



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

October 9, 1987

Mr. Barry M. Corey
Corey & Farrell, P.C.
Suite 600 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701

Re: I87-122 (R87-139)

Dear Mr. Corey:

Pursuant to A.R.S. § 15-253(B) we have reviewed the opinions expressed in your August 4, 1987 letter to Alfred C. Strachan, Associate to the Superintendent, Amphitheater School District. We concur with your conclusion that when a purchase of school property has already been authorized and funded by an election, and a gift of real property is offered in lieu of a sale of the property to the district, an additional election is not required. However, we revise your opinion as follows:

The district asked whether the following policy is legally valid:

Gifts of real property shall be submitted to the electorate unless the gift occurs in lieu of a purchase already authorized and funded by a bond election.

In Ariz. Atty. Gen. Op. I83-055 we concurred with the conclusion of a school district attorney that where a true gift of real property was offered, and there were no hidden or indirect costs to the district as a condition of acceptance of the gift, the property could be accepted without submitting the question to the voters. We stated:

The district may accept the parcel from the city without an election authorizing the transaction, assuming the conveyance is a

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bona fide gift, with the parcel being unencumbered by obligations or restrictions on its use.

In Ariz. Atty. Gen. Ops 72-5-C and I80-156, we stated that an election was required prior to acceptance of a gift with conditions which would result in costs to the district. Acceptance of a conditional gift is, in effect, a purchase. Purchase of school sites requires approval of the electorate. A.R.S. § 15-341(A)(11).

When there are no conditions attached to a gift, however, the transaction is not a purchase and, therefore, there is neither the requirement nor the statutory authority to hold an election. School boards possess and may exercise only the authority granted by statute. Campbell v. Harris, 131 Ariz. 109, 112 638 P.2d 1355, 1358 (App. 1981). Therefore, to the extent the proposed policy mandates the scheduling of an election prior to acceptance of a condition-free gift, the policy exceeds the board's authority.

Sincerely,

BOB CORBIN
Attorney General

BC:JGF:TLM:gm

COREY & FARRELL, P. C.

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862-4994

August 4, 1987

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

RECEIVED
10-10-87

Re: District Policy 3250 - Gifts, Grants and Bequests

Dear Mr. Strachan:

In recently revised District Policy 3250, we proposed the following statement:

"Gifts of real property shall be submitted to the electorate."

In your recent letter, you requested an opinion as to whether the following statement is also an accurate statement under state law:

"Gifts of real property shall be submitted to the electorate unless the gift occurs in lieu of a purchase already authorized and funded by a bond election."

Your question presents the following issue:

QUESTION: Whether the District may accept a gift of real property without submitting said acceptance to the electorate if a purchase of real property has already been approved and funded by a bond election.

DISCUSSION

The governing board is empowered to purchase real property for school sites pursuant to A.R.S. §15-341(A)(11) and (13). Both subsections require authorization of that purchase by election. However, §15-341(A)(11) provides:

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" . . . [S]uch authorization shall not necessarily specify the site to be purchased . . . "

A.R.S. §15-491 governs the conduct of a bond election called for the purpose of purchasing real property. Again, while an election is necessary to approve the expenditure of funds, voter approval of a specific site is not required. A.R.S. §15-491(A)(2). Thus, the statutory scheme clearly contemplates that, while the governing board may not purchase real property without submitting such a purchase to the electorate, the governing board may select the particular piece of real property to be acquired without resorting to the electoral process.

While there are no statutory provisions pertaining to a procedure to be followed when accepting a gift of real property, the Attorney General's Office concluded in 1980 that the acceptance of a gift of real property by the governing board requires authorization by the electorate. Attorney General Opinion I80-156 states that acceptance of a gift of real property must be authorized by the electorate. In that case, the Horizon Corporation made a gift to the Pearce Elementary School District of an improved tract of land. The gift contained a condition that the land be used solely for school purposes and as a civic center for the residents in the area. The gift contained a reverter clause, obligating the district to return the property should such purpose fail.

In concluding that the acceptance of a gift of real property required action by the electorate, the opinion relied primarily on Attorney General Concurring Opinion No. 72-5-C. In that case, however, real property had been donated to a school district with the understanding that the district would pay all upcoming assessments against the property. The Attorney General stated:

"In a gift of land, and more particularly one containing a reverter clause, there must be a vote to determine whether or not the district shall accept the gift. In this case, since there is in effect a purchase price of over \$100,000, the district must vote before either accepting the gift or spending the money. The voters must be advised that the

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Deed will contain a reverter and state the terms of the reverter.¹

While Attorney General Concurring Opinion 72-5-C required an election to accept a gift of land carrying a reverter clause, Attorney General Opinion I-80-156 extended that requirement to the acceptance of gifts of land generally, and required that the acceptance of a gift of land be submitted to the electorate. The rationale behind the extension of the requirement of a vote to accept any gift of real property seemed to be that the statutory provisions authorizing school districts to acquire real property indicated a legislative intent to involve the voters of a school district in the decision-making process concerning purchase of schools.² A district may, however, accept a gift of cash without resorting to the electoral process.³

