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May 7, 2019

Honorable Mark Brnovich
 Arizona Attorney General
 1275 West Washington Street
 Phoenix, Arizona 85007
agopinionrequests@azag.gov

Via U.S. Mail and Email

RE: Request for Legal Opinion – Application of A.R.S. §42-11104(A)

Dear Attorney General Brnovich,

Pursuant to your statutory authority under A.R.S. § 41-193(A)(7), please consider this letter a request for a written opinion from your office to answer the following legal question:

Whether commercial use of a school owned facility constitutes being “used or held for profit,” thereby disqualifying the facility from full property tax exemption pursuant to A.R.S. §42-11104(A)?

The question pertains to the tax consequences for the Colorado River Union High School District’s new Anderson Fieldhouse in Bullhead City, Arizona. The Anderson Fieldhouse website (<https://andersonautogroupfieldhouse.com/>) and all promotional materials indicate the property will be mixed use:

“Planners have designed the Fieldhouse with four primary missions: athletic, academic, community and commercial usage.”

Both the ownership and use of the property are to be considered when granting property tax exemption requests. *Kunes v. Samaritan health Service*, 121 Ariz. 413 (1979). In this matter, the property in question is owned by a local school district. If ownership were the only test, it is clear that the facility would qualify for exemption. However, A.R.S. §42-11104(A) reserves the exemption for educational property that

is “not used or held for profit.” The commercial use of the facility creates many questions regarding property tax status.

Laws exempting property from taxation are to be construed strictly, the presumption is against the exemption, and every ambiguity in the statute will be construed against it. *Verde Valley School v. County of Yavapai*, 90 Ariz. 180, 182, 367 P.2d 223, 225 (1961). Portions of school facilities used for commercial purposes “enjoy no exemption from real property tax.” *Id. At 184*. As applied to the Anderson Fieldhouse, and strictly construing the statutory exemption, it appears likely that the commercial use of the facility results in a property tax liability proportional to the commercial use.

The Arizona Attorney General has previously opined and approved a variety of leases of school property (Ariz. Att’y Gen. Op. No I81-014, Ariz. Att’y Gen. Op. No I79-073, Ariz. Att’y Gen. Op. No I87-033, Ariz. Att’y Gen. Op. No I84-136, and Ariz. Att’y Gen. Op. No I02-003). However, none of these opinions squarely address the commercial use of a school building and its effect on property tax exemption. In light of the very contentious nature of this question and the fact that it is an issue of first impression in Mohave County, we seek an opinion from the Attorney General.

Thank you for your time and consideration of this matter.

Sincerely,



Matthew J. Smith
Mohave County Attorney