

2002 AG Opinions

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December 16, 2002	No. 102-010 (R02-038) Re: School Bus Regulation
December 10, 2002	No. 102-009 (R02-056) Re: Department of Revenue Authority and Responsibilities Regarding Stadium Districts
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STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL December 16, 2002	No. I02-010 (R02-038) Re: School Bus Regulation
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TO: Dennis Garrett, Director
Department of Public Safety

Questions Presented

You have asked the following questions concerning the responsibilities of the Department of Public Safety ("DPS") for regulating school buses:

1. Are preschool programs, including Head Start, "schools" within the statutes and regulations governing school buses?
2. May a school transport students to and from home and school in passenger vans designed to transport ten or fewer persons?

Summary Answers

1. The statutes and regulations governing school buses do not apply to preschools, except for preschool programs for children with disabilities at public schools. Preschool programs are generally subject to regulation by the Department of Health Services ("DHS") pursuant to

A.R.S. §§ 36-881 to -893. Head Start is a federal program governed by federal statutes and regulations. Head Start programs operated by public or private agencies in this State must comply with the applicable federal requirements, as well as the State regulations established by DHS.

2. A vehicle that is designed for 10 or fewer people is not a "school bus" under State or federal law. The statutes do not require schools to use school buses to transport students to or from school.

Background

DPS is responsible for certifying school bus drivers and inspecting school buses to ensure that they meet state standards. *See* A.R.S. §§ 28-900(F) (school bus rules); -984 (school bus inspections); -3228 (school bus drivers); Arizona Administrative Code ("A.A.C.") R17-9-101 to -109. The rules governing school buses are adopted by the Department of Administration in consultation with DPS and a school bus advisory council. A.R.S. § 28-900(A). These rules are intended to "improve the safety and welfare of school bus passengers by minimizing the probability of accidents involving school buses and school bus passengers and by minimizing the risk of serious bodily harm to school bus passengers in the event of an accident." *Id.* The rules address standards for the design and equipment of school buses, inspection and maintenance of school buses, procedures for operating school buses, and other issues intended to ensure the safe operation of school buses. A.R.S. § 28-900(B). DPS is responsible for inspecting school buses to ensure that they meet the applicable standards. A.R.S. § 28-984. Federal laws also govern school buses, *see* 49 U.S.C. §§ 30112, 30125; 49 C.F.R. Pt. 571, and Arizona's requirements must be equal to or more restrictive than the federal requirements. A.R.S. § 28-900(C).

School bus drivers must also receive a certificate from DPS before they can operate a school bus transporting school children. A.R.S. § 28-3228(A). To be certified, a driver must submit fingerprints for a criminal records check, have a commercial driver's license with a passenger endorsement, meet specified requirements regarding his or her driving record, submit to a physical examination and drug and alcohol testing, and have training in first aid and other issues specified by rule. A.A.C. R17-9-102.

Analysis

A. Application of School Bus Regulations to Preschool Programs.

The regulatory system DPS administers applies to "school buses," which are defined as:

motor vehicle[s] that [are] designed for carrying more than ten passengers and that [are] either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

A.R.S. § 28-101(44).

This Office previously advised that the school bus regulations applied to both public and private schools.¹ Ariz. Att'y Gen. Op. No. 57-135. This conclusion is consistent with the current regulations governing school buses. These regulations define "school" as "a school as defined by A.R.S. § 15-101(19), accommodation school as defined by A.R.S. § 15-101(1), charter school as

¹When this Opinion was issued in 1957, the statutory definition of "school bus" was similar to the current definition: "a motor vehicle owned by a public or governmental agency or other institution, and operated for the transportation of children to or from school or privately-owned and operated for compensation for the transportation of children to or from school." Ariz. Att'y Gen. Op. No. 57-135 (quoting former A.R.S. § 28-141).

defined by A.R.S. § 15-101(3), or private school as defined by A.R.S. § 15-101(18)." A.A.C. R17-9-101.

Previous Opinions from this Office have not addressed whether preschool programs are "schools" for the purposes of the regulations governing school buses. To answer this question, an analysis of the definitions of "school" incorporated in the school bus regulations is necessary. Those regulations incorporate various definitions used in Title 15, which governs education. *Id.* Section 15-101(19) defines "school" as "any public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve." This definition includes charter schools and accommodation schools,² but does not include preschool programs except preschool programs for children with disabilities. A private school is defined in A.R.S. § 15-101(18) as "a nonpublic institution where instruction is imparted." This definition of "private school" is arguably broad enough to include a variety of private programs including preschool, higher education and a range of programs unrelated to formal academic instruction. Under that interpretation, the school bus regulations would not generally apply to public preschool programs (except for preschool for children with disabilities), but it would apply to all private preschool programs. That inconsistent

²An "accommodation school" is either:

- (a) a school which is operated through the county board of supervisors and the county school superintendent and which the county school superintendent administers to serve a military reservation or territory which is not included within the boundaries of a school district.
- (b) a school that provides educational services to homeless children or alternative education programs as provided in § 15-308, subsection B.