In the situation posed by your question, there has already been an election conducted, the result of which was to authorize the District to purchase a site or sites for the District. Thus, the requirements of §15-341(A)(11) and §15-491(A)(2) have been met. However, the question as posed by the District contemplates a situation where the District may seek to substitute property that has been donated to the school district in lieu of a specific piece of property. A hypothetical may serve to clarify the question. Assume the District obtains voter approval, subsequent to a valid election pursuant to A.R.S. §15-491, to purchase a site for a school district. The District locates a particular property it wishes to acquire and enters into negotiation to purchase that property. The District is not required, either by §15-341(11) or §15-491, to get voter approval of the specific site. Upon learning that the school district is interested in purchasing his land, the owner decides to give the property to the school district. If the conclusion contained in Attorney General Opinion I80-156 were applied literally to this situation, the governing board would have to conduct another election to approve the acceptance of the property, which the District was already

¹Attorney General Concurring Opinion 72-5-C at page 1.

²*Id.* at page 3.

³Attorney General Opinion I79-181.

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authorized to purchase. Such a conclusion is illogical and unnecessary.

Attorney General Opinion I80-156 went beyond the scope of Attorney General Concurring Opinion 72-5-C in reaching its decision, and the broad statement that voter approval was required in all situations involving a gift of real property was unnecessary to the result. In Attorney General Opinion 72-5-C, an election was deemed necessary because the gift of real property contained a reverter clause that would require the district to spend approximately \$100,000. It was the hidden cash outlay involved in the gift that appeared to trigger the election provisions of §15-491. The gift was, at least in part, a purchase and, as such, required voter approval.

In Attorney General Opinion I80-156, it again appeared that there would be substantial long-term expenditures connected to the real property that was purported to be a gift. It would appear that it was the possibility of future expenditures that caused the Attorney General to concur with the Cochise County Attorney that, ". . . the question of accepting the real property [as] described . . . should be submitted to district electors."

In neither of the two opinions referred to above was there any mention of a previous election approving the purchase of real property. If the election-triggering event in both cases was, indeed, the potential capital expense, the prior approval of funding through an election would appear to obviate the necessity of a second election.

This conclusion appears to be consistent with the legislative intent of A.R.S. §15-341(A)(11) and §15-491(A). The intent that district voters be involved in the acquisition of real property for school districts has been fulfilled because the voters have already participated in the decision pertaining to the authorization of funds to acquire additional property. Should the property donated to the District contain a reverter clause requiring the expenditure of additional funds, the District would already have voter approval to make those expenditures, by virtue of the bond election. Thus, the conclusion that the District is not required to put a gift of real property to an election when the District has already been authorized by virtue of a bond election to purchase real property, does not appear to conflict with relevant law.

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Further support for this conclusion can be found in §15-491(G), and in §15-341(A)(11). These nearly identical provisions create an exception to the election requirement of §15-341(A)(11) and §15-491(A)(2). These sections provide in relevant part that voter approval of the purchase of school sites is not required for the purchase of school sites or the construction of school buildings

"which are included in a plan for the use of the reserve of the capital outlay fund and which have an estimated cost of:

(a) For a district with a student count of at least five hundred, two hundred fifty thousand dollars or less.

(b) For a district with a student count of less than five hundred, one hundred thousand dollars or less."

This provision creates an exception to the election requirement. While this exception is not applicable to the specific question at issue, these sections do indicate that there are situations where voter approval is not required prior to a purchase of real property. Indeed, these statutory provision, added after the Attorney General Opinions referred to above, seem to reflect a legislative intent consistent with the acceptance of any gift of real property, without voter approval, as long as the acceptance of the gift would not involve a possible reverter and/or the expenditure of funds other than as permitted in §§15-341(A)(11) and 15-491(G).

As mentioned previously, even in the absence of this new legislation, the primary legislative concern seems to have been that district voters have some involvement with the decision to acquire real property. Once that decision has been made, by virtue of a bond election, a district is free to accept a gift of real property, and to substitute the gift for property that would have been purchased pursuant to the validly conducted bond election.

It is, therefore, our opinion that Policy 3250 may be amended to read: "Gifts of real property shall be submitted to

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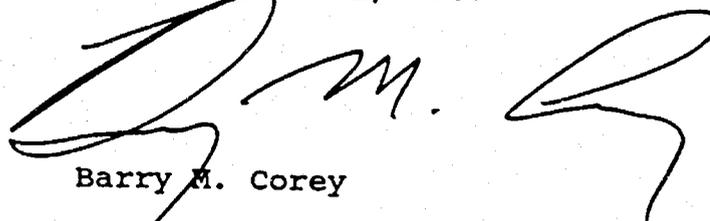
the electorate unless the gift occurs in lieu of a purchase already authorized and funded by a bond election."

Pursuant to your request, we are forwarding a copy of this opinion to the Office of the Arizona Attorney General for review, revision, or concurrence.

Thank you for permitting us to assist you in this matter. Should you have any questions or comments, please do not hesitate to contact us.

Sincerely,

COREY & FARRELL, P.C.



