



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

McDougal

BRUCE E. BABBITT
ATTORNEY GENERAL

(R75-731)

August 2, 1976

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76-248

Mr. Thomas M. Bulman
State Insurance Officer
Department of Administration
State Capitol, West Wing
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Bulman:

You have requested that we render an opinion regarding the following question:

Can Pima College be reimbursed out of the state permanent uninsured loss coverage revolving fund for uninsured losses of books, damaged materials in storage and other contents of the building as a result of a fire which occurred in the College book store area?

Our opinion letter to you dated September 22, 1975, concerned the loss of personal property (an aircraft) owned by Cochise College, a community college. The issues presented and resolved in that opinion are the identical issues again raised by this request. We wish to confirm our conclusions in the previous opinion and also augment the rationale for those conclusions.

The state permanent uninsured loss coverage revolving fund was created by A.R.S. § 41-622, which reads in part:

A. There is established a permanent uninsured loss coverage revolving fund in the department of administration for the payment of uninsured losses. . . .

Departments, agencies, boards or commissions of this state may apply for monies therefrom to reimburse any uninsured property losses suffered by such department, agencies, boards or commission. . . .



August 2, 1976

Since only "departments, agencies, boards or commissions of this state" are legally entitled to apply for and receive money from the uninsured loss coverage revolving fund, it is necessary to establish whether community colleges fall within any of the four stated categories.

An exhaustive search of the statutes reveals that junior colleges in Arizona were originally established under law by high school districts, were governed by the high school board of education, gave courses of study prescribed by the high school board of education, and were funded from the annual budget of the high school board of education with the discretionary provision to discontinue such college if the average daily attendance was not sufficient to warrant the maintaining of the college. See Rev. Code 1928, §§ 1086, 1087.

Laws 1931, Ch. 81, § 1, set up an alternative method for establishing junior colleges. Rev. Code 1928, § 1086, provide that other junior colleges could be established as Union junior colleges and county junior colleges within certain legally designated junior college districts, i.e., two or more contiguous high school districts in the same county, and all county territory not included in any other junior college district. Also, the act established a junior college board of five members for each junior college district with powers and duties identical to those prescribed by law for high school boards, with a few minor exceptions. Further, the act provided that the Union and county junior colleges were to be supported and sustained in the same manner as high school district junior colleges, as provided under Rev. Code 1928, § 1087. Subsequent amendments to § 1087 provided additional state aid on a per annum, per capita student basis as a continuing appropriation.

In 1960 the Legislature enacted Chapter 119, Laws of 1960, Title 15, Ch. 6.1 of A.R.S., as amended, providing for an integrated state system of junior colleges. It established a junior college state board of directors consisting of one member from each county, a representative of the Board of Regents, the Superintendent of Public Instruction, and the Director of the Division of Vocational Education--a total of seventeen members. The act also established a method for organizing county junior college districts. Funds were provided for such districts by directing the board of supervisors in the counties where the districts were located to levy taxes at a rate sufficient to provide an amount necessary for their respective support. State aid was also extended on a per capita student basis for operational

expenses to any junior college organized under the act and, for the first time, state contribution was granted to junior college districts for capital outlay. See A.R.S. §§ 15-686 and 15-690.

By A.R.S. § 15-692.A, the Legislature provided that any junior college district established prior to the enactment would have the option of accepting the per capita student basis state aid as provided for such districts or could continue to receive state funds as provided under A.R.S. § 15-632. By laws 1972, Ch. 122, § 2, the Legislature further included state aid to junior college districts for vocational and technical courses.

The obvious purpose of establishing a statewide system of integrated junior college districts was not only to provide educational facilities in the localities where the students resided but also to relieve the load on existing state universities created by the increasing demand for higher educational opportunities. Moreover, the state recognized, by providing very substantial increased financial support, A.R.S. § 15-690, for junior colleges which would be established under the act that education at this level is not alone a local problem but is of statewide concern.

However, the mere fact that the state in its benevolent wisdom sees fit to provide state aid to standardize and upgrade the quality of junior college level education does not make any junior college district a state "department, agency, board or commission" which would entitle the district to apply for reimbursement from the state uninsured loss coverage revolving fund.

