



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

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November 28, 1984

Mr. William B. Hanson
DeConcini, McDonald, Brammer,
Yetwin & Lacy, P.C.
240 North Stone Avenue
Tucson, Arizona 85701

Re: I84-165 (R84-196)

Dear Mr. Hanson:

We have reviewed the opinions expressed in your October 23, 1984 letter to Dr. Scott D. Foster, Interim Superintendent of the Marana Unified School District, regarding the policy of the five member governing board that "no motion shall be declared adopted unless it shall have received the affirmative vote of not less than three members of the Board." We revise your opinions as follows.

A.R.S. § 15-321.E dealing with the organization of school district governing boards states that a "majority of the members of a governing board constitutes a quorum for the transaction of business." As you correctly point out, A.R.S. § 1-216.B similarly provides that a "majority of a board or commission shall constitute a quorum." The board's policy of requiring an affirmative vote of three members does not conflict with either of these statutes which merely allow action to be taken when a majority of the members or a quorum is present.

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However, we do not think that the board has the power to adopt such a rule absent express statutory authorization. It is well established that a school district's governing board has only those powers expressly granted by statute. See School District No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 333, 458 P.2d 537 (1969). Further, the majority common-law rule is that, in the absence of a contrary statutory provision, a majority of a quorum is empowered to act for the public body. F.T.C. v. Flotill Products, Inc., 389 U.S. 179, 183 (1967); see also Arizona Agency Handbook, § 2.14 (revised July, 1983). In light of these principles, we do not think that the district may adopt a rule which requires the affirmative vote of three members as a prerequisite to transacting business.

Sincerely,



BOB CORBIN
Attorney General

RKC:TLM:lsp

DECONCINI McDONALD BRAMMER YETWIN & LACY, P.C.

ATTORNEYS AT LAW

EVO DECONCINI
J. WM. BRAMMER, JR.
JOHN C. LACY
WILLIAM B. HANSON
JOHN C. RICHARDSON
MICHAEL A. GRAHAM
JAMES A. JUTRY
GARY L. LASSEN
MICHAEL R. URMAN
NANCY DARU YAELI
VIRGINIA BARKLOW

JOHN R. McDONALD
RICHARD M. YETWIN
ROBERT M. STRUSE
DOUGLAS G. ZIMMERMAN
DAVID C. ANSON
NORMAN H. KOTLER
SPENCER A. SMITH
DEBORAH OSERAN
DENISE M. BAINTON
DIANE M. MILLER

240 NORTH STONE AVENUE
TUCSON, ARIZONA 85701-1295
(602) 623-3411

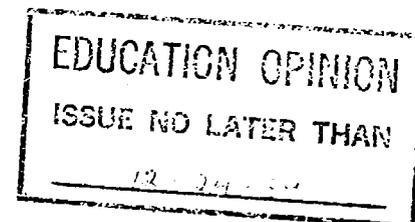
PHOENIX OFFICE
4041 NORTH CENTRAL AVENUE
SUITE 640
PHOENIX, ARIZONA 85012-3398
(602) 248-0036

DINO DECONCINI
OF COUNSEL

October 23, 1984

R84- 196

Dr. Scott D. Foster
Interim Superintendent
Marana Unified School District
11279 West Grier Road
Marana, Arizona 85238



Dear Dr. Foster:

You have asked this office to provide you with an opinion on the question whether the Governing Board of Marana Unified School District may continue lawfully to maintain and regulate itself pursuant to a policy which provides, in part, that "No motion shall be declared adopted unless it shall have received the affirmative vote of not less than three members of the Board." It is our opinion that that provision of Board Policy conflicts with A.R.S. § 1-216 and, consequently, is void. The remainder of this correspondence will explain the basis for our opinion.

A.R.S. § 1-216 provides:

A. Words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving the authority to a majority of the officers or persons unless it is otherwise expressly declared in the law giving the authority.

B. A majority of a board or commission shall constitute a quorum.

In the case of a five-member board, such as the Governing Board of Marana Unified School District, a "quorum" consists of three persons. Under the terms of A.R.S. § 1-216, two members of the Governing Board would be a "majority" for purposes of exercising the authority of the Board as long as three members of the Board were present at a properly noticed and conducted meeting where the authority of the Board is sought to be exercised.

DECONCINI McDONALD BRAMMER YETWIN & LACY, P.C.
ATTORNEYS AT LAW

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The Board Policy quoted above clearly conflicts with A.R.S. § 1-216. The Policy states that no action may be "declared adopted" unless three members of the Governing Board vote for it. On the other hand, A.R.S. § 1-216 expresses a legislative mandate to permit a majority of a quorum to exercise the authority of the Governing Board. Thus, it is possible that two persons, a majority, of a quorum (three persons) may vote to exercise the Board's authority. The Governing Board Policy quoted above, requiring three affirmative votes to take action, is then, in direct conflict with the statute. Since the Governing Board's authority to exercise its power is limited to that only which it is permitted to do by the statute, cf. School District No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 333, 458 P.2d 537 (1969), the policy must give way to the statute. Consequently, we conclude that the Policy is void and may not be used to continue to regulate Board operations, especially since none of the statutes giving the Board its authority (e.g., A.R.S. §§ 15-341 and 342) provide anything to the contrary with respect to how the Board may act.

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

Very truly yours,

DECONCINI McDONALD BRAMMER
YETWIN & LACY, P.C.


William B. Hanson

WBH:lc
c: Honorable Bob Corbin