

July 18, 1949

Hon. Dan E. Garvey  
Governor of the State  
of Arizona  
Capitol Building  
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Governor Garvey:

We have a letter addressed to you by Roy C. Clark, Justice of the Peace at McNary, Arizona, in which Judge Clark states, with reference to fines imposed by him on game violators, that:

"In most of these cases, the offenders do not have the cash to pay their fines, and in accepting these checks, I am acting only as an agent for the State and I will not be responsible financially for their validity."

He also states he has requested the game department for a ruling on his responsibility for checks accepted by him in payment of fines imposed.

It is our opinion that Judge Clark is responsible for the collection of all fines imposed by him whether he turns the money over to the county treasurer or to the State Game Department.

The manner of payment of fines is well stated in 36 C.J.S. p. 785, where the text reads:

"Except to the extent that he is authorized to do so by statute an officer has no authority to receive anything other than money in payment of a fine;"

There are no statutes in Arizona authorizing payment of fines by any means other than money, therefore a Justice of the Peace could not consider a fine paid by check as satisfied until the check had been paid by the bank upon which it was drawn. Mollendorf v. State, 173 P. 2d (Idaho) 519. It would be possible, however, for a Justice to accept a check as a conditional payment with the fine to be satisfied when the check clears the bank.

Very truly yours,

FRED O. WILSON  
Attorney General

PERRY M. LING  
Chief Assistant  
Attorney General

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ARIZONA ATTORNEY GENERAL

July 19, 1949

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Mr. Elwood W. Driggs  
Director, Sales Tax Division  
Arizona State Tax Commission  
The Capitol  
Phoenix, Arizona

Dear Mr. Driggs:

We have before us your letter of May 26, 1949 in which you refer to the oral request for the opinion of this office as to whether the city is liable for the sales tax levied under Section 73-1303(f)(2), ACA 1939, for the rents it receives from the Municipal Frank Luke Housing Project.

It is the belief of this office that no such tax should be levied, for the following reasons:

(1) Our Supreme Court in City of Phoenix v. Moore, 57 Ariz. 350, 113 P. 2d 935, decided that our Sales Tax Act was not applicable to revenues derived from non-profit functions of the city such as the city pools and golf course;

(2) Our Supreme Court further decided in Humphrey v. City of Phoenix, 55 Ariz. 375, 102 P. 2d 82, that municipal housing projects created pursuant to the municipal housing law (Sections 16-1601 through 16-1631, ACA 1939, as amended) are governmental and not proprietary functions of the city.

Such housing projects are operated at cost and on a non-profit basis according to the mandate of Section 16-1609, ACA 1939.

Trusting this answers your question, we are

Very truly yours,

FRED O. WILSON,  
Attorney General

EDWARD JACOBSON  
Assistant Attorney General

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