In further support of our previous conclusion that junior colleges are not "departments, agencies, boards or commissions of this state", the court in McClanahan v. Cochise College, 25 Ariz.App. 13, 540 P.2d 744 (1975), reh. denied, 25 Ariz.App. 233, 542 P.2d 426 (1975), held that "a community college district is a political subdivision of the state." 540 P.2d at 748. See also Stanley v. Southwestern Community College Merged Area, 184 N.W.2d 29 (Iowa 1971). Contrasted to the McClanahan holding, the court in City of Tempe v. Arizona Board of Regents, 11 Ariz.App. 24, 461 P.2d 503 (1969), reh. denied, review denied held that "The Arizona Board of Regents, the governing body of Arizona State University (A.R.S. § 15-721 et seq.) is a state agency. State of Arizona v. Miser, 50 Ariz. 244, 72 P.2d 408 (1937)." See also City of Tempe v. Del Webb Corporation, 13 Ariz.App.

597, 480 P.2d 18, 19 (1971). Also, it is to be noted that the fundamental obligation of the Attorney General is to act as legal advisor to official agencies of the state and the legal services of his department must be furnished whenever required by a state department. Arizona State Land Dept. v. McFate, 87 Ariz. 139, 348 P.2d 912 (1960). See also School District No. One of Pima County v. Lohr, 17 Ariz.App. 438, 498 P.2d 512, 514 (1972), reh. denied, review denied. However, the county attorney must act as attorney for a junior college district governing board established pursuant to the Junior College District Act, Ch. 6.1, Title 15, A.R.S. §§ 15-651 et seq. Attorney General's Opinion No. 63-36 L, R 173, dated March 7, 1963.

Therefore, it is our conclusion that, since community colleges are political subdivisions of the state, they are not "departments, agencies, boards or commissions" of the State of Arizona which would entitle them to be reimbursed from the state uninsured loss coverage revolving fund.

With regard to the statutory interpretation of the coverage provided by purchase of insurance for state owned buildings and contents within those buildings, we look to the intent of the Legislature concerning these matters. A.R.S. § 41-621 provides in part:

A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of the state as provided in subsection C of this section, on the following:

1. All state owned buildings, including those of the universities and community colleges and whether financed in whole or in part by state monies.

2. Contents in any buildings owned, leased or rented, in whole or in part, by or to the state.
(Emphasis added.)

First impression of the foregoing subsection A, subsections 1 and 2, might indicate that any contents within a building owned by the state for community college use would be covered by insurance obtained by the department of administration. However, inquiry into the legislative intent in enacting A.R.S. § 41-621 does not support this inference.

Rather, it appears conclusive that the Legislature specifically did not intend for the state to insure loss of community college personal property contained within state buildings used by community colleges.

A.R.S. § 41-621 was derived from Florida legislation which created the Florida fire insurance trust fund. That fund insured all buildings owned by the state or its agencies, boards or bureaus and the contents thereof; and any other buildings leased or rented by the state, but not their contents.

An examination of the original draft of A.R.S. § 41-621.B (Now A.R.S. § 41-621.A.1) reveals the following reworked verbiage as taken from the Florida statute:

41-621.B. Insurance shall be purchased to insure all state owned buildings, whether financed in whole or in part by state monies and the contents thereof ~~or of~~ and to insure state owned contents in any ~~ether~~ buildings leased or rented in whole or in part by the state. [Underlined words added; crossed out words deleted.]

Subsequent legislation, Laws of 1974, Ch. 205, § 3, amended A.R.S. § 41-621.A as it presently appears in the statutes. As can readily be seen by examination of the A.R.S. § 41-621.B draft above and the present A.R.S. § 41-461.A.1 and 2, the former A.R.S. § 41-621.B was divided into two subsections: §§ 41-621.A.1 and 2. There can be absolutely no doubt but what the Legislature specifically intended insurance against loss of: (1) all state owned buildings and other buildings used by universities and community colleges, and (2) state contents within any buildings owned, leased or rented by or to the state, but not personal contents owned by community colleges. If the Legislature had intended to include personal property of community colleges under the insurance coverage of A.R.S. § 41-621, they would have so provided. A statute which enumerates the subjects or things upon which it is to operate will be construed as excluding from its effect all those not especially mentioned. Elfbrandt v. Russell, 97 Ariz. 140, 397 P.2d 944 (1964), reversed on other grounds, 384 U.S. 11, 86 S.Ct. 1238 (1966).

