

To: The Honorable Bill Brotherton

Arizona House of Representatives

April 6, 2000
Re: Acquisition of Land for School Sites
I00-006
(R99-062)

Questions Presented

You have asked the following questions:

1. Does Arizona Revised Statutes ("A.R.S.") § 15-2041(F) require that a school district accept a donation of land for a school site instead of a donation of money when offered the choice by a potential donor?
2. If not, does a governing board's fiduciary duty require that it make decisions regarding potential gifts in the best interests of the school district?

Summary Answers

1. Section 15-2041(F), A.R.S., does not require that a school district governing board accept a donation of land instead of a donation of money.
2. In deciding whether to accept a donation of land or money, a school district governing board must act in the best interests of the public, focusing on its responsibility to promote education. This determination cannot be made in the abstract, but rather requires the governing board to analyze the specific facts of the transaction.

Background

Among other responsibilities, the School Facilities Board ("SFB") administers the New School Facilities Fund ("Fund"), which provides monies to school districts for constructing new school facilities and acquiring land for new schools. A.R.S. § 15-2041. School districts must develop and annually update a capital plan that includes "long term projections of the need for land for new schools." A.R.S. § 15-2041(B)(3). If the capital plan indicates a need for land within the next ten years, the district submits its plan to the SFB and requests the necessary funds. A.R.S. § 15-2041(C). The SFB is charged with distributing "monies needed for land for new schools so that land may be purchased at a price that is less than or equal to fair market value and in advance of the construction of the new school." A.R.S. § 15-2041(F). If a school district obtains a donation of land for an appropriate school site, thereby relieving the SFB of the need to fund the acquisition of a school site, the SFB will give the school district monies from the Fund equal to twenty percent of the fair market value of the donated land. *Id.* Your opinion request described two scenarios in which a developer may provide a school district with the resources for a new school site. In the first scenario, a developer simply donates a parcel of land to a school district for a new school. If that happens, and the SFB approves the site as appropriate for a new school, the SFB would give the school district twenty percent of the fair market value of the donated land. See A.R.S. § 15-2041(F). In the second scenario, the developer sets aside a parcel of land as a future school site (which the school district may purchase with funding from the SFB), and, in addition, the developer gives the school district a cash donation equal to the fair market value of the land. In both scenarios, the school district does not have to expend its own money to acquire the land, and the school district receives cash in addition to receiving the land.

The main differences between the two scenarios are the amount of cash the school district

receives and the amount the SFB pays to fulfill its statutory responsibilities. If the school district accepts the cash donation, the district receives more cash than it does by accepting a donation of land, because it receives the full fair market value from the developer instead of twenty percent of that value from the SFB. However, when the school district accepts cash instead of a donation of land, the SFB pays more than it would have paid had the school district chosen to accept a donation of land. In that situation, the SFB pays the fair market value for the purchase of the land, instead of paying the school twenty percent of the land's fair market value under A.R.S. § 15-2041(F).

The different scenarios also affect the disbursement of the proceeds from a sale of the property. If the property has been donated to the school district, the district retains any proceeds

if the property is sold. If the SFB purchased the land, the SFB receives any proceeds from the sale of the property. See A.R.S. § 15-2041(F).

Analysis

A. The Statutes Do Not Require Districts to Accept Donations of Land Instead of Donations of Money.

The jurisdiction and powers of any state agency are strictly limited by the terms of the statute that creates the agency. See, e.g., *Schwartz v. Superior Ct.*, 186 Ariz. 617, 619, 925 P.2d 1068, 1070 (App.1996). The statutes governing the SFB address only donations of land to districts. Specifically, A.R.S. § 15-2041(F) provides:

If a school district acquires real property by donation at an appropriate school site approved by the . . . [SFB], the [SFB] shall distribute an amount equal to twenty percent of the fair market value of the donated real property that can be used for academic purposes.

The other provisions addressing the SFB's acquisition of land for school sites establish:

- .The SFB shall distribute monies so that land for new schools may be purchased at a price that is less than or equal to fair market value and in advance of the construction of the new school. A.R.S. § 15-2041(F).
- .A school district shall request from the SFB monies for the acquisition of land if the school district's capital plan indicates a need for land within the next ten years. A.R.S. § 15-2041(C).
- .Monies provided for land shall be in addition to any monies provided for new school construction. A.R.S. § 15-2041(C).
- .The SFB may distribute monies for land to be leased for new schools if the duration of the lease exceeds the life expectancy of the school facility by at least fifty percent. A.R.S. § 15-2041(F).
- .The proceeds of any sale of land purchased or partially purchased with monies from the SFB shall be returned to the state fund from which it was appropriated and to any other participating entity on a proportional basis. A.R.S. § 15-2041(F).

These statutory provisions do not require a school district to accept a donation of land for a new

school site. Accordingly, there is no requirement that a school district accept a donation of land for a school site in lieu of a donation of money.⁽¹⁾

B. The School District Must Make Decisions Regarding Donations in a Manner Consistent with Its Fiduciary Obligations.

In general, all public officials must make decisions based on the public interest. Ariz. Att'y Gen. Op. 184-159. School district governing boards must exercise their power in a manner that serves the purpose for which they exist, which is to educate the youth of the district. *Prescott Community Hosp. Comm'n v. Prescott Sch. Dist. No. 1 of Yavapai County*, 57 Ariz. 492, 494, 115 P.2d 160, 161 (1941).

The school district must be guided by the best interests of the public in its decisions. This Office cannot opine as to what decision a board should make in the abstract, because each decision turns on its unique facts. See Ariz. Att'y Gen. Op. 198-006 at 2 n.2. The governing board must make this decision in a manner consistent with its public trust obligations based on the specific facts of the transaction.

Conclusion

A school district is not statutorily required to accept donations of land in lieu of donations of money. A school district governing board facing such a choice must make its decision consistent with its public responsibilities and based on the specific facts of the transaction.

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1. The practical effect of a school district foregoing a donation of land and accepting cash instead is that the State taxpayers end up paying for the purchase of the land for the school district, and these costs to the State could have been avoided if the developer had donated the site to the district. If a different outcome is desired, a legislative change is necessary.

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