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OFFICE OF THE
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R75-592

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February 3, 1976

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Dear Mr. Brammer:

Your letter of September 16, 1975, requested an opinion with respect to the following questions:

1. Whether or not a governing board of one district may admit children residing in another district, which is capable of educating those children through high school, without a certificate of convenience; and
2. If it may, must tuition be paid by the child or his parents to the school district of attendance.

With regard to your first question, Title 15, Arizona Revised Statutes, vests the general authority to govern each school district in a district board of trustees. A.R.S. § 15-431.A. Specifically, A.R.S. § 15-302.B provides:

The governing board may admit children who do not reside in the district but who reside within the state upon such terms as it prescribes. [Emphasis added.]

Thus, this statute expressly vests discretionary authority within each district board to admit students who reside outside of the district but within the State, and it empowers each board to condition the exercise of this discretion. This statute does not by its terms limit this authority only to those instances with respect to which a certificate of educational convenience has been issued or tuition is paid.



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On the other hand, A.R.S. § 15-449 mandates that the board of trustees admit students residing without their district either

* * * [u]pon the presentation [by the student] of a certificate of educational convenience issued by the county school superintendent pursuant to § 15-304 or by agreement between districts, without payment of tuition,^{1/} to exchange pupils for their convenience for reasons deemed sufficient by the governing boards. A.R.S. § 15-449.A.1.

The Supreme Court of Arizona in School District No. 3 of Maricopa County v. Dailey, 106 Ariz. 124, 471 P.2d 736 (1970), has had occasion to discuss the relationship between these statutes, and has articulated the differences between them. It said:

The statutes may be harmonized by a recognition that the District must admit children residing outside the district under the circumstances described in §§ 15-304 and 15-449, supra, but it may voluntarily accept pupils who live outside the district, but in the state, upon "terms" Id. at 127, 471 P.2d at 739. [Emphasis added.]

1/ The significance of the phrase "without payment of tuition" has not been articulately defined. However, in the context of the statute, it would appear that it is merely an attempt by the Legislature either to limit the authorization given each board of trustees to enter into agreements for the extra-district admission of students only to those instances where the terms of the agreement provide for extra-district admission without tuition, or, to distinguish extra-district admission by virtue of an agreement between districts for which no tuition is charged, from extra-district admission by virtue of the issuance of a certificate of educational convenience for which the district of residence must pay tuition. See A.R.S. § 15-449.D. In any case, it is the conclusion of this office that the use of the phrase in the context of the statute does not imply that tuition must otherwise be charged.

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In effect, it would appear that there are three separate grounds upon which students can be admitted to a school in a district within which they do not reside, each of which has its own characteristics. They are:

- A. by virtue of the consent of the board;
- B. by virtue of the issuance of a certificate of educational convenience; or
- C. by virtue of an agreement to exchange pupils between districts providing for admission without tuition.

Therefore, it clearly appears that students who do not reside in a district can be admitted notwithstanding the absence of a certificate of educational convenience. As is the case with respect to all acts undertaken by agencies of the State or other governmental entities, any extra-district admission contemplated by the board must nevertheless comport with constitutional minimums. Therefore, any decision made by a school district with respect to extra-district admission must nevertheless be free from unlawful discrimination, arbitrary or capricious decision making and any other infringement of rights secured by the Constitutions of the United States and Arizona.

This conclusion of necessity leads us to your second question. As indicated, where extra-district admission is accomplished by virtue of the consent of the board, such consent may also be conditioned by the board. For example, the board could consent to extra-district admission on the condition that the parents of the child admitted pay tuition. School District No. 3 of Maricopa County v. Dailey, supra. Tuition as a condition to admission, however, is purely within the discretion of the board and, as such, is not necessarily a prerequisite for extra-district admission. Similarly, where extra-district admission is effected by virtue of ". . . an agreement between districts, without payment of tuition, to exchange pupils for their convenience . . ." (A.R.S. § 15-449.A.1), tuition is obviously not appropriate. Moreover, even in the case of extra-district admission by virtue of the issuance of a certificate of educational convenience, tuition is not assessed against the student or his or her parents. Subsection D of A.R.S. § 15-449, which requires that tuition be charged, also establishes the amount and source of the payment. With respect to the latter, the statute provides:

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* * * A claim for tuition shall be presented against the district of residence^{2/} through the county superintendent, who shall draw a warrant on the county treasurer in favor of the district of the actual attendance. The claim shall be paid from the funds of the district of residence.

It must be emphasized, however, that this provision relates only to those instances where extra-district admission has been effected by virtue of the issuance of a certificate of educational convenience.

