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ARIZONA ATTORNEY GENERAL

March 1, 1985

Mr. Barry M. Corey
Corey & Farrell
Suite 509 Transamerica Bldg.
177 North Church Avenue
Tucson, Arizona 85701

Re: I85-032 (R84-225)

Dear Mr. Corey:

Pursuant to A.R.S. § 15-253.B, we concur with the following conclusions expressed in your letter to Mr. Alfred C. Strachen of the Amphitheater School District:

1. Parent teacher organizations or other organizations may operate bingo games on school district property upon approval by the governing board of the school district in conformance with A.R.S. § 15-1105, provided the organization obtains a bingo license pursuant to A.R.S. § 5-401 et seq. and A.C.R.R. R15-7-201 et seq. The determination of whether an organization is a "qualified organization" as defined by A.R.S. § 5-401(18) is a factual determination which can only be made on a case-by-case basis. See also Ariz.Atty.Gen.Op. I84-018.

2. Parent teacher organizations and other organizations may conduct lotteries and other games of chance on school district property upon approval of the governing board of the school district in conformance with A.R.S. § 15-1105, provided the organization meets the requirements of A.R.S. § 13-3304. The determination of whether a particular

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organization fits within the requirements of A.R.S. § 13-3304 is a factual determination which can only be made on a case-by case basis. See also Ariz. Atty. Gen. Op. I84-018.

3. A licensed bingo operator, after obtaining proper authorization from the State, pursuant to A.C.R.R. R15-7-304, and approval from the governing board in conformity with A.R.S. § 15-1105, may operate a special bingo occasion on school property.

Sincerely,



BOB CORBIN
Attorney General

BC:SMS:kmc

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December 7, 1984

R84 - 225

Alfred C. Strachan
Associate to the Superintendent
Staff Relations
Amphitheater School District
701 West Wetmore Road
Tucson, Arizona 85705

EDUCATION OPINION

ISSUE NO LATER THAN

2-8-85

Re: Bingo in Public Schools

Dear Mr. Strachan:

You asked us to respond to the following questions regarding the holding of bingo games on school property:

1. Would it be legal, under the sponsorship of PTO's or PTA's, to operate bingo or other games of chance, such as lotteries, on school district property;
2. Would it be permissible for a licensed bingo operator, after obtaining proper authorization from the state, to operate a special bingo occasion on school property; and
3. Would it be permissible for the Amphitheater Community Schools, Inc., or Amphitheater Public Schools Foundation, Inc., to sponsor and operate bingo games, or other games of chance, in our public schools.

We conclude that :

1. It would be legal for PTO's or PTA's to operate bingo games on school district property upon approval by the Governing Board in conformance with A.R.S. §15-1105, provided that the PTO or PTA obtains a bingo license pursuant to A.R.S. §5-401, et seq. and Administrative Rules R15-7-201 et seq. Other games of chance, such as lotteries, may also be held on the premises with Board approval, provided the organization sponsoring the games complies with A.R.S. §13-3304.

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2. It is permissible for a licensed bingo operator, after obtaining proper authorization from the state, pursuant to R15-7-304, and approval from the Governing Board in conformity with A.R.S. §15-1105, to operate a special bingo occasion on school property.

3. It would be permissible for the Amphitheater Community Schools, Inc., or the Amphitheater Public Schools Foundation, Inc., to sponsor and operate bingo games as long as they obtain the proper bingo license under A.R.S. §5-401, et. seq., and are in compliance with those requirements and the requirements of R15-7-201 et. seq. These groups may offer other games of chance, providing they comply with A.R.S. §13-3304. All such activities must be held with approval of the Governing Board in conformity with A.R.S. §15-1105.

DISCUSSION

Properly licensed organizations may carry on bingo games, and various tax exempt organizations may sponsor raffles and lotteries, pursuant to A.R.S. §5-401 et. seq. and §13-3304. A.R.S. §5-401 et. seq., provide the guidelines under which an appropriate organization may sponsor bingo games. The organization must be in compliance with those statutes as well as the appropriate tax provision found in A.R.S. §43-1201(7). Other games of chance, such as lotteries and raffles, are regulated by A.R.S. §13-3304 and §43-1201, parts 1, 2, 4, 5, 6, 7 and 10.

