

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

July 10, 1950

Mr. Kelly Moore  
Tucson Title Insurance Company  
Tucson, Arizona

Dear Mr. Moore:

*W. L. Moore*

Replying to your verbal request for our opinion concerning the legality of an easement to be executed by the Marana School District to the State Highway Department for a right-of-way across school district land fronting on the state highway at Marana, the easement to be executed by the Board of Trustees without a vote of the taxpayers authorizing such action. It is our understanding the Highway Department will pay the fair value of the land taken and the value of one old building to be demolished and will pay for the moving of one building from the right-of-way to another place on the school grounds.

The authority of the Board of Trustees of a rural district under these circumstances has not been passed upon by our Supreme Court; however, it is inferred in Prescott Community Hospital v. Prescott School District, 54 Ariz. 492, that this authority should be liberally construed.

In Section 54-613, ACA 1939, school trustees in incorporated cities may contract and pay for the construction, maintaining or improving of any public way adjacent to school property.

It appears to be fairly well established that land owned by school districts is generally subject to condemnation for highway purposes, Section 59-204, ACA 1939. See also note in 48 L.R.A. (N.S.) page 489. The Highway Department could therefore use this procedure in the event the board failed to act.

Mr. Kelly Moore  
Tucson Title Insurance Co.

Page Two  
July 10, 1950

It is therefore our opinion that where, as here, the rural school district proposes to execute an easement for the use of certain school land for highway purposes, which land in the event the highway is abandoned would revert to the school, and where the school will be fully and fairly compensated for all property used, destroyed or moved, the Board of Trustees of the district may, under the general authority given the Board, execute such an easement without placing the matter before the voters of the district for their action.

Trusting this answers your inquiry, we are

Very truly yours,

FRED O. WILSON  
Attorney General

PERRY M. LING  
Chief Assistant  
Attorney General

PML:mw