

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>JANET NAPOLITANO ATTORNEY GENERAL</p> <p>March 15, 2002</p>	<p>No. I02-003 (R02-004)</p> <p>Re: Leasing school property under A.R.S. § 15-1105</p>
--	--

TO: Donald M. Peters
Miller, LaSota & Peters, PLC

Questions Presented

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-1105, may a school district lease school facilities to a private company that provides dental services to children?

Summary Answer

A school district may lease school facilities to a private company that provides dental services to children, provided that the school district governing board concludes that providing access to dental services is a civic purpose in the interest of the community under A.R.S. § 15-1105. The school district must charge the organization a reasonable use fee and require proof of liability insurance.

Background

Pursuant to A.R.S. § 15-253, you submitted for this Office's review an opinion you wrote to the superintendent of the Dysart Elementary School District ("District") concerning whether the district could lease school property to a company that provides dental services to children.¹ You concluded that because the proposal involved leasing school property to a for-profit company, the lease was not authorized by A.R.S. § 15-1105. This Opinion revises your analysis and conclusion.

According to your opinion, a company proposes to lease school property to provide dental services to children. The company would charge for the services. You note that similar operations exist on campuses of other Arizona school districts. The information available indicates that approximately 70 percent of the children the company serves are covered by the Arizona Health Care Cost Containment System ("AHCCCS") and others have health insurance. You indicated that students not covered by AHCCCS or insurance may pay a discounted rate for the services. The proposed lease is an at-will arrangement that either the District or the company could terminate at any time.

The question centers on the scope of A.R.S. § 15-1105(A), which provides:

The governing board, or the superintendent or chief administrative officer with the approval of the governing board, may lease school buildings, grounds, buses, equipment and other school property to any person, group or organization for any recreational, educational, political, economic, artistic, moral, scientific, social or other civic purpose in the interest of the community, including extended day resource programs. The governing board, superintendent or chief administrative officer shall charge a reasonable use fee for the lease of the school property, which fee may include goods contributed or services rendered by the person, group or organization to the school district.

¹ The materials submitted for review indicate that the company also provides dental services to the elderly but suggests that the services at the school property would focus on children. It is not clear whether non-students would receive services at that location.

The governing board must require proof of liability insurance for such leases. A.R.S. § 15-1105(C). Monies from these leases are deposited with the county treasurer and credited to the civic center fund of the school district. A.R.S. § 15-1105(D). The uncompensated use of school property is permitted only for "school related groups or organizations whose membership is open to the public and whose activities promote the educational function of the school district as determined in good faith by the school district's governing board." A.R.S. § 15-1105(B).

Analysis

The issue is whether A.R.S. § 15-1105(A) could permit a lease of school property to a for-profit entity that provides dental services to children. The statutory language authorizes a school district to lease "school buildings, grounds, buses, equipment and other school property to *any* person, group or organization for *any* recreational, educational, political, economic, artistic, moral, scientific, social or other civic purpose in the interest of the community." A.R.S. § 15-1105(A) (emphasis added).

Section 15-1105(A) uses broad language that could encompass a wide range of activities. The words "recreational, educational, political, economical, artistic, moral, scientific or other civic purposes" are not defined, and, in the absence of a statutory definition, the ordinary meanings of those terms apply. *See Mail Boxes v. Indus. Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995); A.R.S. § 1-213. The list of purposes in A.R.S. § 15-1105(A) does not specifically address health care issues, although there might be an argument that there may be an "economic" or "social" purpose to such services. *See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY* 2, 161 (1993) ("Webster's") ("social" may encompass activities that concern "the welfare in human beings as members of society.") More likely, the question is whether providing access to such services could

be an "other civic purpose in the interest of the community." A.R.S. § 15-1105(A). "Civic" can mean "concerned with or contributory to general welfare and the betterment of life for the citizenry of a community," and "devoted to improving health, education, safety, recreation, and morale of the general public through nonpolitical means." Webster's at 412. These broad definitions are consistent with the comprehensive list of purposes for which an organization may lease school property. *See In re Julio L.*, 197 Ariz. 1, 4, 3 P.3d 383, 386 (2000) (when general term follows specific term, general is interpreted as of the same class or type as the specific terms).

