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Robert R. Corbin

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June 17, 1983

Mr. James A. Shiner  
Stompoly & Even, P.C.  
United Bank Plaza  
Magdalena Building, Ste. 370  
120 West Broadway  
Tucson, AZ 85701

Re: I83-057 (R83-006)

Dear Mr. Shiner:

We have reviewed your opinion dated January 5, 1983,<sup>1</sup> to the Tucson Unified School District in which you said a proposed intergovernmental agreement (IGA) between the Arizona Board of Regents and the District, under which the University of Arizona Speech and Hearing Department would provide hearing test services to the District, is appropriate. In this opinion we concur with your result, but our conclusion is based on a different analysis of the issues.

The purpose of an IGA is set forth at Ch. 94, § 1, 1968 Ariz. Sess. Laws (2d Reg. Sess.) as follows:

The purpose of this article is to permit public agencies, if authorized by their legislative or governing body, to enter into agreements for the joint exercise of any power common to the contracting parties as to

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1. We previously have discussed the time frame for issuance of this opinion.

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governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies. (Emphasis added.)

The "touchstone" of an IGA, then, is that it involves the joint exercise of a governmental or proprietary function common to the contracting parties. See Ariz. Atty. Gen. Op. 179-193.

A.R.S. § 11-952.A specifies the types of contracts which may qualify as IGAs:

[T]wo or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action.

Thus, once the capacity for joint exercise of powers has been established, the public agencies may jointly exercise those powers or contract to have one party perform the powers that are in common.<sup>2/</sup>

There are sound policy reasons for permitting agencies with common powers to enter into IGAs. If two agencies are charged with performing the same duty, it obviously is economically efficient to avoid duplication of services and allocate responsibilities between the parties. Undoubtedly, that is why agencies, when entering into IGAs, are excused from compliance

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2. We note that the statutory courses of action - contracting for services and joint exercise - are presented as alternatives. However, this disjunctive language must be read in the context of the entire statutory scheme, which presumes the existence of joint powers before agencies may contract for services. See Adams v. Bolin, 77 Ariz. 316, 271 P.2d 472 (1954). In addition to the statement of purpose which refers to only the joint exercise of powers, the legislative intent that there must exist the joint capacity to exercise the powers that are the subject of the contract is reinforced in A.R.S. §§ 11-952.B.3, 11-953 and 11-954, all of which presume the existence of joint authority.

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with competitive bidding provisions. Although this exception is appropriate when agencies statutorily share powers, there is no valid policy reason to avoid competitive bidding when agencies merely are contracting with each other for services.<sup>3/</sup>

Therefore, we disagree with your conclusion that A.R.S. § 11-952.A may be interpreted to allow public agencies to enter into IGAs absent a joint exercise of a common power. A contract under which one agency merely procures a needed service from the other does not qualify as an IGA unless the parties are acting jointly to exercise powers common to the parties.<sup>4/</sup>

With respect to the specific fact situation at hand, the Board of Regents is authorized, pursuant to A.R.S. § 15-1626.A.6, to "[e]stablish curriculumms and designate courses at the several institutions which in its judgment will best serve the interests of this state." Assuming that the testing of the hearing of school children is offered by the University as part of a course or curriculum, we think the use of an IGA is appropriate.

Sincerely,

BOB CORBIN  
Attorney General

BC:SMS:lm

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3. Indeed, each agency is bound to discharge its fiduciary duty to the public in the most cost-effective manner, and competitive bidding best satisfies that requirement. See Ariz. Atty. Gen. Op. 75-11. Permitting agencies to contract for services without satisfying bidding requirements does not assure that money is being spent in the best interests of the taxpayers.

4. The means by which the common powers may be exercised are numerous, ranging from one party paying and the other party performing services to a division of tasks between the parties.

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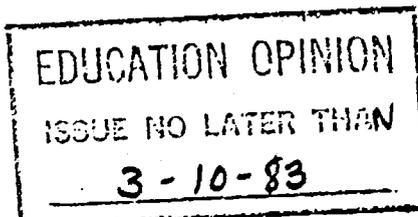
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January 5, 1983



1-11-83 pc  
EDUCATION  
R83-006

Robert Corbin  
Attorney General  
State of Arizona  
State Capitol  
Phoenix, Arizona 85007

Dear Mr. Corbin:

I have enclosed a copy of my letter of opinion dated January 5, 1983, to Felizardo Valencia, Director, Legal and Research Services, Tucson Unified School District No. One, Pima County, Tucson, Arizona. This opinion deals with the issue of intergovernmental agreements.

