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October 16, 1987

The Honorable Jeffrey Hill
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I87-133 (R87-147)

Dear Senator Hill:

You have asked whether Ariz. Atty. Gen. Op. 65-3-L, relating to county ownership of land for a cemetery, is still a valid analysis of the law. Because the statutes upon which that opinion is based have not been repealed nor substantially amended, and there have been no court cases holding otherwise, the reasoning remains sound and we believe that it is still valid.

In that earlier opinion, the Attorney General was asked the following two questions:

1. Whether a county could own land for a cemetery, and
2. Whether a county could hold land as a trustee for a non-incorporated community for cemetery purposes.

The Honorable Jeffrey J. Hill
October 16, 1987
I87-133
Page 2

We stated in Ariz. Atty. Gen. Op. 65-3-L that under A.R.S. § 11-201(2), A.R.S. § 11-201(4), ^{1/} and A.R.S. § 11-251(29), ^{2/} a county has both express and implied authority to "purchase and own land and to use the land 'as the interest of the inhabitants of the county require.'" Ariz. Atty. Gen. Op. 65-3-L. In

^{1/}A.R.S. §§ 11-201(2) and 11-201(4) have been renumbered as A.R.S. §§ 11-201(A)(2) and 11-201(A)(4). The statutory language, however, remains unchanged:

A. The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has power to:

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2. Purchase and hold lands within its limits.

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4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require.

^{2/}A.R.S. § 11-251(29) has also been renumbered as A.R.S. § 11-251(30). The language, however, remains unchanged:

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

.

30. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

The Honorable Jeffrey J. Hill
October 16, 1987
I87-133
Page 3

addition, "the obligation [under A.R.S. § 11-251(26)]^{3/} to bury deceased indigents and mark their graves" was said to indicate legislative intent that counties had authority to own land for a cemetery. Id. (emphasis added). A county is still obligated to bury indigents who die in that county when relatives designated by statute are unable to do so and when other persons are unwilling to do so. Thus, our conclusion remains the same.

Regarding a county's use of its property, the Arizona Supreme Court has said that A.R.S. § 11-201 is a general statement of corporate powers, giving the county "discretion in the manner of use of the property of the county so long as that use [is] within the specific powers otherwise granted." Hartford Accident and Indemnity Company v. Wainscott, 41 Ariz. 439, 448, 19 P.2d 328, 331 (1933). We turn then to the specific powers which justify the county's use of land for a cemetery.

Of the statutes which justified the conclusions in Ariz. Atty. Gen. Op. 65-3-L, only former A.R.S. § 11-251(26) has been amended. The amendment to the statute, renumbered A.R.S. § 11-251(27), does not change our conclusion. It provides that a county board of supervisors may:

Provide for the reasonable expenses of burial for deceased indigents as provided in § 36-831, maintain a permanent register of deceased indigents including name, age and date of death, and when burial occurs, the board shall mark the grave with a permanent marker giving the name, age, and date of birth, if known.

(Emphasis added.)

^{3/}A.R.S. § 11-251(26) provided that the board of supervisors may:

Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

The Honorable Jeffrey J. Hill
October 16, 1987
I87-133
Page 4

A.R.S. § 36-831 relates to statutory burial responsibility. It provides in pertinent part that if the statutorily enumerated family members having a duty to bury a deceased person are financially unable to bury or provide other funeral arrangements for the deceased, "the county in which death occurs, shall bury . . . the . . . body" (Emphasis added.)

We note that subsequent to our earlier opinion, the legislature added to a county's powers under A.R.S. § 11-251(45). A county may purchase real property for public purposes, provided that payment shall be made not later than five years after the date of purchase.

Therefore, because a county continues to have the legal duty to bury deceased indigents who die in that county and because the legislature has specifically stated that a county may purchase property for public purposes, Ariz. Atty. Gen. Op. 65-3-L is still a valid analysis of the law.

We also stated in Ariz. Atty. Gen. Op. 65-3-L that a county has no express or implied authority to act as a trustee of a cemetery for a non-incorporated community. No statutes enacted or cases issued subsequent to that opinion change that result.

Sincerely,



BOB CORBIN
Attorney General

BC:PRH:gm