A.R.S. § 15-101(1).

A "charter school" is "a public school established by contract with a district governing board, the State board of education or the State board for charter schools . . . to provide learning that will improve student achievement." A.R.S. § 15-101(3).

application of the school bus regulations to public and private preschool programs is not supported by the language in A.R.S. § 28-101(44), which makes no distinction between public and private schools. In addition, other statutes suggest that the Legislature did not intend for the school bus regulations to apply to all preschool programs.

Preschool programs are generally regulated by DHS. *See* A.R.S. §§ 36-881 to -893. A "child care facility" subject to DHS regulation includes "any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor." A.R.S. § 36-881(3). "Child care" is broadly defined to include "the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes." A.R.S. § 36-881(2). DHS is required to establish rules "regarding the health, safety and well-being of the children to be cared for in a child care facility," and these rules must address "transportation safely to and from the premises," if transportation is provided by the facility. A.R.S. § 36-883(A)(1). DHS rules establish requirements for motor vehicles used to transport children and other safety issues relating to the transportation of children. A.A.C. R9-5-517.

The Legislature also specifically delineated what public and private school programs are subject to the DHS regulation. Public schools are generally exempt from DHS regulation except "[i]f a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed" by DHS for public school child care programs. DHS is required to prescribe "reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program" that

are comparable to the rules and standards prescribed for other child care programs. A.R.S. § 36-883.04. Similarly, DHS regulates child care programs that are operated at private schools after regular school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve at the school. A.R.S. § 36-884(4). These statutes demonstrate an effort by the Legislature to distinguish the child care programs subject to DHS regulations from kindergarten through twelfth grade public and private school programs.

If preschool programs were "schools" for the purposes of school bus regulations, two state regulatory systems -- the school bus regulations of DPS and the child care regulations of DHS-- would apply to their transportation of students. That does not appear to be the Legislature's intention. *Cf. Vega v. Morris*, 183 Ariz. 526, 905 P.2d 535 (App. 1995) (statutes are to be examined as a whole, harmonizing the sections). Rather, the statutes can be read to establish a complementary, but not duplicative, system of regulation. The regulation of school buses that DPS implements applies generally to transportation of students in kindergarten from twelfth grade, and of preschool students with disabilities in public school programs. *See* A.R.S. § 15-901 (definitions of school). DHS is generally responsible for the regulation of transportation involving preschool programs. *See* A.R.S. § 36-883 (A)(1).

Your opinion request specifically mentioned Head Start. Head Start is a federally-funded program designed "to promote school readiness" of low income children. 42 U.S.C. § 9831. Head Start programs may be operated by local public or private non-profit or for-profit agencies. 42 U.S.C. § 9836. The programs focus on children from low-income families "who have not reached the age of compulsory school attendance." 42 U.S.C. § 9833. Head Start programs may coordinate with local schools by, among other things, "collaborating on the shared use of transportation and

facilities." 42 U.S.C. § 9837(d)(2)(A). Because Head Start programs are aimed at preschool children, they would generally fall under DHS's jurisdiction. Federal regulations also govern transportation safety issues for Head Start programs. *See* 45 C.F.R. §§ 1310.3 to 1310.23.³

B. Using Vehicles that Transport Ten or Fewer People to Transport Students from Home to School and from School to Home.

You also asked whether schools may use passenger vans designed for ten or fewer persons to transport students from home to school or from school to home. A vehicle that is designed to transport ten or fewer passengers is not a school bus under either the State or federal definitions. *See* A.R.S. § 28-101(44); 49 U.S.C. § 30125(a)(1); 49 C.F.R. § 571.3(b). The definition of school bus in A.R.S. § 28-101(44) applies only to "a motor vehicle that is designed for carrying more than ten passengers." Federal law has the same requirement. 49 U.S.C. § 30125(a)(1) (defining a school bus as "a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary and secondary school students to or from school or an event related to school.)"

The regulations that DPS implements regarding school buses establish the requirements for school buses, but do not mandate their use to transport students to or from school. *See* A.R.S. § 28-900(F). The statutes governing school districts establish that school districts may, but are not required to, provide transportation for students to or from school. A.R.S. § 15-342(12) (district may provide transportation "for any child or children if deemed for the best interest of the district"). The

³These regulations concerning transportation of children in Head Start programs were recently promulgated by the Health and Human Services (HHS). A different set of regulations govern school buses under the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") (codified at 49 U.S.C. § 30101 to 30170). In 2000, the National Highway Transportation Safety Administration (NHTSA) advised HHS that Head Start programs were not "schools" for the purposes of the school bus safety provisions in the Vehicle Safety Act. Letter from Frank Seales, Jr., NHTSA Chief Counsel, to Helen Taylor, Associate Commissioner Head Start Bureau, Dep't of Health and Human Services. (August 3, 2000).

school finance statutes also recognize that schools may use vehicles that are designed for fewer than 11 persons. School districts receive funding based on the annual mileage buses are driven. *See* A.R.S. §§ 15-901(7), -945. These statutes incorporate the definition of "school bus" from A.R.S. § 28-101(44), "except that the passenger capacity standards prescribed in that section do not apply." A.R.S. § 15-922(D). Thus, no statute mandates the use of school buses to transport children to and from school.

