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ARIZONA ATTORNEY GENERAL

July 20, 1951
Op. No. 51-191

W. T. Holmes, Esq.
Civil Deputy County Attorney
Pima County Courthouse
Tucson, Arizona

Dear Mr. Holmes:

This acknowledges receipt of your letter of July 12 in which you ask the opinion of this office on:

" * * * the question has arisen as to whether or not the County Board of Supervisors has the power and authority to condemn by eminent domain proceedings, private property for the purpose of constructing drainage canals for the carrying-off of excess surface waters, ("Flash flood") which canals would either directly or indirectly serve to protect County highways and would certainly serve to protect nearby property owners."

Section 17-355 ACA 1939 provides:

"Flood control--Board may construct works--
Tax levy.--Whenever flood waters of any
river, creek, channel or canyon injure or threaten to injure a public road or highway, or public property, or become a menace to human life and habitation, the board may build dikes, levees or other structures or aid in the construction of such works to control such flood waters or lessen their destructive effects, and for such purpose may appropriate and use in any one (1) year out of the general fund an amount not to exceed fifteen cents (15¢) on each one hundred dollars (\$100) of taxable property in the county. If there is not sufficient money in the general fund to meet such

appropriation, the board may issue certificates of indebtedness against said fund. When the board uses money out of the general fund for such purpose, it may, at the next general levy of taxes, levy upon real and personal property within the county subject to taxation, a tax sufficient to cover the amount so used not exceeding fifteen cents (15¢) on each one hundred dollars (\$100) of assessable property, to be levied and collected at the time and in the manner as other taxes.

If at the time of such levying there has been no expenditure of money for such purpose, but the board has made and perfected plans for the construction of dikes, levees, or other works for such purpose, it may levy such tax for the completion of the same, not exceeding the amount authorized."

Thus it is obvious that the Board has authority to perform the work necessary to control flood waters or lessen their destructive effects, and may appropriate funds and levy taxes for the purpose of defraying the expense thereof.

Section 27-901 ACA 1939 provides:

"Subject to the provisions of this chapter (article), the right of eminent domain may be exercised by the state, a county, city or political subdivision, or by any person, for the following uses:

1. All public uses authorized by the government of the United States;
2. Buildings and grounds for any public use of the state and all other public uses authorized by the legislature;
3. * * * canals, aqueducts, flumes, ditches, or pipes, for conducting water for the use of the inhabitants or for drainage, of any county, city, village or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; * * *

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The authority would thus seem to be vested in the Board of Supervisors to exercise the right of eminent domain in pursuance of the objects authorized in Section 17-355.

Section 75-901 ACA 1939 provides the authority for the organization by private citizens of flood control districts and outlines the powers thereof. This section of course has no application to your question, but we mention it for your information.

If there is any other information which you desire and which you feel we may be able to offer you, please do not hesitate to request it of us.

Sincerely yours,

FRED O. WILSON
Attorney General

PHIL J. MUNCH
Assistant Attorney General

PJM:f