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December 31, 1979

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ARIZONA ATTORNEY GENERAL

The Honorable Jeffrey J. Hill
Arizona State Senator
Senate Wing, State Capitol
Phoenix, Arizona 85007

Re: I79-318 (R79-296)

Dear Senator Hill:

This is in response to your October 26, 1979 opinion request with respect to the establishment of branch campuses by community college districts. Your letter raises the following legal issues:

1. Does A.R.S. § 15-686 permit the State Board of Directors for Community Colleges ("State Board") to choose not to request State contributions for capital outlay costs of a community college district?
2. Does A.R.S. § 15-686 require the State Board to obtain legislative approval before establishing a branch campus in a community college district?

In answer to your first question, A.R.S. § 15-686 provides for two different types of State contributions to the capital outlay costs borne by community college districts. Relevant portions of the statute provide:

A. The state, by legislative appropriation, shall pay a sum equal to fifty percent of the total cost for capital outlay for any district, not to exceed five hundred thousand dollars, except in districts where the district governing board certifies the need for an additional campus or campuses to the state board. If the board recommends the increase, it shall present a plan to the legislature. Upon

approval of the plan, the state by legislative appropriation shall pay a sum equal to fifty percent of the total cost for capital outlay for any campus within the district, but not to exceed five hundred thousand dollars, at any one campus . . .

B. In addition to the appropriation prescribed in subsection A of this section, the state, by legislative appropriation, shall pay for each full-time equivalent student in a community college district having under five thousand full-time equivalent students the sum of one hundred seventy-five dollars per capita per annum. In a community college district having five thousand or more full-time equivalent students, the state shall pay for each full-time equivalent student the sum of one hundred thirty-five dollars per capita per annum . . .

C. Appropriations for capital outlay as prescribed in subsections A and B of this section shall be made to an account designated as a capital outlay fund.

Subsection A requires the Legislature to contribute a sum equal to 50% of the total capital outlay cost of a community college district up to \$500,000. It also authorizes the Legislature to increase this contribution to those districts having more than one campus where the need for additional campuses has been recommended by the State Board and the plan is approved by the Legislature. If the Legislature approves the plan for additional campuses, the district is entitled to receive State aid in an amount equal to 50% of the total capital outlay cost up to \$500,000 per campus.^{1/}

Subsection B requires the Legislature to appropriate annually a per capita amount based upon the number of full-time equivalent students (FTSE) in each district. Subsection B makes it clear that there are two separate types of appropriations intended by § 15-686 through its introductory language:

1. It is our understanding that \$500,000 will generally be less than 50% of the capital outlay expense of any major campus expansion. For example, the cost estimate of the proposed South Mountain Community College is estimated at \$8,500,000.

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In addition to this appropriation prescribed in subsection A of this section .

Subsection C makes it clear that each of the two appropriations referred to in subsections A and B are capital outlay appropriations.

Your first question is whether the State Board can choose not to request State contributions for capital outlay for community college districts. Since A.R.S. § 15-686(A) states that if the Board recommends additional campuses, it "shall present a plan to the legislature", we conclude that the State Board is required to request subsection A monies. With respect to the FTSE monies for capital outlay provided for in subsection B, we believe that the Legislature is required to appropriate such funds after having received the FTSE computation made by the community college district. See A.R.S. § 15-688(C).^{2/}

You have also asked whether the State Board must receive legislative approval prior to establishing a branch campus in a community college district. While it is clear that a community college district cannot receive State aid as provided in subsection A of A.R.S. § 15-686 without legislative approval, we do not believe the statute precludes the establishment of a branch campus absent such approval. Our conclusion is based upon both the long-standing administrative implementation of A.R.S. § 15-686(A), an interpretation in which the Legislature has acquiesced, and the powers granted to the State Board in A.R.S. § 15-659.