Barry M. Corey



Darlene Millar-Espinosa

BMC/DME/tw



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

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When there are no conditions attached to a gift, however, the transaction is not a purchase and, therefore, there is neither the requirement nor the statutory authority to hold an election. School boards possess and may exercise only the authority granted by statute. Campbell v. Harris, 131 Ariz. 109, 112 638 P.2d 1355, 1358 (App. 1981). Therefore, to the extent the proposed policy mandates the scheduling of an election prior to acceptance of a condition-free gift, the policy exceeds the board's authority.

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August 4, 1987

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

SEARCHED
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AUG 10 1987
FBI - TUCSON

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While there are no statutory provisions pertaining to a procedure to be followed when accepting a gift of real property, the Attorney General's Office concluded in 1980 that the acceptance of a gift of real property by the governing board requires authorization by the electorate. Attorney General Opinion I80-156 states that acceptance of a gift of real property must be authorized by the electorate. In that case, the Horizon Corporation made a gift to the Pearce Elementary School District of an improved tract of land. The gift contained a condition that the land be used solely for school purposes and as a civic center for the residents in the area. The gift contained a reverter clause, obligating the district to return the property should such purpose fail.

In concluding that the acceptance of a gift of real property required action by the electorate, the opinion relied primarily on Attorney General Concurring Opinion No. 72-5-C. In that case, however, real property had been donated to a school district with the understanding that the district would pay all upcoming assessments against the property. The Attorney General stated:

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In the situation posed by your question, there has already been an election conducted, the result of which was to authorize the District to purchase a site or sites for the District. Thus, the requirements of §15-341(A)(11) and §15-491(A)(2) have been met. However, the question as posed by the District contemplates a situation where the District may seek to substitute property been donated to the school district in lieu of a specific piece of property. A hypothetical may serve to clarify the question. Assume the District's voter approval, subsequent to a valid election pursuant to A.R.S. §15-491, to purchase a site for schools. The District locates a particular property it acquire and enters into negotiation to purchase that property. The District is not required, either by §15-341(11) or §15-491, to get voter approval of the specific site. Upon learning that the school district is interested in purchasing his land, the owner decides to give the property to the school district. If the conclusion contained in Attorney General Opinion I80-156 were applied literally to this situation, the governing board would have to conduct another election to approve the acceptance of the property, which the District was already

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In Attorney General Opinion I80-156, it again appeared that there would be substantial long-term expenditures connected to the real property that was purported to be a gift. It would appear that it was the possibility of future expenditures that caused the Attorney General to concur with the Cochise County Attorney that, ". . . the question of accepting the real property [as] described . . . should be submitted to district electors."

In neither of the two opinions referred to above was there any mention of a previous election approving the purchase of real property. If the election-triggering event in both cases was, indeed, the potential capital expense, the prior approval of funding through an election would appear to obviate the necessity of a second election.

This conclusion appears to be consistent with the legislative intent of A.R.S. §15-341(A)(11) and §15-491(A). The intent that district voters be involved in the acquisition of real property for school districts has been fulfilled because the voters have already participated in the decision pertaining to the authorization of funds to acquire additional property. Should the property donated to the District contain a reverter clause requiring the expenditure of additional funds, the District would already have voter approval to make those expenditures, by virtue of the bond election. Thus, the conclusion that the District is not required to put a gift of real property to an election when the District has already been authorized by virtue of a bond election to purchase real property, does not appear to conflict with relevant law.

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This provision creates an exception to the election requirement. While this exception is not applicable to the specific question at issue, these sections do indicate that there are situations where voter approval is not required prior to a purchase of real property. Indeed, these statutory provision, added after the Attorney General Opinions referred to above, seem to reflect a legislative intent consistent with the acceptance of any gift of real property, without voter approval, as long as the acceptance of the gift would not involve a possible reverter and/or the expenditure of funds other than as permitted in §§15-341(A)(11) and 15-491(G).

As mentioned previously, even in the absence of this new legislation, the primary legislative concern seems to have been that district voters have some involvement with the decision to acquire real property. Once that decision has been made, by virtue of a bond election, a district is free to accept a gift of real property, and to substitute the gift for property that would have been purchased pursuant to the validly conducted bond election.

It is, therefore, our opinion that Policy 3250 may be amended to read: "Gifts of real property shall be submitted to

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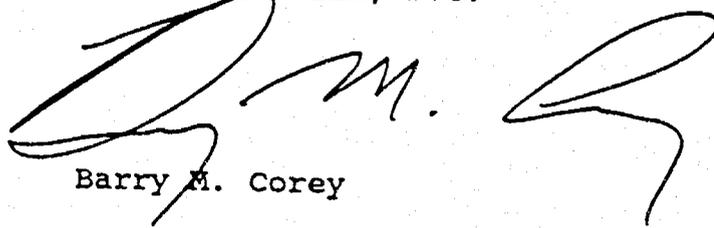
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Thank you for permitting us to assist you in this matter. Should you have any questions or comments, please do not hesitate to contact us.

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Darlene Millar-Espinosa

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