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Robert R. Corbin
May 17, 1979

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ARIZONA ATTORNEY GENERAL

Mr. Michael G. Prost
Deputy Navajo County Attorney
Governmental Center
Holbrook, Arizona 86025

Re: I79-128 (R79-080)

Dear Mr. Prost:

Pursuant to A.R.S. § 15-122.B, we decline to review your February 23, 1979 opinion concerning the responsibilities of the Holbrook School District with regard to the education of Indian children who live within the district on the Navajo Reservation and the validity of an intergovernmental agreement between Holbrook School District and the Bureau of Indian Affairs (BIA) providing for the education of non-Indian children at the BIA-operated Greasewood School. We wish to note, however, that the authority for such an agreement is provided by A.R.S. § 15-449 because a federally-run school is not under the jurisdiction of the Holbrook School District and thus may be considered a different district for purposes of the provision. The provisions governing intergovernmental agreements (A.R.S. § 11-951 et seq.) are not an independent source of contractual authority and apply only in situations where an agency already has the power to enter into an agreement (A.R.S. § 11-954).

We believe A.R.S. § 15-436.B, shielding the Board from personal liability when relying upon the Attorney General's written opinion, applies equally to Board action taken in reliance on a County Attorney's opinion which we have declined to review pursuant to A.R.S. § 15-122.B.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC/mm

NAVAJO COUNTY ATTORNEY

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February 22, 1979

R79- 080

Mr. Luther Flick, Superintendent
 Holbrook Public Schools
 412 W. Buffalo Street
 P. O. Box 640
 Holbrook, Arizona 86025

Dear Mr. Flick:

This letter is in response to your request for an opinion from this office as to the various questions stated in your letter of May 10, 1978, and also includes our response to those matters added by Stuart Meinke in his letter of August 29, 1978. By copy of this letter to Mr. David Rich, Assistant Attorney General, State of Arizona, I am requesting his early concurrence to the opinions set forth below, pursuant to A.R.S. §15-122(B).

In your letter, you have in general requested this office to state what are the responsibilities of the Holbrook School District with regard to the education of Indian children who live within your district on the Navajo Reservation along with ten specific questions for us to answer. As a general rule, the reservations are governed exclusively by federal law, and state law does not apply to the reservation at all by virtue of both the Arizona Constitution and federal law. For example, the Fourth and Fifth paragraphs of Article XX of the Arizona Constitution state that all reservation land is under the "absolute jurisdiction and control" of the federal government and that the state may not tax land or other property owned by Indians on the reservation. The Arizona Supreme Court reiterated this in the recent case of Francisco v. State, 113 Ariz. 427, 556 P.2d 1 (1976):

"It is our opinion that Arizona has no authority to extend the application of its laws to an Indian reservation." Id at 431.

With regard to the Navajo Reservation in particular, the U.S. Supreme Court noted as follows:

Congress has since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities. And in compliance with its treaty obligations the Federal Government has provided for roads, education and other services needed by the Indians. Warren Trading Post Company v. Arizona State Tax Commission 380 U.S. 685, 85 S.Ct. 1242 at 1245 (1965).

Nevertheless, the State of Arizona does retain a governmental or proprietary interest in the reservation, even though state law does not apply to reservation Indians or reservation lands, as discussed by the Arizona Supreme Court in Porter v. Hall 34 Ariz. 308, 321, 271 P. 411 (1928):

We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the State, and that the exceptions set forth in our Enabling Act applies to the Indian lands considered as property and not as a territorial area withdrawn from the sovereignty of the State of Arizona.

Hence reservation Indians are full-fledged citizens of the State of Arizona, with all the privileges and immunities of citizenship, such as the right to vote and hold political office. Despite this, however, the State of Arizona has only nominal authority over the reservation itself.

Different legal standards will govern the extension of state authority onto the reservation depending upon whether or not the discussion involves Indian children or non-Indian children. If the State, through the Holbrook School District, seeks to assert its jurisdiction over non-Indians on the reservation, then such jurisdiction or authority will be permitted so long as tribal sovereignty is not infringed or tribal self-government impaired. Where the State seeks to assert its jurisdiction over an Indian on the reservation, any such assertion of State authority is prohibited unless federal law expressly permits the State to do so.

