

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

February 9, 1990

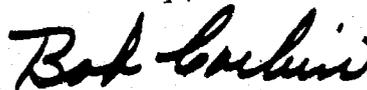
The Honorable Charles R. Hastings
Yavapai County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

Re: I90-018 (R89-146)

Dear Mr. Hastings:

Pursuant to A.R.S. § 15-253(B) we have reviewed your November 24, 1989 and December 1, 1989 opinion letters to Phillip England, Superintendent of Camp Verde Unified School District. We concur with your conclusion that A.R.S. § 9-243 does not authorize a town to apply its road surfacing ordinances to streets or roads within or adjacent to school district property.

Sincerely,



BOB CORBIN
Attorney General

LSP/lpf



Yavapai County Attorney

YAVAPAI COUNTY COURTHOUSE
PRESCOTT, ARIZONA 86301
Criminal (602) 771-3344
Civil (602) 771-3338

I90-018

CHARLES R. HASTINGS
YAVAPAI COUNTY ATTORNEY

December 1, 1989

Mr. Phillip England, Supt.
Camp Verde Unified School District No. 28
P O Box 728
Camp Verde, Arizona 86322

Re: Addition to my letter of November 20, 1989
concerning the letter from Town of Camp Verde

Dear Mr. England,

I would like to update you on a conversation I had with the Camp Verde Town Attorney Ron Ramsey concerning your letter to him based upon my letter to you dated November 24, 1989. Mr. Ramsey stated that there is no problem about your buildings nor any question on building permits. The only question is on the road you plan to build. The Town relies on A.R.S. Section 9-243(B) for its position that it may require you to build a road on school district property to Town standards. Mr. Ramsey called to make sure that I had considered A.R.S. Section 9-243 (copy enclosed) when I wrote you my legal opinion. I had considered it, but did not discuss it in the opinion as I was not sure whether the Town was trying to rely on that statute since they have been talking to you in terms of "road permits" and "zoning clearance permits."

The statute upon which the Town relies was amended in 1983 to include the following:

" B. The council may by ordinance require the proprietor or owner of any property within the town at the time of the development of the property to construct streets within and adjacent to the property. If the council determines that such streets are necessary before the development of the property, the council may order these improvements to be constructed by the town at its expense and the expense shall be assessed against the property. The council may provide and approve the manner of assessing the property at the time of development and provide the manner of collecting unpaid assessments at the time of development of the property subject to the following

OFFICE OF THE YAVAPAI COUNTY ATTORNEY

Mr. Phillip England, Supt.

December 1, 1989

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limitation:

1. The assessment of property, if adjacent arterial streets are involved, shall not exceed the cost of improving more than one-half of the width or more than one thousand lineal feet of such adjacent arterial street, except that if any parcel of land is presently being used for single family residential use and the width of such does not exceed two hundred lineal feet, such property shall not be assessed greater than one-half the cost of the average residential street within such city or town.

2. The assessment of property shall not exceed the actual expense incurred by the town at the time of construction.

C. Any assessment under this section shall abate if the property has not been developed within ten years of the assessment.

D. The determination of necessity by the council resulting in the assessing of property under this section may be appealed by any aggrieved party to the superior court.

E. As used in this section:

1. "Development" includes construction of residential, commercial or industrial buildings or structures or major additions or alterations to existing structures and includes new buildings or structures situated on such property. When such property is zoned for agriculture or single family residential use at the time of assessment, development shall also require a change of use or purpose.

2. "Streets" may include asphaltic concrete surfacing, aggregate base, curb and gutter, concrete sidewalks and tiling of irrigation ditches and storm drainage facilities if required."

The Town interprets this statute as giving them authority to require the "proprietor or owner of any property within the town at the time of the development of

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the property to construct streets within and adjacent to the property" as applying to the school district. In my opinion this statute does not contemplate application of Town road surfacing ordinances to streets within or adjacent to school property for several reasons.

