund could be used for the purposes of leasing University land would, in our opinion, be going beyond the intent of the Legislature.

In answer to your third question, it is our opinion that the Society could use the building fund for the purpose of constructing a building for the housing of its collections and library, to be located on University land adjacent to the University campus. It was clearly the intent of the Legislature to appropriate the money for such purpose, and inasmuch as Section 7-105, supra, states that the building may be erected on or near the grounds of the University of Arizona and the Society is given specific authority in Section 7-101 ACA 1939, as amended, to lease land, the Society could lease and use such grounds for the purpose stated.

In answer to your fourth question, it is our opinion that the Society's building fund can be used for the purpose of purchasing land for a site for the building contemplated in Section 7-105, supra.

Section 7-105 does not specifically authorize the use of the building fund for the purchasing of a site for the building but it is our opinion that there is an implied authority to do so. In the New Mexico case of The Board of County Com'rs. of Bernalillo County vs. McCulloh, 52 N.M. 210, 195 Pac. 1005, the Court stated:

"In a comprehensive sense, then, the power to erect a necessary public building includes the implied power to purchase the necessary land on which to erect it, and to equip it so that it can be used for the purpose for which it is built. It is immaterial that there may be other lawful means of securing

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funds for such a purpose. Public buildings may be built from tax levies, but this does not foreclose resort to the method here used to secure the funds.

The courts which have passed upon the question are unanimous in holding that the power to erect a public building implies the power to purchase the necessary land on which to erect it. (numerous cases cited) * * *

In the West Virginia case of State ex rel vs. Board of Education, 76 S.E. 127, Ann. Cas. 1914B, 1238, the Court considered the right of a school district to use part of the funds, derived from a bond issue for the erection of a schoolhouse, for the acquisition of a site for the building. The Court said the acquisition of a site was necessarily a part of the program to build a schoolhouse and authorized the use of part of the funds to purchase a site.

In answer to your fifth question, it is our opinion that the Society may use the building fund for the purpose of erecting and equipping a building located near the University campus and enclosed on two sides by the University ground.

We trust that this opinion will be of some assistance to you and if we have not answered all your questions in connection with this matter, we will be happy to do so if you will be kind enough to write us setting forth the same.

Very truly yours,

FRED O. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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