

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL March 18, 2008	No. I08-002 (R07-032) Re: Availability of Funding for Water Lines Adjacent to District Property
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TO: Kellie Peterson, Esquire
Mangum, Wall, Stoops & Warden, P.L.L.C.

You have submitted to the Attorney General’s Office for review an opinion that you prepared for the Camp Verde Unified School District (“District”) regarding the availability of funding under the Adjacent Ways statute, Arizona Revised Statutes (“A.R.S.”) § 15-995 (“Adjacent Ways”), to construct a two-mile water line from the school district property to the municipal water supply in order to comply with the orders of the State Fire Marshall and the Arizona Department of Environmental Quality.¹ You concluded in your opinion that the District cannot use Adjacent Ways funds because the water line was not a project designed to provide physical access to the school. Additionally, you concluded that Adjacent Ways monies cannot be used to fund improvements that are more than one-quarter mile from the school property.

Finally, you concluded that the SFB’s Emergency Deficiencies Correction Fund, A.R.S. § 15-

¹ The Arizona School Facilities Board (“SFB”) has agreed that an “emergency” as defined in A.R.S. § 15-2022(E) exists and has agreed to fund improvements needed on the school site.

2022 (“Emergency Fund”), can fund the water line’s construction. We have revised your opinion to clarify that the use of Adjacent Ways funds to improve public ways off school property is not restricted to projects that provide physical access to school property.

Additionally, we have revised your opinion to clarify that Adjacent Ways funds are not restricted to being used within one-quarter mile of school property.

Questions Presented

1. May the District use Adjacent Ways funding to construct a water line that is not being built to assure safe ingress to and egress from public school property?

2. May the District use Adjacent Ways funding to extend a water line from the school site for more than one-quarter mile to the closest municipal water line?

Summary Answer

1. The Adjacent Ways statute does not restrict the use of the funds that it makes available for projects off the school site to projects that assure safe ingress to and egress from school property.

2. The Adjacent Ways statute does not restrict the use of the funds that it makes available for projects off the school site to projects that are within one-quarter mile of school property.

Background

The District has been informed that its current on-site well does not comply with applicable fire codes and that it will not meet the water quality standard for arsenic that became effective in January 2008. The District determined that the most financially effective long-term solution was to construct a two-mile water line from the school property to the municipal water supply. The District applied to the SFB for funding from the Emergency Fund. In a letter dated

October 22, 2007, the SFB's Executive Director recommended that the District pursue Adjacent Ways funding for the off-site costs because the SFB had a longstanding policy of not funding costs related to off-site developments.

The District contends that Adjacent Ways funding is inappropriate for the water line extension for two reasons. First, the District contends that Adjacent Ways funding is limited to projects that provide physical access to schools and that a water line does not provide such access. The District further contends that even if a water line could be deemed to provide such access, the two-mile distance does not fit within the established meaning of "adjacent," which the District has defined as being no more than one-quarter mile from school property. Based on its conclusion that Adjacent Ways funds cannot be used to construct the water line, the District states that the SFB must pay for the off-site improvement.

Analysis

The Adjacent Ways statute provides a funding mechanism (1) that enables school districts to construct certain improvements, including utility lines, along any public way that is adjacent to school district property and (2) that permits school districts to pay for the improvements by levying a special assessment upon the taxable property in the school district.

The relevant portion of the Adjacent Ways statute, A.R.S. § 15-995(A), states as follows:

The governing board of a school district may contract for constructing, maintaining or otherwise improving any public way adjacent to any parcel of land owned by the school district or leased for school purposes by the school district, or an intersection of any public way adjoining a quarter block in which the parcel of land is situated, and for the construction of sidewalks, sewers, utility lines, roadways and other related improvements in or along such streets and intersections, and to pay for such improvements by the levy of a special assessment upon the taxable property in the school district. A school district shall not use any portion of the monies generated from the special assessment for any construction, maintenance or other improvements to the school district's

property except improvements necessary to assure the safe ingress to and egress from public school property directly adjacent to the public way for buses and fire equipment.

The primary goal of statutory construction is to find and give effect to the Legislature's intent. *See Mail Boxes, Etc., U.S.A. v. Indus. Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The best and most reliable indicator of that intent is the statute's own language. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). "When the statute's language is not clear, [courts] determine legislative intent by reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose." *Id.* A statute's individual provisions must be considered in the context of the statute as a whole to achieve a consistent interpretation. *State v. Gaynor-Fonte*, 211 Ariz. 516, 518, 123 P.3d 1153, 1155 (App. 2005).