Consequently, although "school buses" must comply with the regulations that DPS enforces, schools are not required to use school buses to transport children. The statutory scheme appears to permit students to be transported to and from home and school in vehicles that are outside the regulatory scheme for school buses and for certified bus drivers. *See* Ariz. Att'y Gen. Op. I80-040. Although the State's regulatory scheme does not prohibit schools from transporting students in vehicles that are not school buses subject to State and federal regulation, schools should be wary of bypassing the regulatory system for school buses that is designed to protect children. *Cf.* Although this Office has previously recognized that schools may transport students on activity trips in vehicles that are not school buses, it has also recommended that schools use certified bus drivers to transport students whenever possible.

Conclusion

Under State law, transportation to and from preschools, including Head Start programs, is governed by DHS regulations, rather than the school bus regulations DPS implements. Head Start programs also must comply with federal regulations regarding transportation safety. State law does

not prohibit schools from transporting students to or from school in a vehicle that is designed for ten or fewer passengers.

Janet Napolitano
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL December 10, 2002	No. I02-009 (R02-056) Re: Department of Revenue Authority and Responsibilities Regarding Stadium Districts
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TO: Mark W. Killian, Director
Arizona Department of Revenue

Questions Presented

You have asked about the responsibilities and authority of the Department of Revenue ("DOR") under Arizona Revised Statutes ("A.R.S") § 42-5031(F). Specifically, you have asked about the extent of the obligation and authority of DOR or any other state agency to review a county stadium district's compliance with applicable statutory requirements before the State distributes transaction privilege taxes to a district. You have also asked whether DOR should or must withhold distributions from a county stadium district until a review has been completed and compliance has been established.

Summary Answer

Pursuant to A.R.S. § 42-5031, DOR is required to determine whether a stadium district is entitled to receive state payments, the amount of any state payments to the district, and whether,

after 10 years of state payments, a portion of a municipality's local revenue sharing must be distributed to the district. To determine whether a district is entitled to receive state payments under A.R.S. § 42-5031, DOR should have (1) evidence that voters in the district approved the use of the state monies, (2) a resolution from the district requesting payment, and (3) evidence that voters approved a local transaction privilege tax or that there is an intergovernmental agreement that provides local support for the district. The statute does not, however, give DOR broader oversight responsibility with regard to the district.

The statutes do not address the authority of DOR to withhold monies from the district. Whether such action is appropriate may vary depending on the particular facts. In general, DOR should administer A.R.S. § 42-5031 so that the state Treasurer may make payments to an eligible district in the timeframes prescribed by statute.

Background

In 1990, the Legislature enacted statutes governing county stadium districts. 1990 Ariz. Sess. Laws, Ch. 390 (codified as A.R.S. §§ 48-4201 to -4255). The board of supervisors in a county with a population of more than 1.5 million persons or "any county in which a major league baseball organization has established or seeks to establish a spring training operation" may form a county stadium district. A.R.S. § 48-4202(A). The county board of supervisors serves as the board of directors of a countywide district established pursuant to A.R.S. § 48-4202(A).

These statutes also authorized two or more municipalities in the same county to organize "a district for multipurpose facilities if the governing bodies of the municipalities determine that the public convenience, necessity or welfare will be promoted by establishing the district." A.R.S. § 48-4202(B). The Legislature limited the time for municipalities to form this type of district.

Districts may not be formed under this subsection after October 31, 1999, unless before that date, "the governing body of two or more of the municipalities identified the location of a multipurpose facility site and . . . voted with the purpose of forming a district for multipurpose facilities under this subsection." A.R.S. § 48-4202(B). The board of directors of a district organized by two or more municipalities consists of two members appointed by the governing body of each municipality participating in the district, and if the district enters into an intergovernmental agreement with an Indian tribe or community, the board of directors includes two members appointed by that Indian tribe or community. A.R.S. § 48-4202(C).

Either a countywide or a multi-municipality district may construct spring training facilities, A.R.S. § 48-4204, and multipurpose facilities, A.R.S. § 48-4237.¹ Voters in the districts may approve a transaction privilege tax to fund these projects, and the districts are authorized to issue bonds. A.R.S. §§ 48-4251 to -4255. The districts are "tax levying public improvement district[s] and . . . political taxing subdivision[s] of [the] state." A.R.S. § 48-4202(E).

