



Ginger
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

May 7, 1981

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ARIZONA ATTORNEY GENERAL

Mr. Lawrence Ollason
Special Deputy County Attorney
for School Affairs
Office of the Pima County Attorney
182 North Court Avenue
Tucson, Arizona 85701

Re: I81-063(R81-059)

Dear Mr. Ollason:

Pursuant to A.R.S. § 15-253.B, we decline to review your opinion dated April 7, 1981, to Alfred C. Strachan, Associate to the Superintendent of Amphitheater Public School District No. 10 concerning the use and disposition of tape recordings of board meetings.

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

BC:clp



OFFICE OF THE
Pima County Attorney
 182 NORTH COURT AVENUE
Tucson, Arizona 85701
 (602) 624-4477

STEPHEN D. NEELY
 PIMA COUNTY ATTORNEY
LAWRENCE OLLASON
 SPECIAL DEPUTY COUNTY ATTORNEY
 FOR SCHOOL AFFAIRS

April 7, 1981

Memo to: Alfred C. Strachan
 From : Lawrence Ollason
 Re : Amphi School Board Meetings

EDUCATION OPINION
ISSUE NO LATER THAN
6-13-81

4-14-81 *pc*
 LOWE
 R81-059

It is assumed from your question that the tape recordings of your Board Meetings are used solely to verify the accuracy of your official minutes, which are required by law, and there is no present requirement for the use of such recordings for that purpose. It is also assumed that the meetings which have been recorded were open to the public.

The issues presented are 1) Whether the tapes, though not required, nevertheless become public records when made; 2) Whether the tape recordings may be destroyed, and 3) Whether they must be disclosed to the public pursuant to ARS §38-421.01.

It would appear that if the tapes are not public records, they may be destroyed and ipso facto need not be made available. If they are public records, indefinite preservation and disclosure is mandated by ARS §38-421(A).

Parenthetically, it should be noted that insofar as the tapes, although not made under a legal obligation, could be reasonably identified as potentially relevant and probative evidence, at least in a foreseeable criminal prosecution their destruction could constitute obstruction of justice, and their

disclosure could be mandated by a court order, even if the recordings are not public records. See generally, United States v. Nixon, 84 S.Ct. 3090, 418 U.S. 683 (1974).

ARS §38-431.01 (A) requires that school board meetings be open to the public. Sub paragraph B provides that such meetings be recorded either by minutes or tape. Sub paragraph C requires that the minutes or tape be available to the public for three days following the meeting. Accordingly, it is clear that public meetings must provide public records. The disclosure of public records is mandatory, but the obligation may be met through minutes or a recording. Therefore, whichever is disclosed, or purported to be available, or established as such, is the official record to which §138-421 attaches and requires preservation. See Attorney General Opinion No. 180-198.

Thereafter, should minutes be preserved, the recording may be disposed of in any way so long as proper minutes have been preserved, even if the minutes do not contain every specific fact or discussion raised during the meeting. See Karol v. Board of Trustees, Florence Unified School Dist. No. 1 of Pinal County, 122 Ariz 95, 693 P.2d 649 (1979); Attorney General Opinion No. 66-6. Nevertheless, no person may be foreclosed from recording, by any means, any public meeting. ARS §38-431.01 (D). In addition, it is settled that no disclosure is required of meetings not subject to the open meeting law. Hokinson v. High School Dist. No. 8 of Pima County, 121 Ariz. 264, 589 P.2d 907 (1978)

Alfred C. Strachan
Page 3
April 7, 1981

R81- 059

In summation, if you provide minutes for public inspection, you need not provide a tape recording which would not then be considered a public record and would not then require preservation. Difficulty would arise only if the tapes were destroyed to suppress evidence in foreseeable litigation.

I call your attention to Section 15-122 B, as amended, requiring all school opinions to be forthwith submitted by the County Attorney to the Attorney General for concurrence or disaffirmance. We also again call your attention to Section 15-436 B, as amended, that you are relieved from personal liability for acts done in reliance upon the written opinion of the Attorney General. If you act without waiting for the Attorney General's concurrence or disaffirmance of the opinion, and any damage results from your actions; you are liable both as a member of the Board of Trustees and personally. Bear in mind, that reliance in the opinion of the Attorney General relieves you only from personal liability and not from liability as a member of the Board of Trustees.

The request for the opinion contained herein and this memorandum are being sent by this office to the Attorney General's office.