The primary reason the statute is not applicable is contained in my original advice letter. The school district is still a political subdivision of the state, delegated by law the authority and responsibility to perform a governmental function through its school governing board, not subject to the general police powers of a municipal corporation. Op.AG 186-033, 183-052. Unlike A.R.S. Section 34-461, which specifically grants jurisdiction over the school district for purposes of applying local building codes to the construction of public buildings on school district property, A.R.S. Section 9-243 does not grant an express power to the Town to allow them to require another political subdivision to comply with their street ordinance.

In fact, the statute allows a town to "by ordinance require the proprietor or owner of any property within the town at the time of the development of the property to construct streets within and adjacent to the property." The term "development" is defined as "includes construction of residential, commercial, or industrial buildings or structures..." None of these categories include the development of school buildings and roadways planned by the school district. The word "includes" as used in this definition is a term of limitation specifying all the particular things included within the general term development. Black's Law Dictionary, Fifth Edition, p. 687; The Oxford Universal Dictionary, 3rd Edition (1955).

It would also not be a reasonable interpretation of A.R.S. Section 9-243, that it applies to school district property since the school district has its own inherent statutory power to provide adjacent roads by use of A.R.S. Section 15-995, allowing the governing board to pay for improvements on property adjacent to school district property "by the levy of a special assessment upon the taxable property in the school district." A.R.S. Section 15-995. It would make little sense to give a governing board power to levy a special assessment upon taxable property in the school district to build "adjacent ways" and yet allow the city or town within which the District is located to levy an assessment against the property of the

OFFICE OF THE YAVAPAI COUNTY ATTORNEY

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school district to pay for streets built on the district's own property.

The procedures set out in A.R.S. Section 9-243 contemplate an assessment of property "if adjacent arterial streets are involved... not exceed(ing) the cost of improving more than one-half of the width or more than one thousand lineal feet of such adjacent arterial street" or "not (to) exceed the actual expense incurred by the town at the time of construction.

Basically this procedure is used by a town when the town does the construction itself and then assesses the property owner for their portion of the cost. This occurs "if the council determines that such streets are necessary before the development of the property." An appeal to the superior court is provided in A.R.S. Section 9-243(D) to appeal such a determination of necessity resulting in the assessing of property.

The Town has no authority to deny you "road construction permits" except as such construction may affect a road of the Town. In A.R.S. Section 9-243 a town is given the authority to enact an ordinance to require an owner to construct streets within and adjacent to the property. It also gives the town authority in certain circumstances to assess a property owner when the Town builds such required roadways.

I would suggest that you proceed with your bid as planned and perhaps negotiate with the Town as to what type of road you will build particularly where it may connect to any of the Town's roadways. I reiterate that in my opinion the Town has no power to force you to comply with their ordinance pursuant to A.R.S. Section 9-243 or elsewhere in the law.

I am submitting a copy of this follow up letter to the Attorney General's Office for his review pursuant to A.R.S. Section 15-253(B).

Very truly yours,

Victoria E. Witt

Victoria E. Witt
Deputy County Attorney

VEW/djp
Enclosure

municipalities, and to provide the manner of prosecution and define the punishment for the violation of such ordinance.

Amended by Laws 1980, Ch. 229, § 1, eff. April 23, 1980.

Law Review Commentaries

Living conditions and facilities in Arizona's local jails and prisons. Ariz. State L.J. 2, 1975, 351.

Notes of Decisions

Train speeds 31
Warrants 28.5

22. Ordinances

Provision of licensing ordinance that no adult entertainment license could be issued or renewed if the applicant knowingly made any false statement in the application was constitutionally infirm as the ordinance regulated an activity subject to protection under U.S.C.A.Const. Amend. 1, i. e., nude dancing; whether or not a false statement had been knowingly made involved the appraisal of facts, exercise of judgment and formation of opinion. Wortham v. City of Tucson (App.1980) 128 Ariz. 137, 624 P.2d 334.