The Legislature also authorized the transfer of certain transaction privilege tax revenues to these districts. A.R.S. § 42-5031. Pursuant to A.R.S. § 42-5031, a district may receive "one-half of the amount of state transaction privilege tax revenues received . . . from all persons conducting business under any business classification . . . at a multipurpose facility site, or in the construction

¹A "multipurpose facility" means any facility or facilities that include:

(a) A primary component that is located in the district on the multipurpose facility site and on lands that are adjacent to each other or separated by public rights-of-way, that the district owns or leases and that is used to accommodate sporting events and entertainment, cultural, civic, meeting, trade show or convention events or activities.

(b) Secondary components that are located in the district and that the board determines are necessary or beneficial to the primary component, limited to on-site infrastructure, artistic components, parking garages and lots, and public parks and plazas. In addition, secondary components may include related commercial facilities that are located within the multipurpose facility site.

A.R.S. § 48-4201(4).

of a multipurpose facility." However, this statute is only applicable if the public or district-owned components of the multipurpose facility cost at least \$200 million to construct. A.R.S. § 42-5031(B). These returns of state transaction privilege tax monies to the district begin after the district board of directors delivers to DOR a resolution requesting payment. A.R.S. § 42-5031(A). The resolution "shall contain notice of the exercise of the option to begin payments provided for in this subsection." *Id.* The state Treasurer is to make these payments each month, beginning the second calendar month after the "commencement event" identified in the resolution. *Id.*

These state payments to the district "shall continue for ten years after either the commencement or the completion of construction of the primary component of the multipurpose facilities, at the option of the district." A.R.S. § 42-5031(A). The state payments are equal to the aggregate amount that the district receives from the municipality, either by a voter-approved transaction privilege tax or through an intergovernmental agreement between the municipality and the district. A.R.S. § 42-5031(D). If the local monies paid to the district fall short, beginning six months after the ten-year period for state payments ends, state shared revenues to the municipality are reduced by an amount equal to the excess in state transaction privilege taxes received over the local support for the district. A.R.S. § 42-5031(E).² This amount is then distributed to the district. *Id.*

²This withholding provision reads as follows:

If the municipality in which the multipurpose facility site is located fails to satisfy the obligations of the municipality pursuant to subsection D of this section, then beginning six months after the end of the ten year period referred to in subsection A of this section, distributions otherwise payable to the municipality pursuant to subsection C of § 42-5029, shall be reduced by an amount equal to the excess of the amount received by the district pursuant to this section over the amount paid or expended by the municipality. The amount of the reduction shall be distributed to the district to satisfy the financial commitment of the municipality pursuant to subsection D of this section.

A.R.S. § 42-5031(E).

Section 42-5031 also addresses DOR's responsibilities to administer that section by providing:

To comply with the requirements of this section, the county stadium district board of directors of any city or town that is part of the county stadium district shall supply the department [of revenue] with all requested information necessary to administer this section.

A.R.S. § 42-5031(F).

Analysis

The role of DOR is determined by an analysis of the relevant statutory language. The primary goal of statutory construction is to effectuate the Legislature's intent. *State v. Huskie*, 202 Ariz. 283, 284, 44 P.3d 161, 162 (App. 2002). Pursuant to A.R.S. § 42-5031(F), the district must supply DOR "with all requested information necessary to administer" the statutory provisions. The statute provides no similar instruction regarding any other state agency. This suggests that although the Treasurer is responsible for actually making the appropriate payments, DOR should request the information that the State needs to comply with the requirements of Section 42-5031.

Triggering State Payments to District. Pursuant to A.R.S. § 42-5031, before a district may receive state payments:

(1) voters must authorize the use of the state payments as prescribed in the statutes governing these stadium districts;³

³The voters must authorize the district to

[u]se amounts paid to the district pursuant to § 42-5031 and received from the multipurpose facility site the boundaries or boundary amendment of which are described in the publicity pamphlet as allowed by law, including securing the district's bonds or other financial obligations issued or incurred under this chapter for the construction of the multipurpose facilities which are owned by the district or which are publicly owned.

A.R.S. § 48-4237(F)(5).

(2) the district must deliver a resolution requesting payment and give notice of the event on which payments are to commence (either commencement or completion of construction of the "primary component" of the multipurpose facility);⁴ and

(3) voters must approve a local transaction privilege tax or enter into an intergovernmental agreement between the municipality and the district for payments to the district.⁵

Before any state payments are commenced, DOR should have evidence that these requirements have been satisfied. DOR could, for example, receive the election canvass or a similar public record to verify that voters approved the use of the state payments as required by A.R.S. § 42-5031(A). If the district is relying on an intergovernmental agreement to comply with § 42-5031(D), DOR should obtain a copy of the agreement. The statutory language, however, does not suggest that DOR must investigate procedural requirements concerning an election or the adoption of the resolution, or, for example, review whether the specific project meets all legal requirements set forth in statute. Although the word "administer" may include decision-making responsibilities, *see Facilitec v. Hibbs*, No. 1 CA CV01-0139, slip op. at ¶ 9 (App. Nov. 5, 2002), DOR is

⁴These first two requirements are described in subsection A of Section 42-5031:

[I]f a county stadium district is authorized by an election pursuant to § 48-4237, subsection F, paragraph 5 to use the amounts paid to the district pursuant to subsection B of this section as permitted by law, then after delivery of a resolution of the district board of directors requesting payment, which resolution shall contain notice of the exercise of the option to begin payments provided for in this subsection, the state treasurer shall pay each month, beginning with the second calendar month after the optional payment commencement event contained in the resolution. . . the amount determined under subsection B of this section to the district.