This Office has previously approved of a variety of leases of school property, including leases to private day care providers, Ariz. Att'y Gen. Op. No. I81-014, to a non-profit corporation that will use the school facilities for a summer program, Ariz. Att'y Gen. Op. No. I79-073, to religious organizations (subject to certain parameters to comply with constitutional principles governing the separation of church and State), Ariz. Att'y Gen. Op. No. I87-033, and to a commercial nursery as part of an educational project (provided that the project fell within the curriculum requirements established by the State Board of Education), Ariz. Att'y Gen. Op. No. I84-136. A broad definition of "civic" purpose and the other uses within A.R.S. § 15-1105(A) is consistent with the range of leases this Office has approved in earlier Attorney General opinions.²

A lease to an organization that provides dental services could, under some circumstances, serve a civic purpose in the interest of the community within A.R.S. § 15-1105(A). For example,

²Earlier opinions at times blend discussions of 15-1105 (and its predecessor statute) with discussions of other more general statutes that authorized leases. For example an Opinion concerning leasing teacherages to district employees not statutorily entitled to such housing concluded that such rentals were not a "civic purpose" within 15-1105, but the district had authority to lease the property for fair market value under general leasing authority in former 15-341. Ariz. Att'y Gen. Op. No. I82-069. Another Opinion concurred with the conclusion that a district had the authority to lease unused school property to a developer. Ariz. Att'y Gen. Op. No. I83-055. These Opinions raise questions about the extent of a district's leasing authority outside A.R.S. § 15-1105. This Opinion will not address these issues and, instead, analyzes only A.R.S. § 15-1105.

if a school district is in an isolated area where children may have limited access to dental services, providing such access could be a useful service to the community. This is a determination that a local governing board must make based on the needs and interests of the community the district serves.

The fact that the entity proposing to lease school property is a for-profit company does not preclude such a lease. The statute broadly authorizes a school district to lease school property to "any person, group or organization" for the types of purposes listed and "any other civic purpose in the interest of the community." A "person" generally includes "a corporation, company, partnership, firm, association or society as well as a natural person." A.R.S. § 1-215. "Group" is "a number of individuals bound together by a community of interest, purpose or function." Webster's at 1004. "Organization" is also broadly defined as "something organized" or "a group of people that has more or less constant membership, a body of officers, a purpose and usually a set of regulations." *Id.* at 1590. These terms do not limit leases to non-profit entities. Thus, a lease to a for-profit entity is permissible if the school board determines that the lease serves a legitimate purpose within 15-1105(A). This conclusion is consistent with the earlier Attorney General's Opinion that a lease to a commercial nursery for a proposed educational program was permissible (provided that the educational program fit within the school's curriculum and it fulfilled other statutory requirements relating to leases). *See* Ariz. Att'y Gen. Op. No. I84-136. It also is consistent with the Opinion approving leases to private day care centers, which did not distinguish between for-profit and non-profit entities. *See* Ariz. Att'y Gen. Op. No. I81-014.

The other question that this lease raises is whether a company may lease school property to an entity that intends to provide a service to students for a fee (or to be paid for through insurance

or a government program such as AHCCCS). Section 15-1105 expressly applies to extended day resource programs which involve programs that provide a service to students at the school on an on-going basis.³ A non-profit corporation leasing school property to provide an extended resource program may charge a fee to students for that program. Ariz. Att'y Gen. Op. No. I99-021. Thus, a lease under § 15-1105 may involve a program that provides services or programs to children who attend the schools, and an entity leasing school property pursuant to A.R.S. § 15-1105(A) may charge those receiving its services or participating in its programs a fee.