Admitted operators of enterprises falling within scope of ordinance licensing and regulating adult entertainment enterprises lacked standing to challenge that portion of ordinance disqualifying an applicant from a license if he has been convicted of certain crimes where plaintiffs did not allege that they had been convicted of any such crimes. Id.

Where ordinance licensing and regulating adult entertainment enterprises defined such enterprise as an activity wherein was furnished opportunity to feel, etc., or be entertained by unclothed bodies or to view or photograph any such activity, ordinance applied only to live entertainment and encompassed nude or partially nude dancing, activities subject to protection under U.S.C.A.Const. Amend. 1, despite exception for performances in theaters or concert halls wherein such display was an integral part of a dramatic or comedic presentation. Id.

A licensing ordinance which, while impinging on rights under U.S.C.A.Const. Amend. 1, gives licensing authority broad discretion to refuse a permit is an unconstitutional prior restraint of

those rights, and correspondingly, an ordinance which permits discretionary revocation of such a license must be invalidated. Id.

Where subsection of ordinance defining crime of indecent exposure was invalid because it conflicted with § 13-1402 on indecent exposure, subsection of ordinance prohibiting solicitation of indecent exposure was also of no effect. State ex rel. Baumert v. Municipal Court of the City of Phoenix (App.1979) 124 Ariz. 159, 602 P.2d 827.

Although city may not enact an ordinance defining crime of indecent exposure which conflicts with § 13-1402, it may criminalize an act of solicitation of indecent exposure not covered by state law. Id.

City charters and ordinances are to be construed by same rules and principles which govern construction of statutes. Rollo v. City of Tempe (1978) 120 Ariz. 473, 586 P.2d 1285.

Provisions of this section granting the common council, within town limits, power to enforce the observance of town ordinances and to punish the violations thereof would be deemed to have been amended by implication so that the jurisdictional limits of city or town police courts would coincide with the limits of the justice of the peace courts, as mandated by § 22-402 providing that, in each city or town, there should be a police court with jurisdiction of all cases arising under the city or town ordinances and having jurisdiction concurrently with the justices of the peace of precincts in which the city or town is located of state law violations committed within limits of the city or town. Op.Atty.Gen. No. 179-211.

28.5. Warrants

In absence of statutes governing warrant processing, city and county agencies possess inherent and current authority in such processing. Op.Atty.Gen. No. R75-432, p. 133, 1975-76.

31. Train speeds

This section empowers the common council of a town to regulate the speed of locomotives, showing clearly that the legislature has given municipalities the power to regulate train speed. Op.Atty.Gen. No. 182-115.

§ 9-243. Construction of streets and sidewalks; default of property owner; abatement of assessment; appeal; definitions

A. The common council may require the proprietor of any block, lot or part of a lot within the town to construct a sidewalk in front thereof of a width and type of construction as it may direct, and may by ordinance provide that upon failure of the proprietor to construct the sidewalk within a time to be prescribed after notice so to do it may be constructed by the town, and the expense thereof assessed against the block, lot or part thereof. The council may provide the manner of making the assessment, may approve the same and provide the manner of collecting the assessment.



Yavapai County Attorney

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190-018
CHARLES R. HASTINGS
YAVAPAI COUNTY ATTORNEY

889 146

November 24, 1989

Parol

Mr. Phillip England
Camp Verde Unified S.D. No. 28
P.O. Box 728
Camp Verde, Arizona 86322

Re: Town of Camp Verde letter of November 14, 1989
Submitted for my review and legal opinion

Dear Mr. England:

I have reviewed the November 14, 1989 letter (copy attached for reference) to Camp Verde School District's architect from the Town of Camp Verde concerning their review of the site plan for Phase I, Middle Verde School. According to paragraph six of the Town's letter, a reply to their letter is expected and such letter should address each of the comments contained in the letter before "permits may be issued for the work as shown on the plans provided".