The enclosed opinion is forwarded to you under the provisions of A.R.S. §15-436(b) for your concurrence or revision.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James A. Shiner".

James A. Shiner

JAS:law  
Enclosure

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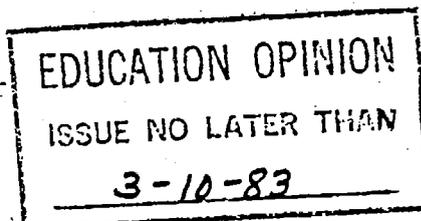
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January 5, 1983

Felizardo Valencia, Director  
Legal and Research Services  
TUSD #1  
Post Office Box 40400  
Tucson, Arizona 85717



~~1-11-83~~  
1-11-83 pc  
EDUCATION  
R83-006

Dear Mr. Valencia:

This correspondence is in response to your memo received September 18, 1982, requesting an opinion with respect to intergovernmental agreements. On October 22, 1982, the question presented was further clarified by Mr. Ron Curry. The question is:

May Tucson Unified School District No. One ("District") and the Arizona Board of Regents ("Regents") enter into an agreement under which the Speech and Hearing Department of the University of Arizona would provide hearing tests (Audiological Evaluation Services) to students of the District without the District's complying with ACRR R7-2-701(C) for the reason that such an agreement would be an intergovernmental agency agreement ("IGA") and, therefore, exempt from the requirements of ACRR R7-2-701(C)?

The answer is yes for the reasons set forth below.

ACRR R7-2-701(C)<sup>1</sup> establishes the procedure applicable to school districts in contracting for outside professional services. Subsection 9 of ACRR R7-2-701(C) exempts intergovernmental agency agreements from the requirements of Section R7-2-701(C).<sup>2</sup>

If the proposed agreement on hearing tests between the District and the Regents is an IGA, there is no requirement that there be compliance by the District with ACRR R7-2-701(C). An examination of the elements of an IGA is required to determine if the proposed Audiologic Evaluation Service agreement is an IGA.

IGA refers to those agreements authorized by Article 3, Chapter 7, Title 11, A.R.S., which is captioned "Joint Exercise of Powers." A.R.S. §11-952(A) specifies the types of IGAs allowed:

"[T]wo or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action..."

The term "public agencies" includes school districts and the Regents. A.R.S. §11-957. A.R.S. §15-342(13) establishes as a discretionary power the right of a governing school board to enter into an IGA. Therefore, the governing board of the District may enter into an IGA with another public agency in certain situations.

The situations where an IGA is allowed is where the public agencies:

1. Contract for services; or
2. Jointly exercise a common power; and
3. Enter an agreement for joint or cooperative action. (A.R.S. §15-952(a)).

The District has the power to provide hearing tests, through delegation of this power by the Arizona Department of Health Sciences. A.R.S. 36-899.02(A)(3)<sup>3</sup>. The Department of Health Sciences has authorized the District's governing board to develop and maintain periodic evaluation services.<sup>4</sup>

The Attorney General has addressed the applicability of A.R.S. §11-957, et seq. However, none of the situations are in the same factual context as the present question.

The Attorney General has stated:

"Such agreements [IGAs] may be made only when two districts wish to exercise a common or joint power." Op. Atty. Gen. I81-068

The issue under consideration in Op. Atty. Gen. I81-068 was the sharing of administrative personnel. It was concluded this was allowed without resort to an IGA because there was no prohibition against each District independently contracting with the same administrative personnel on a part-time basis. While it was not necessary for the Attorney General to reach the question of when an IGA may be utilized, it was observed that the sharing of administrative personnel did not involve the exercise of a common or joint power and, therefore, was not the proper subject of an IGA.

