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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

May 23, 1980

Mr. Dudley S. Welker
Deputy County Attorney
Graham County Courthouse
Safford, Arizona 85546

Re: I80- 095 (R80-009)

Dear Mr. Welker:

Thank you for sending us a copy of your opinion dated January 2, 1980 to Wayne A. McGrath, President of Eastern Arizona College.

Although we are not authorized to formally opine on your opinion, we appreciate being informed of its contents.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:LPS:eib

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January 2, 1980

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ATTORNEY GENERAL
PHOENIX, ARIZONA

Wayne A. McGrath, President
Eastern Arizona College
Thatcher, AZ 85552

EDUCATION OPINION
ISSUE NO LATER THAN
1-17-80

R80-009

Dear President McGrath:

You have inquired whether or not a brother of an employee of the school may be a member of the Board of Education of the college and if so, what limitations would result upon the participation by such a board member in the affairs of the college.

It is my opinion that a person otherwise qualified who has been elected may serve as a member of the governing board of the college regardless of the fact that he is the brother of a teacher at the college. It is further my opinion that he may participate as a board member, as more fully explained hereafter.

The question of conflict of interest is not totally clear as set forth in the current statutes of the State. There is a provision in A.R.S. §15-443C in reference to boards of trustees of common school districts which states that no dependent, as defined in §43-1001, of a trustee may be employed in the district except by the consent of the Board. I do not believe this provision applies to the college as it is not a common school district, but that the college is governed by the general provisions of A.R.S. §38-501 and following, which states in §38-501A that it applies to all public officers and employees of any political subdivision and of the State and any of its departments, commissions, parties, organizations, or boards.

A.R.S. §38-503B states, "any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such decision."

"Substantial interest" is defined in §38-502.11 as "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." Since by definition a substantial interest is an interest other than a remote interest, the definition of remote interest must also be determined. A.R.S. §38-501.10 defines remote interest in many ways, but paragraph (h) states "that of a public school board member when the relative

involved is not a dependent, as defined in §43-1001, or a spouse." Paragraph I states "that of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:

- (i) Another political subdivision.
- (ii) A public agency of another political subdivision.
- (iii) A public agency except if it is the same governmental entity."

As previously stated, the foregoing provisions are hardly a model of clarity. However, an employee brother would not be a dependent as defined in §43-1001 which is the provision of the Arizona income tax law as this requires, pursuant to §43-1002, that the person receive over half their support from the public officer in question. I am assuming that this is in fact not the case, as the fact of employment indicates the employee brother is supporting himself.

It would further seem to me, pursuant to the provisions of paragraph I of A.R.S. §38-502.10, that so long as no benefit or detriment would apply to the brother, other than as a member of a class, that the public officer or board member could participate fully in the deliberations and decisions. Stated more simply and in another way, it would be my opinion that so long as the decision and vote involved all teachers or employees as a class and not the brother individually, there would be no limitations on the actions of the board member. If, however, the question of the particular brother's contract or circumstances involving that brother's employment were the issue, then it is my opinion that any activity on the part of the board member would be a conflict of interest.

We are sending a copy of this opinion to the Attorney General, to the Ethics Board, and for filing with the County Recorder.

Very truly yours,

Jack M. Williams
COUNTY ATTORNEY

By _____
Dudley S. Welker, Deputy

DSW:mw

cc: Attorney General
State Capitol
Phoenix, AZ 85007

Ethics Board
1645 W. Jefferson
Phoenix, AZ 85007