In this letter I will first advise you in general terms how you might specifically address each of the comments in the Town's letter, next I will summarize the legal background upon which this advice is based, and finally I will advise you of your options should the Town persist in holding up school construction by failure to grant permits.

In your reply letter to the Town, you might answer comments in paragraphs one through five as follows:

1. The roadway on site plan for Phase I, Middle Verde School is a newly constructed private roadway to be located entirely upon school district property. It is not a public road. The Town has no authority over the school district property except as allowed by statute in A.R.S. § 34-461, applying local building codes to the construction of public buildings. See § 9-240(B)(3), (Town has power to control public roadways). The Town has no jurisdiction to require the school's road to have a 68 foot right-of-way width, 32 feet roadway and concrete curb and gutter.

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OFFICE OF THE YAVAPAI COUNTY ATTORNEY

2. The Town standards contained in Section CV502(4) do not apply to private roadways on school district property.

3. The school district may construct sidewalks and crosswalks when the district determines that such are needed.

4. The drainage requirement was addressed by the architect and Flood Control District approval is being sought. The Town has no jurisdiction to withhold permits from the school district based upon compliance requirements of the Flood Control District.

5. The School District does not plan to submit revised plans indicating conformance with items 1 and 2 to the Town as it is the position of the school district, based upon advice obtained from the County Attorney (copy of written opinion sent to Attorney General and pending review), that the Town has no jurisdiction over the school district beyond the authority given in A.R.S. § 34-461 which applies only to public buildings. The school district has met all Town and State Fire Marshall standards on its buildings as well as receiving State Fire Marshall approval on its proposed private roadway.

LEGAL BACKGROUND

The Town of Camp Verde has such powers as are expressly given it by statute or necessarily implied to aid the municipality in carrying out an "express power". Town of Gila Bend v. Hughes, 13 Ariz.App. 447, 477 P.2d 566 (1970), See A.R.S. § 9-240. The Town has exclusive control over the "streets, alleys, avenues, and sidewalks of the town". A.R.S. § 9-240⁽³⁾(a)-(f). This includes public roadways established by statutory dedication, grant or common usage. Hughes v. City of Phoenix, 64 Ariz. 331, 170 P.2d 297 (1946).

The Attorney General has never addressed this exact point concerning the Town's authority to hold the school district to its Town standards for a private roadway on school property, but there is some delimitation of a municipality's authority over school district property in two Attorney General's opinions and an older Arizona case which has been disproved in part due to legislative action in 1984. See, Attorney General Opinions 183-052, 186-033, A.R.S. § 34-461 (Amended 1984); Board of Regents v. City of Tempe, supra. The simple answer is that generally the Town lacks authority over private roadways and in addition it has limited authority over the school district property in particular.

The general rule is that school districts are political subdivisions of the State, delegated by law the responsibility of performing a governmental function by the school district governing boards not subject to the general

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OFFICE OF THE YAVAPAI COUNTY ATTORNEY

police powers of a municipal corporation. The powers of the governing boards include construction of school buildings, roadways, and adjacent ways. A.R.S. §§ 15-341 and 15-995. In 1986 the Attorney General issued an opinion which pointed out that in 1984 the legislature specifically provided that local building codes now apply to the construction of public buildings including new construction of school district buildings. Op. AG. 186-033. This opinion does not change the basic premise that a school district is a political subdivision of the State not subject to regulation by the municipality in which it exists. This opinion discussed the application of the 1984 statute, A.R.S. § 34-461, expanding the authority of a local government to include applying local building codes to "public buildings". The statute is not interpreted expansively and certainly would not include roadways on school property.

I would advise that you address a letter to the Town and specifically send a copy to each council member declining to submit revised roadway plans, since the District is not required to comply with Town standards. In addition, you should advise the Town that their failure to grant a building permit based upon required changes in roadway plans is inappropriate. I would explain to them when your construction bid will go out and request that all permits be granted based upon the plans already submitted. In addition you may advise the Town that if the permits are not forthcoming in time to meet your next bid schedule, you will seek a mandamus or other appropriate legal action so that the District does not suffer additional damages due to the delays on the part of the Town.

