

March 12, 1948

Colonel Frank E. Fraser
Executive Officer
Office of the Adjutant General
747 West Van Buren Street
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Colonel Fraser:

We have your request for an opinion regarding a claim presented by the Adjutant General to the State Auditor for the expenses of a meeting of General Staff in January, in which you state the following:

- "1. Under the provision of Chapter 64, Article 2, Section 207, the General Staff of the National Guard of Arizona, quote, "shall meet semi-annually, in July and January, in the office of the Adjutant General". End Quote. This section further states that all expenditures necessitated by this section for meetings of the General Staff shall be paid under the provisions of Section 2224 (64-224) of this Act."
- "2. This headquarters, believing that the provisions of Section 207 and Section 224 of Chapter 64 are valid, and that our procedure is correct in asking payment, respectfully request your opinion as to whether or not this claim should be approved by the state auditor for payment from the general funds as prescribed in Section 224 of Chapter 64."

There may be some question as to the validity of Section 64-224, A.C.A., 1939, for the reason that no limitation as to the maximum amount which may be expended thereunder is fixed in this law.

However Section 64-207 provides that the General Staff shall consist of the Adjutant General and four officers above the grade of Lieutenant. Section 64-220 provides that the officers composing the General Staff shall be paid at the rate paid U. S. Army Officers. We believe these officers, when attending the semi-annual General Staff meetings, would be bound by the general travel expense allowance of Six and 50/100 (\$6.50) Dollars per day and mileage so that it appears there would be a definite limit as to the amount which would be expended at any General Staff meeting. Because of the foregoing it is our

opinion that there is in fact a maximum fixed by the other Sections of the National Guard Act and that the appropriation provided for in Section 64-224 is therefore not invalid because no maximum amount is fixed therein.

The other possible objection to this Section arises by reason of the provisions of the 1943 Budget Law, wherein Section 10-939 the following provision is found:

"10-939. Continuing and recurring appropriations repealed. Effective July 1, 1943, all continuing or recurring appropriations heretofore made for the use of any state departments or agency from or consisting of any specified source of revenue or a percentage of the receipts and collections of specified revenue, or a percentage of, or amounts equal to a stated percentage of specified expenditures are hereby abolished and repealed."

It will be noted that this Section uses the words "from any specified source of revenue, etc."

In the case of McDonald v Frohmiller, 63 Ariz. 487, the court in commenting on this wording said:

"It will be observed that "all continuing or recurring appropriations" which are abolished and repealed by the section are appropriations "from or consisting of any specified source of revenue or a percentage of the receipts and collections of specified revenue, or a percentage of, or amounts equal to a stated percentage of specified expenditures."

"(6) The continuing appropriation made by Secs. 45-202 and 45-203, Arizona Code Annotated 1939, was not made from any of the sources referred to in Sec. 17, supra, but was an appropriation from the general fund and is, therefore, in no manner affected by the specific repeals set forth in Sec. 17."

We believe this case effectively disposes of the second possible objection to Section 64-224, and that the 1943 Budget Law did not repeal the appropriation therein.

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It is therefore our opinion that the travel expense of Colonel Stoffet as shown by the attached travel order is a valid claim against the State of Arizona.

Very truly yours,

EVO De CONCINI
Attorney General

PERRY M. LING
Chief Assistant
Attorney General

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