USE OF SCHOOL PROPERTY:

The actual use of school property by these organizations for the purposes of bingo, raffles and lotteries is not specifically governed by any Arizona statute. A.R.S. §15-341(8) gives the governing board the authority to grant the use of its property to various organizations for various purposes. A.R.S. §15-1105(A) and (B) provide that unless the organization using the property is a school-related group or group whose membership is open to the public and whose activities promote the educational function of the school district (as determined in good faith by the board), the board shall charge a reasonable use fee for the lease or rental of the school property. The PTO, PTA, Amphitheater Community Schools, Inc., and Amphitheater Public Schools Foundation, Inc., are all organizations which would reasonably be deemed to be

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school related groups, or groups whose activities promote the educational function of the school district. However, please note that when a rental or lease fee is received by the school, the use to which that fee is put is regulated by A.R.S. §15-1102. In addition, the following statutes, rules and regulations must be adhered to when permitting an organization to hold bingo games, lotteries or raffles on school premises.

BINGO:

A.R.S. §5-402 provides that in order to sponsor a bingo game, an organization must obtain a license from the Department of Revenue. To obtain a license to hold games of bingo, an organization must be a "qualified organization" pursuant to A.R.S. §5-401(18) which provides:

"'Qualified organization' means a homeowner's association or any bona fide charitable, fraternal, religious, social as defined in §43-1201, paragraph 7, veterans' or volunteer fire fighters organization or any chartered branch or lodge or chapter of such national or state organization which operates without profit to its members and which has been in existence continuously for a period of two years in Arizona immediately before applying for a license under this article, and may include not more than one identified auxiliary of any such organization which may itself be a qualified organization in addition to such organization.

A.R.S. §43-1201(7) provides:

"Clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder."

Since PTO's and PTA's are established primarily for non-profit, educational purposes, it is likely they fall within the standards

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set forth in A.R.S. §5-401(18) and §43-1201(7) and, therefore, are "qualified organizations" able to obtain bingo licenses. Such status is determined on an individual club basis. The primary hinderance to qualifying under §43-1201(7) would be if any member of the organization seeking a license were to receive any compensation or benefit from the proceeds obtained from the operation of the bingo game.

Additionally, A.R.S. §5-406 sets out at section (I) that:

"The entire net proceeds of any game shall be devoted to a lawful use or uses. In addition to other unlawful uses, the following are not considered lawful uses under this subsection:

1. Compensation and expenses of directors, officers and management personnel.
2. Fees or commissions of consultants.
3. Donations to other than national, state or local non-profit parent organizations in excess of five percent of the next proceeds except with the permission of the licensing authority.
4. Donations or any payment from the lessor to the lessee."

Amphitheater Community Schools, Inc., and Amphitheater Public Schools Foundation, Inc., are equally likely to fall within the ambit of A.R.S. §5-401(18) and §43-1201(7) as organizations qualified to obtain bingo licenses.

Assuming one of the organizations proposed to hold bingo games can be deemed a "qualified organization" the next step is to obtain a bingo license. Title 5 and Administrative Rules R15-7-201, et. seq. go into further detail as to what may or may not be done in the conducting and operating of a bingo game. All of these requirements must be complied with when operating

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the bingo game. The organization must obtain approval from the Governing Board to use school premises for the operation of the bingo game.

Additionally, if an already licensed group wishes to obtain permission from the revenue service to hold a bingo game on Amphitheater property, it may do so pursuant to permission by the Governing Board, conformance with A.R.S. §15-1105, and subject to Department of Revenue discretion. A bingo licensee may hold a bingo game on premises different from those listed in the license application pursuant to written permission from the Arizona Department of Revenue and Arizona Administrative Rule R15-7-304. R15-7-304 states, in pertinent part:

"Except with the prior written consent of the licensing authority, bingo occasions may be conducted only at the address and the times stated in the licensee's license as from time to time amended in writing by the licensing authority"

Once permission is received from the Department of Revenue, the "outside" organization must obtain approval from the Governing Board for use of the premises under A.R.S. §15-1105.