Luther Flick

2/22/1979

Page 3

See McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 93 S.Ct. 1257(1973). In addition, federal law will always prevail over State law, as well as any considerations of tribal sovereignty and self-government, in any case where there is a conflict between them.

Simply stated, and as will be seen from the federal statutes discussed below, the Holbrook School District has authority over reservation Indians and their children only to the extent that federal law expressly provides for state action in regard to the education of these children. On the other hand, where non-Indian children on the reservation are concerned, the Holbrook School District will have the same responsibility toward those children as any other child off the reservation, and they will be subject to the rules and regulations of the Holbrook School District to the same extent as any other child. The converse of the above principle regarding Indian education is also true. Unless federal law and the regulations of the secretary of the interior provide for education of Indians within state-run public schools, then the state, and specifically the Holbrook School District, would have no authority whatever over Indians living on the reservation, regardless of the directives and mandates of state law. This means that the authority of the Holbrook School District on the reservation is strictly limited by whatever federal law expressly permits.

The main body of federal law pertaining to the Indian nations is found in Title 25, United States Code. Title 25 contains several statutes relating to the education of Indian children and explicitly provides for their education in state-run public schools in accordance with appropriate regulations by the Secretary of Interior. 25 U.S.C. §282. Section 283 provides for sanctions against parents who do not send their children to schools in accordance with the regulations promulgated under §282. The Bureau of Indian Affairs may not expend funds for the education of children with less than one-fourth degree Indian blood in any areas "where there are free school facilities provided". 25 U.S.C. §297. Non-Indian children on the reservation are expressly prohibited from attending Indian day schools or boarding schools, unless they fall within some exception provided by DOI regulations. 25 U.S. §§288 and 289. Federal law even provides for the sale of Indian school facilities constructed at federal expense to local school districts under the condition that the properties be used "for school or other public purposes." 25 U.S.C. §293(A). Under certain conditions, namely that the local tribal government adopt a resolution of consent, federal law permits state personnel to enter the reservation in order to inspect educational facilities and to enforce state laws requiring compulsory school attendance. Thus, federal law seems to contemplate extensive

cooperation with the state in the important area of education and expressly provides for State action to accomplish the education of Indian children on the reservation.

This proposition is borne out by regulations of the Secretary of Interior, issued under authority of 25 U.S.C. §282 cited above, and also by the local handbook of regulations published by the BIA Division of Education in Window Rock. The DOI regulations are found in Volume 25 of the Code of Federal Regulations, which corresponds to Title 25 of the United States Code. The heart of the regulations are found in §§31.0 through 31.4. Basically, the regulations provide for the availability of BIA schools to children of one-fourth or more degree Indian blood except when those children are the children of federal employees. Regulation 31.1(c) provides that children of federal employees must attend the local public schools established by the state wherein they reside. Regulation 31.3 provides that non-Indian pupils may not attend BIA schools unless "there are no other adequate free school facilities available," meaning local public schools established by the state. The language of §31.1 indicates that attendance at BIA schools by Indian children is certainly not mandatory but only optional. There is no federal law or regulation that expressly prohibits an Indian parent living on the reservation from sending his child to a state-run school at his own choice, even though the child has the alternative of attending a BIA school.

Federal reliance upon state schools in Navajo County is borne out by the educational regulations published by the BIA's Navajo Area Office in Window Rock, entitled "School Enrollment Guidelines, 1978-1979 School Year." These local regulations are issued under authority of the BIA and the department of interior, and they establish a uniform policy for the attendance of Navajo children at BIA and state-run schools. These guidelines mirror the policies contained in the federal regulations above in that they express a clear preference in all cases for attendance at State-run public schools on a day basis, rather than at a BIA school on any basis. For example, the following order of preference is stated on page 4 and page 2:

All pupils who live within walking distance, as designated by the local school board of a public school or a public school bus route and where an appropriate grade level is offered, will attend this school. (Page 4).

School-age Navajo boys and girls should stay at home with their parents and attend school on a day basis if this is at all possible.

They should attend:

1. A Public School on a day basis if one is available, and if not
2. A Federal School on a day basis if one is available, and if not
3. A Federal Boarding School
4. A Bordertown Dormitory for those who are eligible. (page 2)

All applications to attend categories 2, 3 or 4 must be approved by the BIA School Superintendent.