⁵This requirement is established in A.R.S. § 42-5031(D):

To qualify for payments under this section, the municipality in which the multipurpose facility site is located must either obtain vote approval for a local transaction privilege to pay costs associated with a multipurpose facility, or make a financial commitment by intergovernmental agreement between the municipality and the district to make direct payments to the district from any lawful source

responsible only for "administering" the State payments to the district. DOR does not have broader oversight responsibilities for the district operations. The local district board is responsible for the district's governance and should ensure that the district complies with all legal requirements.⁶

This conclusion regarding DOR's limited responsibilities is supported by the legislative history. The language in Section 42-5031(F) was added in 1999 in response to testimony by DOR representatives that they would have difficulty getting information needed to perform their responsibilities relating to state payments to the district. 1999 Ariz. Sess. Laws, Ch. 290, § 9; *see also* Minutes, Ariz. House of Representatives, Committee on Gov't Reform, 44th Leg., 1st Reg. Sess. (Feb. 10, 1999); Minutes, Ariz. House of Representatives, Committee on Program Authorization Review, 44th Leg., 1st Reg. Sess. (March 29, 1999). Thus, subsection F enables DOR to obtain the information that it needs to administer Section 42-5031. *See* Bundgaard Senate Floor Amendment #2 to HB 2061, 44th Leg., 1st Reg. Sess. (1999); Tape of Senate Committee of the Whole, 44 Leg., 1st Reg. Sess. April 27, 1999 (HB 2061).⁷ Nothing in the statutory language or legislative history suggests a broader oversight role for DOR.

Determining the Amount of the State Payments to the District. If the district is eligible to receive payments from the State, DOR must then determine the amount of those payments. This requires a calculation of the transaction privilege taxes collected from persons conducting business

⁶ The Auditor General provides some state oversight of the district. For example, the statute requires that the district send annual audits to the Auditor General and permits the Auditor General to conduct further inquiries "as he deems necessary." A.R.S. § 48-4231(D). In addition, the Auditor General must audit the district if the district's liquid assets will not cover its obligations. *See* A.R.S. § 48-4231(C).

⁷ DOR representatives expressed their concerns in testimony regarding SB 1172, which was entitled "stadium districts; multipurpose facilities." SB 1172 made various changes to the statutes governing these stadium districts. The language in 42-5031(F) was added in a different bill, HB2061, which was entitled "DOR; Omnibus Tax Administration Act."

"at a multipurpose facility site or in the construction of a multipurpose facility." A.R.S. § 42-5031(B). The State is to transfer 50% of those transaction privilege taxes to the district.

There are, however, two limitations on this general principle. First, to receive any state funding, the public or district owned components of the multipurpose facility district must cost at least \$200 million to construct. Second, the amount transferred each month under this section cannot exceed "the net new state transaction privilege tax revenues received from the multipurpose facility site as compared to the revenues received in the same month during the twelve months prior to the month in which the public vote. . . [approving the project] is held." A.R.S. § 42-5031(B). Obviously, before construction begins, the actual facility costs cannot be determined, but the district should satisfy DOR that, when completed, the \$200 million requirement will be met. A statement in the resolution from the district board that the facility will cost at least \$200 million and an estimated budget supporting that conclusion are among the items that may satisfy that requirement.

DOR should determine whether a district is entitled to receive state payments and the amount of those payments so that the Treasurer may make the necessary payments in the time frame established by statute. *See* A.R.S. § 42-5031(A) (payments commence in the "second calendar month after the optional payment commencement event contained in the resolution"). The Legislature did not address the authority of DOR to delay or withhold monies from the district. Whether such action is appropriate would require an analysis of specific facts.

Diverting Payments to a District Because of Insufficient Local Funding. The total local support for the district (either by payments through an intergovernmental agreement or a voter-approved tax) must equal the total amount that the district receives from the State over ten years. A.R.S. § 42-5031(D). If the local share does not equal the amount that the district receives from the

State, then amounts that the municipality would have received in state shared revenues under A.R.S. § 42-5029(C) are, instead, diverted to the district. The state shared revenues diverted to the district equal the difference between the amount the district received from the State and the amount the district received in local contributions. A.R.S. § 42-5031(E).

DOR must therefore ensure that the district provides it with the information necessary to compare the State and local payments to the district, so that DOR may redirect revenue sharing from the municipality to the district, if necessary. *See* A.R.S. § 42-5031(F).

