



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

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ARIZONA ATTORNEY GENERAL

April 1, 1986

Mr. Spencer A. Smith
DeConcini, McDonald, Brammer,
Yetwin & Lacy, P.C.
Attorneys at Law
240 North Stone Avenue
Tucson, Arizona 85701

Re: I86-033 (R86-002)

Dear Mr. Smith:

Pursuant to A.R.S. § 15-253(B), this office concurs with the opinions expressed in your letter of January 17, 1986 to the Director of Legal Research Services for Tucson Unified School District No. 1, in which your office concluded that A.R.S. § 34-461, requiring subdivisions of the state to comply with local building codes, does not apply to the relocation of existing factory-built, portable classrooms. We also concur with the opinion that such portable classrooms are, however, subject to inspection by the state fire marshal and to regulation by the Office of Manufactured Housing.^{1/} See A.R.S. § 26-334 and § 26-335 and Ariz. Atty. Gen. Op. I79-284; A.R.S. § 32-1171 et seq.

We also take this opportunity to point out that A.R.S. § 34-461 was amended in 1984 to provide that local building codes apply to the construction of public buildings, which includes new construction of school district buildings. Any statements to the contrary in our opinions predating this amendment, Ariz. Atty. Gen. Ops. 83-052, 73-12-C, 65-8-C, 64-34-C, are now disapproved.

Sincerely,

BOB CORBIN
Attorney General

BC:TLM:lfc

1. A.R.S. § 32-1172.A.11 defines "factory-built building" as a single-story nonresidential building of less than four thousand five hundred square feet floor space. . . ." We do not herein express an opinion as to portable classrooms which fall outside this definition.

86-002
1-21-86
Martinez

DECONCINI MCDONALD BRAMMER YETWIN & LACY, P. C.

ATTORNEYS AT LAW

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

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

JOHN R. McDONALD
RICHARD M. YETWIN
ROBERT M. STRUSE
DOUGLAS G. ZIMMERMAN
DAVID C. ANSON
DEBORAH OSERAN
SPENCER A. SMITH
DENISE M. BAINTON
DIANE M. MILLER
KENNETH C. SUNDLOF, JR.
MATTHEW R. BERENS

January 17, 1986

DINO DECONCINI
OF COUNSEL

Mr. Felizardo Valencia, Director
Legal and Research Services
Tucson Unified School District No. 1
P.O. Box 40400
Tucson, Arizona 85717-0400

EDUCATION OPINION
ISSUE NO LATER THAN
3-22-86

Re: Application of Building Codes

Dear Mr. Valencia:

You have requested that this office render an opinion as to the applicability of the local building codes of the City of Tucson and Pima County under § 34-461 of the Arizona Revised Statutes, which was enacted by the Legislature during the 1984 session and became effective August 3, 1984, to the relocation of portable classrooms within the District. After review of the statute along with related statutes and ordinances, we have concluded that § 34-461 applies only to the construction of public buildings and not to the placement or relocation of portable classrooms or utilities appurtenant thereto. Thus, it is our opinion that no permits are required for locating or moving a portable classroom.

Prior to August 3, 1984, public school districts of the State of Arizona were not subject to the building codes of local jurisdictions since "a State agency delegated by law the responsibility of performing a governmental function is not subject to the general police powers of a municipal corporation." Board of Regents v. City of Tempe, 88 Ariz. 299, 309, 356 P.2d 399 (1960). During the 1984 session, the Legislature passed a bill now codified as § 34-461 of the Arizona Revised Statutes, that became effective August 3, 1984, which provides:

A. Public buildings shall be designed or constructed according to the state fire code adopted by the state fire marshal and applicable building, plumbing, electrical, fire prevention and

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mechanical codes adopted by the city or town in which the building is located or, if in an unincorporated area, by the county in which the building is located in the same manner as any other building. The owner of the public building is subject to the same fees required of other persons. Public buildings are subject to inspection during construction pursuant to such codes to determine compliance.

B. If a public building is built in an area not subject to local codes, the building shall be designed or constructed according to the state fire code adopted by the state fire marshal and the building, plumbing, electrical, fire prevention and mechanical codes that apply in the largest city in the county in which the building is located.

C. Public buildings are subject to those codes that apply and are in effect when the building is designed or constructed and to the currently adopted codes when such buildings are found to be structurally unsafe, without adequate egress, or which constitute a fire hazard or are otherwise dangerous to human life.

D. Subsections A and B do not apply to state buildings.

E. In this section, "public building" means a building or appurtenance to a building which is built in whole or in part with public monies.

The central question concerning the applicability of this statute is whether or not subpart A applies to portable classroom facilities.¹ By its terms, the statute only

¹The offsite manufacture of the portable classroom buildings are regulated by the provisions of A.R.S. § 32-1171 et seq. The Attorney General has opined that § 34-461 does not apply to the manufacture of "factory built buildings" Att. Gen. Op. 84-086 (June 20, 1984), but does not address the extent of jurisdiction given by § 34-461 over appurtenances to or placement of such buildings.

