

ATTORNEY GENERAL OF ARIZONA
STATE CAPITOL
PHOENIX

November 18, 1921.

Hon. Raymond R. Earhart,
State Treasurer,
State House,
Phoenix, Arizona.

Dear Sir:

Answering your inquiry of the 10th instant regarding your authority to transfer certain funds from the legislative, executive and judicial public funds to the general fund by way of compensation to the state for the erection of the west wing of the Capitol Building, we submit the following:

The second paragraph of Section 25 of the Enabling Act provides a fund for the building of legislative, executive and judicial public buildings, and the seventh paragraph of Section 28 makes the State Treasurer the custodian of said funds, and requires him to give a bond to faithfully perform his duties with reference to such funds, as defined in the Enabling Act and the Laws of the State of Arizona.

This fund is referred to in Section 100 of Chapter 5 of the second special session of the Legislature of 1915, which act is commonly known as the Land Code. Section 104 of the Land Code provides for the transfer from the special fund to the general fund of the interest and other moneys available from said funds.

Page Two.

However, Section 104 does not refer to the transfer of the fund for legislative, executive and judicial public buildings, and we are unable to find any express legislative authority authorizing you to make a transfer from this fund.

This particular fund is not a permanent fund within the meaning of the provisions of Section 104 aforesaid.

However, under the provisions of the Enabling Act you are the custodian of this fund and are primarily responsible for the proper application of the moneys in said fund, and if error is made, or should be made, in the application of this money, the responsibility would be yours under your bond, and for that reason it is well that you exercise caution in the distribution of this fund.

We are certain that the Legislature has the power to direct the application of this fund to repay the state for money advanced by the state in the building of this addition to the Capitol.

However, on the other hand, until the Legislature does authorize you to do so, we may assume that it is the intent of the Legislature to permit this fund to accumulate in your hands for future use, and with that view we are inclined to the opinion that you would not have the power to compel the state to use such funds at this time.

For these reasons we suggest that it would not be advisable to make a transfer of such funds as suggested, until some action is taken by the Legislature with reference thereto.

Very truly yours,

W. J. GALBRAITH,
Attorney General.

BY

George R. Hice
Assistant
Attorney General.

GRH:HB

November 10, 1921.

Hon. W. J. Galbraith,
Attorney General of Arizona,
State House,
PHOENIX, ARIZONA.

Sir:

In 1917 the Legislature made an appropriation of \$125,000.00 for the construction of an addition to the Capitol Building, and in 1919 an additional appropriation of \$30,000.00 was made to complete such addition.

Section 25 of the Enabling Act provides that one hundred thousand acres be granted the State of Arizona for Legislative, Executive and Judicial public buildings erected in the proposed State and for the payment of the bonds heretofore or hereafter issued therefor.

From the proceeds derived from the sale of these lands, together with rentals received, the State has already called for payment \$58,000.00 of the \$100,000.00 bonds issued in 1898 for the erection of the Capitol Building.

As the proceeds from this land will be many times the amount of the bonds still outstanding, the question I desire your opinion upon, is whether I have the power to make transfers, from time to time, as moneys are received into this fund, to reimburse the \$155,000.00 which has been raised by taxation for the new addition as mentioned above. My opinion is, that this new addition comes within the provisions of Section 25 of the Enabling Act.

Thanking you in advance for your usual prompt