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June 28, 1985

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ARIZONA ATTORNEY GENERAL

Mr. Jerry Ward
Deputy Division Director
Motor Vehicle Division
Arizona Department of Transportation
1801 West Jefferson
Phoenix, Arizona 85007

RE: I85-087 (R85-067)

Dear Mr. Ward:

This letter is in response to your inquiry concerning the implementation of Ariz. Atty. Gen. Op. 184-149 issued on October 19, 1984. In that opinion we concluded that the Motor Vehicle Division and the county assessors, when they are acting as agents of the Motor Vehicle Division, are required to deposit one dollar of each commercial registration fee established by A.R.S. § 28-206.B into the special funds created by A.R.S. § 28-301 and A.R.S. § 28-301.03.

County assessors, after withholding the one dollar from commercial registration fees and other applicable fees, are required to forward the remainder of those fees immediately to the director of the Arizona Department of Transportation for transfer to the state treasurer and credit to the Arizona Highway User Revenue Fund (H.U.R.F.). A.R.S. §§ 28-208 and 28-301.C.

Prior to Ariz. Atty. Gen. Op. No. 184-149, the assessors had forwarded to the director the entire commercial registration fee without withholding one dollar for deposit into the assessor's special fund. Some assessors now are seeking to "recapture" those fees for the special funds by withholding more than one dollar from current registration fees.

Mr. Jerry Ward
June 28, 1985
Page 2

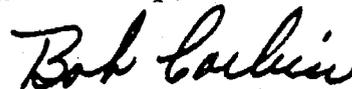
You have asked us to consider the propriety of the assessors' recovering lost receipts for the special funds by overwithholding from current receipts until the loss is recovered.

A.R.S. § 28-301.C authorizes county assessors to remit one dollar of each registration and other specified fees to county treasurers for deposit into the special fund. Remitting more than one dollar from a registration fee into the special fund is not authorized by any statute.

The situation is somewhat analogous to tax cases in which recovery of taxes erroneously paid is said to be a matter of legislative grace and that statutory procedure must be strictly complied with. City of Phoenix v. Phoenix Newspapers, Inc., 100 Ariz. 189, 412 P.2d 693 (1966). In the situation about which you inquire, the legislature has not provided any procedure for recovering monies erroneously paid into the H.U.R.F. rather than into the said special funds.

Based upon the foregoing, it is our opinion that county assessors may not withhold funds from current revenues for the purpose of depositing in their special funds money attributable to commercial registration fees from which they failed to withhold money for deposit in the special funds.

Sincerely,



BOB CORBIN
Attorney General

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