Since 1960, the year in which A.R.S. § 15-686 was enacted, it has been the practice of the State Board to select sites for branch campuses, approve building plans for such campuses that are submitted by community college district governing boards and authorize construction of campuses prior to submitting a request to the Legislature for § 15-686(A) funds. The State Board has construed its power in A.R.S. § 15-659(C) to:

2. Our conclusion that the State must request subsection A money is consistent with our statement in Op. Atty. Gen. No. 75-188 that:

It is the belief of this office that FTSE money and a capital outlay appropriation will be combined together in one capital outlay account and that the responsibility of the local districts is merely to raise the balance owed for capital outlay. (Emphasis added.)

. . . determine the location within the district of the community college and purchase, receive, hold, make and take leases of and sell real property for the benefit of the state for the use of the community colleges under its jurisdiction
. . . .

as granting authority to approve the building of branch campuses without prior legislative approval. While the Board has submitted plans for branch campuses to the Legislature, it has viewed this submission as necessary only for purposes of obtaining § 15-686(A) state funding. The Legislature has been made fully aware of this practice over the last 19 years. In fact, legislative appropriations for § 15-686(A) capital outlay funds have been made for branch campuses whose construction has commenced several years prior to receiving this funding.^{3/}

A.R.S. § 15-686(A) is somewhat ambiguous. While it clearly requires legislative approval as a prerequisite to State appropriations, its language does not necessarily lead to the conclusion that legislative approval for the establishment of a branch campus is mandatory. We therefore believe that the administrative interpretation which has been made known to the legislature and has been followed for 19 years should be accorded considerable weight in construing the statute. See Chee Lee v. Superior Court, 81 Ariz. 142, 147, 302 P.2d 529, 533 (1956). See, also, Industrial Commission v. Harbor Insurance Co., 104 Ariz. 73, 449 P.2d 1 (1968); Bohannon v. Corporation Commission, 82 Ariz. 299, 313 P.2d 379 (1957).

3. Examples of this practice include the following:

Classes opened at the Aravapai Campus of the Pinal County Community College District in 1974. In 1975 the State Board requested § 15-686(A) funds but no appropriation was made. In 1976 the State Board again requested funding and an appropriation was made for Aravapai.

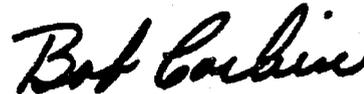
Classes began during the Fall of 1974 at the Pima Downtown Campus of the Pima County Community College District. In 1976 the State Board requested § 15-686(A) funds but no appropriation was made. In 1977, the State Board again requested funding and an appropriation was made for the Pima Downtown Campus.

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In addition, we note that the State Board is granted unrestricted authority to select the sites for community colleges and purchase real property for the benefit of community college districts in A.R.S. § 15-659(C). Further, A.R.S. § 15-659(H) contemplates the acquisition of real property through lease-purchases without utilization of § 15-686(A) funds.^{4/} No legislative approval is specifically required for lease-purchase of real property by the State Board and A.R.S. § 15-659(H) impliedly permits the establishment of a branch campus by means of a lease-purchase agreement.^{5/}

We therefore conclude that A.R.S. § 15-686(A) requires legislative approval prior to the receipt of the State appropriation described in that subsection, but is not intended to require the State Board to obtain legislative approval as a prerequisite to establishing a branch campus in a community college district.

Sincerely,



BOB CORBIN
Attorney General

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4. A.R.S. § 15-659 provides in part:

D. The state board may enter into long-term lease or lease-purchase agreements for real property, including buildings and improvements to such property.

* * *

H. Districts which acquire real property by lease-purchase shall not be entitled to receive funds pursuant to the provisions of § 15-686, subsection A, pertaining to the specific real property acquired by lease-purchase.

5. A.R.S. § 15-659(H) states that § 15-686, subsection A funding is not available for real property acquired through lease-purchase but does not deny the district subsection B capital outlay funds for student enrollment that is generated by branch campuses.