

Attorney General

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Robert R. Corbin

January 25, 1989

The Honorable Joe Albo, Jr.
Gila County Attorney
1400 E. Ash Street
Globe, Arizona 85501

Re: I89-010 (R87-093)

Dear Mr. Albo:

You have asked for an opinion concerning the applicability of Arizona's Open Meeting Law, A.R.S. §§ 38-431 to -431.09, to the Board of Directors of the Arizona Interscholastic Association (AIA).

The Open Meeting Law applies to public bodies and requires that their meetings "shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A.R.S. § 38-431.01(A). The legislature has mandated that "any person or entity charged with the interpretations of [the Open Meeting Law] . . . shall construe any provision of this [law] in favor of open and public meetings." A.R.S. § 38-431.09. See, e.g., Ariz. Att'y Gen. Op. No. I85-088.

The Open Meeting Law, being applicable only to public bodies, requires us to look to the legislature's definition of the term "public body" to determine whether the AIA is subject to the law's provisions. The term "public body" as used in the statute means:

[T]he legislature, all boards and commissions of the state or political subdivisions,^{1/} all multi-member governing bodies of departments,

1. The term "political subdivision" means "all political subdivisions of the state, including without limitation all counties, cities and towns, school districts and special districts." A.R.S. § 38-431(4).

agencies, institutions and instrumentalities of the state or political subdivision, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

A.R.S. § 38-431(5) (emphasis added).

The AIA is not the legislature; nor is it a board or commission of the state or political subdivision. The AIA also is not a multi-member governing body of a department, agency or institution of the state or of a political subdivision. The Open Meeting Law, therefore, is not applicable to the AIA unless the AIA is a multi-member governing body of an instrumentality of the state or of a political subdivision.

While the AIA is a multi-member organization it is not a governing body of an instrumentality of the state or of any political subdivision. Rather, the AIA is a private, voluntary organization in which most of its members are political subdivisions. It is a nonprofit corporation composed of "all public and most private high schools in Arizona." Tiffany v. Arizona Interscholastic Association, Inc., 151 Ariz. 134, 135, 726 P.2d 231, 232 (App. 1986).^{2/} The AIA is a "private organization with no statutory or regulatory powers and school district membership in the organization is purely voluntary."

2. Because we find that the term "public body" as defined by the legislature controls our decision here the fact that the court in Tiffany determined that the actions of the AIA were state action under color of law within the meaning of 42 U.S.C. § 1983 is not relevant. In any event, the validity of the Tiffany court's determination can be seriously questioned given the United States Supreme Court's recent decision which found that the actions of a comparable entity, the National Collegiate Athletic Association, did not constitute state action and were not performed under color of state law within the meaning of § 1983. See, National Collegiate Athletic Association v. Tarkanian _____ U.S. _____, 109 S.Ct. 454 (1988).

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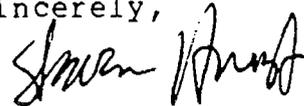
Ariz. Att'y Gen. Op. I84-084 (June 15, 1984).^{3/} Nothing leads us to believe that the AIA has been delegated any governmental power. See Quimby v. School District No. 21, 10 Ariz. App. 69, 71, 455 P.2d 1019, 1021 (1969).

We conclude that the AIA is an organization made up of its collective membership which is independent of the State or any particular political subdivision and therefore is not an instrumentality of either.^{4/} We reiterate our position stated in a prior opinion, however:

Nonetheless, we believe the Council [homeowner's association] should be strongly encouraged to always conduct public meetings which are properly noticed. Because it is obvious that the Council has a great deal of influence on community affairs, we believe the public should always be invited to attend, observe and even participate in the Council's deliberations.

Ariz. Att'y Gen. Op. I88-055.

Sincerely,



STEVEN J. TWIST
Chief Assistant
Attorney General

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3. The only statutory reference which even arguably might apply to the AIA is A.R.S. § 15-348 which provides: "A governing board or an interscholastic athletic association may permit common school students to participate in practice sessions of noncontact sports with secondary school students."

^{4/}The AIA is distinguishable from a nonprofit hospital association leasing a public hospital from a hospital district pursuant to A.R.S. §§ 48-1910, -1911, because the hospital association exercises powers that are statutorily required to be delegated by a political subdivision to operate a district-owned hospital for the benefit of district residents. See Ariz. Att'y Gen. Ops. I85-088, I84-091.