



Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

March 6, 1979

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

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Re: I79-067 (R79-039)

Dear Mr. Landis:

We have reviewed your opinions of January 11, 1979 and February 2, 1979, addressed to the President of the Prescott Unified School District and concur with your conclusion that A.R.S. §§ 38-501 et seq. does not allow the district to do business with the firm of any board member through any means other than public competitive bidding. As you noted, "public competitive bidding" is, for purposes of A.R.S. §§ 38-501 et seq., defined as procedures substantially equivalent to those set forth in A.R.S. § 41-730. Also, see A.C.R.R. R7-2-701, the State Board of Education's recently promulgated rule on competitive bidding.

Sincerely,

*Bob Corbin*  
BOB CORBIN  
Attorney General

BC/mm



R79- 039

BILLY L. HICKS  
COUNTY ATTORNEY

OFFICE OF  
**County Attorney**

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

January 11, 1979

CARL H. COAD  
DEPUTY  
STEVEN B. JAYNES  
DEPUTY  
HOWARD D. HINSON, JR.  
DEPUTY  
WILLIAM J. PEARLMAN  
DEPUTY  
JAMES H. LANDIS  
DEPUTY

Mr. Jerry Williams  
President, Board of Education  
Prescott Unified School District  
P.O. Box 1231  
Prescott, AZ 86302

Re: Conflict of Interest

Dear Mr. Williams:

In your letter of January 3, 1978, you ask the following question:

"In view of the cited statute [ARS §§ 38-501 et seq.], can this district continue doing business with the firm of any board member through any means other than by public competitive bidding?"

The answer to this question is an unequivocal no!

As you mention in your letter, one of the newly elected school board members has, in the past, sold musical supplies and equipment to the school district. While larger purchases have been made after public competitive bidding, the daily small items (amounting to \$708.00 last year) have been procured without resort to competitive bidding.

The question is clearly resolved by A.R.S. Sections 38-501 et seq. Section 38-503(C) provides in pertinent part that "no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding." (emphasis added).

Section 38-501(A) provides as follows:

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"This article shall apply to all public officers and employees of incorporated cities or towns, political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards, but shall not apply to members of the legislature." (emphasis added).

Section 38-502(5) defines "political subdivision" to include all school districts, and Section 38-502(8) defines "public officers" as all elected or appointed officers of a statutorily created agency.

The above-mentioned statute clearly prohibits the sale of music supplies by a board member to the district unless based upon a public competitive bid. Please note that the penalties for conflict of interest violations are severe: A knowing or intentional violation constitutes a class 6 felony; a reckless or negligent violation is a class 1 misdemeanor; and a person found guilty of either must forfeit his public office. (A.R.S. §38-510(A)(B)).

Based upon the foregoing, we advise the district not to make purchases from a board member without complying with the bid procedures. Pursuant to A.R.S. Section 38-507, this opinion is a matter of public record, and a copy will be filed with the county recorder. A copy will also be sent to the Attorney General for review. (A.R.S. §15-122(B)).

If you have any further questions, please do not hesitate to call.

Very truly yours,

James H. Landis  
Deputy County Attorney

JHL:j

cc:  
Dr. Gene Hunt, Superintendent  
Yavapai County Schools

Dave Rich  
Office of the Attorney General

Patsy Jenney  
Yavapai County Recorder



R79- 039

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JAMES H. LANDIS  
DEPUTY

February 2, 1979

Mr. W. Jerry Williams  
Prescott Unified School Board  
P.O. Box 1231  
Prescott, AZ 86302

Re: Conflict of Interest Opinion of January 11, 1979

Dear Mr. Williams,

In our opinion dated January 11, 1979, we concluded that a public official of the school district may sell merchandise to the school district only through a procedure of "public competitive bidding". That opinion, however, did not define what constitutes "public competitive bidding". Because that question needs to be answered, we are sending you this supplemental opinion.

Public competitive bidding is defined by A.R.S. Section 38-502(7) as follows:

"'Public competitive bidding' means the method of purchasing defined in Title 41, chapter 4, article 3 [§41-721 et seq.] or procedures substantially equivalent to such method of purchasing or as provided by local charter or ordinance." (emphasis added).

The only section in Title 41, chapter 4, article 3 that involves purchasing is Section 41-730. Section 41-730 provides as follows:

"A. All purchases of supplies, materials, equipment, risk management services, insurance and contractual services made by the section of purchasing having an estimated cost in excess of five thousand dollars per

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transaction shall be based on sealed, competitive bids. The invitation for bids and specifications shall be issued in a sufficient time before the purchase is made, and in sufficient detail, to permit free competition. Copies of the invitation and specifications shall be supplied to and bids shall be solicited from the maximum number of qualified sources throughout the state consistent with the item to be purchased as determined by the assistant director for finance, but including all qualified suppliers who prior to the issuance of the invitation notify the purchasing section in writing that they desire to bid on materials, supplies, equipment or contractual services contained in the invitation.

"B. Bids shall be opened publicly at the time and place stated in the invitation. Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the state with respect to price, conformity to the specification and other factors. However, all bids may be rejected if the purchasing section determines that rejection is in the public interest.

"C. This section shall apply to all purchases of supplies, materials, equipment, insurance and contractual services made by the section of purchasing for any budget notwithstanding any provision of law to the contrary. "  
(emphasis added).

While Section 41-730 itself is limited to transactions in excess of \$5,000.00, in the case of transactions between school board members and their fiduciary, the bidding procedures apply regardless of the amount involved. Otherwise, a board member would be treated no differently from any one else which is obviously contrary to the intent of A.R.S. Section 38-503(C) and its predecessor A.R.S. Section 15-205.

Consequently, before a board member may lawfully sell merchandise of any value to the school district, the formal

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bidding procedures contained in Section 41-730 must be "substantially" complied with. We recommend that Section 41-730 be complied with to the letter.

Pursuant to A.R.S. Section 41-730, the existing school district policy requires "public competitive bidding" only for amounts of \$5,000 or more (D. 9.2.1). Thus, a board member may not lawfully bid unless the amount equals or exceeds \$5,000. In the event that the board wishes to allow an employee or public official of the district to bid on a lesser amount, the policy could be changed to permit the board, in its discretion, to require "public competitive bidding" on a case-by-case basis.

If you have any further questions, please call. We are sending this supplemental opinion to the Attorney General so that he may review this along with our original opinion.

Very truly yours,

James H. Landis  
Deputy County Attorney

JHL:j

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