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May 5, 1951
Op. No. 51-127

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ARIZONA ATTORNEY GENERAL

Mr. Robert H. Renaud
Deputy County Attorney
403 Luhrs Tower
Phoenix, Arizona

Dear Mr. Renaud:

In your letter of May 3 you request our opinion on the following question:

"Must the Gila Bend High School enroll members of the African race who are graduates from an elementary district not within a high school district, when the Gila Bend High School District is already accepting members of the Caucasian race from the same elementary district?"

We believe the answer to this question is found in Section 54-908 ACA 1939. We quote a portion of said statute which reads as follows:

"* * * Non-resident pupils of school age, otherwise qualified, residing in the county in which there is a high school, but in a district having no high school, nor a school wherein high school subjects are taught, shall be admitted to such high school on the same conditions as residents, upon paying a reasonable fee for each pupil to be fixed by the board in charge of the high school, not to exceed, however, such amount as would equal the average cost per pupil of the high schools of the county after deducting the amount

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received from the state and county, such payment to be made monthly. Said tuition shall be a legal charge against the school district in which said non-resident pupil resides, and levied and collected in the same manner as other school taxes, and shall be paid by said school district out of the funds of such district upon presentation to the clerk of such district of a statement, verified by the clerk, superintendent or principal of the high school district furnishing such instruction, stating the grade or grades in which such pupil was enrolled, the number of months enrolled, the name of such pupil and the amount of tuition. Thereupon an order shall be drawn by said district in favor of the high school district for the amount of such tuition. The residence of the person having the legal custody of the child shall be considered the residence of the child."

In view of this statute, it would appear that the Gila Bend High School District must make whatever facilities it now operates available to qualified residents from elementary district not within a high school district, but within the county; any existing policy in the Gila Bend High School concerning segregation or non-segregation would apply to their non-resident students.

It is our opinion, therefore, that the Gila Bend High School must enroll members of the African race who are residents in an elementary district not within a high school district, provided, of course, that the elementary district lies within the same county, and that the students are otherwise qualified. The fact that the Gila Bend High School District is already accepting members of the Caucasian race

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from the same elementary district does not affect the
question of acceptance of members of the African race.

Very truly yours,

FRED O. WILSON
Attorney General

CHARLES C. STIDHAM
Assistant Attorney General

CCS:rc

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