



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

by

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ATTORNEY GENERAL

February 23, 2015

No. I15-001
(R14-017)

Re: Zoning Rights of
Charter School Leasing Facilities

To: Kimberly Yee
Arizona State Senator
Legislative District 20
Senate Education Committee Chair

Questions Presented

You have asked whether a county or municipality can prohibit a charter school that leases a facility from availing itself of the zoning relief provided by A.R.S. § 15-189.01.

Summary Answer

No, a county or municipality cannot prohibit a charter school that leases a facility from availing itself of the zoning relief that A.R.S. § 15-189.01 provides.

Background

The Arizona Legislature added A.R.S. § 15-189.01 to the charter school statutes in 1996. 1996 Ariz. Sess. Laws ch. 356, § 3. This provision classified charter schools as public schools for purposes of assessing zoning fees, site plan fees and development fees. A.R.S. § 15-

189.01(A). The section also provided that “[n]o political subdivision of the state may enact or interpret any law, rule or ordinance in a manner that conflicts with subsection A.” A.R.S. § 15-189.01(B). In 2009, the Legislature amended A.R.S. § 15-189.01 to clarify that charter schools should be treated as district schools with respect to zoning regulations. 2009 Ariz. Sess. Laws ch. 98, § 1. Specifically, the Legislature added the following language:

Municipalities and counties shall allow a charter school to be established and operate at a location or in a facility for which the zoning regulations of the county or municipality cannot legally prohibit schools operated by school districts, except that a county or municipality may adopt zoning regulations that prohibit a charter school from operating on property that is less than an acre in size and that is located within an existing single family residence zoning district.

A.R.S. § 15-189.01(A). The Legislature further clarified that charter schools should be treated like district schools in terms of zoning, stating that:

[a] charter school is subject to the same level of oversight and the same rules, hearing requirements, application requirements, ordinances, limitations and other requirements, if any, that would be applied to and enforced against a school that is operated by a school district. A municipality or county shall not enforce, or attempt to enforce, any ordinance, procedure or process against a charter school that cannot be legally enforced against a school district.

A.R.S. § 15-189.01(B). The only exceptions require municipalities to adopt procedures that expedite hearing and administrative reviews involving charter schools (A.R.S. § 15-189.01(D)) and to establish that charter schools are subject to applicable building codes (A.R.S. § 15-189.01(C)).

When this Office requested additional information, you explained that at least one municipality has indicated that charter schools operating in leased premises could not avail

themselves of this statute unless the property's owner was also a governmental entity and was thus exempt from municipal zoning requirements. Stated otherwise, the municipality indicated that if the property's owner was subject to zoning requirements, the charter school lessee would likewise be subject to zoning requirements.

Analysis

This Office has previously opined that when a school district uses a building or property for a public school, the school district is not subject to any local zoning laws of the municipality in which the school building is located.¹ Ariz. Att'y Gen. Op. I83-052. More specifically, the Opinion noted that school districts are political subdivisions of this State (*Amphitheater Unified School District No. 10 v. Harte*, 128 Ariz. 233, 234, 624 P.2d 1281, 1282 (1981)) and that political subdivisions are exempt from the regulations of other political subdivisions (*City of Scottsdale v. Municipal Court of Tempe*, 90 Ariz. 393, 368 P.2d 637 (1962)). Thus, if a municipality treats a charter school as it treats a district school for the purposes of zoning, the charter school should be exempt from the municipality's zoning regulations.

Arizona Revised Statute § 15-189.01 evinces a clear intent to ensure that municipalities do not impose zoning regulations on charter schools except to the extent they could do so on district schools. The language of A.R.S. § 15-189.01 (A) is clear on that point. The statute continues, "[a] municipality or county shall not enforce, or attempt to enforce, any ordinance, procedure or process against a charter school that cannot be legally enforced against a school district." A.R.S. §15-189.01(B). The statute's legislative history is consistent with this language. *See* HB 2099 Fact Sheet, 49th Leg., 1st Reg. Sess. (Ariz. 2009) ("HB 2099 classifies charter schools as public schools for the purposes of zoning in municipalities and counties.")

¹ School districts are subject to state fire code regulations. A.R.S. § 34-461; *also* Ariz. Att'y Gen. Op. I86-033.

There is no indication that this exemption depends on whether the political subdivision leases, rather than owns, the property. The statute does not distinguish between leased and owned premises. Furthermore, nothing in the legislative history indicates that the legislature intended to allow municipalities to treat schools that operate in leased premises differently than schools that operate in owned premises.²

Conclusion

A municipality cannot impose any zoning restriction on a charter school that leases its property that it could not impose on a district school or on a charter school that owns its property.

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² Practically speaking, permitting such a distinction would only affect charter schools, because district schools rarely operate in leased premises.