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ARIZONA ATTORNEY GENERAL  
October 20, 1980

INTERAGENCY

The Honorable James B. Ratliff  
Arizona State Representative  
House Wing, State Capitol  
1700 West Washington  
Phoenix, Arizona 85007

Re: I80-182 (R80-095)

Dear Mr. Ratliff:

In your letter of April 18, 1980 you asked several questions regarding S.B. 1199, enacted as Ch. 163, Laws 1980, which amended A.R.S. § 26-322 and 37-1610.01. Specifically, you asked the following questions:

1. What safeguards, if any, are provided in Chapter 163 to assure that the State would receive full and fair value for any state lands which are sold or otherwise conveyed, directly or indirectly, pursuant to A.R.S. §§ 26-321 et seq., "Flood Relocation and Land Exchange"?
2. Would the purchase or exchange of land under this statutory scheme or an indemnity contract under A.R.S. § 26-322.G violate the Arizona constitutional prohibitions against certain kinds of "gifts" or "debts"?
3. Who would have a right of action, and what would be the remedy, if state lands or state trust lands were appraised at less than their real value, and sold or exchanged on that basis?

With respect to your first question, the "Flood Relocation and Land Exchange" statutory scheme itself provides safeguards in A.R.S. §§ 26-322.C.3, 37-610.B, C and F and 37-610.01, which require that the lands exchanged be of substantially equal value or that the state trust be compensated for the difference if the private land is valued less than the state land. In addition, the Enabling Act (36 Stat. 574, as amended), the Arizona Constitution and Title 37, Arizona Revised Statutes, are generally applicable to conveyances of state trust lands and Title 37, Arizona Revised

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Statutes, also governs conveyances of non-trust state lands. These statutory and constitutional provisions, as well as case law construing them, provide stringent guidelines to insure that the State receives full and fair value for state lands which are conveyed in any manner.

With regard to your second question, we note that it is our duty to uphold the constitutionality of legislation and, accordingly, we will not declare a statute unconstitutional unless it is patently so. After a review of Article 9, §§ 5 and 7 of the Arizona Constitution and the court decisions construing these provisions, we think that, although parts of the legislation are broadly worded, the flood plain relocation and land exchange program passed by the Legislature is not patently unconstitutional. A.R.S. § 26-322.G does not constitute a debt within the meaning of § 5 and, therefore, does not improperly authorize the creation of a public liability. Rochlin v. State, 112 Ariz. 171, 540 P.2d 643 (1975). In passing the flood plain relocation plan, the Legislature determined it was necessary for the public welfare; insofar as this statutory scheme is necessary for the public welfare and A.R.S. § 26-322.G is an integral part of that scheme, we do not think there is a violation of § 7. See Town of Gila Bend v. Walled Lake Door Co., 107 Ariz. 545, 490 P.2d 551 (1971).

A.R.S. § 37-322.G provides as follows:

The Director may enter into contracts of indemnity to indemnify any public or private agency, association, corporation or other entity or any individual against liability by virtue of injuries, lawsuits or damages in connection with the administration of this article.

Although the language of this provision appears to convey a broad grant of authority to the Director, the provision is not self-executing. Those indemnity contracts which the Director enters into can be drawn narrowly enough to satisfy both the statutory limitation of being "in connection with the administration" of the article and any constitutional limitations. Thus, we think that the provision can and should be construed to be constitutional. See Mardian Construction Co. v. Superior Court, 113 Ariz. 489, 557 P.2d 526 (1976).

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However, the legislature would be well-advised to amend the provision in order to clearly set forth the limits of indemnification authority granted to the Director.<sup>1/</sup>

Your third question involves the legal issue of "standing;" that is, who would have a right of action if state lands were sold or exchanged at less than their true value. The Enabling Act provides that the Attorney General of the United States may prosecute, in the name of the United States and its courts, any proceedings necessary and appropriate to enforce the provisions of the Enabling Act regarding the trust lands. Under general trust principles, the beneficiaries may also have standing to sue. The issue of who else might have standing to pursue such an action is currently being litigated in Sayler v. Arizona State Land Department, Maricopa County Superior Court, Cause No. C 372791, and so we must decline to answer your question in this regard in light of our long standing policy of not addressing issues that may be judicially determined.

The second part of your third question asks what would be the remedy in an action challenging the sale or exchange of state lands for less than their true value. As discussed above, any disposition of trust lands in violation of the Enabling Act, including a sale for less than their true value, would be null and void and therefore one remedy would be to ask the court to declare the conveyance null and void.

Sincerely,



BOB CORBIN  
Attorney General

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<sup>1/</sup>It is our understanding that the provision was enacted pursuant to 33 U.S.C. § 701.5, and the regulations promulgated thereunder, which require certain indemnification as a prerequisite to receipt of federal funds.