No approval is required or even suggested for attendance at a public school. The guidelines provide that children of Indian employees must attend public schools of the state, unless a public school is not available. (page 8). Children of non-Indian employees must attend whatever public school is available, and if there is none available, then they must pay tuition before they will be permitted to attend a BIA school. (page 9).

In light of the extensive reliance upon state-run public schools in the above federal statutes and regulations, it is clear that there is no real conflict between federal and state law in this important area, and that federal law relies heavily upon state-run public schools to accomplish the important public goal that all children in the State of Arizona, Indian or non-Indian, obtain a quality education. Federal law clearly contemplates that, where state-run schools are available, State and federal government work hand-in-hand to provide public education to Indian children on the Navajo reservation. Therefore, the fact that the District boundaries enclose several hundred square miles of territory within the Navajo reservation does not conflict with federal law and, indeed, is consistent with the purposes and policies embodied in Title 25, United States Code, and regulations of the Secretary of Interior.

Since the situation at the Greasewood School, and the resulting intergovernmental agreement, are what prompted your letter of inquiry, I will first set forth the facts surrounding the situation at the Greasewood School as I understand them to be. This statement of facts is based upon my conversations with you, as well as with the acting principal at the Greasewood School, with officials at the Navajo Area Division of Education in Window Rock, and with the field solicitors of the Department of Interior in Window Rock.

Luther Flick

2/22/79

Page 6

The boundaries of the Holbrook School District extend for about 60 miles into the Navajo Reservation, as well as enclosing many square miles of area in and around the City of Holbrook. The Holbrook School District derives substantial tax monies from the non-Indian owned power transmission lines which traverse the area enclosed by the school district on the Navajo reservation.

Within the school district is a small town on the Navajo reservation called Greasewood, where the BIA operates a boarding school for grades K-8. There are several categories of students who attend Greasewood School. The school has regular dormitory students who live within 25 miles of the school but too far from any bus route to attend public school on a day basis. There are about 200 day students who are transported to Greasewood by the school's own buses. 100 children are "walk-ins" who attend the school on a day basis, and they are children of federal employees who live at Greasewood.

This latter group of 100 children were the subject of the Greasewood contract, and they are not eligible to attend Greasewood School under BIA regulations. For many years, the Holbrook School District has provided for their education by transporting them to the Ganado Public School and paying tuition to that district in accordance with A.R.S. §15-449. This arrangement worked considerable hardship upon these children, especially during the winter months. The children had to be transported a round-trip distance of 70 miles each day by bus. During the winter months, the route is frequently blanketed with deep snows and the journey can be quite hazardous. In addition, the shortening of the winter day and the length of the journey, especially during snowy weather, meant that many of the children would have to board the bus well before daybreak and would not return to their homes until well after sunset.

At a meeting on February 22, 1978, the parents of the children unanimously requested the Superintendent of the Holbrook School District to negotiate with the BIA for attendance of their children at Greasewood on a day basis. The intergovernmental agreement between the Holbrook School District and the BIA entitled "Education of Greasewood Children" was the outcome of this request. Under the contract, the Holbrook School District will pay tuition to the BIA for these children, at a rate equal to the "per capita cost of maintenance, not to exceed the state support level per ADM for the previous year." This cost is estimated to be approximately \$800 to \$900 per student for the 1978-79 school year.

Under the previous arrangement with the Ganado Public School District, the Holbrook School District was paying approximately \$1800 per student per school year. The intergovernmental agreement is expected to result in a net saving to the school district of some \$90,000 in the 1978-79 school year. Under BIA regulations, these children would not have been eligible to attend the Greasewood School on any basis, whether tuition-paid or otherwise, but for the existence of this contract.

