



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

BRUCE E. BABBITT
ATTORNEY GENERAL

June 7, 1977

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Mr. Verne C. McCutchan
State Mine Inspector
Rm. 705, West Wing, State Capitol
Phoenix, Arizona 85007

Re: 77-134 (R77-136)

Dear Mr. McCutchan:

You have requested an opinion of this office to the following question:

Is it a conflict of interest for a deputy mine inspector to lease his own land for the purpose of removing sand and gravel from said land?

The State Mine Inspector and his deputies are charged with the responsibility of regulating sand and gravel operations in Arizona. A.R.S. § 27-441. The deputy mine inspector who seeks to lease his land for a sand and gravel operation would, by doing so, acquire an interest in the regulation of sand and gravel operations.

A.R.S. § 38-503.B provides as follows:

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a board, administrative official, commission, or legislative or administrative body of which he is a member or to which he makes recommendations, shall make known such interest in the official records of such board, commission, or legislative or administrative body and shall refrain from participating in any manner as an officer or employee in such decision. (Emphasis added.)

A substantial interest has been legislatively defined in A.R.S. § 38-502.8:

8. "Substantial interest" means any interest, either direct or indirect, other than a remote interest. (Emphasis added.)

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A remote interest is defined in A.R.S. § 38-502.7:

7. "Remote interest" means:

(a) That of a nonsalaried officer of a nonprofit corporation.

(b) That of a landlord or tenant of the contracting party.

(c) That of an attorney of a contracting party.

(d) That of a member of a nonprofit cooperative marketing association.

(e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee, and any other payments made to him by the corporation do not exceed five per cent of his total annual income.

(f) That of an officer in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

(g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is an officer or employee, on the same terms and conditions as if he were not an officer or employee.

(h) That of a member of the hearing board provided for by section 6-365 other than such interest specified in subsection D of section 6-365 which requires that the member refrain from participating in the proceeding.

Thus, the interest in the sand and gravel operation that would be acquired by the deputy mine inspector, not falling within the seven specified situations declared to be "remote interests"

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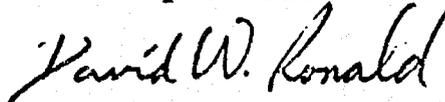
by A.R.S. § 38-502.7, is "substantial," and the deputy must make known in the official records of the Mine Inspector's office his interest in the sand and gravel operation and refrain from participating in any manner in any decisions affecting sand and gravel operations according to A.R.S. § 38-503.B.

It is suggested that a letter signed by the deputy addressed to the Mine Inspector would fulfill the requirement contained in A.R.S. § 38-503.B that the interest be made known in "official records" of the administrative body. Whether the deputy mine inspector can refrain from participating in any manner in decisions affecting sand and gravel operations will depend not only upon the organizational structure of the office but also upon the causal affect of the deputy inspector's activities upon the office's sand and gravel regulations. For example, merely because the deputy does not inspect such operations does not mean that he may participate in office planning functions which could result in greater or lesser priority being assigned to the regulation of sand and gravel operations.

In the opinion of this office, so long as the deputy inspector complies with the provisions of A.R.S. § 38-503.B he will not violate the conflict of interest laws of this state by leasing his own land for the purpose of removing sand and gravel from said land. We hasten to add, however, that if any serious question remains concerning the office's ability to isolate the deputy from decisions which may impact upon sand and gravel operations, the prudent alternative is for the deputy to avoid even the possible appearance of impropriety and not enter into the lease.

Sincerely,

BRUCE E. BABBITT
Attorney General



DAVID W. RONALD
Assistant Attorney General

DWR:jrs