



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

November 25, 1986

The Honorable Alan K. Polley
Cochise County Attorney
P.O. Drawer CA
Bisbee, Arizona 85603

Re: 186-116 (R86-132)

Dear Mr. Polley:

Pursuant to A.R.S. § 15-253(B), we have reviewed the opinions expressed in your letter to Dr. John Sinclair, Superintendent of the Sierra Vista School District, and revise your opinion.

Mr. Sinclair has asked whether the school board may waive tuition for foreign students who are temporarily living within the district and are participating in an exchange program that is not recognized by the United States Department of State and the State Board of Education. We conclude that the board may not waive tuition for these students.

A school board has only that authority granted by statute which must be exercised in the manner and within the limits prescribed by statute. School District No. 69 of Maricopa County v. Alcherr, 10 Ariz.App. 333, 338, 458 P.2d 537, 542 (1969).

A.R.S. § 15-823(B) requires the school board to charge tuition and has only three specific exceptions:

B. Except as provided in subsections D, E and F, children of nonresidents of this state may be admitted upon payment of a reasonable tuition fixed by the governing board.

Subsection (F) of that statute provides the following exception:

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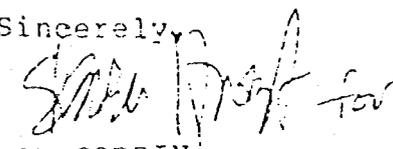
F. The governing board may admit nonresident foreign students who are in exchange programs recognized by the United States department of state and the state board of education without payment of tuition or as it may otherwise prescribe.

A.R.S. § 15-823(F).

The doctrine of statutory construction known as expressio unius est exclusio alterius provides that expression of one or more items of a class indicates the intent to exclude all items of the same class which are not expressed. Pima County v. Heinfeld, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982). Specific authority in A.R.S. § 15-823(F) to waive tuition for nonresident foreign students in recognized exchange programs and the clear statement in subsection (B) that tuition must be charged except as provided in other subsections of that statute manifest an intention of the legislature that no other exceptions to the tuition requirement are permitted.

Therefore, the board has no authority to waive tuition for students who are enrolled in exchange programs that are not recognized by the United States Department of State and the State Board of Education.

Sincerely,


BOB CORBIN
Attorney General

BC:JCF:TLM:gm



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ALAN K. POLLEY
COCHISE COUNTY ATTORNEY

R86 - 132

September 22, 1986

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| EDUCATION OPINION |
| ISSUE NO LATER THAN: |
| <u>11-25-86</u> |

FORMAL OPINION

Dr. John Sinclair
Superintendent
Sierra Vista School District
4001 Fry Blvd., N.E.
Sierra Vista, AZ 85635

Dear Dr. Sinclair:

The Sierra Vista Unified School District, No. 68, has requested a legal opinion regarding the admissibility of foreign students without payment of tuition. The students, who are temporarily living within the district, are participating in an exchange program which is not recognized by either the United States department of state or the state board of education. It is my understanding that if the District agrees to accept these students, the students will be available to make presentations about their native country to school groups. In addition, individual District students may be permitted to study in other countries without payment of school tuition. Thus, the presence of the foreign students may be expected to enhance the learning environment of District students and to provide an opportunity for District students to study abroad.

The pertinent statutory provisions are found in A.R.S. §15-823. They are as follow:

"Except as provided in subsections D, E and F, children of nonresidents of this state may be admitted upon payment of a reasonable tuition fixed by the governing board."

6A A.R.S. §15-823(B).

"The governing board may admit nonresident foreign students who are in exchange programs recognized by the United States department of state and the state board of education without payment of tuition or as it may otherwise prescribe."

6A A.R.S. §15-823(F).

Admission of nonresident foreign students who are participating in programs recognized by the United States Department of State and the Arizona Board of Education without payment or tuition is expressly authorized. On the other hand, admission of students in non-recognized programs appears to be contingent upon payment

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of a reasonable tuition. This statutory requirement has been incorporated in Sierra Vista School District Policy JECG-R:

The District will accept other tuition students approved by the Governing Board by order of the Courts or as required by state law.

Unfortunately, neither Arizona statutes nor School District policy directly address the issue of what constitutes the appropriate amount of tuition. Public entities are, however, constitutionally prohibited from conferring gifts on private entities.

Article IX, Section 7 of the Arizona Constitution prohibits the state and its political subdivisions from making any donations or subsidies to private entities. ^{1/} This does not preclude all public expenditures which benefit a private party. If an expenditure is for a public purpose, the fact that a benefit is conferred upon a private party does not automatically invalidate the expenditure. Industrial Div. Auth. of Pima County v. Nelson, 109 Ariz. 368, 509 P.2d 705.

In Wistuber v. Paradise Valley Unified School District, 141 Ariz. 346, 687 P.2d 354 (1984), the Arizona Supreme Court adopted a standard for determining when the constitutional prohibition against public expenditures to private parties is violated. Citing City of Tempe v. Pilot Properties, Inc., 22 Ariz.App. 356, 527 P.2d 515 (1974), the Court held that a public expenditure to a private entity is valid only if the public entity receives consideration which is not "so inequitable and unreasonable that it amounts to an abuse of discretion", thus providing a subsidy to the private entity." Wistuber, supra, 141 Ariz. at 349, 687 P.2d at 357.

^{1/} Article IX, section 7 of the Arizona Constitution provides: Neither the state nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the air of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.

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In determining whether a particular transaction meets this "equitable and reasonable consideration" test,

"[a] panoramic view of the facts of each transaction is required....The public benefit to be obtained from the private entity as consideration for the payment or conveyance from a public body, may constitute a "valuable consideration" but the Constitution may still be violated if the value to be received by the public is far exceeded by the consideration being paid by the public. Of course, in reviewing such questions, the courts must not be overly technical and must give appropriate deference to the findings of the governmental body."

Westuber, supra, 141 Ariz. at 349, 687 P.2d 357.

Based on the foregoing, it is my opinion a school district may admit foreign students on unrecognized programs without payment of tuition provided that:

1. The district has sufficient open positions and/or resources to accommodate such students;
2. The benefit conferred on the district in exchange constitutes a reasonable and equitable consideration; and
3. Consistent, non-discriminatory criteria are used to make individual admission decisions.

A copy of this opinion is being sent to the Arizona Attorney General for review pursuant to A.R.S. §15-253(B). Absent exigent circumstances, you are advised to await the response of the Attorney General prior to taking action upon the advice set forth above.

Sincerely,

ALAN K. POLLEY
Cochise County Attorney



By: Paula N. Wilk
Deputy County Attorney

PNW/la