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October 15, 1963  
Letter Opinion  
No. 53-124-L

# LAW LIBRARY

## ARIZONA ATTORNEY GENERAL

The Honorable Harold C. Giss  
Yuma County Senator  
Adams Hotel  
Phoenix, Arizona

Dear Senator Giss:

This office is in receipt of the letter which Mr. F. Keith Benton directed to you. As we understand your request your question concerns whether the City of Somerton may declare an emergency and spend \$9,100 for the construction of a sewer improvement without calling for bids, and without having this item contained in the annual budget.

In answering this question we will be forced to make a few assumptions since in his letter Mr. Benton does not give us all the necessary facts. Mr. Benton refers to House Bill 70, which is Section 73-505 b, A.C.A. 1939, as amended, Laws of 1963. This section authorizes the creation of a public works reserve fund. In view of this reference to Section 73-505 b, we will assume that the \$9,100 which the City of Somerton proposes to spend will come from this fund. Paragraph b of the above section provides that except as provided in Paragraph c expenditures from this fund shall only be made when authorized in the annual budget.

It is given as a fact by Mr. Benton that this item for a sewer improvement has not been included in the annual budget. It will be necessary then to look at Paragraph c of the above section. This section states that construction costing in excess of \$20,000 which will be paid in whole or in part from the public works reserve fund shall be done by contract after a call for bids, provided that upon a resolution duly authorized and acted upon by the city or town declaring an emergency to exist the provisions of Paragraph c shall not apply.

We have a situation where Paragraph b says that no funds may be expended from the public works reserve fund unless the funds are budgeted as provided in Paragraph c; but, when we turn to Paragraph c no mention is made concerning the restrictions set forth in Paragraph b, and there are no provisions for the suspension of Paragraph b's restrictions requiring an

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The Honorable Harold C. Giss  
Yuma County Senator

October 15, 1953

item to be budgeted before an expenditure can be made from the public works reserve fund.

It is the considered opinion of this department that no expenditure may be made from the public works reserve fund which is not included in the annual budget. The only effect which Paragraph c of Section 73-505 b, supra, has is to eliminate the necessity for the calling of bids for construction costing in excess of \$20,000, if the county, city or town duly declares an emergency to exist. Paragraph c gives the county, city or town no power to spend any funds from the public works reserve fund which are not budgeted.

We trust that this will answer your question concerning this matter; if not please feel free to call upon us at any time.

Very sincerely yours,

RCS:EMG

ROBERT C. STUBBS  
Assistant to the  
Attorney General