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ARIZONA ATTORNEY GENERAL

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April 9, 1954  
Opinion No. 54-41

TO: Mr. Dan T. Benchoff  
State Examiner  
Capitol Building  
Phoenix, Arizona

RE: Applicability of veterans',  
widows' and other tax  
exemptions to certain levies.

- QUESTIONS: 1. Do Article 9, Section 2,  
Constitution of Arizona, and  
Section 73-201, Arizona Code  
of 1939, 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, Arizona Code  
of 1939, grant an exemption  
from sanitary district levies  
for (a) bonded indebtedness,  
(b) current expenses?
3. Do Article 9, Section 2,  
Constitution of Arizona and  
Section 73-201, Arizona Code  
of 1939, grant an exemption  
from Improvement District levies  
for (a) general obligations,  
(b) improvement assessments?
4. (a) Is the State of Arizona  
or its political subdivisions  
liable for special assessments  
levied pursuant to the District  
Improvement Act of 1945. (16-2801,  
et seq., Arizona Code of 1939)  
(b) May special assessments paid  
under the District Improvement  
Act of 1945 to a district by the  
State or its political subdivisions  
be recovered from the district?

Special Assessments Generally

Exemptions from "taxation" are granted by the Arizona Constitution 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 associations or institutions 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 Supreme Court of the State of Arizona in the case of WELLS v. CITY OF PHOENIX, (1931) 39 Ariz. 148, 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 from a special (paving) assessment by virtue of Section 24-501, A.C.A. 1939, wherein homestead property is "exempt from attachment, execution or forced sale". The court said at page 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. (Italics underscored)

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 direct property 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. \* \* \*"

Article 9, Section 6, Constitution of Arizona, authorizes named types of municipalities to impose special assessments for local improvements as well as granting the right to tax generally.

"§ 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 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." All statutes must be construed so that, if possible, all words may be given meaning and effect. (ARIZONA EASTERN R. CO. v. MATTHEWS, (1919) 20 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). Therefore, "special taxation" as used in Section 6 is not the same as "taxation" as used in Section 2, both of Article 9, Constitution of Arizona.

As the imposition of special assessments or special taxes depends upon the general taxing power of government (WELLER v. CITY OF PHOENIX, supra) and such power is inherent in the legislative body of the state (51 Am. Jur., Sec. 345) the constitutional grant to municipalities cannot be held to be exclusive so that the Legislature is prohibited thereby from authorizing other political subdivisions than the municipalities named in Section 6, Article 9, supra, to impose "special assessments" or "special taxation".

From the foregoing authorities this office concludes that the exemption provided by Article 9, Section 2 of the Constitution does not apply to "special assessments" or "special taxation".

#### Characterization of "Levy"

The first question asked relating to "special assessments for local improvements" cannot be answered further apart from particular statutes authorizing levies for named improvements. However, as the problem in each particular case is one of characterization, i.e., are the direct property levies in question "special assessments", "special taxes", or "ordinary taxes", the criteria for determining the nature of a particular levy must be discussed and determined before an examination of the particular statutes.

The primary distinction between the various "levies" is one of purpose. "Special assessments" and "special taxes" are impositions laid directly on real property for a public purpose in an amount in proportion to the benefit received by the property from the improvement constituting the public purpose. "Taxes" are burdens or impositions laid directly on real property for a public purpose in an amount in proportion to the value the property bears to the total levy raised for the public purpose. In the case of ordinary taxes the "public purpose" is the governmental units

need for general revenue. With special assessments, the revenue needed is to pay for specific improvements which improvements constitute the "public purpose."

This fundamental difference, or rule of "purpose", if it may be called such, is theoretical. A pragmatic test for determining the character of the several levies may be deduced from the composition and structure of the many statutes and acts providing for both ordinary and special taxation.

Exercising its inherent power to tax, and pursuant to the mandate of Article 9, Section 11, Constitution of Arizona, the Legislature has established (in Chapter 73 of the Arizona Code Annotated, 1939) an integrated taxing system with provision for uniform assessment, levy, and collection of direct property taxes. Without attempting to detail this procedure, the nature thereof can easily be shown with a few references to the statutes. The integration of this tax procedure is best indicated by the statutes authorizing the levy of taxes. Levies for state and county purposes are authorized to be made on the bases of the assessments provided for in Article 4, Chapter 73, as follows:

"73-501. Annual levy.---\* \* \*On the second Monday of August in each year, the state board of equalization shall levy upon the real and personal property within the state such sum of money as shall be necessary, with all other sources of revenue as estimated by the state board of equalization and all unencumbered balances on hand at the close of the preceding fiscal year, as fixed by law, to defray the necessary expenses of the state for the current fiscal year, including interest and principal of the bonds of the state, and shall fix the rate of taxation required to produce the amount of such levy. Upon the same property and upon the same valuation the board of supervisors of each county shall levy for the same fiscal year, all taxes to be levied and collected for all county purposes in amounts as limited and for the purposes specified in this article."  
(Emphasis supplied)

It will be noted that the levy authorized in the case of the state is for "necessary expenses of the state for the current fiscal year, including interest and principal of the bonds of the state".