If you have any further questions please advise me. I am submitting a copy of this letter to the Attorney General's office for his review pursuant to A.R.S. § 15-253(B).

Very truly yours,

Victoria E. Will

Victoria E. Will
Deputy County Attorney

Enclosures (3)

TOWN OF CAMP VERDE

P.O. Box 710
Camp Verde
Arizona 86322
(602)567-6631



T.A. Parsons
Mayor

I 90-018
November 14, 1989

Carter Rogers
Vice Mayor

Mr. Dennis Umber, A. I. A.
Dennis Umber and Associates
8553 Via De Sereno
Scottsdale, Arizona 85258

Woody Dichl
Councilmember

SUBJECT: REVIEW OF SITE PLAN FOR PHASE I, MIDDLE VERDE SCHOOL

Patricia Kaminsky
Councilmember

Dear Mr. Umber:

The Town of Camp Verde would like to thank you and the school board for submitting your project for review. The plans were detailed and informative and show that the new Middle School will be an exciting project which we can all look forward to.

Ervin Reynolds
Councilmember

As we have discussed, the Middle School project is under a tight timing schedule and I appreciate your patience in waiting for the Town's comments. Today I received the survey results which refer to the access road easement as an ingress/egress easement. I had requested this information from Harold Hallett over a week ago.

Tom Shaw
Councilmember

While the Town has no problem with the school initiating its bidding process next week, I would suggest that consideration be given to the following comments:

Jerry Taylor
Councilmember

David A. Maynard
Town Manager
Town Clerk

1. The anticipated traffic and general use of the access roadway places it in the Residential Collector category, thereby requiring a 68 foot right-of-way width and ³⁶32 feet roadway and concrete curb and gutter.

Ronald C. Ramsey
Town Attorney

2. The construction of the roadway will be the responsibility of the applicant and in accordance with the Town Standards. The construction of the roadway surfacing shall be a 2-inch seal on an appropriate base. A copy of the Town Standards are enclosed for your review.

Middle Verde School Comments

3. While it is not currently required in the Town Standards, the Town suggests that sidewalks be installed and painted crosswalks be installed along the roadway and within the 68 foot right-of-way width. Crosswalks should be installed at all critical intersections (i.e. one at each entry to the site and at Montezuma Castle Highway) so that the high level of pedestrian access for the school can be safely accommodated.
4. The drainage report and project plans have been submitted to the Flood Control District for their review and approval. Once comments are received from the District, they will be forwarded to you. Compliance with all Flood Control District requirements will be necessary prior to issuance of any permits from the Town.
5. Prior to commencement of any work, please submit revised plans indicating conformance with items 1 and 2 above to the Town. Permits for road construction and on-site building construction must be issued prior to the start of any work.
6. If all of the above comments are addressed, permits may be issued for the work as shown on the plans provided. Please note that future phases of the Middle School project are subject to review, approval and issuance of permits prior to commencement of any work.

All comments listed herein are mandatory (excepting item 3) unless waived by the Town Council. As referred to in my letter of November 8, 1989, all Phase I project related fees will be waived once the requested letter has been received.

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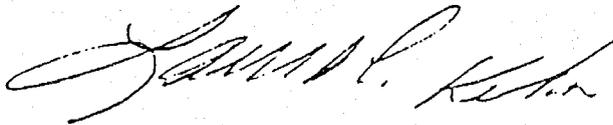
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Middle Verde School Comments

Once again, thank you for the opportunity to review the plans. I look forward to working with you on the project and hope the project continues on its anticipated schedule.

Should you have further questions, please call.

Sincerely,



Laura C. Kuhn
Director of Planning and Zoning

enclosure

lck/wdpft/middles

cc: David Maynard, Town Manager
Ron Ramsey, Town Attorney
Doug Jones, Road Superintendent
Todd Rocwell, Town Engineer