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R 76-165

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76-141

April 26, 1976

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ARIZONA ATTORNEY GENERAL

Honorable James A. Elliott
State Representative
State Capitol
Phoenix, Arizona 85007

Dear Representative Elliott:

By letter of March 31, 1976, you have asked whether Chapter 4, Laws of 1975, unconstitutionally delegated authority to the Department of Corrections to expend monies "for construction of an Arizona correctional training facility." It is our view that such delegation was constitutional, and does not violate the "separation of powers" mandate of Article III of the Arizona Constitution.

In State v. Phelps, 12 Ariz. App. 83, 87 (1970), the Court of Appeals observed that "the line" between proper and improper delegations of authority and power "is dim and must in many instances be determined on a case-to-case basis." In this instance, the Legislature, by Laws 1975, Chapter 4, delegated to the department of corrections full authority to spend \$5.1 million "for construction of an Arizona correctional training facility ... at a location anywhere in this State"; this authorization "is not subject to joint legislative budget committee approval." The Legislature had earlier provided ample direction to the department regarding a "correctional training facility." A.R.S. § 41-1641 sets out the purpose and clientele of the facility, and A.R.S. § 41-1643 authorizes the director of corrections to construct and equip the facility "in accordance with law." (Laws 1970, Chapter 174).

Combining the 1970 and 1975 legislative pronouncements, we conclude that the delegation of authority here is proper and constitutional. In its most recent pronouncement on this subject, our Supreme Court stated:

'[w]hile the Legislature may not divest itself of its proper functions, or delegate its general legislative authority, it may still authorize others to do those things which it might properly, yet cannot understandably or advantageously do itself. The object to be accomplished, or



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the thing permitted may be specified, and the rest left to the agency of others, with better opportunities of accomplishing the object, or doing the thing understandingly.'

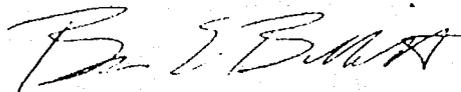
State v. Arizona Mines Supply Co., 107 Ariz. 199, 205 (1971), quoting Peters v. Frye, 71 Ariz. 30, 35 (1950).

Finally, the Supreme Court's language in State v. Birmingham, 95 Ariz. 310, 313 (1964), fortifies the validity of the Legislature's action here:

In order to avoid unconstitutional delegation of power, it is not necessary for [the legislative body] to supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaption of the [legislative] policy to infinitely variable conditions constitutes the essence of the program.

If we can be of further assistance, do not hesitate to contact us.

Sincerely,



BRUCE E. BABBITT
Attorney General

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