Therefore, it is our final conclusion that personal property of community colleges does not come within the purview of A.R.S. § 41-621 providing for insurance coverage

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against loss, and consequently Pima College cannot be reimbursed out of the state permanent uninsured loss coverage revolving fund for its loss of books, damaged materials in storage and other personal property contents of the building as a result of a fire which occurred in the College book store area.

Sincerely,

BRUCE E. BABBITT
Attorney General

Fred H. Strick
for
RODERICK G. McDOUGALL
Chief Counsel
Civil Division.

RGM:vld



DEPARTMENT OF LAW
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BRUCE E. BABBITT
ATTORNEY GENERAL

September 22, 1975

Mr. Thomas M. Bulman
State Insurance Officer
Department of Administration
State Capitol, West Wing
Phoenix, Arizona 85007

Dear Mr. Bulman:

We have received your letter asking whether Cochise College can be reimbursed out of the State Revolving Fund for uninsured losses for the loss of a training aircraft. We are informed that Cochise College is a community college, administered by a local community college district board, and subject to the jurisdiction of the State Board of Directors for Community Colleges.

A.R.S. § 41-622 creates the State Uninsured Loss Fund. However, disbursements from the fund to compensate for uninsured property losses are limited to "departments, agencies, boards or commissions of this state." A.R.S. § 41-622.A. Interestingly, A.R.S. § 41-621, the statute charging the Department of Administration with the procurement of state insurance, expressly mentions community colleges, albeit in a restrictive context. Paragraph A(1) thereof requires the department to provide coverage for "all state owned buildings, including those of the universities and community colleges and whether financed in whole or in part by state monies." In subsequent subsections, however, personal property and general casualty and liability insurance is limited to "the state and its departments, agencies, boards and commissions." A.R.S. § 41-621.A(4) and (6).

Not only are community colleges conspicuous by their absence from these statutory provisions, including the Uninsured Loss Fund, § 41-622, there appears to be a rational basis for obligating the State only as to providing insurance on the community college buildings.

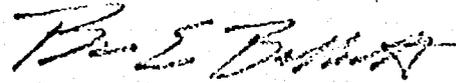
Simply, the State is deeply involved in the general supervision and financing of community colleges. The State Board of Directors for Community Colleges is the overall



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policy setting body charged with establishing curriculums and fixing tuition and fees. A.R.S. § 15-660. The state contributes 50% of the total cost of capital outlay (not to exceed 500,000 dollars), A.R.S. § 15-686, and provides aid based upon the per capita student population, A.R.S. § 15-690. However, direct supervision of a community college is vested in a local district board of directors, comprised of elective officers from the community college district. See Article 4, Chapter 6.1, Title 15, A.R.S. Among the powers statutorily assigned to the district board is the right to "receive, hold, make and take leases of and sell personal property for the benefit of the community college district under its jurisdiction." A.R.S. § 15-679.A(10). (Emphasis added.) That authority contrasts with the power of the state board to "purchase, receive, hold, make and take leases of and sell real property for the benefit of the state and for the use of the community colleges under its jurisdiction." A.R.S. § 15-659.C. (Emphasis added.) In light of the above language, the reason for requiring state insurance on community college buildings is apparent. It is also equally apparent that the local district board which controls the personal property of the community college is an independent political entity. A.R.S. §§ 15-676.01, et seq. As such, it is not a department, agency, board or commission of the state within the meaning of A.R.S. § 41-622. See, e.g., Stanley v. Southwestern Community College Merged Area, 184 N.W.2d 29 (Iowa 1971). Accordingly, the claim for reimbursement out of the Uninsured Loan Fund, based upon the loss of personal property (an aircraft) should be denied.

Sincerely,



BRUCE E. BABBITT
Attorney General

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