Sincerely yours,

LO:ks
CC: The Attorney General

LAWRENCE OLLASON
Special Deputy County
Attorney for School Affairs



OFFICE OF THE ATTORNEY GENERAL

1981 FEB - 7 PM 4:30

Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

December 2, 1980

R81- 059

Ms. Janice M Urbanic
Deputy County Attorney
Yavapai County Attorney's Office
Yavapai County Courthouse
Prescott, Arizona 86301

Re: I80-198 (R80-233)

Dear Ms. Urbanic:

Pursuant to A.R.S. § 15-122.B, we concur with your
October 26, 1980 opinion to the Yarnell School District No. 52,
concerning the preservation of tape recordings of school board
meetings.

Sincerely,

BOB CORBIN
Attorney General

BC:MP:eb





R80- 233

R81- 059

HICKS
ATTORNEY

OFFICE OF

County Attorney

YAVAPAI COUNTY COURTHOUSE
PRESCOTT, ARIZONA 86301
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October 28, 1980

EDUCATION OPINION
ISSUE NO LATER THAN
12-31-80

Mr. John Wagner
Yarnell School District No. 52
P. O. Box 488
Yarnell, Arizona 85362

Dear Mr. Wagner:

You have requested an opinion as to whether your district must preserve tape recordings of school board meetings, and if the district must preserve the recordings, what is the length of time the recordings are to be preserved.

As you are aware, Arizona statutory provisions require written or recorded minutes be taken at all school board meetings. (A.R.S. §38-431.01). There is no statutory provision for destruction of the school board meeting minutes; nor is there a statute specifically indicating the length of time such minutes must be preserved.

However, guidelines for dealing with public records in general can be found in A.R.S. §38-421. A.R.S. §38-421 provides in part:

A. An officer having custody of any record, map or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who steals, or knowingly and without lawful authority destroys, mutilates, defaces, alters, falsifies, removes or secretes the whole or any part thereof, or who permits any other person so to do, is guilty of a class 4 felony.

And, in a 1974 Arizona Supreme Court decision, the Court stated that the A.R.S. §38-421 makes it "abundantly clear that the public policy of this State as established by the Legislature

Mr. John Wagner
October 28, 1980
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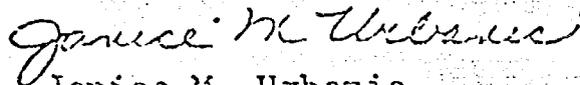
is to preserve as a memorial matters customarily retained in public offices for future enlightenment of those necessarily concerned therewith." The Court goes on to state that as public records are to be kept by law, their destruction is a matter to be regulated by statute. Beasley v. Glenn, (1974) 110 Ariz. 438.

In light of the above-cited statutes and case law, it is my opinion that the Board must preserve school board meeting minutes indefinitely.

It should be noted that your request for an opinion concerning preserving tape-recorded school board meetings did not distinguish between recordings as actual minutes of the meeting and recordings used merely as a back-up for the transcription of written minutes. I believe that in the latter case, recordings used solely as aids in transcription of written minutes need not be preserved in the same manner as those recordings made as the actual minutes of the meetings. If your written minutes accurately reflect the business conducted at the school board meeting, you need preserve the tape-recording of the meetings only for such time as is convenient.

I am forwarding a copy of this letter to the Attorney General's Office. I suggest you continue to preserve any tape-recordings until Attorney General's Office has had an opportunity to review this matter. Please feel free to contact me if you have any questions.

Sincerely,



Janice M. Urbanic
Deputy County Attorney

JMU:ab

cc: Attorney General's Office
State Capitol
Phoenix, Arizona 85007

Dr. Eugène Hunt, Superintendent
Yavapai County Schools



1st Prince Road Tucson, Arizona 85705 (602) 887-5500

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R81- 059

March 13, 1981

Mr. Lawrence Ollason
Special Deputy County Attorney
for School Affairs
182 North Court Avenue
Tucson, Arizona 85701

Dear Moe:

It is our understanding that, according to the Attorney General's opinion, if tape recordings of board meetings are used as backup material in transcribing the minutes, then there is no specified time limit in keeping them. The printed minutes, as approved by the board, then become the official minutes. Therefore, it would be permissible for the tapes to be erased after minutes have been approved.

We have received a request for the tape of a specific meeting by a district citizen. The board has requested your opinion of the following questions.

QUESTION: Must we release the tape of the special meeting as requested by the district citizen, or are we within our rights to refuse?

QUESTION: What disposition should we make of past and future tape recordings of board meetings? May we erase the tape after approval of the minutes of said meetings if we so choose?

We appreciate your assistance in this matter.

Sincerely,

Alfred C. Strachan
Associate to Superintendent
Staff Relations

dw

cc: Dr. Wilson, Superintendent