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August 4, 1988

The Honorable Brenda Burns
State Representative
Arizona State Capitol - House Wing
Phoenix, AZ 85007

The Honorable Bob Denny
State Representative
Arizona State Capitol - House Wing
Phoenix, AZ 85007

Re: I88-087 (R88-090)

Dear Representatives Burns and Denny:

You have asked for our opinion as to the validity or constitutionality of Section 4 of S.B.126, Laws 1988 (2nd Reg. Sess.) Ch. 271, § 4, which enacted A.R.S. § 15-991.01. The Attorney General's duty is to defend a duly-enacted statute unless it is patently unconstitutional. Ariz.Atty.Gen.Op. 187-039. We do not find that the amendment in question is patently unconstitutional.

A.R.S. § 15-991.01(A) establishes a county education district in each county consisting of all property in the county not located in an organized school district. A tax rate is then applied against the property located in the county education district for the cost of educating children who reside in the county education district but attend public schools. You question the constitutionality of A.R.S. § 15-991.01 on the grounds that the taxpayers in the county education district are not entitled to vote in school district elections and consequently, the members of the county education district do not have a representative on the school boards.

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With respect to the Equal Protection Clause of the United States Constitution with respect to classification for taxation purposes, the State has very broad powers. The United States Supreme Court in Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351, 354-355 (1973) stated:

Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.

(Footnote omitted.)

In Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959), the United States Supreme Court further stated:

[T]he States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value.

358 U.S. at 526-527, 79 S.Ct. at 440-441, 3 L.Ed.2d at 484-485 (emphasis added, citation omitted).

The Arizona Supreme Court has stated:

In determining whether the taxing ordinance violates the Fourteenth Amendment, we are guided by the early case of Southwestern Oil Company v. State of Texas, 217 U.S. 114, 30 S.Ct. 496, 54 L.Ed. 688 (1910). There the State of Texas imposed an occupation tax on the wholesale sellers of

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We cannot say that it was irrational for the State Legislature to fail to grant a property tax rate reduction to class 5 properties within a county education district. Consequently, we do not believe that A.R.S. § 15-991.01 as adopted by Laws 1988 (2nd Reg. Sess.) Ch. 271, § 4 is patently unconstitutional.

Sincerely,



BOB CORBIN
Attorney General

BC:FLM:eb