The purposes for which the county and other levies are authorized is set forth in Section 73-502, A.C.A. 1939, as amended, as follows:

"73-502. Annual statement and estimate--  
Publication and notice.--The governing board of each county, incorporated city or town, on or before the third Monday in July in each year, shall prepare a full and complete statement of the financial affairs of the preceding fiscal year and an estimate of the different amounts which will be required to meet the public expense for the current fiscal year, which shall include an estimate of the amount of money required for each item of expenditure necessary for county, city or town purposes, the amounts necessary to meet the interest and principal of any bonds, the items and amounts of every special levy provided by law and an amount for contingency or emergency not anticipated. The estimate shall be entered upon the minutes of the governing body and shall be fully itemized in accordance with forms which shall be furnished by the state tax commission showing under separate heads the amounts estimated to be required for each department, public office or official, for each public improvement, for the maintenance of public structures and institutions and the salaries of public officers, the separate amounts proposed for the construction for the maintenance and for engineering and administration of public highways, roads, streets and bridges, and the amounts proposed for the construction, operation and maintenance of each public utility subject to this article, and a full and complete disclosure and statement of the contemplated expenditures for the ensuing year showing the amount proposed to be expended from each separate fund and the total amount of proposed public expense. The estimate shall contain a statement of the receipts for the previous year from sources other than direct property taxation and the amounts estimated to be received during the current fiscal year from sources other than direct property taxation, the amounts actually levied and the amounts actually collected for county, city or town purposes upon the tax rolls of the previous

fiscal year and the amount proposed to be raised by direct property taxation for the current fiscal year, for the general fund, the road fund, schools, bonds, special assessments, district levies, emergency levies and any other special levies specifically authorized by law. \* \* \*  
(Emphasis supplied)

Note that among the different types of authorized expenditures for which the levy can be made are: "item of expenditure necessary for county, city or town purposes, the amounts necessary to meet the interest and principal of any bonds, the items and amounts of every special levy provided by law".

The state and all its political subdivisions other than charter cities use the same valuations, supra. Charter cities may use the valuations.

"73-601. One valuation for all purposes of levy--Optional if city holds special charter.  
--There shall be but one (1) tax valuation of the taxable property of the state, which valuation shall be that which is finally equalized and fixed and set out upon the rolls of each county and such rolls shall contain additional columns for city and town taxation purposes.\* \* \*"

"73-602. County assessor to carry out and extend columns.--To be assessment roll for all taxing units.--The county assessor shall extend the total valuations of all property subject to taxation, and the valuation assessed to each taxpayer, into columns provided for state, county, city, town, school district, special road district, drainage district and other local assessment district purposes within the county, so that these several columns will show each assessment and the total of the columns will show the total valuation of all the property subject to taxation within the limits of the county, and each taxing unit therein.\* \* \* (Emphasis supplied)

The several boards of supervisors and governing boards of municipalities compute and levy the taxes for the cities, towns

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and other authorized "districts". The imposition of these duties is found in Section 73-505, A.C.A. 1939, in the case of cities, and in the statutes permitting their establishment for other political subdivisions.

In contrast with the integrated taxing system provided by Chapter 73, Arizona Code of 1939, supra, the grant of power to municipalities to open and close public ways and to make other public improvements provided for in Chapter 16, Article 21, A.C.A. 1939, entitled "OPENING, WIDENING AND CLOSING OF PUBLIC WAYS", is exercised by levies against the property benefited, pursuant to statutory assessment procedure not at all connected or integrated with Chapter 73. The several levies which are denominated 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. Similar statutory procedure for assessment, lien and sale to collect delinquent assessments, is authorized in Chapter 16, Article 23, A.C.A. 1939, entitled, "PUBLIC IMPROVEMENT BY SPECIAL ASSESSMENT".

It is apparent from an examination of these different statutes that the pragmatic test to be applied in determining the character of a particular levy is, "Ordinary direct property 'taxation' is integrated with and collected pursuant to the provisions of Chapter 73, Arizona Code of 1939." while conversely, "A levy is direct property 'special taxation' if the assessment is made pursuant to other statutory procedure with the amount fixed by the benefit to the land etc." also, "'Special taxation' usually carries a lien on the land to the extent of the assessment, with collection of delinquent assessments often authorized to be made through a different type of public sale than that embodied in Chapter 73, Article 8, Arizona Code of 1939. However, the integration of 'collection' with Chapter 73 may occur and the levy still be 'special taxation'". (Emphasis supplied)

#### Exemption from Sanitary District Taxes

What is the character of (1) sanitary district taxes for bonded indebtedness, and (2) sanitary district taxes for current expenses?

