

February 26, 1945

Mr. Clair R. Cotton
Division Finance Examiner
Federal Works Agency
P. O. Box 1431
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Cotton:

We have your letter of February 20th instant asking the question:

"The Federal Works Agency has been requested, on several occasions, to assist in the financing of the construction of cafeterias for various school districts within the State. The claim has been made by District Superintendents that although the law does not specifically prohibit the use of school district funds for the construction of cafeterias, neither does it specifically provide for school district funds for such purposes, and therefore the law has been interpreted that school district funds may not be used for the construction of cafeterias.

"At this writing we are now informed by several District Superintendents that school districts are permitted to use their funds for the construction of cafeterias. We should like to have this point clarified and request a letter from you in this regard."

In answer to your question we will quote in part powers and duties of the Board of Trustees:

Chapter 54-416, Subdivision 3, A.C.A. 1939:

"The board shall manage and control the school property within their districts; purchase school furniture, apparatus, equipment, library books, and supplies for the use of the schools; rent, furnish, repair and insure the school property of the district; when directed to do so by a vote of the district, construct school buildings, or purchase or sell school sites; make, in the name of the district, conveyances of all property belonging to the district and sold by them, and employ under written contract, all employees of the schools." * * *

Mr. Clair R. Cotton
February 26, 1945
Page 2

books, and supplies for the use of the schools; rent, furnish, repair and insure the school property of the district; when directed to do so by a vote of the district, construct school buildings, or purchase or sell school sites; make, in the name of the district, conveyances of all property belonging to the district and sold by them, and employ under written contract, all employees of the schools." * * *

We give you the following citations upon which we base our opinion:

"Boards of county commissioners possess such powers as are expressly conferred upon them by the Constitution and statutes and such implied powers as are reasonably necessary to the efficient execution of their express powers and duties."

324. Gunnison County v. Davis, 27 Colo. App. 502, 150 Pac.

"That it is undoubted that the board may provide for the physical as well as the mental education of the pupils, and may, within reasonable limits as to expense, provide means and instrumentalities to that end."

Hallett v. Post Printing & Pub. Co. 68 Colo. 573 - 192 Pac. 658.

In reference Irene Goodman v. School District No. 1, City and County of Denver, et al, the Supreme Court said:

"In holding that the operation of a cafeteria or restaurant by school authorities does not involve a taking of taxpayers property without due process of law, and is within the implied powers of such authorities under the state Constitution." * * *

In the case of Ralph v. Orleans Parish School Bd. (1925) 158 La. 659.

"In that case it was held that the sale of lunches in the lunch hour on the school premises, to teachers and pupils only, for their convenience safety, was incidental to the main purpose of the

Mr. Clair R. Cotton
February 26, 1945
Page 3

school, and was in the interest of the safe, sanitary, and efficient conduct of the school, and was not an unlawful use of the building."

In view of the above cited cases and others we have read, we have come to the conclusion that the Board of Trustees of a school district of the State of Arizona, have the implied powers to establish cafeterias with funds that have been raised by tax levy or a bond issue voted by the qualified electors of the district. It would also be necessary to budget every year for the running expenses of the cafeteria.

Respectfully yours,

JOHN L. SULLIVAN
Attorney General

MAURICE BARTH
Assistant Attorney General

MB:jw