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ARIZONA ATTORNEY GENERAL

October 1, 1984

Mr. Robert J. Roberson  
Roberson & Shelley  
Attorneys at Law  
P.O. Box 749  
Yuma, AZ 85364

Re: I84-137 (R84-168)

Dear Mr. Roberson:

Pursuant to A.R.S. § 15-253.B, we decline to review the opinion expressed in your letter to Mrs. Maureen Keegan, of the Yuma Union High School District, pertaining to the construction and financing of an all-weather track on land at Carver Park deeded by the City to the District.

Sincerely,

BOB CORBIN  
Attorney General

BC:WJW:mch

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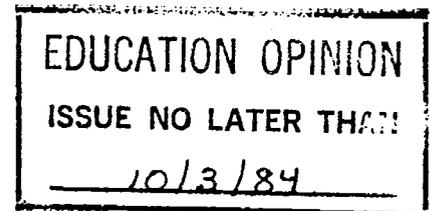
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R84-168

Mrs. Maureen Keegan, President  
Board of Education  
Yuma Union High School District  
3150 Avenue A  
Yuma, Arizona 85364

Re: School Track for Yuma High

Dear Mrs. Keegan:



Not less than 60 nor more than ninety days prior to May 15, 1984, the Board of Directors called for an election for the purpose of acquiring new school property. The election was scheduled for May 15, 1984, pursuant to A.R.S. § 15-491. After the election had been called for, but prior to the election, the City of Yuma approached the District with a proposal to deed to the District a certain portion of Carver Park if the District would agree to build an all-weather track upon the site and, through a subsequent agreement, make the track available to the citizens of Yuma. The election was thereafter held on the 15th of May with three questions presented to the citizens of the District: 1) Should the district acquire land in the vicinity of Yuma High School, 2) Should the district accept a gift of that portion of Carver Park from the city, and 3) Should the district expend approximately \$150,000. to build an all-weather track on the land deeded by the city.

The election was held and all three questions were answered affirmatively by an overwhelming majority of the voters. The question has now been asked as to whether or the district may proceed to accept the land and build the track.

The need for additional land in the vicinity of Yuma High is apparent to all familiar with the school's location. It was built in what is now an extremely dense residential area. For the school to expand and meet the needs of its everincreasing student body land must be acquired from those people owning real estate near the school site. A.R.S. § 15-341 requires the Board to call for an election before purchasing land for a school site. The Board need not necessarily specify the site to be purchased. A.R.S. §15-341(A)(11) The Board met its

requirement by calling for the election. However, the real question concerning the track is can the district accept the land from the City of Yuma?

While the statute does not address the question of gifts, this issue has been reviewed by the Attorney General. In his Opinion I80-156, he opined that the acceptance of real estate by gift should be submitted to the district voters. The board, I believe, has complied with this opinion by submitting the question to the voters and receiving from them a resounding "yes". It is my opinion that the district can accept the land from the city.

A more difficult question concerns the building of the track.

A.R.S. § 15-961 discusses the use of capital outlay funds. It is my understanding that the track will be build from these funds and, further, that this specific item was included in the capital outlay plan which was approved for the 1984-85 school year. A.R.S. §15-961(I) permits the use of these funds without an election except for the purpose of purchasing sites and the construction of buildings. Since the land is being gifted to the school, and since there was an election in any event, the real concern is the question of installing the track.

In Attorney General Opinion I81-028 the use of capital outlay funds was discussed. In that Opinion there was a very specific reference to the construction of buildings. The Attorney General made a clear distinction between the language "construction of buildings" and "improvements to buildings and grounds". The Opinion further stated "...we believe that an election is not required for any 'improvements to buildings and grounds' provided that such improvement does not include the construction of a building." The proposed track cannot be construed to be a "building" and therefore would fall under A.R.S. §15-961(G)(2) as an improvement to grounds. This section does not require an election. I further note, however, that even if an election is required for this type improvement that one was held and the electors firmly supported the District's plan to install the track. It is therefore my opinion that the track can be done without an election, and that if an election is required that the one conducted would suffice and that the District can proceed with its plan to bid and build the track after the city deeds the land.

A copy of this opinion is being forwarded for review to the Attorney General.

ROBERSON & SHELLEY, LAWYERS

  
ROBERT J. ROBERSON