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July 27, 1955
Opinion No. 55-165

REQUESTED BY: Honorable C. L. Harkins, Superintendent of
Public Instruction, Capitol Building
Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
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Attorney General

QUESTION: May a school district acquire by gift real
property from the Federal Government on which
there are various restrictive covenants and
restrictions?

CONCLUSION: Yes, provided such acceptance by the school
district is submitted to the vote of the
qualified electors of the district.

There is no statutory prohibition against school districts
acquiring land by gift or devise. As a matter of fact, Section
54-608(a), ACA, 1939, contemplates a devise, while Section 54-419,
ACA, 1939, only contemplates a restriction (a vote or an election)
where school property (a site) is purchased. This section also
requires a vote for the location of a school house or the reloca-
tion of a school house.

The proposed federal gift in this case requires a school
district to keep and maintain the property in a good state of
repair. In the event the school district should fail to abide by
such covenant, then the federal agency is given the power to keep
and maintain the premises in a good state of repair and to charge
the cost in connection therewith to the school district.

Since there are various obligations that must be performed by
the school district, including maintenance as aforementioned, it
is the opinion of this office that, before such a gift is accepted
by the school district from the federal government, the proposed
acceptance must necessarily be voted upon by the qualified electors
of the school district. The fact that the school district must
perform certain acts leads this office to believe that, even though
the grant of the property is termed as a gift, it is more nearly
analogous to a purchase.

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