



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

Bob Corbin
~~XXXXXXXXXXXXXXX~~
ATTORNEY GENERAL

February 27, 1979

James H. Landis, Esq.
Deputy County Attorney
Yavapai County Attorney's Office
Yavapai County Courthouse
Prescott, Arizona 86301

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Re: I79-062 (R78-360)

Dear Mr. Landis:

We have reviewed your December 15, 1978 opinion addressed to the Superintendent of the Prescott Unified School District and concur that the district, for a fair consideration determined in good faith by the Governing Board, may convey an easement to a private party. However, we do not agree that the conveyance of an easement constitutes the sale of a school site requiring approval of the electorate. Only if the conveyance would effectively prevent the school district from using either the subject property or other school property, must there be a vote of the electorate.

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

BC:lp



OFFICE OF

County Attorney

YAVAPAI COUNTY COURTHOUSE
PRESCOTT, ARIZONA 86301
445-7450 EXT. 208

December 15, 1978

LY L. HICKS
COUNTY ATTORNEY

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Dr. Kenneth Walker, Supt.
Prescott Unified School District
P.O. Box 1231
Prescott, AZ 86302

Dear Ken:

The Board of Education has requested an opinion concerning the possible conveyance of school district land to a private party who has requested an easement for ingress and egress and for utilities over a triangular corner of school district land. The easement contains approximately 1,200 square feet and is located at the west end of Aubrey Street, just to the southwest of Prescott Junior High School. In the alternative, this private party would make an offer for an outright purchase of the above-described property.

A school board is authorized to sell or convey school property. (A.R.S. §§15-442(A)(8), (12), (13), (B)(8), and 15-1302). Both the conveyance of an easement as well as the conveyance of the entire property in fee would constitute a "sale". (See A.G.O. 77-193 (R77-339)). In order to sell a school district site to a private party, however, there must be authorization from the electorate. (Garrett v. Tubac-Amado School District, 9 AA 331, 333 (1969); A.G.O. 75-22-C). The triangular piece of property is part of a much larger parcel that is so closely connected to the existing campus as to constitute part of the whole school site. Furthermore, a school board cannot sell a school district site or other real property with or without an election, unless the sale benefits the school district and promotes education within the district. (Prescott Community Hospital v. Prescott School District, 57 Az 492, 494-495 (1941); see A.G.O. 74-24-C; and see A.R.S. §15-442(B)(8)). For example proper reasons for

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the sale of school real estate would include the following: The land in question is not useable; the land is a financial burden to maintain; or the sale will in some way enhance the retained property of the district. (A.G.O. 74-24-C).

If it is determined in good faith by the board of education that the sale of this property would be for some proper educational purpose and is also authorized by the electorate, the district must receive fair market value for the property. (Prescott Community Hospital v. Prescott School District, 57 Az. 492, 494-495 (1941); A.G.O. 77-193 (R77-339)). We would then recommend that the district have the interested purchaser submit, at his or her own expense, an independent appraisal. A formal bid procedure is not required. (A.G.O. 75-22-C).

I have personally inspected the property involved. It does not appear that the sale would in any way benefit the district. On the contrary, the sale of the fee, as well as the easement would have the same practical effect of preventing all future use of the described property by the district merely to accommodate a private party who does have other access alternatives.

Should you have any further questions about this matter, please call me. Otherwise, could you please make copies of this opinion available to the school board. Pursuant to A.R.S. Section 15-122(B), we are sending a copy of this letter along with your request to the Attorney General for review.

Very truly yours,

JAMES H. LANDIS

James H. Landis
Deputy County Attorney

JHL:j

cc:
Dr. Gene Hunt, Supt.
Yavapai County Schools

Dave Rich
Office of the Attorney General
State Capitol Building
Phoenix, AZ 85007