

To: Donald M. Peters

March 30, 2000
Re: Conditions Relating to Contributions
of Land or Money to Public Schools
100-005
(R00-010)

Miller, LaSota & Peters, P.L.C

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), this Opinion revises the opinion you prepared for the President of the Dysart Unified School District No. 89 Governing Board and submitted to this Office for review.⁽¹⁾

Questions Presented

1. Can the governing board of a school district legally make contractual promises to a private party regarding how schools will be built or operated in return for a contribution of money or land?
2. Can the governing board of a charter school legally make contractual promises to a private party regarding how a charter school will be built or operated in return for a contribution of money or land?
3. Can a private entity that is involved in the operations of an existing or proposed charter school make valid and binding contractual promises to another private party regarding how a charter school will be built or operated?

Summary Answers

1. A school district governing board cannot make contractual promises to a private party in exchange for a donation of money or land that are contrary to statutory or constitutional requirements or are inconsistent with the district's public trust obligations.
2. A charter school governing board cannot make contractual promises to a private party in exchange for a donation of money or land that are contrary to statutory or constitutional requirements or are inconsistent with the charter school's public trust obligations.
3. Because the charter school governing board is responsible for policy and operational decisions, it must authorize agreements concerning the operations of the charter school. Before a charter school is established, a charter school applicant may make agreements concerning a proposed charter school, but, those agreements must be consistent with the laws governing charter schools and with the charter school's public trust obligations.

Background

According to your opinion, as a result of recent rapid growth in the Dysart Unified School District ("District"), real estate developers have offered to donate land or cash to the school district.⁽²⁾ In return for these donations, certain developers have asked the District for contractual promises regarding how the school located on the donated land would be built or operated. When the District refused to make such contractual commitments, the developers withdrew their offers to donate land or money. In addition, the developers indicated that the same offer would instead be made to a charter school if the charter school would agree to the contractual conditions attached to the donation.

Analysis

A. A School District Governing Board's Ability to Make Contractual Promises to a Private Party in Exchange for a Donation of Money or Land Is Limited by the Laws Governing the District and by the District's Public Trust Obligations.

School districts are legislative creations, and school boards must exercise authority within the limits established by statute. *Tucson Unified Sch. Dist. No. 1 v. Tucson Educ. Ass'n*, 155 Ariz. 441, 442-43, 747 P.2d 602, 603-04 (App. 1987). In addition, the Arizona Supreme Court has held that school districts owe trust obligations to the public.

School districts are created by the state for the sole purpose of promoting the education of the youth of the state. All their powers are given them and all the property which they own is held by them in trust for the same purpose, and any contract of any nature which they may enter into, which shows on its face that it is not meant for the educational advancement of the youth of the district but for some other purpose, no matter how worthy in its nature, is *ultra vires* and void.

Prescott Community Hosp. Comm'n v. Prescott Sch. Dist. No. 1, 57 Ariz. 492, 494, 115 P.2d 160, 161 (1941) (lease of school property to hospital was *ultra vires* and void). Therefore, although donors may generally attach conditions to their donations, *Dunaway v. First Presbyterian Church*, 103 Ariz. 349, 351-52, 442 P.2d 93, 95-96 (1968), the ability of school districts to agree to certain conditions is limited. In particular, any donation of land or money must be consistent with the laws governing school districts. Ariz. Att'y Gen. Op. 179-241; see also Ariz. Att'y Gen. Op. 188-056 (district may accept donation of land that reverts to donor if not used for school purposes within set period of time). Moreover, because of their obligations to serve the public interest, school district governing boards may not enter into agreements that restrict their ability to make future policy decisions in response to changing conditions. *School Dist. No. 69 v. Altherr*, 10 Ariz. App. 333, 338-39, 458 P.2d 537, 542-43 (1969), *overruled in part on other grounds by Marana Elementary Sch. Dist. No. 6 v. Wildermuth*, 16 Ariz. App. 171, 173, 492 P.2d 420, 422 (1972).

Your opinion indicated that one developer asked for a contractual term that gave enrollment preference to students living within the particular real estate development. A school district may not enter such an agreement. Pursuant to A.R.S. § 15-821, with limited exceptions, a district must admit students from within the district. Moreover, the governing board must fulfill this statutory responsibility in a manner that is in the best interests of children throughout the district. See *Dick v. Cahoon*, 84 Ariz. 199, 203, 325 P.2d 835, 837 (1958) (public officers must exercise discretion for the public interest, not the private interests of individuals or groups of persons). Based on the statutory obligation of districts to serve the entire district, and the prohibition against entering agreements that limit the policy-making ability of the school board, the district may not enter an agreement granting enrollment preferences to students in certain developments.

B. Charter Schools Cannot Make Contractual Promises to a Private Party in Exchange for Land or Money That Are Inconsistent with the Laws Governing Charter Schools or With Their Public Trust Obligations.

