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ARIZONA ATTORNEY GENERAL

*Yes  
8/11/51*

July 31, 1951  
Op. No. 51-214

Gilbert L. Cady, Comptroller  
Arizona State College  
Tempe, Arizona

Dear Sir:

We have your letter of July 26, 1951, stating:

"I am writing to inquire into the procedure set up under the present law governing the disposal of excess and obsolete equipment owned by the State. I am unable to determine what procedure is in order in light of recent legislation.

I would also like clarification on the matter of liability insurance, purchased by the institution, for state-owned vehicles. Did recent legislation change, to permit the college to obtain this coverage?"

Section 4-318 ACA 1939 Code (Supplement) provides for the sale or disposition of personal property belonging to the State or any of its departments or agencies. This section reads:

"The governor, secretary of state and the state auditor shall constitute a property condemnation board and are authorized, and it shall be their duty, from time to time to examine and condemn any personal property belonging to the state, or any of its departments or agencies, when the same shall have been worn out or otherwise become useless to the state, its departments or agencies, and direct the sale of the same in the manner hereinafter provided.

After the condemnation of any such property as provided in the last preceding paragraph, the board may authorize the department in which said equipment is located to advertise the same for sale in a newspaper of general circulation

51-214

published in the city of Phoenix, for a period of once a week for four (4) consecutive weeks; and if the sale shall be made at any other place than the state capitol, then said advertisement shall also be published in like manner in some newspaper published in the county where said sale is to be made; said advertisement shall state the time and place where the sale is to be made, and said property shall be sold at public auction to the highest bidder, for cash, and the proceeds thereof shall be paid over to the state treasurer and placed to the credit of the general fund. The necessary expenses of advertisement and sale shall be a proper charge against the funds so received and deposited with the said state treasurer, except however the board in its discretion may authorize the department having said equipment to trade the same in on new equipment.

Except as herein provided no personal property of the state, its departments or agencies, shall be sold, exchanged or disposed of; provided, this act shall not apply to property sold or exchanged between the various institutions, departments or agencies of the state, as otherwise provided for by law."

The section requires that money derived from the sale of obsolete or useless property be deposited in the general fund but, by later legislation, to wit, Chapter 60, Laws of Twentieth Legislature, 1951, the University and State Colleges were exempted from the Act. The chapter provides:

"When any money belonging to the state comes into the possession of any state officer, by recovery at law or otherwise, and no provision of law exists for the disposition of the same, it shall be turned over to the state treasurer and placed in the general fund. The provisions of this section shall not apply to money realized from the sale of personal property or from the sale of real property or improvements thereon by the board of regents of the university and state colleges of Arizona, or by educational institutions under the control of said board, or by the employment security commission of Arizona."

Gilbert L. Cody, Comptroller  
Arizona State College, Tempe

July 31, 1951  
Page Three

After property possessed by the University and State Colleges is condemned as provided by Section 4-318, supra, the University and State Colleges sell the same and the proceeds of such sale need not be deposited in the general fund as required by Section 4-318, but should be deposited in the State Treasury to the credit of the University and State Colleges as provided in said Chapter 60.

Chapter 41, Session Laws of 1951, contains a repeal of Section 4-318 of the Code, however, a referendum was filed against the act and under Section 5, Article 4, part 1 of the Constitution, Chapter 41 does not become effective until approved by a majority vote at the next election. Therefore, Section 4-318 of the Code is still in effect.

Answering your second question, you are advised the Twentieth Legislature at its regular or special session did not change the law with respect to purchasing liability insurance by state departments.

Very truly yours,

FRED O. WILSON  
Attorney General

EARL ANDERSON  
Assistant Attorney General

EA:f