

Aldrich
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Turner

March 25, 1955
Opinion No. 55-63

REQUESTED BY: Mr. Fred O. Goodell
Comptroller
Pima County
Tucson, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Gordon Aldrich, Assistant to
The Attorney General

QUESTION: Does the ten per cent budget limitation imposed by 73-502; 73-503 and 73-505 apply to (county) road funds when there has been no levy for such fund during the previous fiscal year?

CONCLUSION: Yes.

This is in answer to your inquiry of February 7, 1955, directed to Mr. W. T. Holmes.

For the purpose of the following conclusions, the question posed shall be re-framed:

Does the ten per cent budget limitation imposed by 73-502; 73-503; and 73-505 apply to (county) road funds when there has been no levy for such fund during the previous fiscal year?

The authority for the annual levy upon real and personal property is given the County Boards of Supervisors in the following code provision:

"* * * Upon the same property and upon the same valuation the Board of Supervisors of each County shall levy and collect 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. 73-501 Laws 1945 Ch. 55, Sec. 1. (Emphasis supplied)

The following provision of the Code (73-502) requires of the governing board (sic) supervisors an estimate of amounts needed for public expenses. This provision makes no differentiation between expenses catalogued as General Fund and Road Fund purposes.

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On the contrary, this particular code provision specifically sets out that estimates of the separate amounts proposed for construction, maintenance, engineering, and administration of public highways and roads shall be made. It further stipulates in specific terms for estimates proposed for (1) the general fund; (2) the road fund, etc.

This section imposes the ten per cent limitation on the total of such amounts.

It must be argued the legislature was fully cognizant of the different public purposes characterized in the classification of: General fund; road fund; etc.; and the legislature imposed the limitation on the total of these expenditures, with the exception of those excluded in the act itself.

"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. The 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, excluding, however, in each case, expenditures for school, bond, special assessment, district levy, primary, general or special election purposes. The estimates, together with a notice that such governing body will meet for the purpose of hearing taxpayers and making tax levies at named times and places, shall be published once a week for at least two (2) consecutive weeks following the tentative adoption of such estimates in the official newspaper of such county, city, or town, if there be one, and if not, then in a newspaper of general circulation therein." 73-502, A.C.A., 1939. (Emphasis supplied)

All doubts as to the conclusions arrived at are removed by the repetition of the limitations detailed in:

"The governing boards of counties, cities and towns shall meet on the seventh day before the day on which they levy taxes as designated in said notice and any taxpayer may appear and be heard in favor of or against any proposed expenditures or tax levy. When such hearing has been concluded, the governing board shall finally determine and adopt estimates of proposed expenditures for the various purposes set forth in the

published proposal which shall constitute the budget of the county, city or town for the current fiscal year. The total amounts in such budget proposed for expenditure shall not exceed the total of amounts proposed for expenditure in the published estimates, nor shall the total of amounts in such budget proposed for expenditure exceed by more than ten (10) per cent the total of amounts proposed for expenditure in the budget adopted for the previous fiscal year, excluding expenditures for school, bond, special assessment, district levy, primary, general, special election purposes, the amount of increase in salaries of public officials whose salaries are set by state law or municipal utility undertaking as defined in section 16-2602, Arizona Code of 1939. No expenditures shall be made for a purpose not included in such budget and no expenditures shall be made, nor debt, obligation or liability be incurred or created in any fiscal year in excess of the amount specified for each purpose in the budget for such fiscal year as finally adopted except when authorized under and pursuant to the provisions of section 73-504, Arizona Code of 1939, irrespective of whether the county, city or town at any time has received, or has on hand, funds or revenue in excess of those required to meet expenditures, debt, obligations and liabilities incurred under such budget. 73-503, A.C.A. 1939, as amended.

Again, in 73-505, the only exclusions are for school, bond, special assessment and other specifically mentioned expenses.

"The governing body of each county, city or town, on or before the third Monday in August in each year shall fix, levy and assess the amount to be raised by direct taxation, which, together with all other sources of revenue, as estimated, and unencumbered balances from the previous fiscal year, shall equal the total of amounts proposed to be expended in the budget for the current fiscal year, designate the amounts which shall be levied for each purpose appearing in the adopted budget and fix and determine a rate on each one hundred dollars (\$100) of taxable property shown by the finally equalized

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valuations of property, less exemptions, appearing upon the tax rolls for such fiscal year, which when extended upon such valuations will, in the aggregate, produce the entire amount to be raised by direct taxation for that year. The budget estimate as finally adopted shall not exceed by more than ten (10) per cent the total amount proposed for expenditure in the budget adopted for the previous year, after excluding expenditures for school, bond, special assessment and district levy, primary, general or special election purposes. The amount contained in said budget estimate as finally adopted, required to be raised by direct taxation, shall in no event exceed by more than ten (10) per cent the amount levied upon the tax rolls for the preceding fiscal year after excluding levies for emergency liabilities, schools, bond principal and interest, primary, general or special elections and special assessments and district levies; provided that if no such amount was levied for the preceding fiscal year by such county, town or city, the governing body thereof may include in the budget such amount to be raised by direct taxation as may be found by the state tax commission to be necessary upon application to it and after notice for hearing given and held upon such application in the manner prescribed by section 73-504, Arizona Code of 1939, and the levy authorized shall not be deemed to be for an emergency expenditure and shall constitute the base for computing the ten (10) per cent levy limitation for the budget of the succeeding fiscal year. 73-505, A.C.A. 1939, as amended.