Charter schools are public schools, and their purpose is to educate Arizona's youth. See A.R.S. § 15-181(A). In addition, like traditional public schools, charter schools have governing bodies that are responsible for policy and operational decisions. A.R.S. § 15-183(E)(8). Like traditional public schools, charter schools are also supported by public funds. This Office has previously

observed that, "State aid paid to charter schools for their educational services is substantially similar to the State aid paid to other public schools and the core requirements imposed on charter schools are also imposed on public schools . . ." Ariz. Att'y Gen. Op. I98-003. Because charter schools, like district schools, are public schools "created by the State for the sole purpose of promoting the education of the youth of the State," charter schools owe trust obligations to the public. See *Prescott Community Hosp. Comm'n*, 57 Ariz. at 494, 115 P.2d at 161 (school district public trust responsibilities).

As statutory creations, charter schools cannot agree to conditions that violate statutory or constitutional requirements that apply to charter schools. See Ariz. Att'y Gen. Op. I79-241 (school districts may only agree to conditions that comply with State law). A charter school must also ensure that any agreements with third parties comply with the terms of its charter. See A.R.S. § 15-183(E) (describing charter). In addition, as public schools with public trust obligations, charter schools are prohibited from entering into agreements that restrict their ability to make policy for the charter school in order to meet changing conditions. See *Altherr*, 10 Ariz. App. at 338-39, 458 P.2d at 542-43.

The fact that some charter schools are operated by private entities does not alter this analysis. Cf. *Hertz Drive-Ur-Self System, Inc. v. Tucson Airport Authority*, 81 Ariz. 80, 83-84, 299 P.2d 1071, 1073 (1956) (private corporation serves public rather than private function in operating airport). All charter schools are public schools, regardless of whether they are operated by public bodies, private persons, or private organizations. A.R.S. §§ 15-101(3), -181(A). All charter schools may contract, sue and be sued, and hold property. A.R.S. § 15-183(H), (U). Thus, charter schools are distinct legal entities, with legal responsibilities independent of their public or private operators. Cf. *Jarvis v. Hammons*, 32 Ariz. 124, 129, 256 P. 362, 364 (1927), *on reh'g*, 32 Ariz. 318, 257 P. 985 (1927) (concluding that school districts are distinct legal entities).⁽³⁾

The specific example cited in your opinion - an agreement to give an enrollment preference to students living within a particular real estate development - would violate A.R.S. § 15-184(A), which requires charter schools to admit all eligible pupils who submit a timely application, unless the school is filled to capacity.⁽⁴⁾ Therefore, charter schools, like school districts, cannot enter into such agreements.

C. The Charter School Governing Board Must Make Decisions Consistent With the Laws Governing Charter Schools.

A charter school's governing board is the only entity that may make decisions regarding the design or operation of an existing charter school. See A.R.S. § 15-183(E)(8) (governing body is responsible for school policy and operations). The charter school governing board must make decisions for the charter school that are consistent with the laws governing charter schools and the charter school's obligation to act in the public interest. A charter school applicant may make agreements before the charter school is formed. See A.R.S. 15-183(A) (charter school application may include a financial plan and a description of the school's facility). However, those agreements must be consistent with the laws governing charter schools and with the charter school's obligation to act in the public interest.

Conclusion

Because district schools and charter schools are public schools financed by public funds that provide education for the children in this State, both owe trust obligations to the public. School districts and charter schools are prohibited from making promises, contractual or otherwise, to

private parties that are inconsistent with the laws that govern them or with their obligations to serve the public interest.

Janet Napolitano
Attorney General

1. Your opinion raised a number of issues that are not addressed here because they are not necessary for the analysis.
2. Section 15-2041(F), A.R.S., provides an incentive to school districts that acquire land by donation from private parties. In those circumstances, the School Facilities Board must pay the school district twenty per cent of the donated land's fair market value, which the district can use for academic purposes.
3. Section 15-183(B), A.R.S., provides that "[t]he sponsor of a charter school may contract with a public body, private person or private organization for the purpose of establishing a charter school pursuant to this article." Pursuant to this statute, if the State Board of Education, the State Board for Charter Schools, or a school district chooses to act as a sponsor for a charter school, the sponsoring entity may contract with any one of the listed entities - a public body, a private person, or a private organization - for the formation of a charter school. This provision does not, as your opinion suggests, provide for a discretionary contract that may or may not be formed by the sponsor and the public body, private person or private organization. Instead, the "contract" contemplated by A.R.S. § 15-183(B) is the actual charter, the issuance of which creates the charter school.
4. There are a few, limited exceptions to this requirement. Pupils who attended the charter school the previous school year and their siblings are given an enrollment preference, and a school-district-sponsored charter school must give preference to those students who reside within the sponsoring district's boundaries. A.R.S. § 15-184(A).

 [Back to 2000 Opinions](#)