The Legislature in enacting "The Sanitary District Act of 1941" (Section 68-1001, et seq. Arizona Code of 1939, 1952 Perm. Supp.) provided for the creation of political subdivisions possessing powers necessary to carry out the purposes of the districts, including the imposition of taxes to meet current expenses and bonded indebtedness. The applicable parts of the statute authorizing

imposition of taxes to pay for bonded indebtedness is as follows:

"68-1018. Tax levy to pay bonds.--(a) The principal of and interest on bonds issued pursuant to this act shall be paid out of revenue derived from an annual tax on the real property within the sanitary district issuing the same, and all such real property shall remain liable to taxes for payment of the bonds and interest until the same are paid in full.

(b) The board of directors of a sanitary district shall annually, not less than fifteen (15) days before the first day of the month in which the board of supervisors of the county in which the district is located is required by law to levy county taxes, certify to the board of supervisors the amount necessary to pay the interest on the bonds of the district, and such portion of the principal thereof as will become due, during the ensuing year. The board of supervisors, at the time of levying general county taxes, shall levy and cause to be collected, in the manner prescribed by law for county taxes, a tax upon the real property within the sanitary district, based upon the current assessment roll, sufficient to pay the amount so certified by the board of directors. In the event the board of directors of any sanitary district fails to certify to the board of supervisors the amount necessary, the board of supervisors shall ascertain the amount which should have been certified, as provided in this section, and shall levy and cause to be collected a tax sufficient to produce that amount."  
(Emphasis supplied)

The applicable parts of the statute authorizing an imposition of taxes to pay for current expenses is as follows:

"68-1019. Tax levy for current expenses.--  
(a) The board of directors of a sanitary district shall have power, at the time of certifying the amount required for payment of the principal of and interest on bonds, to

certify to the board of supervisors the amount necessary to maintain, operate, extend, and repair the sewerage system of the district during the ensuing year, and to defray all other expenses incidental to the exercise of the powers granted by this act, together with an estimate of the revenue which will be received from rentals and service charges. The board of supervisors, in such event, at the time of levying general county taxes, shall levy and cause to be collected, in the manner prescribed by law for county taxes, a tax upon the real property within the sanitary district, based upon the current assessment roll, sufficient to pay the amount so certified, less the amount estimated to be received from rentals and service charges."  
(Emphasis supplied)

In both cases the direct property taxes authorized to be imposed for district purposes are assessed, levied, and collected as a part of and with the taxes authorized by Chapter 73.

It is the opinion of this office, therefore, that such levies constitute "taxation" for the purposes of Article 9, Section 2 of the Arizona Constitution, supra, and Section 73-201, A.C.A. 1939.

Exemption From General Obligations and Special Assessments Made by Improvement Districts

As heretofore stated, Article 9, Section 2 of the Arizona Constitution, and Section 73-201, A.C.A. 1939, provide for the exemption from taxation of certain designated classes of property. The property of honorably discharged veterans and/or widows is included in that property designated as exempt. In the light of the foregoing distinction drawn between "special assessment" and "tax", it is apparent that the exemption from taxation afforded under the Constitution and under the statute above referred to does not extend to and include an exemption from the payment of a special assessment. The District Improvement Act of 1945, cited as Section 16-2801, et seq., A.C.A. 1939, as amended, 1952 Cumulative Supplement, provides for the ordering of public improvements by an improvement district and the payment therefor by means of special assessments made against the properties improved.

Section 16-2842, A.C.A. 1939, as amended, provides for the sale of property against which a special assessment has been levied

and which remains unsatisfied, in the following words:

"16-2842. Sale.--District may purchase where no bidders.--On the day fixed for the sale, the superintendent must at the hour of ten o'clock, or any time thereafter to which the sale may be adjourned, begin the sale of the property advertised, commencing at the head of the list and continuing in the numerical order of lots, until all are sold; he may postpone or continue the sale from day to day until all the property is sold. Each lot separately assessed must be offered for sale separately. The sale shall be for the entire assessment including the delinquent instalment, and the person who will take the least quantity of land and then and there pay the amount of the assessment, penalty and costs due, including fifty cents (50¢) to the superintendent for a certificate of sale, shall become the purchaser. If there is no purchaser for any lot so offered for sale, the same shall be struck off to the district as the purchaser, for the amount of the entire assessment and the district shall thereupon assume as a general obligation the amount of said assessment and interest accruing thereon, subject to the limitation provided in section 51 (§ 16-2851) hereof. The district may sell any lot, so purchased after the expiration of the time for redemption, at public or private sale. All moneys received by the district from the redemption of property purchased by it and from the sale by it of property so purchased, shall be paid into the special fund for the payment of the bonds until said special fund is made sufficient to pay all outstanding bonds." (Emphasis supplied)

