



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

*Ed Wright*

BRUCE E. BABBITT  
ATTORNEY GENERAL

December 16, 1977

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**ARIZONA ATTORNEY GENERAL**

The Honorable Billy L. Hicks  
Yavapai County Attorney  
Yavapai County Courthouse  
Prescott, Arizona 86301

Re: 77-235 (R77-309)

Dear Mr. Hicks:

We have reviewed your September 6, 1977 opinion addressed to the Prescott Public Schools, concluding that a power of attorney by parents residing outside of the school district purportedly granting legal custody of their children to a resident of the district is insufficient to effect legal custody.

We concur in the result reached in your opinion, but disagree with the next-to-last paragraph in your opinion which appears to conclude that a court order appointing a person as custodian will necessarily effect a different result. That conclusion is inconsistent with School Dist. No. 3 of Maricopa County v. Dailey, 106 Ariz. 124, 127, 471 P.2d 736, 739 (1970), which held that if a person is appointed as guardian solely to change the residency of the ward for school admission purposes, that guardianship is to be disregarded. Also see Atty.Gen.Op.No. 73-24-C and cf. Atty. Gen.Op.Nos. 75-158 and 73-28-C.

Sincerely,

BRUCE E. BABBITT  
Attorney General

*David Rich*  
DAVID RICH  
Assistant Attorney General

DR:dsw



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COUNTY ATTORNEY  
RICHARD A. STEWART  
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ATTORNEY GENERAL **County Attorney**  
PHOENIX, ARIZONA  
YAVAPAI COUNTY COURTHOUSE  
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CARL H. COAD  
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HOWARD D. HINSON, JR.  
DEPUTY  
STEVEN B. JAYNES  
DEPUTY

September 6, 1977

*Concerning  
Opinion Request  
R 77-309  
Rich*

Prescott Public Schools  
P.O. Box 1231  
Prescott, AZ 86301

Attention: Dr. Robert Browne and Mr. Clyde Kidd

Re: Students Attending Prescott Schools via Power-of-  
Attorney Authorization

Gentlemen:

You have raised the question of students attending Prescott Public Schools pursuant to a power of attorney from their natural or adoptive parents who are out of our jurisdiction granting parental rights to non-parents residing in the Prescott School District area.

A.R.S. §15-449 sets forth the criteria by which pupils from another school district shall be admitted. Briefly stated the two main situations are:

- (1) by certificate of educational convenience pursuant to 15-304 by agreement between districts and
- (2) by admission without such certificate if the pupil is a resident of a district in the State that has neither a high school nor a school in which high school subjects are taught.

A.R.S. §15-449(B) sets forth that the residence of the person having legal custody of the pupil shall be considered the residence of the pupil. For purposes of this section, "legal custody" means:

Prescott Public Schools  
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1. Custody exercised by the natural or adoptive parents with whom a pupil resides;
2. Custody granted by order of a court of competent jurisdiction to a person or persons with whom a pupil resides.

It would appear that parents are attempting to circumvent the regulation set forth in 15-449(B)(2) above by substituting the power of attorney for the order of a court of competent jurisdiction.

A court order from the Superior Court (Arizona's court of competent jurisdiction) granting a guardianship to the local guardians would comply with subsection (B)(2).

Accordingly, it is our advice that the legal way to admit these out-of-jurisdiction students is to have them comply with obtaining the court order granting custody to the person or persons with whom the pupil resides.

If there are any questions, please feel free to contact me.

Very truly yours,

*151 Billy L. Hicks*  
Billy L. Hicks  
Yavapai County Attorney

BLH:j

cc:  
Office of the Attorney General  
159 State Capitol  
Phoenix, AZ 85007