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OPINION NO. 2006-01

TO: David Nakagawara, Acting Community Development Director
FROM: Stephen M. Kemp, City Attorney
DATE: February 10, 2006
SUBJECT: Applicability of Land Use Regulations to Public Schools

QUESTION:

You have inquired in light of our 2005 opinion pertaining to the applicability of land use regulations to counties and special districts, how are such regulations applicable to schools.

OPINION:

For ease of reference we have attached a copy of our 2005 opinion to this Opinion. Additionally, this matter has been addressed informally in a memo from this office. The memo generally outlined the City's authority as follows:

> This memorandum is in response to the question you posed, "whether a school district (i.e. school development/building) has to adhere to local (i.e. the City's) codes. The answer is yes, a school district must comply with the local codes. A.R.S. § 34-461 does require subdivisions of the State to adhere to local codes.
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> As we had discussed in addition to the statute A.R.S. § 34-461 entitled Applicability of local codes; exception; definition, there is an Attorney General Opinion, 1986 Ariz. Op. Atty. Gen. 31 which supports the answer. In fact the opinion states that in 1984 A.R.S. § 34-461 was amended to provide that local building codes apply to the construction of public buildings, such public buildings include new construction of school district buildings. 1986 Ariz. Op. Atty. Gen. 31. The opinion goes on to acknowledge that any statements to the contrary in their other opinions pre-dating this amendment (i.e., 1986 Ariz. Op. Atty. Gen. 31), are now disapproved.

Clearly, A.R.S. § 34-461, et seq. this requires that school district buildings must comply with the adopted City uniform codes pertaining to buildings and

construction, unless specific legislation has been adopted to the contrary. Such a case is manufactured school buildings which are subject to a specific state building code.

School Districts are a legislative creation having only such power as is granted to them by the legislature. Oracle Elementary School District v. Mammoth High School District, 130 Ariz. 41, 633 P.2d 450 (App. 1981). It is not part of the county or state, rather it exercises powers of the state that the legislature has elected to delegate. Jarvis v. Hammons, 32 Ariz.124, 256 P. 362 (1927). Unlike cities, school districts have none of the rights and privileges of municipalities.

The state has elected to delegate to school districts a part of the state's responsibility under the Arizona Constitution to provide a general and uniform public school system. Ariz. Const. Art. XI, § 1. This responsibility is governmental, not proprietary in nature. Unlike the Arizona Board of Regents, the state has not delegated the power to regulate the construction and maintenance of buildings to the school district. Instead it has subjected school districts to regulation by the cities as to the construction of their buildings. A.R.S. § 34-461.

Arizona has adopted the general rule that cities have no right to zone properties used by other governmental bodies for governmental purposes. Book-Cellar, Inc. v. City of Phoenix, 150 Ariz. 42, 721 P.2d 1169 (App. 1986). Therefore a public school district does not have to obtain zoning for the location of a school on property within the City. As part of the function of the school district is the responsibility to provide transportation to eligible students. A.R.S.§§ 15-901, et seq. In order to execute this responsibility, the school district may locate transportation facilities for the schools in such locations as the school district determines to be necessary. Addison v. Dallas Independent School District, 632, SW2d 771 (Tex.Ct.App. 1982)

The City has provided for site plan review of all proposed development. This review applies a number of development related ordinances to an evaluation of the proposed use on the site. The application of each of these development related ordinances to a public school district project is dependent on whether it would interfere with the school district's governmental responsibility.

For example, the City cannot regulate the size, configuration and shape of a district building. Conversely, the City may impose its landscaping, traffic, utility, parking and access requirements, as a school district has not been delegated any of these powers by the legislature. In the site plan evaluation process, it must be recognized that the Ciy's requirements cannot be applied to prevent the school district from exercising its governmental responsibilities. In this regard,

the City may wish to elect to provide for administrative review of such site plans, as the standard of review is more limited that the review of non governmental function site plans.

Should you desire further information, please do not hesitate to contact this office.

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