

July 1, 1949
AW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. George F. Senner
Attorney at Law
City Attorney
Central Building
Miami, Arizona

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Dear Mr. Senner:

In answer to your letter of June 23, 1949 wherein you say:

"I have been requested to write you by Mr. J. F. Landis, Town Clerk, for the Town of Miami, regarding any surplus which might be left after the fiscal year, 1948-1948. Can it or part of it be transferred to the Post War Fund."

Your letter said "1948-1948" but we presume you meant 1948-1949 and are answering it with that idea in mind.

In most instances where a city has an attorney we usually request the opinion of the City Attorney on the matter before answering the question because so often we write conflicting opinions and it complicates matters, but in this case we assume that you have not given an opinion to the city regarding this Post War Fund, and from that angle we are giving this opinion.

The law respecting this Post War Fund or Post War Planning is found in Subsection (c) of Chapter 5 of the War Measures which is in the appendix of the Cumulative Pocket Supplement of Volume 5, ACA 1939. This law was originally passed by the Regular Session of the Legislature in 1943 and was amended by the 1947 Session Laws. It is a commonly accepted fact that in order for a town, county or the state to spend money, that the amount must be appropriated or budgeted for the purpose for which it is expended and that any surplus left at the end of the fiscal year reverts to the General Fund. This law provided for the governing bodies of the municipalities to budget or appropriate money for the Post War Public Works Reserve Fund and permit an accumulation of these funds from year to year. Beginning at the middle of Section 1, Subsection (c) of Chapter 5, supra, we have this:

"The creation and maintenance of such fund shall be deemed a proper public purpose for which the moneys of the political subdivision may be expended and appropriated. There may be included in the annual tax levy of the political subdivision such sum as it may deem necessary for the uses and purposes of the fund. The fund shall consist of all moneys appropriated, transferred or credited thereto by budgetary provision or otherwise. All unexpended balances of appropriations from the fund remaining after the appropriations lapse according to law shall revert to the fund."

Mr. George F. Senner
City Attorney

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From the underscoted portion of the above quotation it is apparent that the governing body of the political subdivisions must appropriate or budget for the amount they deem advisable or necessary to be placed in the Post War Fund. We do have in this sentence the words "transferred or credited thereto", which might be construed to permit a transfer as you suggest, but it says "transferred or credited thereto by budgetary provision". If the quotation stopped there, there would be no question but what it must be budgeted as other funds but it says, "or otherwise". It appears to us that if the political subdivision could put funds into this Post War Fund without the proper budgetary or appropriation procedures having been followed that it would not be a good procedure and not authorized by reasonable interpretation of the word "otherwise".

It is therefore our opinion that the city officials should transfer this surplus into the Post War Fund by placing it as one of the items in their annual budget. We believe that after you have read this statute and given it reasonable consideration that you will arrive at this opinion; also, that the rest of the provisions are clear.

Please be assured that we will be happy to assist you whenever we can.

Respectfully,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

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