Much closer to the facts of the present question is whether psychiatric services could be supplied to the District by the Regents under an IGA. This question was considered in Op. Atty. Gen. I82-088. The Attorney General,

after first concluding the District did not have "... the power to perform the services it is attempting to purchase..." (psychiatric services) (id at 3), concluded the proposed agreement did not qualify as an IGA. Specifically, the Attorney General stated: "...the school district is not purporting to exercise any power that it may have jointly with the Board of Regents." The opinion addresses only the joint exercise of power proviso of Section 11-952 which follows the disjunctive "or" and the comma contained in Section 11-952(A). The opinion does not address, discuss or consider the "may contract for services" provision which precedes the "or." The opinion on the IGA issue perhaps is the result of the preceding conclusion that the District could not perform the services it sought to purchase. The Attorney General also may have felt obliged to clearly state the proposed agreement did not involve a joint exercise of power and, therefore, the District was precluded from contracting for the service and from relying on the Regents' power to assume authority. Audiological Evaluation Services are clearly different because not only does the District have the power to perform the service, it is under the statutory obligation to do so.

The words "may contract for services" contained in Section 11-952 cannot be ignored in the present case as the District clearly has the power to perform the services it seeks to acquire. It is a well recognized rule of statutory construction that:

"The law will be given, whenever possible, such an effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant." State v. Artur, 125 Ariz. 153, 608 P.2d 90 at 92 (Ariz. App. 1980); State v. Superior Court of Maricopa County, 113 Ariz. 248, 550 P.2d 626 at 627 (1976); State v. Deddens, 112 Ariz. 425, 524 P.2d 1124 (1975).

If one is to conclude from reading Op. No. I82-028 and I81-068 that IGAs may be used only where there is a joint exercise of a common power, then the effect is to render superfluous the words "may contract for services." As stated in City of Mesa v. Killingsworth, 96 Ariz. 290, 394 P.2d 410 at 414 (1964):

"...[L]anguage of a statute will not be ignored where all parts can be reconciled." (citations omitted)

There is no inconsistency on the face of A.R.S. 11-952(A). Uncertainty arises only if the plain meaning of all of the language of the statute is not given effect. As noted in City of Mesa v. Killingsworth, supra, at P.2d 412:

"Where the statute is unambiguous, the courts will only apply the language used and not interpret, for the statute speaks for itself."

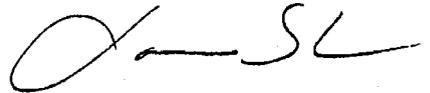
Giving effect to all portions of the statute leads to the following conclusions:

1. The District is a "public agency" as defined by A.R.S. §11-951.
2. As a "public agency" the District can enter into an IGA with other public agencies.
3. The Board of Regents is also a "public agency" and can enter into an IGA.
4. The proposed contract is for services to be supplied to the District by the Regents (Audiological Evaluation Services).
5. Audiological Evaluation Services are services the Governing Board of the District is authorized to provide.

Therefore, the proposed agreement with the Regents qualifies as an IGA under A.R.S. §11-952 and is exempt from the bidding procedures established by ACRR R7-2-701(C) by virtue of subsection 9 of that provision.

This opinion is being forwarded to the office of the Attorney General for review pursuant to A.R.S. §15-436(b). Unless circumstances require immediate action upon this opinion, you should await my forwarding to you the response of the Attorney General before acting upon the opinion set forth above.

Very truly yours,



James A. Shiner

JAS:law

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<sup>1</sup>ACRR R7-2-701(C) (1) provides in part:

1. "School districts contracting for outside professional services which require a total payment of more than \$5,000.00 shall issue a request for proposals for outside professional services including at least the following information as applicable and made publicly available to all interested persons..."

<sup>2</sup>ACRR R7-2-701(C) (9) provides:

"C. Outside Professional Services:

The provisions of this subsection C shall not be applicable to intergovernmental agency agreements."

ACRR R-7-2-701(C) (9) is derived from A.R.S. §41-1051(C). Op. Atty. Gen. I82-028 which does not define the term IGA.

<sup>3</sup>In fact, the failure of the District to provide audiological evaluation could result in the District being in violation of the Education of the Handicapped Act (20 USC 1401, et seq.) which could result in the loss of federal assistance. See 20 USC 1412.

<sup>4</sup>There are extensive regulatory provisions relating to audiological evaluations, e.g., ACRR R9-13-113 through 117, inclusive. These regulations are authorized by A.R.S. §36-899.03.