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Phoenix, Arizona 85007

Robert R. Corbin

March 19, 1979

Mr. J. Wm. Brammer, Jr.
DeConcini McDonald Brammer
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240 North Stone Avenue
Tucson, Arizona 85701

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ARIZONA ATTORNEY GENERAL

Re: I79-077 (R79-010)

Dear Mr. Brammer:

We have received your January 9, 1979 opinion addressed to the Assistant Superintendent for Business Services of the Tucson Unified School District and the following is a revision of that opinion.

The question is whether the district legally may pay the tuition and travel expenses for a member of the general public serving on a school site committee to attend a school conference out of state. We conclude the school district may pay tuition and expenses for non-school employees in certain limited situations. Pursuant to A.R.S. § 15-442.B.5, a school board may:

Permit a superintendent, principal or their representatives to travel for a school purpose, as determined by majority vote of the board.

In Op. Atty. Gen. No. 61-47, this office considered the effect of that provision and concluded that a school board could authorize teachers to travel as representatives of either the principal or superintendent, or both, when the particular purpose is determined by the board to be a "school purpose,"¹ and when travel expenditures are properly included in the school budget.

¹ It was noted in Op. Atty. Gen. No. 61-47 that since the term "school purpose" is not susceptible of a precise definition, the school board's discretion in determining what constitutes a school purpose will not be overturned unless the board exercised its discretion in an arbitrary and capricious fashion. The question of what constitutes a "school purpose" was more fully considered in Op. Atty. Gen. Nos. 78-93, 71-3-C, and 60-22.

Mr. J. Wm. Brammer, Jr.
March 19, 1979
Page 2

In determining whether the members of the school site committee could be considered "representatives" of the superintendent or principal, designated as such by the Board pursuant to A.R.S. § 15-442.B.5, we consider the conclusion reached in Op. Atty. Gen. No. 66-23-L wherein this office opined that such representatives could only be district employees or those with whom the district contracted to perform services. While the school site selection committee members are obviously not employees, their agreement to serve on the school site advisory committee could be construed as an oral contract with the district to perform services for the district if the necessary elements of such an express or implied contract exist.

It is the opinion of this office, therefore, that the district legally may pay the tuition and travel expenses for a member of the general public to attend a school conference out of state if the conditions described herein are met. If the committee members can appropriately be designated representatives of the superintendent or principal or as persons under contract to provide services to the district traveling for a "school purpose" and reimbursed therefore from monies properly budgeted, then such expenditures would not constitute improper gifts made in violation of Art. 9, § 7 of the State Constitution.²

Sincerely,



BOB CORBIN
Attorney General

BC/mm

² Concerning the question of what is an improper gift as opposed to a proper expenditure for a school purpose, consider the analysis of Op. Atty. Gen. Nos. 179-11, n.1; 78-91, n.8; 67-34-L and 66-23.L.

R79- 010

January 9, 1979

Mr. E. V. Summers
Assistant Superintendent for
Business Services
Tucson Unified School District
P. O. Box 4040
Tucson, Arizona 87517

Re: Magnet School Conference - Legality
of Payment of Conference Tuition
and Expenses

Dear Hugh:

You have asked me to provide you with a written opinion as to whether or not it would be legal for the District to pay tuition and expenses for a member of the general public (who is presently a volunteer member of a school site committee) to enable that person to attend a Magnet School Conference which is to be held out of state. It is my opinion that it would be illegal for the District to make such payments for the following reasons.

The Constitution of the State of Arizona, Article 9, Section 7, makes the following prohibition:

Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law [emphasis added].

This section of the Constitution has been interpreted by both Arizona case law and opinions of the Attorney General. In Proctor v. Hunt, 43 Ariz. 198, 29 P.2d 1058 (1934), the

Mr. H. V. Summers
Page Two
January 9, 1979

Arizona Supreme Court held that money raised by public taxation can only legally be spent for public purposes, and not for personal benefit of any individual. The worthiness of a claim alone never authorizes the granting of state funds to a claimant. Udall v. State Loan Board, 35 Ariz. 1, 273 P. 721 (1929). Thus, donations to individuals have been held unconstitutional in Duke v. Yavapai County, 24 Ariz. 567, 211 P. 862 (1923), and in Rowlands v. State Loan Board of Arizona, 24 Ariz. 116, 207 P. 359 (1922).

The evil sought to be avoided by this provision is the "depletion of the public treasury or inflation of public debt by engagement in non-public enterprise." State v. Northwestern Mutual Insurance Company, 86 Ariz. 50 at 53, 340 P.2d 200 at 201 (1959). Town of Gila Bend v. Walled Lake Door Company, 107 Ariz. 545, 549, 490 P.2d 551, 556 (1971).

In addition to the constitutional prohibition discussed above, there is no explicit grant by statute to the school board of a power to make such a payment. The court, in School District No. 1 of Pima County v. Lohr, 17 Ariz.App. 435, 498 P.2d 512 (1972), made it clear that school boards have only the authority granted by statute, and that the Board must act for the public interest. I find no statutory grant under A.R.S. § 15-442, enumerating the general powers and duties of school boards, which would enable the board to make the tuition and expense payments discussed above. The payment under consideration cannot be justified under A.R.S. § 15-443 which authorizes the board to employ and fix the salaries of employees necessary for the succeeding school year. And finally, although the board is empowered to employ professional personnel under A.R.S. § 15-438, the member of the general public who is presently a volunteer member of a school site committee has not been defined as a professional whose services could be compensated pursuant to the provisions of A.R.S. § 15-438.

Thus, because the Constitution of the State of Arizona specifically prohibits a school district from making any donation or grant to any individual and because the state legislature has not granted the school board the statutory

R79- 010

Mr. H. V. Summers
Page Three
January 9, 1979

authority to make the payment in question, it is my opinion
that such payment cannot legally be made.

Sincerely,

DeCONCINI McDONALD BRAMMER
YETWIN & LACY, P.C.

J. Wm. Brammer, Jr.

JWB:crc
CC: Dr. Florence Reynolds
Russell N. Jensen