



# Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

May 9, 1988

Ms. Denise M. Bainton  
DeConcini McDonald Brammer  
Yetwin & Lacy  
240 North Stone Avenue  
Tucson, Arizona 85701-1295

Re: I88-056 (R88-038)

Dear Ms. Bainton:

Pursuant to A.R.S. § 15-253(B), this office concurs in the opinions expressed in your March 11, 1988 letter to Roger Pfeuffer of the Vail Elementary School District No. 20 in which you conclude that no election is required before acceptance of a bona fide gift of real property subject to a reverter clause in the deed providing for return of the property to the donor if the district ceases using the property for school purposes or fails to build a school on the property within seven years. We assume, for purposes of this concurrence, that the real property being given to the district is unimproved and has no outstanding liens, assessments, taxes or other encumbrances of monetary impact that will result in hidden or indirect costs to the district.

Sincerely,

BOB CORBIN  
Attorney General

BC:TLM:amw

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March 11, 1988

EDUCATION OPINION

ISSUE NO LATER THAN

5-13-88

888 038

Martin  
3/14/88

Mr. Roger Pfeuffer  
Superintendent  
VAIL ELEMENTARY SCHOOL DISTRICT NO. 20  
13299 East Colossal Cave Road  
Post Office Drawer 8  
Vail, Arizona 85641

Re: Necessity of Election Concerning Gifts  
of Real Property

Dear Roger:

You have asked whether an election is required before the Vail Elementary School District may accept a gift of real property subject to a clause in the deed that states that the property reverts to the donor if the District ceases using the property for school purposes or fails to build a school on the property within seven years. It is our opinion that an election is not required.

It has long been held that school districts have the power to accept gifts of real property. See, e.g., Attorney General Opinions 72-5-C; I80-156; I83-055; and I87-122. When acceptance of what on its face appears to be a gift in reality constitutes a purchase,<sup>1</sup> an election is required. See A.R.S. §§ 15-341.A.11 and 15-491.A.2; Attorney General Opinion I87-122. If there is no purchase, an election not only is not required, but it is not authorized by statute. See Attorney General Opinion I87-122. This is because there is no statutory authority for an election concerning acquisition of a school site unless there is a

<sup>1</sup>Also, it must be noted that the statutes require an election only for purchases of school sites. See A.R.S. § 15-341.A.11. The Legislature knows the difference between the word "purchase" and the word "acquire." Compare A.R.S. § 15-341.A.6 before amendment (a governing board may purchase school furniture, etc.) with that section as amended by Laws 1986, Ch. 296, § 1 (the governing board shall acquire school furniture, etc.).

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purchase. The question therefore becomes whether or not acceptance of a gift of real property under the conditions as stated above constitutes a purchase. For the following reasons, we believe that it does not.

Some broad language in earlier Attorney General opinions indicates that a reverter clause in and of itself might be sufficient to trigger the election requirement. One such opinion was No. 72-5-C. That opinion dealt with a gift of land for a school site which was conditioned upon the District paying for upcoming assessments on the land. The condition was contained in a reverter clause. The Attorney General was of the opinion that the condition was, in effect, a purchase price of over \$100,000.00. We agree. The Attorney General, however, also 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.

This language was not necessary to the result in Opinion 72-5-C.

The problem with the gift involved in Opinion 72-5-C was not that there was a reverter clause per se. Rather, the problem was the \$100,000.00 hidden purchase price. The reverter clause was merely the method used to enforce the condition. The existence of a reverter clause, in and of itself, however, does not in every case mean that there is a "price" that is being paid for the property -- hidden or otherwise. To determine if the District is in reality paying a "price" for a parcel of property, it is necessary to analyze the condition itself to determine if compliance with it amounts to a purchase.

In addition to the language in Attorney General Opinion 72-5-C, there is some language in Attorney General Opinion I87-122 that might imply that any condition on a gift constitutes a purchase. In that opinion, the Attorney General said that "[a]cceptance of a conditional gift is, in effect, a purchase." It is our opinion, however, that an agreement to use property for school purposes and to build a school within a specified and reasonable time does not constitute a purchase within the meaning of A.R.S. §§ 15-341.A.11 and 15-491.A.2. Although there ultimately may be a substantial expenditure of money to build a school on the property, that expenditure will be made only after and if the electorate approves it. The acquisition of the

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property itself will not require an expenditure. Therefore, there is no purchase, and an election is not required.

Perhaps it might be argued that there necessarily will be an expenditure connected with the property. For example, the grass must be cut, trash cleared and the property must otherwise be maintained. This is no more true, however, of this property than it would be of property not subject to a reverter clause. Therefore, if the cost of maintaining the property is to be considered a purchase price, then all gifts of property, with or without other conditions, would be "purchases" and an election would be required. This is not the law. See Attorney General Opinion I87-122.

The fact that the property may revert to the donor after many years if the District decides to abandon the property for any school purposes does not make it a "purchase." A similar situation routinely occurs at the end of leases, whether the lease is a gift or not. Here at least, the District controls absolutely whether the reversion will occur. Any school use prevents reversion. It is certainly doubtful that a District has the statutory authority to use property for other than school purposes. All the reversion does is prevent the District from making a profit on the sale of the property. There is no legal requirement, however, that the District profit from the gift other than being able to use it for school purposes.

Finally, we note that the Legislature does not require elections, even for all true purchases. The District could, for example, amend its plan for the use of the capital reserve, and "purchase" the property for, say, ten dollars, even with the reverter clause. See A.R.S. §§ 15-341.A.11 and 15-491.G. Therefore, there is little public policy rationale for requiring an election for a true gift such as this one, even one with the conditions as stated above.

For the above reasons, it is our opinion that an election is not required. A copy of this letter has been forwarded to the Attorney General for review.

Very truly yours,

*Denise M. Bainton*

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