Before entering into negotiations with the BIA, the Holbrook School Superintendent investigated the Greasewood School's facilities and its educational program for compliance with state health and educational requirements. As a result of that investigation, he was satisfied that the school facilities themselves meet health requirements and the educational program meets the requirements of the State Board of Education. As a matter of policy, the BIA is attempting to bring all of its schools, including Greasewood and Dilcon, up to the educational standards provided by the Arizona State Board of Education. For example, all of the BIA schools use the same textbooks prescribed by the State Board of Education and follow the course of study prescribed by the state board. The schools require attendance for the same number of days per school year as that required by state law, as well as the same number of hours per school day. However, very few of the BIA teachers, at Greasewood or elsewhere, are certified to teach school under Arizona State Law. All of the teachers without exception have been certified by the states from which they came. The BIA has set a policy whereby all of its teachers will be required to obtain Arizona Certification, but that policy is not in effect as yet.

Of the 100 children covered by the Greasewood contract, 86 are children of federal employees at Greasewood School and the Public Health Service, but 14 are not children of federal employees. Of these 100 children, 96 are Indians and 4 are non-Indians. In addition, there are 16 children not on the contract list who attend Greasewood School and have brothers or sisters who are on the contract list.

The following are my best opinions as to the questions posed in your letter, which I have restated here for convenience. Question 8 involves the Greasewood contract and will be dealt with last.

1. Are the children who reside within the Holbrook School District and who are, also, living on the Navajo Indian Reservation, under the rules and regulations of the Holbrook School District for public education as set forth in chapter 15, Arizona Revised Statutes?

First of all, the question is necessarily limited to those children who reside within the Holbrook School District. Under State law no child is considered to be a resident of the district unless his parents reside there. And under state law a school district has no responsibility to children who live outside the district, except when the County School Superintendent issues a certificate of convenience in accordance with A.R.S. §15-304. This means that the Holbrook School District has no responsibility to any child, Indian or non-Indian, whose parents live beyond the boundaries of the District, even though those children may be living within the district at a federal BIA dormitory. The residence of a child is determined solely by the residence of his parents.

In general, the Holbrook School District has the same educational responsibilities to children who live on the Navajo Reservation as to those who live off the reservation. This means that the district must admit all students between the ages of 6 and 21 to its established schools (A.R.S. §15-302) and may provide transportation for any children when the board deems it to be in the best interests of the district (A.R.S. §15-422(4)). This does not mean that the school district must build or construct schools within the district on the reservation. Indeed, federal law would clearly prohibit such action by the school board. However, the district must admit an eligible Indian student to its schools even though that student might also be eligible to attend a BIA school. It would be up to the board to determine whether it would be in the best interest of the district to establish a bus route for transporting the student to the school. The question presented is not one of the school district attempting to impose its rules and regulations upon an unwilling child on the reservation. The question presents a situation in which the parents of children have made a voluntary choice to send their children to a school operated by the Holbrook School District rather than one operated by the BIA. If such parents are otherwise eligible to send their children to school, that is, if they live within the Holbrook School District albeit on the Navajo Reservation, then such children would be subject to the rules and regulations of the Holbrook School District as set forth in Title 15, Arizona Revised Statutes, while voluntarily attending a District school. Obviously, the school superintendent and the school board would have to ensure that all children are provided the same educational benefits while attending the Holbrook School regardless of whether they were Indian or non-Indian and regardless of whether they lived on or off the reservation.

On the other hand, the Holbrook School District has no authority whatsoever to impose its rules and regulations upon any

school operated by the BIA on the Navajo Reservation. Therefore, no student attending a BIA school could ever be subject to the rules and regulations of the Holbrook district. Although federal law appears to incorporate much of Arizona law in the matter of education, the enforcement of any state standards and regulations related to education on the reservation is in the exclusive hands of the Department of Interior and the BIA. In the absence of authorization by the Navajo Tribal Government, in accordance with 25 U.S.C. §231, neither state officials nor officials of the Holbrook School District may enter reservation lands for purposes of making health and other inspections of educational facilities or for enforcing state laws requiring compulsory school attendance. Even if the Tribe gave its consent, such entry by state officials would still be subject to rules and regulations of the Secretary of Interior. In short, so long as Indian children on the reservation attend BIA schools, by choice or otherwise, they are not subject to any rules or regulations of the Holbrook School District nor are the BIA schools themselves subject to those rules and regulations.

2. Is the Holbrook School District responsible for the education of Indian children who are in the Holbrook School District and who live on the reservation and is the Holbrook School District entitled to State aid per ADM?