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applies to "public buildings" which are defined in subpart E as "a building or appurtenance to a building which is built in whole or in part with public monies." In our opinion, neither a portable classroom, nor the utilities which are appurtenant thereto fall within the definition of a "building or appurtenance to a building," and thus are exempt from the application of the building codes. The term "building" is defined as "an edifice constructed for use or convenience as a house, church, shop, etc., attached to and becoming part of the land." Lewis v. Midway Lumber Company, 114 Ariz. 426, 430, 561 P.2d 750, 754 (1977). Thus, to be a building, a structure must be real property, a fixture that is attached to and a part of the land.

The Attorney General has opined that if the structure can be "moved from one spot to another at less expense than building a new building, it is prima facie portable and relocatable." Atty. Gen. Op. 72-30 L (1972). This definition was applied to find that a 28' x 30' structure erected on a 4" thick concrete slab was in fact not a "building," but rather a "portable building," and therefore could be erected without voter approval. Atty. Gen. Op. 185-19 (1985).

The test of when a chattel becomes a building and part of the real property is the unity of three requisites:

- (1) annexation to the realty or something pertinent thereto;
- (2) the chattel must have adaptability or application to the use for which the real estate is appropriated; and
- (3) there must be an intention of the party to make the chattel a permanent accession to the freehold.

Fish v. Valley National Bank, 64 Ariz. 164, 170, 167 P.2d 107, 111 (1946). The portable classrooms in question are not intended to be permanent, as evidenced by the District practice of moving at least some of them each year.

The portable classrooms under consideration are completely self-contained except for the connection to electric, gas and water utilities in a fashion similar to a mobile home. Similarly, the foundation and tie-down requirements are like those of a mobile home. The utilities and foundations themselves are not part of the real property because they are affixed to and serve a structure which is

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temporary and thus there is no intention to make the utilities and foundations a permanent accession to the freehold. Sulphur Springs Valley Electric Cooperative, Inc. v. City of Tombstone, 1 Ariz. App. 268, 401 P.2d 753, 758 (1965), aff'd. 99 Ariz. 110, 407 P.2d 76 (1965).

Even if the portable classrooms were "public buildings," it is still our opinion that local building codes would not apply generally to the relocation of the portables within the District. Subpart B of § 34-461 contemplates only that new construction be covered. It provides that if a building is built in an area not subject to local codes, then codes of the nearest large city and of the State Fire Marshal shall be observed. No mention is made in subpart B of existing structures. Likewise, subpart A contains no specific mention of buildings that are in existence at the time the statute was made effective. Only subpart C deals with existing buildings and states that public buildings are to be subject to those codes that apply and are in effect when the building was designed or constructed, but subject to currently adopted codes only when the buildings are found to be structurally unsafe, to be without adequate egress, to constitute a fire hazard or are otherwise dangerous to human life. Thus, under subpart C of § 34-461, the current codes are limited in their application to existing buildings to those situations specifically found to be unsafe. If subparts A and B affected existing buildings, the effect of subpart C would be to add nothing because the codes applicable under subparts A and B would accomplish the purpose of subpart C. If possible, statutes are interpreted in a manner so as to give meaning to every section. Thus, to give subpart C of § 34-461 meaning, subpart A must apply only to new construction while jurisdiction over remodeling, alteration and repair of existing buildings is limited to the situations described in subpart C.

The interpretation set out above is consistent with the statute authorizing and defining the jurisdiction of the State Fire Marshal, A.R.S. § 26-335, that provides that the Fire Marshal shall review plans for new construction, remodeling, alterations and additions for state, county and public school buildings for compliance with the State Fire Code. This statute demonstrates that the Legislature considered the distinction between new construction, remodeling, alterations and additions. The joint effect of § 34-461 and § 26-335 is that the legislature has determined that remodeling, alteration and repair of existing buildings

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must be reviewed by the Fire Marshal since the Fire Marshal's review affects public safety. Similarly, only where the existing buildings are found to be unsafe need they be made to comply with current building codes, and then only to the extent of correction of the unsafe condition. New buildings, on the other hand, are required to be constructed under the jurisdiction of local building codes, including the permit, fee and inspection requirements thereof.

For the foregoing reasons, the portable classrooms are not "public buildings" within the meaning of A.R.S. § 34-461 and therefore the building codes do not apply to their relocation. Even if the portables are "public buildings" the building codes do not apply unless the relocation results in a fire hazard, a structural deficiency that is unsafe, a condition of lack of adequate egress or conditions otherwise unsafe to human life.

In accordance with your request, we are submitting a copy of this opinion to Robert K. Corbin, Attorney General of the State of Arizona, for his review pursuant to A.R.S. § 15-253B.

Very truly yours,

Spencer A. Smith
Spencer A. Smith

pkm
c: Robert K. Corbin
The Governing Board
Dr. Dorothy Magett
Dr. Bennie Linkhart
Frank Coghlan
Ruben Romero