

November 23, 1948

Mrs. Ana Frohmiller,  
State Auditor  
Capitol Building  
Phoenix, Arizona

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**ARIZONA ATTORNEY GENERAL**

Dear Mrs. Frohmiller:

We have your letter of November 9th, wherein you  
state:

"I am enclosing copies of resolutions passed by the Arizona Highway Commission on September 16, 1948 (1) authorizing Mr. W. C. Lefebvre, State Highway Engineer, and Mr. R. C. Perkins, Deputy State Highway Engineer to sign checks drawn upon the State Highway Imprest Fund, and, (2) authorizing Mr. W. C. Lefebvre, State Highway Engineer, and Mr. R. C. Perkins, Deputy State Highway Engineer, and Mr. P. J. Munch, Chief Accountant, to verify and approve claims for payment out of State Highway Funds."

and ask our opinion on the following question:

"Will you please give me an opinion as to whether or not the Commission may legally authorize the above signatures to handle the Imprest Funds, or Revolving Account, and approve claims presented against State Highway Funds."

I respectfully call your attention to

Par. 5, Section 59-105, A.C. 1939, amended  
Par. 14, Section 59-105, A.C. 1939, amended  
Par. 1, Section 59-107, A.C. 1939, amended  
Par. 4, Section 59-107, A.C. 1939, amended  
Section 59-311, A.C. 1939, amended  
Section 59-312, A.C. 1939, amended"

We have examined the sections set out in your letter, and will refer to them briefly.

Section 59-105, as amended by Chapter 32, Laws of 1945, Regular Session, prescribes the general powers

and duties of the commission. Subdivision 5 of said section states the commission may make provisions for the expenditures of the highway fund under the direction of the secretary of the commission; and subdivision 14 of the same section, as amended by said chapter, provides the commission may exercise such powers and duties as may be necessary to carry out the provisions of the act.

Subdivision 1 of Section 59-107, as amended by Chapter 32, Laws of 1945, Regular Session, provides the secretary shall direct the organization of the department; appoint, suspend and discharge employees and fix their duties, and prescribe rules and regulations for the conduct of all employees, subject to the approval of the commission. Subdivision 4 of the same act provides the state engineer may be authorized by the commission to enter into agreements on behalf of the state with counties, etc., for the improvement or maintenance of state routes and to enter into contracts for the construction of state highways or state routes. Subdivision 4, Section 59-107, as amended by the laws of 1945, Regular Session, provides that no claim shall be allowed in connection with state highways or state routes by the auditor without the written approval of the state engineer or his authorized or his bonded agent.

Section 59-311, as amended by Chapter 10 of the First Special Session of 1945, provides for the establishment of a revolving account, but does not provide how said fund shall be expended. Section 59-312 of the said act, hereinafter quoted, provides the manner in which the funds of the highway department may be expended.

We think a correct determination of your question depends upon two sections referred to in your letter, namely, subdivision 5 of Section 59-105, which reads as follows:

"The commission shall: \* \* \* \* \*  
5. Prescribe rules and regulations for the expenditures, by or under the direction of the secretary, of all money in the state highway fund;"

and Section 59-312, as amended at the First Special Session of 1945, which reads as follows:

"59-312. MANNER OF APPROVING, AUDITING AND PAYING CLAIMS. Money in the state highway fund shall be paid out only upon claims itemized and veri-

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fied by the commission or other bonded agent authorized by the commission, said claims shall be presented to and filed with the auditor showing the authority therefor. If the auditor shall approve any such claims, he shall charge the same to the proper account and draw his warrant therefor on the treasurer, who shall pay the same out of the state highway fund and charge to the proper account as shown on said warrant".

You will note there is a conflict between these two sections just quoted. Section 59-105 provides expenditures may be made under the direction of the secretary, while Section 59-312 provides money in the highway fund shall be paid out upon claims itemized and verified by the commission or a bonded agent authorized by the commission. In other words, Section 59-105 authorizes the secretary to authorize expenditures of highway funds, and Section 59-312 provides that a bonded agent of the commission may authorize the expenditure of highway funds.

To answer your inquiry, it is necessary to either reconcile these sections above quoted, if they may be reconciled, or, if they are in conflict, to determine which section controls. This is a rule of statutory construction. As we read the two sections, there is no doubt in our mind there is an unreconcilable conflict between the two sections, and it becomes necessary to determine which section prevails.

Section 59-105 was enacted as Chapter 32, Laws of 1945, Regular Session, as an emergency measure, was approved by the Governor on March 6, 1945, and became a law on that date. Section 59-312, a later act, was enacted at the First Special Session of 1945, as an ordinary measure and became effective ninety days after the adjournment of the session September 29, 1945.

Therefore, it is our opinion the later act contained in Section 59-312, as amended at the First Special Session of 1945, controls, and the commission may authorize any bonded agent to present claims against the highway fund. It appears from the copies of the resolutions submitted, W. C. Lefebvre, R. C. Perkins and P. J. Munch are

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agents of the commission and if they are duly bonded they are authorized to verify and present claims against the highway fund and the said Lefebvre and R. C. Perkins are duly authorized by said resolution to draw checks on the imprest fund, or revolving account, of the Highway Commission.

Yours very truly,

EVO De CONCINI  
Attorney General

EARL ANDERSON  
Assistant Attorney General

EA:A