The first part of this question is a restatement of question 1 in different words, and therefore the answer to question 1 would also apply here. Indian children whose parents reside within the Holbrook School District on the Navajo Reservation are the responsibility of the Holbrook School District under the qualifications of the foregoing answer to question 1. If the parents of the children voluntarily seek admission to the District's schools, then the District must admit them and provide for their education the same as any other child. The district may not make any distinction as to children who live on or off the Navajo Reservation.

The Holbrook School District is fully entitled to state aid per ADM for every child attending its schools. State law makes no distinction between students properly admitted to a district school, regardless of whether such student lives on or off the reservation, so long as they are residents of the school district. Federal law, specifically the XIVth Amendment to the federal Constitution, would absolutely prohibit the state from making a distinction in the rendition of ADM aid as to students who live on the reservation and those who live off the reservation. Obviously, the Holbrook School District would not be entitled to state aid for any student, Indian or non-Indian, who chooses to attend a BIA school rather than one of the District's own schools.

Luther Flick

2/22/1979

Page 10

3. Are the schools which are on the Navajo Indian Reservation within the boundaries of the Holbrook School District under the jurisdiction of the Holbrook School District?

No, for the reasons given in answer to question 1. No school operated by any federal agency or the Navajo Tribe can be subject to the jurisdiction of the Holbrook School District as a matter of federal law. The only time that the rules and regulations of the Holbrook School District would apply to any federal school on the reservation would be in a case where the BIA or other agency affirmatively adopts such regulations and incorporates them into their own regulations. In all cases, the United States Department of Interior is responsible for the management and regulation of any schools operated on the Navajo Indian Reservation.

4. Does residence on the Navajo Indian Reservation exclude children from the rules and regulations of the Holbrook School District?

This question is really covered in the answer to question 1. If the child's parents send him to a school operated by the Holbrook School District, then that child would be subject to the rules and regulations of the District. In the opinion of this office, the Holbrook School District could never make a distinction between children who live on or off the Indian reservation without running afoul of state law and the federal constitution. This answer assumes that the child is otherwise eligible to attend a district school, that is, his parents must live within the boundaries of the Holbrook School District.

5. Does the BIA have the power and authority to exclude children who are residents of the Holbrook School District and who live on the Navajo Indian Reservation from the BIA schools located on the Navajo Indian Reservation and in the Holbrook School District?

Yes. The BIA schools are subject solely to the regulations of the BIA, and not those of the Holbrook School District, as explained in the foregoing answers. However, as a matter of comity, the BIA has adopted regulations and policies which express a marked preference for attendance at state-run public schools, meaning schools operated by the Holbrook School District, among others. What schools the BIA operates, and who may attend them, is strictly a matter of federal law and federal regulations promulgated by the secretary of interior and by the BIA itself. The Holbrook School District has nothing to say about how the BIA schools are run or who may attend them.

6. Does the BIA have the power to assign children who are residents of the Holbrook School District and who live on the Navajo Indian Reservation to attend the BIA schools located on the Navajo Indian Reservation within the Holbrook School District?

Yes, with qualifications. As discussed in the foregoing answers, the BIA may establish its own rules and regulations for attendance at BIA schools. No illegality will accrue so long as those BIA regulations are consistent with federal law and the regulations of the Secretary of Interior. As noted above, these regulations establish a marked preference for attendance at state-run public schools. The BIA does not "assign" any child to any school. BIA policy requires all Indian parents on the reservation to send their children to school, and public schools are preferred over BIA schools. Such children may attend BIA schools so long as they meet BIA eligibility requirements, in particular those of the Navajo Area Division of Education in Window Rock. The only illegality that might ever occur would be in a case where the BIA attempted to overrule the wishes of a child's parents and compel him to attend a BIA school rather than a public school. As a practical matter, this situation would never arise since both Title 25, United States Code, and the regulations of the Secretary of Interior require these children to attend public schools wherever such schools are available, rather than schools operated by the Bureau of Indian Affairs itself. The only time when the BIA may impose sanctions against an Indian parent would be in a case where an Indian parent refused to send his child to any school at all. See 25 CFR §31-4 and 25 U.S.C. §§282 and 283.

7. Do the federal regulations regulating the education of Indian children countermand, or supercede, the rules and regulations set forth in A.R.S. Title 15?