Conclusion

Based on information provided by a district, DOR is required to determine whether state payments to a district are required pursuant to A.R.S. § 42-5031, the amount of those payments, and whether a portion of a municipality's local revenue sharing must be distributed to the district as described in A.R.S. § 42-5031(E). However, DOR need not investigate or otherwise audit the information provided by the district. DOR should make the determinations required to implement Section 42-5031 in the statutorily prescribed time frames.

Janet Napolitano
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL August 19, 2002	No. I02-008 (R02-040) Re: School Facilities Board Funding for District Public Schools Re-designated as Charter Schools
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TO: Ed Boot, Interim Executive Director
Arizona School Facilities Board

Questions Presented

Your predecessor asked the following questions regarding the responsibilities of the School Facilities Board (“SFB”) for providing capital funding for schools:

1. If a district public school is re-designated as a charter school, at what point should SFB remove the schools from its records and cease providing building renewal fund monies for the school?
2. If a district public school is re-designated as a charter school, may the SFB cease funding any current or future deficiency correction work at that school, including funding for projects that have been started but not yet completed?

3. If a district public school is re-designated as a charter school, does the SFB have the authority to require the district to repay the SFB for Deficiencies Correction Fund monies expended at that school?

Summary Answers

1. When a school district re-designates one of its schools as a charter school, that facility is no longer entitled to receive further funding from the Building Renewal Fund. The charter school becomes ineligible for building renewal monies when the charter contract is signed, and the school should be removed from SFB's records as of that date.

2. Similarly, if a district school is re-designated a charter school, that school is no longer eligible to receive funding from the Deficiencies Correction Fund. It is, therefore, not eligible to receive additional monies for projects that have been started and not yet completed as of the date the charter contract is signed.

3. The SFB does not have the authority to require a school district to repay the SFB for Deficiencies Correction Fund monies previously paid to a public school that has since been re-designated as a charter school.

Background

A. The School Facilities Board.

The SFB administers the State's school capital funding program. *See* A.R.S. §§ 15-2001 to -2115. The Legislature created the SFB in 1998 in response to a trio of Supreme Court decisions concerning the requirements of Article XI, Section 1 of the Arizona Constitution, which mandates that the State to provide a general and uniform system of public education. *See Hull v. Albrecht*, 192

Ariz. 34, 960 P.2d 634 (1998); *Hull v. Albrecht*, 190 Ariz. 520, 950 P.2d 1141 (1997); *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994).

The SFB is charged with establishing minimum adequacy standards for school facilities, A.R.S. § 15-2011, and distributing funds so that school facilities meet these standards. The SFB distributes monies from three funds, and each fund serves a different purpose. The Deficiencies Correction Fund brings facilities up to state standards. A.R.S. § 15-2021. The Building Renewal Fund maintains all facilities at the level required by State standards. A.R.S. § 15-2031. The New School Facilities Fund provides new facilities for growing school districts. A.R.S. § 15-2041.

B. Charter Schools.

Charter schools are public schools that are sponsored by a school district, the state board of education, or the state board for charter schools. A.R.S. § 15-183(C). These sponsors may contract with a public body, private person or private organization to establish charter schools. A.R.S. § 15-183(B). Like traditional public schools, charter schools receive state funding based on a formula prescribed by statute. *See* A.R.S. § 15-185. Traditional public schools may become charter schools through the statutory procedure for establishing charter schools. *Cf.* A.R.S. § 15-185(A)(5), (7), (E) (addressing issues related to State financial assistance when district school converts to charter school). When the Legislature created the SFB in 1998, it also amended the statutes governing charter schools to exempt charter schools from the statutes governing the SFB and the three funds it administers. *See* 1998 Ariz. Sess. Laws, 5th Spec. Sess. ch 1, § 5 (codified at A.R.S. § 15-181(A)).

Analysis

An administrative agency has no powers except those expressly conferred or necessarily implied in the statutes governing the agency. *Pressley v. Indus. Comm'n*, 73 Ariz. 22, 31, 236 P.2d 1011, 1017 (1951). Here, the Legislature exempted charter schools from the statutes governing the SFB by adding the following language to the charter school statutes:

Charter schools are public schools that serve as alternatives to traditional public schools and charter schools are not subject to the requirements of article XI, § 1, Constitution of Arizona, or chapter 16 of this title.

A.R.S. § 15-181(A) (as amended by 1998 Ariz. Sess. Laws, 5th Spec. Sess. ch. 1, § 5).

The statutes governing the SFB are in chapter 16 of Title 15. *See* A.R.S. §§ 15-2001 to -2115. By its terms, this exemption from SFB funding applies to all charter schools and to all three funds the SFB administers. *See, e.g. UNUM Life Ins. Co. v. Craig*, 200 Ariz. 327, 330, 26 P.3d 510, 513 (2001) (Clear and unambiguous statutory language is applied "without using other means of construction.").

