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ARIZONA ATTORNEY GENERAL

February 18, 1955
Letter Opinion
No. 55-29-E

Mr. Gilbert L. Cady, Comptroller
Arizona State College
Tempe, Arizona

Re: Effect of municipal building
regulations and building permit
fees upon the construction of
state school buildings.

Dear Mr. Cady:

In your letter of December 13, 1954, you requested an opinion of this office as to whether Arizona State College is required to obtain a building permit and pay a permit fee to the City of Tempe under a recently adopted ordinance of that city requiring such a permit for construction of school buildings on school property.

Although there is considerable conflict of authorities concerning the power of municipalities to enforce building regulations and requiring building permits pertaining to the construction of public buildings located on property within these municipalities, the better reasoned and more modern view would seem to be that such power does exist in the municipalities under general police power granted to municipalities by state constitution and statutes.

Article 13, Section 2 of the Arizona Constitution gives municipal corporations the power to enact rules, regulations and ordinances consistent with and subject to the constitution and the laws of the State of Arizona. Section 16-601, A.C.A. 1939, Subsections (9) and (10), codify this constitutional authority by specific reference to the power of municipalities to establish building regulations and building codes.

Although the Board of Regents of the State, the various county school superintendents, and the Boards of Trustees of school districts have been granted broad powers in the construction, control and repair of school buildings under state statutes, these statutes do not specifically confer police powers relative to

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general police, sanitary, fire, and building code regulations. Since such police powers have not been so delegated, municipalities retain these powers under the constitution and statutes of Arizona, as aforementioned. It is felt that the better reasoned Court decisions support this principle. See PASADENA SCHOOL DISTRICT v. PASADENA, 166 Calif 7, 134 Pac 985; EX PARTE MEANS (Calif), 85 P2d 460; KANSAS CITY v. SCHOOL DISTRICT OF KANSAS CITY, (Kans), 201 SW 2d 930.

It is accordingly the opinion of this office that when the State, or its educational subdivisions, own or control property within the jurisdictional limits of municipalities of the State, that buildings and improvements erected on said property are subject to the building regulations and required building permit fees of these state municipalities.

Yours very truly,

ROBERT MORRISON
The Attorney General

By:

ROBERT E. KERSTING
Special Assistant to
The Attorney General

REK:hb