



Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007

Robert R. Corbin

December 1, 1982

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

The Honorable Daniel Peaches
Arizona State Representative
State Capitol, House Wing
Phoenix, AZ 85007

Re: I82-131 (R82-137)

Dear Representative Peaches:

This letter is in response to your August 27, 1982 request for our opinion on whether the Fund Manager of the Arizona Public Safety Personnel Retirement System ("System") may enter into an agreement with the Navajo Tribe to provide benefits under the System to public safety personnel of the Tribe. We conclude that the legislation under which the System currently is operating covers only certain employees of the State and its political subdivisions, that the Navajo Tribe is not a political subdivision of the State, and, therefore, that the System's Fund Manager may not enter into an agreement with the Tribe to provide System coverage to the Tribe's employees.

That a person must be employed by the State or one of its political subdivisions to participate in the System is clearly indicated by the System's statutory scheme. The System was established to make uniform retirement and other benefits paid to certain public safety personnel in the "employ of the state of Arizona or a political subdivision thereof." A.R.S. § 38-841.B. For those persons not automatically covered when the System originally was established, a provision was included to permit coverage to be extended to them. It states:

Additional eligible groups of public safety personnel will participate in the system pursuant to election by their employer

The Honorable Daniel Peaches
December 1, 1982
Page 2

for such coverage under an appropriate joinder agreement. (Emphasis added.)

A.R.S. § 38-841.D.

The word "employers" is defined in the System's statutes to include only cities which participated in certain pension systems as of June 30, 1968, the State highway patrol, and:

The State, or any political subdivision thereof, including but not limited to towns, cities and counties, which has [sic] elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

A.R.S. § 38-842.13.

So the only employers who may elect to extend System coverage to their employees are the State or its political subdivisions. The Navajo Tribe obviously is not the State. Consequently, unless it is a political subdivision of the State, the Fund Manager may not enter into a joinder agreement with it.^{1/}

1. There is an additional condition which must be satisfied for a joinder agreement to be entered into. A.R.S. § 38-841.D, quoted supra, indicates that coverage may be extended only to "eligible groups." This term is defined as follows:

"Eligible groups" means only municipal police officers, municipal fire fighters, state highway patrol officers, county sheriffs and deputies, fish and game wardens, penitentiary guards and college campus police officers, all of whom are regularly assigned to hazardous duty.

A.R.S. § 38-842.11.

It is extremely doubtful that Navajo Tribal employees fall into any of the above categories.

The Honorable Daniel Peaches
December 1, 1982
Page 3

Political subdivisions of the State have been defined as follows:

. . . [T]hey embrace a certain territory and its inhabitants, organized for the public advantage, and not in the interest of particular individuals or classes; that their chief design is the exercise of governmental functions, and that to the electors residing within each is, to some extent, committed the power of local government, to be wielded either mediately or immediately, within their territory, for the peculiar benefit of the people there residing. Bodies so constituted are not merely creatures of the state, but parts of it, exerting the powers with which it is vested for the promotion of those leading purposes which it was intended to accomplish, and according to the spirit which actuates our republican system.
(Emphasis added.)

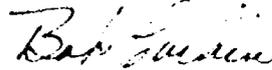
McClanahan v. Cochise College, 25 Ariz. App. 13, 17, 540 P.2d 744 (1975), quoting from Sorensen v. Superior Court, 31 Ariz. 421, 425, 254 P. 230 (1927), which in turn had quoted from Lydecker v. Commissioners, 41 N.J.L. 154.

An Indian tribe obviously is not a creature or a part of the State and does not exert the powers with which the State is vested. Hence, it is not one of the State's political subdivisions. The System's current legislation thus does not permit the Fund Manager to enter into a joinder agreement with

The Honorable Daniel Peaches
December 1, 1982
Page 4

an Indian tribe to extend System coverage to the Tribe's employees.^{2/}

Sincerely,



BOB CORBIN
Attorney General

BC:ASK:lm

2. A.R.S. § 13-3874, which is mentioned in your letter, does not require a different conclusion. It states:

A. While engaged in the conduct of his employment any Indian police officer appointed by the Bureau of Indian Affairs or the governing body of an Indian tribe as a law enforcement officer and holding a certificate of qualification and training from the director of the department of public safety shall possess and exercise all law enforcement powers of peace officers in this state.

B. Each agency appointing any Indian police officer pursuant to this section shall be liable for any and all acts of such officer acting within the scope of his employment or authority. Neither the state nor any political subdivision shall be liable for any acts or failure to act by any such Indian police officer.

Nothing in this section makes any Indian tribe into a political subdivision of the State. Nor do the Indian police officers acting under the section constitute employees of the State or any of its political subdivisions. The most that can be said is that the police officers enforce the State's laws on the State's reservations. This, however, in and of itself, does not qualify them for coverage under the System's statutes as presently constituted.