Accordingly, the answers to your specific questions are as follows. First, a district school that is re-designated as a charter school becomes ineligible for building renewal monies and should be removed from the SFB's records at the point that the school becomes a charter school. This occurs when the charter contract is signed. A.R.S. § 15-183(B) ("The sponsor of a charter school may contract with a public body . . . for the purpose of establishing a charter school . . ."). Therefore, as of the date the charter contract is signed, the SFB should remove the charter school from its records and cease providing it funds.

Second, because charter schools are not eligible to receive monies from the SFB's Deficiencies Correction Fund, the SFB may not provide any additional funds for deficiency correction work at the charter school.

Third, the SFB does not have the authority to require school districts to repay the SFB for Deficiencies Correction Fund monies expended at a district school that is subsequently re-designated as a charter school. No statute establishes the authority to seek repayment of these monies, and no statute creates an obligation on the part of the school district to repay these monies to the SFB.

Conclusion

Because the Legislature specifically excluded charter schools from SFB funding, if a school district re-designates a public school as a charter school, that facility is no longer entitled to receive monies from any of the three funds the SFB administers. The SFB does not, however, have the statutory authority to require school districts to repay the SFB for Deficiencies Correction Fund monies expended at a public school that has since been re-designated as a charter school.

Janet Napolitano
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>JANET NAPOLITANO ATTORNEY GENERAL</p> <p>August 14, 2002</p>	<p>No. I02-007 (R02-030)</p> <p>Re: Law Enforcement Jurisdiction on State Trust Lands</p>
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TO: Michael E. Anable
Arizona State Land Commissioner

Question Presented

Do State, county and local law enforcement agencies have the authority and obligation to enforce criminal laws on State Trust land?

Summary Answer

State, county and local law enforcement agencies have the authority and obligation to enforce criminal laws on State Trust land. This authority does not conflict with the Arizona State Land Department's responsibility for the use, management and disposition of State Trust land and the State's obligation to manage State Trust land in the best interest of the trust.

Background

The State of Arizona owns approximately 9.5 million acres of State trust lands that the United States granted to Arizona when it became a State. Arizona-New Mexico Enabling Act, Act

of June 20, 1910, Pub. L. No. 219 (ch. 310) 36 Stat. 557, 568-579 (“the Enabling Act”). The United States granted these lands to Arizona in trust for the benefit of the State's common schools and certain other public institutions. *Kadish v. Ariz. State Land Dep't*, 155 Ariz. 484, 486, 747 P.2d 1183, 1185 (1987). The State must manage these lands in the best interests of the trust so that they produce revenues for the trust beneficiaries. *Princess Plaza Partners v. State*, 187 Ariz. 214, 219 928 P.2d 638, 643 (App. 1995). *See also Deer Valley Unified Sch. Dist. v. Superior Court*, 157 Ariz. 537, 540, 760 P.2d 537, 540 (1988) (Article X of Arizona Constitution establishes independent fiduciary obligation to manage state trust lands in the best interest of the trust).

In 1915, the Arizona Legislature adopted the State Land Code, which established the system for managing State Trust lands and created the State Land Department and the position of State Land Commissioner ("Commissioner"). The State Land Code vests the State Land Department with the authority of control, management, and disposition of all State Trust lands and the natural products thereon, subject only to the Enabling Act and the Constitution. *See Arizona Revised Statutes ("A.R.S.") §§ 37-102 to -1156*. The Commissioner is obligated to manage State Trust lands for the benefit of the trust and its beneficiaries, in part, by maximizing revenue to the trust. *Campana v. Ariz. State Land Dep't*, 176 Ariz. 288, 291 860 P.2d 1341, 1344 (App. 1993).

You have asked whether law enforcement agencies have the authority to enforce criminal laws on State trust lands. According to your opinion request, many law enforcement officers believe they lack such authority.

Analysis

Generally, law enforcement agencies have jurisdiction to enforce laws within certain geographic areas. As this Office has noted in previous Opinions, Department of Public Safety

officers have the primary duty for law enforcement on the public highways, sheriffs have the primary duty for law enforcement in unincorporated areas of the state, and municipal police have the primary duty for law enforcement in cities and towns. *See* Ariz. Att’y Gen. Op. I84-167; Ariz. Att’y Gen. Op. No. 66-4. *See also* A.R.S. §§ 9-240(B)(12) (authority of municipalities to establish police force); 11-441 (duties of county sheriff); 41-1743 (duties of Highway Patrol).

The Legislature has not provided the State Land Department with authority to enforce criminal laws on State Trust land. In contrast, it has specifically granted law enforcement authority to other state and local agencies.¹ The State Land Department also has no inherent authority to enforce criminal laws on State Trust land. "As an agency, the state land department and the commissioner have only those powers granted by the legislature. The department has no common law or inherent powers." *Havasu Heights Ranch and Dev. Corp. v. State Land Dep't*, 158 Ariz. 552, 556, 764 P.2d 37, 41 (App. 1988) (internal citations omitted).

