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*W. J. ...
Pittman*

September 5, 1953
Opinion No. 53-165

TO: The Honorable Wallace O. Tanner
Apache County Attorney
St. Johns, Arizona

RE: Applicability of veterans' and
widows' exemptions from special
assessments and taxation to
meet school bonds.

QUESTIONS: (1) Do Article 9, Section 2,
Constitution of Arizona, and
Section 73-201, A.C.A. 1939, as
amended, grant an exemption from
levies to pay special assessments
for local improvements?
(2) Do Article 9, Section 2,
Constitution of Arizona, and
Section 73-201, A.C.A. 1939, as
amended, grant an exemption from
levies to pay school bond indebted-
ness?

Exemptions from taxation are granted by the Arizona Consti-
tution to named classes of institutions, governmental bodies and
individuals. The applicable part of Article 9, Section 2, of the
Arizona Constitution is as follows:

"§ 2. (Tax exemption.)--That there shall be
exempt from taxation all federal, state, county
and municipal property. Property of educational,
charitable and religious association or institu-
tions not used or held for profit may be exempt
from taxation by law. * * * There shall be further
exempt from taxation the property of widows,
honorably discharged soldiers, sailors, United
States marines, members of revenue marine service,
and army nurses, * * *"

The application of these exemptions to school bond indebted-
ness must be considered separate from the question of the appli-
cation of the exemptions to special assessments for local improve-
ments. In answer to the first question, the Supreme Court of the
State of Arizona in the case of WELLMER v. CITY OF PHOENIX, (1931)
39 Ariz. 143, 4 P. 2d 665, recognized that there was a primary and

clear distinction between special assessments and taxes. They were considering the effect of a homestead and held that homestead property was not exempt, by virtue of Section 24-501, A.C.A. 1939, wherein homestead property is "exempt from attachment, execution or forced sale", from a special paving assessment. The court said, l. c. 151:

"If a 'special assessment' is a 'tax' in the ordinary sense of the term, there is no question that homesteads are subject thereto (special assessment); for under section 2, of article 9 of the Constitution, all property in the state not specifically exempted under the provisions of such section is expressly made subject to taxation, and it contains no reference to homesteads. It is urged, however, that the special assessment in question is not a 'tax' within the constitutional provision last mentioned. In practice, and as generally understood, there is a clear distinction between the two terms. Taxes are generally held to be burdens or impositions laid for purposes of general revenue, regardless of the direct benefit accruing to the person or property taxed, while assessments are special and local impositions on property, made for a public purpose, but fixed in amount with reference to the special benefit which such property derives from the expenditure. Illinois Central R. Co. v. Decatur, 147 U. S. 190, 37 L. Ed. 132, 13 Sup. Ct. Rep. 293.

And such special assessments are frequently held not to be within constitutional or statutory provisions referring to general taxation only. Nevertheless, they can only be sustained by virtue of the general taxing power of the government, and in that sense, at least, resemble a tax. * * *"
(Parenthetical matter supplied.)

The case of ILLINOIS CENTRAL R. CO. v. DECATUR, cited by the court above, represents the great weight of authority, which is that constitutional or statutory exemption from taxation is to be taken as an exemption from ordinary taxes only and does not include special assessments for local improvements. 48 Am. Jur., Special or Local Assessments, Sec. 80. This rule is stated in Elliott on Roads and Streets, Fourth Edition, Sec. 670, as follows:

"§ 670. What property may be assessed--exemption.--Where a statute provides generally for the assessment of land for the cost of improving a road or street it authorizes an assessment upon all lands within the limits designated, although some of the property may be exempt from taxation. A statute exempting property from taxation does not exempt it from an assessment for a local improvement. * * *"

As the practice in Apache County conforms to this rule, it will not be necessary to treat this question further.

In answer to your second question, Article 9, Section 6, Constitution of Arizona, authorizes special assessments to be made for local improvements.

"§ 6. (Local improvements.)--Incorporated cities, towns, and villages may be vested by law with power to make local improvements by special assessments, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes." (Emphasis supplied.)

This grant of power, which does not extend to school districts, is in the same article as Section 2, which grants exemption from "taxation". Section 6 authorizes local improvements to be financed by "special assessments" or "special taxation". Following the well-known rule of statutory construction, all statutes must be construed so that, if possible, all words may be given meaning and effect. (ARIZONA EASTERN R. CO. v. MATTHEWS, (1919) 29 Ariz. 282, 180 P. 159 7 A.L.R. 1149; HILL v. GILA COUNTY, (1940) 56 Ariz. 317, 107 P. 2d 377; POWERS v. ISLEY, (1947) 66 Ariz. 94, 183 P. 2d 880; FRYE v. SOUTH PHOENIX VOLUNTEER FIRE CO., (1950) 71 Ariz. 163, 224 P. 2d 651), "Special taxation" as used in Section 6 is not the same as "taxation" as used in Section 2.