Strictly speaking, the answer is yes. If ever there were a conflict between federal regulations and local public school regulations, or even state law, then the federal regulations would always prevail by virtue of the Supremacy Clause of the federal Constitution. As a practical matter, however, this office does not believe such a situation would ever arise under the present federal statutes and DOI regulations. The federal regulations appear to incorporate and rely on state-run public school education wherever possible. Under these regulations the BIA is authorized to operate its own schools only where state school facilities are not otherwise available, or when the BIA has established programs for the benefit of Indian children living both on and off the reservation. 25 CFR §31.1(b) provides for enrollment of Indian children in BIA schools even though those children live off the reservation only when the BIA has established some program which would be beneficial to the Indian tribe as a whole. Implementation of this specific regulation might

result in some children who live off the reservation attending a BIA school rather than a state-run public school. If such were the case, it would be a violation of federal law for the parents of such a child to suffer any penalty under state law by reason of his or her participation in such BIA program. In all cases the BIA regulations make such programs voluntary and not mandatory upon the parents of the children involved. Here again, this would be an instance of parents making a voluntary choice to participate in a BIA educational program. Neither the school district nor the state could impose any penalty upon the parents for making this voluntary choice.

This situation is similar to that in which parents choose to send their children to a private school rather than a public school. Obviously, the state may not penalize the parents for exercising their right of free choice. The only difference between this example and the present situation is that BIA schools do not have to meet state certification standards, whereas any private school in the State of Arizona does.

To the extent that federal law or regulations create a conflict with state law or local public school regulations, then the federal rules and regulations will always prevail. As a practical matter, this office does not believe this situation would ever arise.

9. Who may assign children living on the Navajo Indian Reservation and in the Holbrook School District to a dormitory near a public school for educational purposes?

The answer to this question is related to answers 5 and 6 above. Obviously, the parents of a child living on the Navajo Reservation are the only ones who can make the decision where to send the child for his education. The BIA, through the Navajo Area Division of Education, has promulgated guidelines for the assignment of children to dormitories for purposes of education in its pamphlet of guidelines discussed above. Since such dormitories are operated and funded by the BIA, the BIA has sole discretion to assign students to such dormitories as it sees fit, so long as its discretion is exercised consistently with federal law and regulations of the Secretary of Interior.

The responsibilities of the Holbrook School District to these dormitory students will of course depend upon whether or not the child's parents live within the Holbrook School District. If the child's parents reside within the Holbrook School District, then the child is entitled to a free public education, just as any other child. If the child's parents live in an adjoining district, then the Holbrook District is entitled to charge tuition to the sending district.

10. Under what circumstances may children be assigned to a border town dormitory for educational purposes?

The answer to this question is found in the rules and regulations of the Bureau of Indian Affairs and specifically in the pamphlet published by the Navajo area Division of Education discussed above, which is entitled "School Enrollment Guidelines, 1978-79 School Year".

8. If children on the Navajo Indian Reservation are the responsibility of the Holbrook School District, may the Holbrook School District pay tuition to a BIA school when a public school is not within a reasonable distance of the residence of the students?

Yes, under the special circumstances at Greasewood School.

First of all, the Holbrook School District may never pay tuition to the BIA for education of children who would be eligible to attend the school tuition-free under the BIA's own rules and regulations. Where federal regulations provide for attendance at its schools by eligible students tuition-free, those regulations must be followed. The BIA would be violating its own rules and regulations, and the applicable statutes in Title 25 United States Code, if it entered into an agreement with the Holbrook School District, whereby the District paid tuition for a child who was eligible to attend tuition-free. Practically speaking, the BIA regulations provide for tuition-free education of all Indian children on the reservation except for the children of federal employees, whether Indian or non-Indian. The children of federal employees at Greasewood, whether Indian or non-Indian, are not eligible to attend Greasewood School on any basis, tuition-paid or otherwise. The BIA programs are designed to serve parents who cannot afford to educate their children otherwise and the federal employees here make too much money to place them within the income eligibility guidelines provided for in the BIA regulations. These local regulations provide that such children may attend a BIA school only if there is no other public school available. Here, the Ganado Public School is "available" and has been for many years.