It is our opinion, therefore, the representatives of the people intended to impose the budget restriction upon the road fund as well as the general fund.

The subsidiary question is:

Does the provision of Sec. 17-309 (12) conflict with the budget limitation provision? If so, which is to prevail?

The pertinent provision is as follows:

"The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

* * *

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, not exceeding two dollars (\$2.00) on every one hundred dollars (\$100) of value for any one (1) year, and levy such other taxes as are required to be levied by law." 17-309, A.C.A. 1939, as amended.

and the foregoing provision is similar to that provided for municipalities of the State in:

"The common council shall have power to levy and collect annually, upon the assessed value of the real and personal property within the town, as shown by the equalized assessment roll of the current year, except such as is, or may be, exempt from taxation under the laws of the state, in each year, the following taxes: Not exceeding twenty-seven and one-half ($27\frac{1}{2}$) mills on the dollar of such assessed valuation to defray the salaries of officers, and the ordinary and contingent expenses of the corporation, not herein otherwise provided for; and for the purpose of constructing and repairing streets, sewers, sidewalks and cross-walks, or bridges and culverts, upon such streets and sidewalks. The limitation herein imposed shall not deny the right to levy and collect the amounts necessary to defray the charges of the public debt of the town. Nothing herein contained shall be held to repeal, modify or affect the provisions of sections 73-502 and 73-505, Arizona Code of 1939." 16-213, A.C.A. 1939, as amended.

The Supreme Court of Arizona had this particular matter under consideration and reasoned that because all the cited provisions

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were before the legislature at one time; (upon the adoption of the 1928 Code) all were entirely new material depending for their validity solely upon the action of the legislature at that time; and all enjoyed equal status.

Its conclusion was to reconcile all the provisions of the tax-rate and budget law, to give effect to each but not to relax the restrictions.

"The budget law, the statutes regarding assessment rolls, and statute establishing maximum tax rate for municipalities can all be construed and operated in such a manner as to be consistent with each other and therefore the statute establishing maximum tax rate for municipalities has not been repealed by implication."
Southern Pacific Co. v. Gila County, 56 Ariz
109; 109 P2d 610.

In this regard, it is noted Section 17-309 (12) has been re-enacted in 1952, Ch. 108, Sec. 1; but there was no change in this particular provision from the 1928 Statute (Sec. 774, 1928). In the decision referred to above, there appears this language:

"* * * The mere fact that such an interpretation may work a hardship upon defendants and other municipalities situated like them cannot affect our decision, the only remedy being an appeal to the legislature." Southern Pacific Co. v. Gila County, supra.

The foregoing discussion applies with equal force to the Code Section 59-604, A.C.A. 1939. This section is identical with the 1928 Code R.C. 1928 Sec. 1702. As a consequence, regardless whether or not these features were considered in the earlier opinion, there is no escape from the conclusions that both the legislature and the courts have rigidly adhered to the budget limitations.

It may be assumed the philosophy concerned with these particular enactments are to allow for a gradual increase of the taxable wealth of the counties affected, but at the same time, prevent the taxing authorities from encroaching upon this wealth, except for the increment of 10% yearly. It, of course, is understood that county highway programs of improvement are imperative to the welfare of the State. It is equally important, however,

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the basic philosophy of good government economy is reflected in the budget limitation law.

"The purpose of the budget law is to require counties and municipalities to pay as they go and to advise taxpayers of anticipated expenditures, and to fix a rate which will produce taxes as nearly as possible to equal the exact amount required to pay for the anticipated expenses of the year." City of Tucson vs. Tucson Sunshine Climate Club, 64 Ariz 1 at Page 2.

This opinion is implemented by the fact that the legislature, in permitting a special allowance for the fiscal year 1953-54, limited the allowance to 20 per cent of the actual expenditures of the "general" and "road" funds of the 1952-53 fiscal year. This special dispensation is contained in Section 73-505a, Laws of 1953, Chapter 77, and demonstrates the fact the legislature has considered the limitations to apply both to the general and the road funds.

ROBERT MORRISON
The Attorney General

Gordon Aldrich

GORDON ALDRICH
Assistant to The
Attorney General

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