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ARIZONA ATTORNEY GENERAL

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

January 24, 1984

Mr. Keith Ricker
Deputy County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

Re: I84- 012 (R83-164)

Dear Mr. Ricker:

We concur with the opinions expressed in your letter of November 17, 1983, to Mr. Marc Alop of the Canon School District in which you conclude that a governing board may make purchases from a board member if the transaction does not exceed \$300, the total purchases from any board member by the board within any 12 month period do not exceed \$1,000, and the board has by majority vote adopted a policy authorizing such purchases within the preceding 12-month period.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

SMS:PD



COUNTY ATTORNEY
CHARLES R. HASTINGS

OFFICE OF

County Attorney

YAVAPAI COUNTY COURTHOUSE
PRESCOTT, ARIZONA 86301
(602) 445-7450 EXT. 208

November 17, 1983

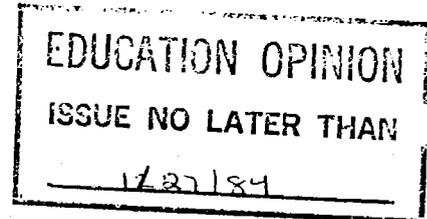
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R83- 164

Whitehead
11-29-83

Mr. Marc Alop, Principal
Canon School District #50
P. O. Box 89
Black Canyon City, Arizona 85324



Re: Purchases from School Board Member

Dear Mr. Alop:

You have requested an opinion from this office clarifying the conditions under which a school district may make purchases from a member of its governing board. Specifically, you wanted to know whether the school board can purchase certain items from one of its members without utilizing competitive bidding procedures, and if so, are such purchases subject to any dollar limitation.

In 1979, the Attorney General concurred with an opinion from this office that no purchases could be made by a school district from a school board member unless competitive bidding procedures were used. See Op. Atty. Gen. 179-067. Accord Ops. Atty Gen. 179-133 and 179-177. That line of opinions was based upon the requirements of A.R.S. §38-503(C) as that statute existed at that time.

"[N]o public officer or employee of any incorporated city or town, political subdivision, or the State or any of its departments, commissions, agencies, bodies or boards shall supply to such city or town, political subdivision, or such state department, commission, agency, body or board any equipment, material, supplies or

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services unless pursuant to an award or contract let after public competitive bidding."

That statute was later amended to specifically exempt from the public competitive bidding requirements purchases made by a school district governing board from one of its members as long as the cost of such purchases did not exceed \$300.00 per transaction or \$1,000.00 annually. A.R.S. §38-503(C), as amended. To utilize this exception to the general rule requiring public competitive bidding, the school board must annually approve a policy which allows such purchases. Id.

In 1981, another law became effective which gives the school board the authority to "make purchases from a board member if the transaction does not exceed three hundred dollars, the total purchases from any board member by the board within any twelve month period do not exceed one thousand dollars and the board has by majority vote adopted a policy authorizing such purchases within the preceding twelve month period." A.R.S. §15-323B.

It is important to note that this statute makes no distinction between purchases made from board members as a result of public competitive bidding procedures and those made utilizing the school district exception carved from the general rule stated in A.R.S. §38-503(C). Thus by granting the authority to make very limited purchases from a school board member without reference to any particular mode of procurement, the legislature has put a "cap" on such purchases.

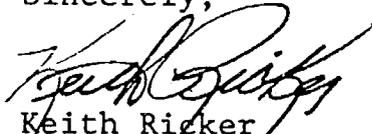
If the governing board of your school district has no policy which allows purchases to be made from a board member, it may wish to adopt one. I would suggest that the language of any such policy closely "track" the wording used in A.R.S. §§15-323(B) and 38-503(C). If adopted, this policy must be reviewed and approved annually to be effective. A.R.S. §38-503(C). The school board should also note that the limit of \$1,000.00 in purchases referred to in A.R.S. §38-503(C) is an annual limit, while the corresponding figure given in A.R.S. §15-323(B) refers to total purchases in any twelve month period. Theoretically, the former statute would allow "spreading out" purchases from a board member (keeping in mind the \$300.00 per transaction limit) in December and January of succeeding years without approaching the annual ceiling of \$1,000.00. However, the January purchases may exceed the \$1,000.00 limit in a twelve month period set forth in

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A.R.S. §15-323(B). If this problem should arise, I would suggest that the school board follow the requirements of the more restrictive statute (A.R.S. §15-323(B)) until the Attorney General clarifies this ambiguity or the legislature corrects it.

I hope this information is helpful to you. A copy of this opinion is being sent to the State Attorney General pursuant to A.R.S. §15-253(B).

Sincerely,



Keith Ricker
Deputy County Attorney

KR:mp

cc: Attorney General
Dr. Eugene M. Hunt