When special assessments remain unsatisfied, the improvement district is authorized to transform the special assessment into a general obligation of the district. Section 16-2851, A.C.A. 1939, as amended, provides, in part, as follows:

"16-2851. General obligations of district.--  
General obligations of the district shall be provided for by the levy and collection of

taxes upon all the property real and personal in the district. Such general obligations shall be limited to the following:

\* \* \* \* \*

3. the payment of the purchase-price of lots sold to district under the provisions of section 42 (§ 16-2842) of this act provided that the total amount of taxes levied upon all the property of the district for the purchase-price of lots sold under any proceeding shall be limited to twenty (20) per cent of the amount of the bonds issued under said proceeding; \* \* \*

The levy and collection of taxes specified in Section 16-285, supra, are dealt with in Section 16-2853, A.C.A. 1939, as amended, as follows:

"16-2853. Levy and collection of taxes.--- It shall be the duty of the board of supervisors to levy upon all the property of such districts, and collect as state and county taxes are collected, the amounts shown by said statements and estimates as adopted by the board of directors. All statutes providing for the levy and collection of state and county taxes, including collection of delinquent taxes and sale of property for non-payment of taxes, are hereby made applicable to the general obligation district taxes herein provided to be levied."

It will be seen that the general obligations of an improvement district may be satisfied by the levy and collection of taxes upon all taxable property within the district. The amount of the purchase price of lots struck off to the district where there is no purchaser for any lot so offered for sale is included in a general obligation of the district to be satisfied out of a levy and collection of taxes as made under the integrated plan contained in Chapter 73, A.C.A. 1939. This procedure is designed to spread the cost to the district, attributable to the delinquent special assessment, throughout the taxable property within the district. Therefore, it will be seen that the imposition of a tax to satisfy a general obligation of an improvement district cannot be imposed upon that property designated as exempt from direct taxation by the Constitution and the laws of the State of Arizona.

It is the opinion of The Department of Law that the property of widows and honorably discharged veterans is not exempt from the payment of special assessments for local improvements as levied by improvement districts, but that such property being within those classes of property labeled "exempt from taxation", is not liable for taxes levied and collected by an improvement district to satisfy general obligations of the district.

Exemptions from Levies of Improvement Districts  
To the State of Arizona and/or Political Subdivisions

Using our pragmatic test we can now determine the character of a levy by an improvement district upon the State of Arizona or any of its political subdivisions. Section 16-2819, A.C.A. 1939, as amended, 1952 Cumulative Supplement, relating generally to local improvements in unincorporated towns or settlements by means of special assessments, provides for proceedings when public property is involved, as follows:

"16-2819. Proceedings when public property is involved.---Whenever any lot belonging to the United States, the state of Arizona, to a county, city, school district, or to any political subdivision or institution of the state or county, shall front upon the proposed work or improvement, or be included within the assessment district declared by the board of directors in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, the board of directors shall, in the resolution of intention, declare whether or not said lot shall be omitted from such assessment thereafter to be made. If so omitted from the assessment, then the total expense of all work done shall be assessed on the remaining lots fronting on the work or improvement, or lying within the assessment district, without regard to such omitted lot. If the board of directors shall declare that said lot be included in the assessment, or if no declaration is made respecting such lots, then said district shall be liable for such sum as thereafter may be assessed against such lot, and be payable by the said district; the amount of the assessment levied against such lot may, however, be included in any bonds issued

for such improvement, and if so included, said assessment shall bear the same interest, and be payable by the district in instalments, as assessments against property of private persons. The district may contract with the state of Arizona, or body to which such lot belongs, for the payment to the district of such assessment and interest, as same becomes due and payable, and the state of Arizona, or such body, shall perform such contract." (Emphasis supplied)

It will be noted that this section expresses in clear terms the intent of the legislature to impose liability for the payment of special assessments upon the State of Arizona and/or its political subdivisions and institutions, by authorizing the improvement district to enter into a contract with the above enumerated governmental bodies regarding the payment of such special assessment.

The foregoing analysis of special assessment removes this term from the application of Article 9, Section 2 of the Arizona Constitution, supra, and Section 73-201, A.C.A. 1939, supra. Therefore, any of the political entities enumerated in Section 16-2819, supra, may be liable to pay for special assessments made in an improvement district pursuant to the terms of a contract entered into by the district and the political entities in accordance with the provisions of Section 16-2819.

In the light of the opinion above, it is evident that payment of a special assessment pursuant to the terms of such a contract is a de jure obligation of the political subdivision and will afford no recourse to the particular governmental body or political subdivision liable on the contract to recover any amount paid to the contractor or to the district thereunder.

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