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ARIZONA ATTORNEY GENERAL

March 24, 1952
Opin. No. 52 81

*Yes
How
3/26/52*

The Honorable Lee Ackerman
House of Representatives
Capitol Building
Phoenix, Arizona

Dear Mr. Ackerman:

We have your oral request for an opinion asking whether or not a taxpayer who has requested the Attorney General to file suit pursuant to Section 12-503 ACA 1939 may bring the suit before the sixty (60) day period has expired, when the Attorney General has answered the request stating he did not intend to file suit.

The answer to this question depends upon the statutory construction to be given Section 12-503 ACA 1939, the pertinent part of which provides:

"If the attorney general shall for sixty (60) days after request made by any taxpayer of the state in writing, fail to institute such action, then any taxpayer of the state may institute such action in his own name and at his own cost, with the same effect as if brought by the attorney general;"

We have been unable to find any cases construing the above quoted section or similar sections in statutes of other states upon the precise point here in question. Therefore, we must attempt, if possible, to determine the intent of the legislature by giving the words their common and ordinary meaning. You will note that the statute reads:

"If the attorney general shall for sixty (60) days after request * * * fail to institute suit."

This would appear to require the taxpayer to wait sixty (60) days after submitting a request before filing suit irrespective of what the Attorney General does. The section does not state

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"for sixty (60) days after request or at such time as attorney general gives written notice that he does not intend to bring suit."

If the legislature had inserted the above underlined phrase then undoubtedly suit could have been brought after the Attorney General stated that he did not intend to bring suit. However, the underlined part was not inserted. Even though the Attorney General did give written notice that he does not intend to file suit before the sixty (60) day period has expired, there is nothing in the statute which precludes him from changing his mind should additional facts or further research warrant a reversal of position.

In our opinion, the statute prohibits the taxpayer from bringing suit before the sixty (60) day period has expired even though the Attorney General has stated he does not intend to file suit in the matter.

Very truly yours,

FRED C. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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