

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

January 4, 1991

The Honorable Roy A. Mendoza  
Pinal County Attorney  
P.O. Box 887  
Florence, Arizona 85232

Re: I91-005 (R90-124)

Dear Mr. Mendoza:

Pursuant to A.R.S. § 15-253(B), we have reviewed your August 10, 1990 opinion letter to Pinal County School Superintendent Sherry Ferguson. We concur with your conclusion that a school district may not use school lunch commodities to make baked goods for a Chamber of Commerce dinner involving non-students who would not otherwise qualify for assistance under federal and state laws governing the uses of such commodities.

Sincerely,



BOB CORBIN  
Attorney General

BC:LSP:bl

ROY A. MENDOZA  
PINAL COUNTY ATTORNEY

BOYD T. JOHNSON  
CHIEF DEPUTY

CRIMINAL DIVISION  
DWIGHT P. CALLAHAN  
CINDA L. GRAF  
CATHERINE M. HUGHES  
JEANNE M. BENDA  
E. CATHERINE LEISCH  
CLIFFORD J. HOFMANN, Jr.  
JAMES H. DAWDY, Jr.  
DANIEL J. DERIENZO  
JOY L. KEMP  
DEPUTIES

OFFICE OF THE  
**County Attorney**

01730

CAF

PINAL COUNTY  
P.O. BOX 887  
FLORENCE, ARIZONA 85232

(602) 868-5801, Ext. 271

CIVIL DIVISION  
STEPHEN M. KEM  
KATHY CASTEEL  
M. RUTH HARRISON  
LOGAN F. BOREN  
DAVID M. WILSON

CHILD SUPPORT DIVISION  
CAROLYN C. HOLLIDAY  
DANIEL G. FIELD  
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DEFERRED PROSECUTION  
JOHN C. FELIX

INVESTIGATOR  
RAY R. VASQUEZ

August 13, 1990

Arizona Attorney General  
1275 West Washington  
Phoenix, Arizona 85007

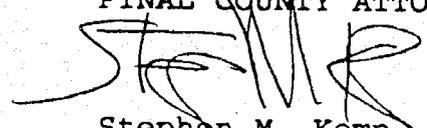
R90-124  
Pawel

Dear Sir:

Pursuant to A.R.S. §15-253(B), the office of the Pinal County Attorney-Civil Division submits the enclosed opinion in response to the request of Sherry Ferguson, Pinal County School Superintendent.

Sincerely yours,

ROY A. MENDOZA  
PINAL COUNTY ATTORNEY



Stephen M. Kemp  
Chief Civil Deputy

SMK:mkh

enclosure

9-10-90

ROY A. MENDOZA  
PINAL COUNTY ATTORNEY

BOYD T. JOHNSON  
CHIEF DEPUTY

**COUNCIL DIVISION**  
DWIGHT P. CALLAHAN  
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August 10, 1990

CIVIL DIV.  
STEPHEN V.

L  
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CAROLY  
DANIEL  
DEPUTY

DEFERRED PROSEC.  
JOHN C. FELL

INVESTIGATOR  
RAY R. VASQUEZ

Sherry Ferguson  
Pinal County School Superintendent  
P.O. Box 769  
Florence, Arizona 85232

Dear Mrs. Ferguson:

You have requested a formal written County Attorney's Opinion.

## QUESTION

May a public school district utilize federal commodity food supplies to make baked goods which are used for a city Chamber of Commerce Dinner which does not involve or benefit students?

## OPINION

Commodity food supplies are surplus food items distributed by the United States Department of Agriculture. These distributions are authorized by a variety of federal statutes and regulations, including the Agricultural Act of 1949 (7 U.S.C. 1431) and the National School Lunch Act. The statutes have been the basis for regulations governing the program which are found in 7 C.F.R. Part 250.1

The regulations provide:

....the Commodity Credit Corporation (a federal agency administering agricultural price support programs) is authorized, on such terms and under such regulations as the Secretary (of Agriculture) may deem in the public interest: \*\*\* (3) in the case of food commodities to donate such commodities to the Bureau of Indian Affairs and to such State, Federal, or private agencies as may be designated by the proper State or Federal authority and approved by the Secretary, for use in the United States in non profit School-lunch programs. [explanations added]

School uses of commodities are specifically governed under the National School Lunch Act. 7 C.F.R. 250.1 (b) (7). The pertinent portion of regulations provide:

Commodities . . . may be donated by the Secretary (Agriculture) to schools, in accordance with the needs as determined by the local school authorities, for utilization in the school lunch program under this act as well as to other schools carrying out non profit school lunch programs and institutions authorized to receive such commodities.

Clearly, it is evident from these regulations that the intent of the Federal commodity program is to provide assistance to schools in operating their lunch programs for students. A review of 7 C.F.R. 250.1 does not indicate any authorization to use federal commodities to provide food to non students who would not otherwise qualify for assistance under these regulations.

Further, the regulations indicate that the Federal Government was concerned about improper use of these commodities by Schools. Section 12 (g) of the National School Lunch Act provides:

(g) Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this act or the Child Nutrition Act of 1966, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals or retains such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100.00 or more, be fined not more than \$10,000.00 or imprisoned not more than five years or both, or if such funds, assets, or property are of a value of less than \$100.00, shall be fined not more than \$1,000.00 or imprisoned for not more than one year or both.

The answer to your opinion request is that a public School district may not use foods obtained from the United States Department of Agriculture to make baked goods for a Chamber of Commerce dinner which does not involve providing meals to students. A copy of the Federal Regulations which are lengthy are attached as Appendix "A" to this opinion for your reference.

Pursuant to A.R.S. §15-253.B. a copy of this opinion is being transmitted to the Office of the Arizona Attorney General for their review and concurrence. Should you have any further questions please feel free to contact our office.

Sincerely yours,

ROY A. MENDOZA  
PINAL COUNTY ATTORNEY

Stephen M. Kemp

August 13, 1990

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1275 West Washington  
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PINAL COUNTY ATTORNEY

*for* *Stephen M. Kemp*  
Stephen M. Kemp  
Chief Civil Deputy

SMK:mkh

enclosure

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Attorney General

1275 WEST WASHINGTON

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Robert R. Corbin

January 4, 1991

The Honorable Roy A. Mendoza  
Pinal County Attorney  
P.O. Box 887  
Florence, Arizona 85232

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BC:LSP:b1

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SMK:mkh

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*9-10-90*

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PINAL COUNTY ATTORNEY

*Referral to Pinal Co.*

*for*  
Stephen M. Kemp  
Chief Civil Deputy

SMK:mkh

enclosure

Chief Civil Deputy