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ARIZONA ATTORNEY GENERAL

July 22, 1953

Opinion No. 53-139

TO: The Honorable T. J. Mahoney
Pinal County Attorney
Florence, Arizona

RE: Budgeting of Highway Funds

QUESTION: May funds be budgeted for the maintenance of public highways, roads, streets and bridges as set forth in Section 73-502, A.C.A. 1939, as amended, which would be separate and apart and in addition to the amount provided for in Section 59-604, A.C.A. 1939, for improvements for the roads of the county?

Section 59-604, A.C.A. 1939, reads as follows:

"59-604. County tax levy for improvement of highways.--The board of supervisors may levy a real and personal property tax, not exceeding twenty-five cents (25c) on each one hundred dollars (\$100) of property in the county, for road purposes, to be levied and collected at the same time and in the same manner as other property taxes are collected, and the money when collected shall be paid into the county treasury for the benefit of the highways within the county, and together with other money received for such purposes, expended by the board in the improvement of the roads of the county. (Emphasis supplied)

Section 73-502, A.C.A. 1939, as amended, will not be set out in full. However, it becomes apparent upon the reading of this Section that it merely describes the procedure which should be followed in preparing a budget. No mention is made as to how much can be budgeted under each account. The only limitation imposed by this Section is that the

"73-502. Annual statement and estimate--Publication

and notice.--* * *total of amounts proposed for expenditure in said estimates shall not exceed by more than ten (10) per cent the total of amounts proposed for expenditure in the budget adopted for the previous fiscal year,* * *."

Section 73-502 has been modified by Chapter 77, Laws of 1953. This Section is set out below:

"73-505a. County, city, and town budget and tax levy limitation. The governing body of a county, city or town may adopt a budget for the fiscal year 1953-54 without complying with the budget limitations provided in sections 73-502, 73-503, and 73-505, Arizona Code of 1939; provided, however, that the total amount of the adopted budget shall not exceed the actual expenditures of the general and road funds of the 1952-53 fiscal year plus twenty per cent. Said budget so adopted may be the basis for future budgets of such political subdivisions. Nothing herein contained shall be held to permit increasing the tax levy over and above the ten per cent increase allowed in section 73-505, Arizona Code of 1939, as amended." (Emphasis supplied)

Section 73-505a, as set out above, allows the county to prepare a budget without complying with the budget limitations set forth in Section 73-502, supra. The only two limitations imposed on the county in Section 73-505a, supra, are:

1. "* * *the total amount of the adopted budget shall not exceed the actual expenditures of the general and road funds of the 1952-53 fiscal year plus twenty per cent.* * *"
2. "* * *Nothing herein contained shall be held to permit increasing the tax levy over and above the ten per cent increase allowed in section 73-505, Arizona Code of 1939, as amended."

From a close reading of both Sections 73-502 and 73-505a, supra, it becomes apparent that neither of these sections in any way affects the following provision of Section 59-604:

The Honorable T. J. Mahoney
Pinal County Attorney

July 22, 1953
Page Three

"59-604. County tax levy for improvement of highways.***and the money when collected shall be paid into the county treasury for the benefit of the highways within the county, and together with other money received for such purposes, expended by the board in the improvement of the roads of the county."

This provision of Section 59-604 definitely contemplates that other money than that collected by the tax provided for in that section may be budgeted in the general budget for the maintenance of county highways, roads, streets and bridges. In fact, such is expressly provided for by the above proviso.

It is, in view of the above considerations, the opinion of this office that funds may be budgeted for the maintenance of county roads in addition to the funds provided for by the tax set forth in Section 59-604, A.C.A. 1939. However, such a budgetary measure is limited by the above limitations as set forth in Section 73-505a, supra. The total amount of the adopted budget can not exceed the actual expenditures of the general and road funds of the previous year plus twenty per cent and the tax levy can not be increased by more than ten per cent over the preceding year.

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