Therefore, extra-district admission can be effected without the imposition of tuition payments to be paid to the school district of attendance by the student or his parents. Indeed, it would appear that in the ordinary course of events, tuition would not be paid by an individual except in those cases where tuition had been imposed by the board as a condition to its consent in accordance with A.R.S. § 15-302.B.

Lastly, it should be noted that it is the opinion of this office that Article 9, Section 7 of the Arizona Constitution does not preclude tuition free extra-district admissions. Although this provision of the Constitution is clearly applicable to school districts as subdivisions of the State (see Prescott Community Hospital Commission v. Prescott School District No. 1, 57 Ariz. 492, 115 P.2d 160 (1941); Attorney General Opinion No. 71-16) the provision relates to the ". . . giv[ing] or loan[ing] of] credit in the aid of, or mak[ing] any donation or grant, by subsidy or otherwise . . .". It is our opinion that the extra-district admission of students is not within the area of trans-

^{2/} It should be noted that where a student is admitted to a school in a district in which he or she does not reside by virtue of the issuance of a certificate of educational convenience, the district of his or her residence nevertheless is generally authorized to include the student in its average daily membership computation, A.R.S. § 15-304.A.1, except in the case of a student who is from an unorganized territory or who has been admitted by virtue of the issuance of a certificate of convenience with respect to foster children or rehabilitative schools, in which case it shall be the district of attendance. See A.R.S. §§ 15-304.A.2, 15-304.B and 15-304.C.

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actions proscribed by this section of the Constitution. This provision of the Constitution simply precludes the use of public funds ". . . to foster or promote purely private or personal interests . . .", Town of Gila Bend v. Walled Lake Door Co., 107 Ariz. 545, 490 P.2d 551 (1971), and proscribes entry by the State into purely nonpublic enterprises. State v. Northwestern Mutual Insurance, 86 Ariz. 50, 340 P.2d 200 (1959). Thus, it does not prohibit expenditures made by school districts which are related to bona fide educational purposes.^{3/} Cf. Prescott Community Hospital Commission v. Prescott School District No. 1, supra.

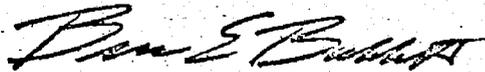
Although extra-district admissions in any significant number will undoubtedly increase the cost of education for the school district of attendance and hence marginally increase the burden upon the taxpayers of the district, Article 9, Section 7 of the Constitution of Arizona has never been read so as to require a precise allocation of the cost of governmental activity to the recipients of the benefit of that activity. Humphrey v. Phoenix, 55 Ariz. 374, 102 P.2d 82 (1940); Phoenix v. Superior Court of Maricopa County, 65 Ariz. 139, 175 P.2d 811 (1947). Insofar as expenditures made by the board for the marginal cost of educating students who do not reside in the school district are nevertheless expenditures made for the purpose of education, and education is a proper public purpose with respect to Article 9, Section 7 of the Arizona Constitution. Cf. Prescott Community Hospital Commission v. Prescott School District No. 1, supra, it would appear that the Arizona Constitution is not contravened by tuition free extra-district admissions. The language in Attorney General Opinion No. 60-1 referred to in your letter and the discussion in Attorney General Opinion No. 57-118 to which No. 60-1 referred, both of which in their isolation may have suggested that extra-district admission can be permitted only upon the imposition of the cost of tuition, do not relate to Article 9, Section 7 of the Constitution.

^{3/} As indicated earlier, other constitutional provisions demand that all expenditures made by the board be reasonable in amount, nondiscriminatory and reasonably related to education. Thus, while it is the opinion of this office that the mere tuition free extra-district admission of students is permissible, the payment by the board of monetary grants or other incentives in order to attract students from other school districts would in all probability exceed constitutional limitations.

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In view of our answer to your first two questions, it appears to be unnecessary to render an opinion with respect to the other questions raised in your letter. However, an issue related to but not directly posed by your third question is that of how should the amount of tuition be determined if the Trustees consent to extra-district admission, pursuant to A.R.S. § 15-302.B, on the condition that the student or his parents pay tuition. The answer is simply that since the Trustees have the authority to condition or not condition their consent as they see fit, they can also charge tuition in any reasonable amount that they see fit. Thus, the Trustees could permissibly charge no or nominal tuition, tuition determined by the value of the services rendered to the student by the school (that is, for example, what a comparable private school would charge as tuition), or tuition in the amount of the estimated marginal cost of the education provided the students by the school.

Sincerely,



Bruce E. Babbitt
Attorney General

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