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May 10, 1977

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ARIZONA ATTORNEY GENERAL

The Honorable C. W. "Bill" Lewis
Arizona State Representative
House Wing, State Capitol
Phoenix, Arizona 85007

Re: 77-104 (R77-117)

Dear Representative Lewis:

By letter dated March 31, 1977, you requested our opinion on the following questions:

1. If Sun City incorporates, will they be able to purchase the existing recreational facilities and exclude non-residents from using them?
2. If . . . this is not possible, would they be able to establish a lower use fee for residents than for non-residents?

In response to your first question, it is our opinion that if Sun City incorporates, nothing would prevent it from purchasing existing recreational facilities in the community. Whether the City of Sun City could lawfully preclude non-residents from using such facilities is a difficult issue to deal with hypothetically.

In Lopez v. Jackson County Board of Supervisors, 375 F. Supp. 1194 (S.D. Miss. 1974), the defendants were challenged for establishing a priority system favoring county residents over non-residents in the rental of boat slips in a county harbor. The Federal District Court held that the actions of the board amounted to an ouster of noncounty residents from boat rental space in violation of the equal protection clause-- that the criteria for exercising a priority led to the total exclusion of non-residents in an arbitrary and unreasonable fashion.

However, low-level courts in the State of New York have held that non-residents may be excluded from certain municipal facilities. In People v. Gilbert, 137 N.Y.S.2d 389 (1954), a county court held that an ordinance providing

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an off street parking area for the exclusive use of village residents did not violate the qual protection clause. And in Schreiber v. City of Rye, 278 N.Y.S.2d 527 (1967), a county court held that restricting use of the municipal golf course and swimming pool to city residents did not deny equal protection to non-residents where the facilities had limited capacity, and were operated and maintained by the city with its own funds.

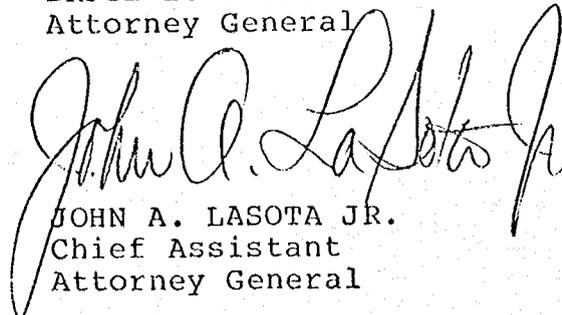
Our search has disclosed no other cases in point, and we cannot predict what course Arizona courts would take. However, we should point out that in the Lopez case cited above, the county board of supervisors had specifically relied on People v. Gilbert (also cited above) to justify their actions, but the Federal District Court rejected the reasoning used in Gilbert.

In response to your second question, it is our opinion that, with respect to the operation of recreational facilities by an incorporated Sun City, the establishment by the city of a lower use fee (within reasonable limits) for residents than for non-residents would not involve a denial of equal protection and would, therefore, be legally permissible.

Under these circumstances, granting residents a lower fee would appear to be the type of "reasonable classification" authorized by the Arizona Supreme Court in State ex rel. Babbitt v. Pickrell, 113 Ariz. 12, 545 P.2d 936 (1976); State v. Kelly, 111 Ariz. 181 (1974) cert. denied 420 U.S. 935; Farmer v. Killingsworth, 102 Ariz. 44 (1967); and Schechter v. Killingsworth, 93 Ariz. 273 (1963).

Sincerely,

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JAL:jrs