It should be noted that once an organization qualifies to hold a bingo game, the statutes are quite specific as to how it must be operated. Additionally, there are various statutes governing what the board can do with any money received as a result of such activity on its premises.

RAFFLES and LOTTERIES:

A.R.S. §13-3304 must be complied with by the organization wishing to hold raffles or lotteries. A.R.S. §13-3304(A) states:

"Except as provided in Title 5, Chapter 5, Article 1 in subsections (B) and (C) of this section, a person who knowingly keeps, maintains, employs, or carries on a lottery, or lottery scheme or device, or raffle, is guilty of a Class 2 Misdemeanor."

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However, subsection (B) of A.R.S §13-3304 provides that if one of the organizations is qualified for tax exemption of income within §43-1201 (1)(2)(4)(5)(6)(7) or (10), a raffle or lottery may be conducted by that organization subject to certain specified conditions.

A.R.S. §43-1201, parts 1,2,4,5,6,7 and 10, provide that the following organizations are exempt from the taxes imposed under that Title, except as otherwise provided in that Chapter:

"1. Labor, agricultural or horticultural organizations, other than cooperative organizations.

2. Fraternal beneficiary societies, orders or organizations both:

(a) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system;

(b) Providing for the payment of life, sick, accident or other benefits to the members of such society, order or organization or their dependents.

* * *

4. Corporations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

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5. Business leagues, chambers of commerce, real estate boards or boards of trade, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

6. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or local organizations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

* * *

7. Clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

* * *

10. Teachers or public employees retirement fund organizations of a purely local character, if both of the following apply:

(a) No part of their net earnings inures to the benefit of any private shareholder or individual other than through payment of retirement benefits;

(b) The income consists solely of amounts received from public taxation, amounts received from assessments upon the salaries of members and income in respect of investments. For the purposes of this paragraph, 'public employees' means employees of the state and its political subdivisions."

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The PTA and PTO appear to fit in the categories mentioned in Sections 6 and 7 above. Amphitheater Community Schools, Inc., and Amphitheater Public Schools Foundation, Inc., may fit within section 4, depending on whether or not a substantial part of their activities involves propogandaizing or otherwise attempting to influence legislation.

Attorney General Opinion I84-018 is directed toward the question of organizations conducting raffles or lotteries in Arizona. More specifically, students of Showlow Junior High School were interested in conducting a raffle to raise funds for student activities. The Attorney General's reply to this question was that an organization qualified under A.R.S. 13-3304(B) to hold a raffle will be subject to the conditions outlined in that statute. Furthermore, the Opinion stated that while a public school or public school district does not fall specifically within the provisions of A.R.S. §13-3304(B), clubs which are not controlled by the district such as off-campus clubs, clubs sponsored by civic groups, or parent teacher organizations, which fall within A.R.S. §43-1201(7), may hold a raffle in compliance with A.R.S. §13-3304(B). All four of the suggested school organizations seem to fit within the regulations governing the holding of raffles and lotteries.

CONCLUSION:

For all of the foregoing reasons, we believe that the Amphitheater School District may have bingo games held on its premises as long as one of the organizations mentioned is able to obtain a bingo license, and complies with all of the appropriate regulations. Lotteries and raffles may also be held by one of the organizations as long as it complies with the provisions in A.R.S. §13-3304. Approval from the Governing Board must be obtained by the organization before such activities may be held on the school premises. However, since A.R.S. §15-1105 grants discretion to the Governing Board to allow use of its premises based on a good faith determination that the activities of the organization promote the educational functions of the district, and since the primary, if not sole, purpose of the proposed organizations is to promote the educational welfare of the district, then approval from the Board may reasonably

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be granted.

Pursuant to your request and to A.R.S. §15-253(B), a copy of this opinion is being forwarded to the State Attorney General for review.

Thank you for permitting us to work with you in connection with this matter. If you have any questions regarding the foregoing, please do not hesitate to contact us.

Very truly yours,

COREY & FARRELL, P.C.

Drue A Morgan-Birch

Drue Ann Morgan-Birch

[Signature]
Barry M. Corey

DAM-B/BMC/tld