We submit that the absence of school districts from the enumeration of governmental units invested with power to make local improvements through the use of special assessments or special taxation is persuasive, if not controlling, and, therefore, that levies to pay school bond indebtedness are taxes within the constitutional exemption, supra.

Article 11, Section 1, Constitution of Arizona, imposes a duty upon the Legislature to establish and maintain a "general and uniform public school system".

Article 11, Section 10, Constitution of Arizona, makes provision for the revenue necessary to maintain state educational institutions. One of the sources of revenue thus authorized is that "the legislature shall make such appropriations, to be met by taxation, as shall insure the proper maintenance of all state educational institutions, and shall make such special appropriations as shall provide for their development and improvements." (Emphasis supplied.)

Apart from the constitutional mandates above, the power to tax is inherent in the legislative body. 51 Am. Jur., Sec. 345.

"§ 345. Education.--It is not only the right, but the duty of the government to make proper provision for education, and the supplying of the means for education is a purpose for which it is eminently proper that the power of taxation shall be exercised. * * *"

The Legislature, following the constitution and in exercise of their inherent power to tax, provided for the revenue necessary for the state schools. Chapter 54, Article 6, Arizona Code Annotated, 1939, reflects an integrated tax structure whereby a portion of this cost of maintenance is met by taxes levied on the state level, by taxes levied on the county level, and by taxes levied on the particular district according to the needs of the district as estimated by the Boards of Trustees and in accordance with the average daily attendance requirements found in the article. In addition, school districts are authorized by law to issue bonds "for the purpose of raising money for purchasing or leasing school lots, for building school houses, and supplying same with furniture and apparatus, and improving grounds, or for liquidating any indebtedness already incurred for such purposes". (Sec. 54-419, A.C.A. 1939.)

An election is required to determine whether or not said bonds shall be issued. If the bond issue is authorized by the election, the Supervisors of the county issue the bonds. The revenue necessary to pay the principal and interest on the bonds "shall be raised by taxation upon the taxable property in said district". (Section 54-421, A.C.A. 1939.) The particular duties of the Board of Supervisors in connection with the levy of the tax necessary to meet this indebtedness are found in Section 54-427, A.C.A. 1939, as follows:

"54-427. Levy of tax to pay bonds and interest.--
The board of supervisors, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of school bonds, * * *." (Emphasis supplied.)

The procedure set out in Section 54-428, A.C.A. 1939, to be followed in the event the Board of Supervisors fails to make the levy necessary to pay such bond principal and interest, is of special significance in connection with this question, for it is the duty of the State Board of Equalization to "add to the state tax to be levied in said district a sufficient rate to realize the amount of principal or interest past due prior to the next levy. The same shall be levied and collected as a part of the state tax". (Emphasis supplied.)

It is the opinion of this office that in view of the law above set out that there is no difference in character between taxes for state, county and school districts and school bonded indebtedness, and that levies made to pay school bond principal and interest are

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taxes within the meaning of Article 9, Section 2, supra, which grants "exemption from taxation".

The distinction between special assessments and school bonded indebtedness is further illustrated by the provisions of Chapter 10, Article 6, A.C.A. 1939, entitled "County, municipal and school district indebtedness", authorizing bond issues to be paid for by taxes, and the special assessments authorized in Chapter 16, Article 21, A.C.A. 1939, entitled "Opening, widening and closing of public ways", and Chapter 16, Article 23, A.C.A. 1939, entitled "Public improvement by special assessment". The indebtedness authorized by Article 6, supra, may be for any public purpose, including public buildings. An election is necessary in order to issue the bonds. When said bonds are issued, the Board of Supervisors for a county or school district or the governing body of a municipality shall levy annually taxes sufficient to pay the principal with interest, and such taxes are levied and collected "at the same time and in the same manner as other taxes are levied and collected upon all taxable property in such political subdivisions."

The grant of power to municipalities to open and close public ways and make other public improvements provided for in Chapter 16, Article 21, is made by special assessment against the property benefited. The several assessments are made liens upon the property benefited and the property authorized to be sold in the event of a failure to pay the same. The same procedure of lien and sale to collect delinquent assessments is authorized in Chapter 16, Article 23, entitled "Public improvement by special assessment", supra. In contrast to the special collection procedure for special assessments, school bonds and other bonded indebtedness of counties and municipalities must be collected as all delinquent ad valorem taxes, in accordance with the provisions of Chapter 73, Article 8, Arizona Constitution, entitled "Collection of delinquent taxes."

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