The Adjacent Ways statute authorizes a school district's governing board to levy a special assessment on the taxable property in the school district to pay for certain improvements that the school site or its occupants will use. A.R.S. § 15-995(A). Subsection A of the statute addresses the use of adjacent ways monies under two specific circumstances. In the first circumstance, the funds are used to improve public ways that are adjacent to school property—that is, they are used off-site. In the second circumstance, the funds are used on the school property to provide safe ingress and egress for buses and fire equipment—that is, they are used on-site. The District's proposed use of the funds to construct a water line off-site along the public way is subject to subsection A's first sentence, which concerns off-site use. It is not restricted by the language in subsection A's second sentence, which concerns only on-site use.

Accordingly, the District's construction of the water line off the school property is not subject to any public ingress or egress restrictions.

The next issue is whether the District is precluded from using the Adjacent Ways funds more than the one-quarter mile from the school site. The statute does not define the word "adjacent." *See* A.R.S. § 15-995. When statutory terms are undefined, courts look to the plain meaning of the terms. *See, e.g., Mail Boxes*, 181 Ariz. at 121, 888 P.2d at 779. Arizona Attorney General Opinion I90-098 concluded that a school district could use Adjacent Ways funds for improvements that did not abut the school property for their entire length but were adjacent to it. In doing so, the Opinion relied on previous Arizona Attorney General Opinions and case law from other jurisdictions that stated that "adjacent" did not require "contiguousness" or "abutting or touching" but meant "in the neighborhood of," "in the vicinity of," or "within a reasonable distance of" the property in question. (Internal quotation marks and citations omitted.) The public way at issue in the Opinion happened to be one-quarter mile from the school site. The Opinion did not discuss the improvement's distance from the school site, and none of its language would support the conclusion that one-quarter mile from a school site was the furthest distance at which one could use Adjacent Ways funds. In fact, none of the prior Opinions that it cited addressed the issue of how far an improvement could be from school property and still be considered "adjacent" to it. The prior Opinions were fact-specific and recognized that the term "adjacent" was a relative one that depended on the particular facts and circumstances of the funds' anticipated use. *See id.* (stating that the proposed improvements at issue would upgrade the existing connecting road and construct a second connecting road to provide safe access to the school). Accordingly, it can only be concluded from the Opinion that under the specific facts and circumstances at issue in the Opinion, the public way one-quarter

mile from the school site was “adjacent” to the site. However, there is no language in the Opinion from which to conclude that a location more than one-quarter mile away from school property was too far to be considered adjacent to it.

It is also instructive that the Legislature used the word “adjacent” differently depending upon whether the funds at issue were to be used on-site or off-site. Specifically, with respect to the on-site use of funds, the Legislature used the phrase “directly adjacent” to describe the physical relationship between the on-site ingress and egress and the public way. The use of the word “directly” clearly implies that a close physical proximity is required between the on-site use of the funds and the public way, although the statute does not require that the public way be contiguous to or abutting the school site. Therefore, by comparison, use of the word “adjacent” alone with respect to off-site improvements necessarily contemplates a further permissible distance from the school site for them than for on-site use improvements. Accordingly, the determination of whether Adjacent Ways funds can be used for a specific off-site improvement is fact-specific.

Your Opinion correctly noted that the applicable statute and the rules promulgated pursuant to it neither prohibit nor require the SFB to fund an off-site project. The statutory language and legislative history of A.R.S. §§ 15-2001 to -2041 provide no guidance to the SFB regarding the funding of off-site improvements. We understand, however, that the SFB has a longstanding general policy of not funding off-site improvements that Adjacent Ways monies have traditionally funded. The interpretation of a statute by an administrative agency such as the SFB that administers it is entitled to deference. *See, e.g., Better Homes Constr., Inc. v. Goldwater*, 203 Ariz. 295, 299, 53 P.3d 1139, 1143 (App. 2002) (stating that the court accords great weight to an agency's interpretation of a statute); *Berry v. State Dep’t of Corr.*, 145 Ariz.

12, 13, 699 P.2d 387, 388 (App. 1985) (stating that the “historical statutory construction placed upon a statute by an executive body administering the law will not be disturbed unless clearly erroneous”). As long as the SFB ensures that it provides the funding necessary to comply with its statutory obligations, the statutes do not require it to fund off-site improvements for which Adjacent Ways funding is available. The application of the SFB statutes to this particular fact-specific situation, however, is beyond this Opinion’s scope.

Conclusion

We revise your opinion to clarify that Adjacent Ways funds used to construct projects off school property are not restricted to projects that provide safe ingress to and egress from school property. They may therefore be used to construct a water line off school property. Furthermore, such funds may be used more than one-quarter mile from school property. Additionally, the SFB is not statutorily prohibited from funding off-site improvements, but it may have a general policy of not funding such improvements.

Terry Goddard
Attorney General