Based on this analysis, if the school district governing board determines that providing access to dental services serves a civic purpose in the interest of the community, the district may lease school property for that purpose under A.R.S. 15-1105(A). The school district must exercise its discretion "with great care, in a reasonable manner, . . . in good faith, . . . with regard only for the public interest and not the private interest of any individual or group." *Dick v. Cahoon*, 84 Ariz. 199, 203, 325 P.2d 835, 837 (1958). As is true of any decision, the school board must exercise its fiduciary obligation to act in the best interest of the school district. *See* Ariz. Att'y Gen. Op. No. I90-066 (approving school district contracts with private for-profit entity for "Channel One" programming but cautioning school districts to exercise fiduciary obligations to obtain maximum return under the contract). In some circumstances, if a district has space to lease out, a competitive

³Extended day resource programs are

activities offered on school property before or after school or at times when school is not customarily in session for children who are of the age required for kindergarten programs and grades one through eight. The program may be offered for children who are of the age required for a kindergarten program or for one grade or for any combination of kindergarten programs and grades. Activities may include physical conditioning, tutoring, supervised homework or arts activities.

A.R.S. § 15-1105(E).

bidding process for that space may ensure that the district receives the maximum return for that lease and that those interested in such a lease have an equal opportunity to receive it. As the Supreme Court has noted, even though bids are not legally required, a public entity could not "at its uncontrolled pleasure arbitrarily fix upon terms with one contractor to the utter exclusion of the offers of another contractor, and upon terms disadvantageous to the public." *Hertz Drive-Ur-Self Sys. v. Tucson Airport Auth.*, 81 Ariz. 80, 85, 299 P.2d 1071, 1074 (1956).

Although the district is authorized to lease school property to private entities, it cannot subsidize or enter joint ventures with such entities. *See* Ariz. Const. art. IX, § 7; Ariz. Att'y Gen. Op. No. I84-136. The entity leasing the property must pay a reasonable fee and provide proof of liability insurance, A.R.S. § 15-1105, and may not use any resources of the district other than those for which it has contracted, Ariz. Att'y Gen. Op. No. I83-099. The school district must also ensure that any lease under 15-1105 does not interfere with the school district's responsibilities to educate children and to do so in a safe environment. *See generally* A.R.S. §§ 15-341, -342 (duties of school district governing board); *cf. State v. Serna*, 176 Ariz. 267, 271, 860 P.2d 1320, 1324 (App. 1993) (acknowledging duty with regard to student safety).

Because you reached a different conclusion regarding a district's ability to enter into this lease, this Opinion will briefly address some of the issues you raised. First, you concluded that such a lease was inappropriate under *Prescott Cmty. Hosp. Comm'n v. Prescott Sch. Dist.*, 57 Ariz. 492, 115 P.2d 160 (1941). There, that court rejected a "lease" of \$1 per year for use as a medical facility, concluding that the school was essentially giving a gift of school property. Section 15-1105 reflects the principles in *Prescott Community Hospital Commission* by permitting uncompensated use of school property only for groups whose work promotes the educational function of the school district.

57 Ariz. at 494, 115 P.2d at 161. Other entities that lease school property must pay a reasonable use fee. A.R.S. § 15-1105(A).

You also refer to an opinion that this Office declined to review in which the Pinal County Attorney concluded that a school district could not permit an employee to place a soda machine on campus and keep the money from the machine because this benefitted only the employee. Ariz. Att'y Gen. Op. No. 179-11. That issue is very different from a lease that could provide access to certain health services that may, in some circumstances, otherwise be unavailable.

Finally, you note legitimate concerns about the impact such leases have on competition and what other leases might be contemplated on school property. A school district governing board may properly consider these issues when determining whether to exercise its discretion to enter a lease. If the discretion of school district governing boards with regard to leases of school property under A.R.S. § 15-1105 is to be more limited this is a policy question for the Legislature to address.

Conclusion

A school district may lease school property to a company that provides dental services to children if the district governing board determines that the lease serves a civic purpose in the interest of the community and otherwise complies with the laws applicable to leases of school property.

Janet Napolitano
Attorney General