The threshold question is whether or not the Holbrook School District has the power and authority under state law to enter into the Greasewood contract in the first place. Specific authority for the Holbrook School District to do so is found in A.R.S. §§11-951 et seq, providing for intergovernmental agreements and contracts. §11-952 specifically authorizes two or more public agencies to "contract for services" under the limitations set forth therein. A "public agency" includes "any federal * * * agency", such as the

Luther Flick

2/22/79

Page 14

BIA, and "school districts". Thus, the foregoing statutes in Title 11 expressly authorize a school district to enter into a "contract for services" with a federal agency such as the Bureau of Indian Affairs.

This question presents a unique fact situation which is not specifically covered anywhere in Title 15, Arizona Revised Statutes. A.R.S. §15-449 authorizes payment of tuition by one district for students who have been issued a certificate of convenience to attend school in an adjoining district. These certificates may be issued by the county school superintendent when he deems that it is not feasible for the child to attend school in his home district. This statute does not apply to the Greasewood situation since Greasewood School lies squarely within the Holbrook School District itself. The contract was entered into in order to avoid bussing the children to the adjoining Ganado School District.

A.R.S. §15-449 obviously contemplates situations where the health, welfare and safety of a child would be better served by paying tuition to an adjoining school district if the child would have to travel an unreasonable distance to attend school in his home district. In the opinion of this office, payment of tuition under the Greasewood contract comes within the sanction of this legislative policy, even though the statute itself does not expressly apply. The considerations that entered into your negotiations with the BIA for the Greasewood contract are nearly identical to the legislative policies contemplated by that statute. The basic considerations were that children of tender years had to attend school 35 to 40 miles away from their homes, which required them to make a daily trip under hazardous road conditions during winter, with the resulting loss of several hours each day that might have otherwise been spent with their own families at home.

One of the most important public policies in the State of Arizona is that every child who resides in the State of Arizona is entitled to a free public education. This proposition needs no citation for authority. The power of the governing body of a school district to act for the district and carry out this paramount public policy is generally without statutory limitation, so long as the specific strictures and limitations of state law are observed. As noted in one case, the Arizona Revised Statutes, Title 15, "vest plenary power in the board of trustees to govern the affairs of the school district, subject only to various statutory limitation." Garrett v. Tubac-Amado School District of Santa Cruz County, 9 Ariz. App. 331, 451 P.2d 909(1969). Without doubt, the action of the board of trustees of the Holbrook School District in entering into the Greasewood contract with the BIA was for a beneficial educational purpose, at a substantial savings to the taxpayers, and was clearly in the best interests of the health, welfare and safety of the children covered by the contract.

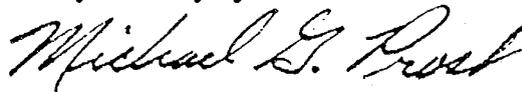
In light of the foregoing legal considerations and the specific authorization of §11-952, this office is of the opinion that the Holbrook School Board had proper authority under state law to enter into the Greasewood contract.

The answer to this question is not complete with the abstract statement above. According to the Greasewood administration, some 86 of the 100 students covered by the contract have parents who work for the federal government, but the remaining students are not children of federal employees. The latter group of 14 students are all Indians eligible to attend Greasewood School tuition-free under the applicable BIA regulations and they should not be covered by this contract. Since the other 86 children are not otherwise eligible to attend Greasewood without the contract, then any tuition payments for them are perfectly legal and proper.

In addition, there are some 16 children attending Greasewood School who are not on the contract list all of whom have brothers and sisters who are on the list. This revelation, along with the discovery of 14 students who should not be eligible for coverage under the contract, indicates to this office that the Holbrook District is not doing its "homework" in regard to monitoring the Greasewood contract.

I have attempted in the foregoing letter to provide you with what I feel is a comprehensive statement of your responsibilities toward those children within your district who live on the Navajo Reservation. I trust that this letter fully answers the ten specific questions which you raised in your letter, as well as the additional matters raised by Mr. Meinke in his letter. Please contact me if you have any further questions regarding this opinion.

Very truly yours



MICHAEL G. PROST
Deputy County Attorney

cc: Stuart Meinke
Navajo County School Superintendent

David Rich, Esq.
Assistant Attorney General
Department of Education
State of Arizona
Phoenix, Arizona 85000