The Legislature has, however, specified that certain activities on State Trust land are crimes. *See e.g.*, A.R.S. §§ 37-246 (sale of natural product on state land); -501 (criminal trespass). In addition, the Legislature has specified that the State criminal code (A.R.S. Title 13) applies throughout the State. *See State v. Verdugo*, 183 Ariz. 135, 137, 901 P.2d 1165, 1167 (App. 1995). Pursuant to A.R.S. § 13-108(A), "This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which such person is legally accountable, if . . . [c]onduct constituting any element of the offense or a result of such conduct occurs within this state."

¹ *See, e.g., Goode v. Alfred*, 171 Ariz. 94, 95-96, 828 P.2d 1235, 1236-37 (App. 1991) (Board of Regents); A.R.S. §§ 11-935(B)(6) (County Parks Commissions); 15-1444(A)(9) (Community College Districts); 17-211(D) (Game and Fish Department); 41-511.09 (Department of Administration); 41-794 (State Parks).

These statutes support the conclusion that law enforcement agencies have the authority to enforce state criminal laws on State Trust land within their jurisdiction. The State has an interest in enforcing criminal laws to protect the safety and welfare of the general public. *State v. Greenlee County Superior Ct.*, 153 Ariz. 119, 122, 735 P.2d 149, 152 (App. 1987). The State also has a mandate to protect the Trust assets. Having not provided the State Land Department with the authority to enforce criminal laws on State Trust land, the Legislature could not have intended that these lands would be exempt from the jurisdiction of other law enforcement agencies. Such an interpretation would lead to the absurd result of creating law enforcement-free zones within the more than nine million acres of State Trust land in Arizona. Statutory interpretations that lead to absurd results which could not have been contemplated by the Legislature are to be avoided. *State v. Altamirano*, 166 Ariz. 432, 437, 803 P.2d 425, 430 (App. 1990).

The conclusion that law enforcement agencies have jurisdiction to enforce criminal laws on State Trust lands does not infringe on responsibilities of the State Land Department and the Commissioner. A.R.S. §§ 37-102 to -1156. Laws that encroach on the authority of the Commissioner and that conflict with the provisions of the Enabling Act and the Constitution related to State Trust lands may not be enforced on State Trust land. *Gladden Farms, Inc. v. State*, 129 Ariz. 516, 518, 633 P.2d 325, 327 (1981). Enforcing criminal laws does not conflict with and, indeed, may complement the Commissioner's authority and responsibilities.²

²Theoretically, there could be law enforcement issues arising on State trust lands that have an impact on the responsibilities and authority of the State Land Department and the Commissioner, but this possibility does not undermine the general principle that law enforcement agencies enforce criminal laws on State trust lands.

Conclusion

State, county and local law enforcement agencies have authority to enforce criminal laws on State Trust land within their jurisdiction.

Janet Napolitano
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL July 25, 2002	No. I02-006 (R02-015) Re: Election Equipment Certification
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TO: The Honorable Betsey Bayless
Arizona Secretary of State

Questions Presented

You have asked whether the Arizona Secretary of State has the authority to decertify election equipment, such as punch card equipment, that the Secretary of State previously adopted under Arizona Revised Statutes ("A.R.S.") § 16-442.

Summary Answer

No. Section 16-442 provides the Secretary of State with the authority to adopt the types, makes, or models of vote recording or tabulating machines or devices. That statute, however, does not give the Secretary of State the authority to decertify those same machines or devices.

Background

Counties, cities, and agricultural improvement districts may "adopt for use in elections any kind of electronic voting system or vote tabulating device approved by the Secretary of State." A.R.S. § 16-442(B).¹ The process by which the Secretary of State approves electronic voting equipment is set forth in A.R.S. § 16-442(A). The Secretary of State appoints a three-person committee, which includes "a member of the engineering college at one of the universities, a member of the state bar of Arizona and one person familiar with voting processes in the state, no more than two of whom shall be of the same political party." A.R.S. § 16-442. This committee investigates and tests the various types of electronic voting equipment. The committee submits its recommendations to the Secretary of State "who shall make final adoption of the type or types, make or makes, model or models to be used." *Id.*

The Legislature has also established standards for electronic voting systems. Electronic voting systems must provide secrecy in the voting booth, and they must prevent the elector from voting for the same person more than once. A.R.S. § 16-446(B). They must be "suitably designed for the purpose used" and "when properly operated" the equipment is to "record correctly and count accurately every vote cast." *Id.*

The Legislature established this statutory framework in 1966 and it has not changed significantly since that original legislation. *See* 1966 Ariz. Sess. Laws ch. 92 (formerly codified as

¹"Vote tabulating equipment" is defined to include "apparatus necessary to automatically examine and count votes as designated on ballots or ballot cards and tabulate the results." A.R.S. § 16-444(A)(8). An "electronic voting system" is "a system in which votes are recorded on a paper ballot or ballot cards by means of marking or punching, and such votes are subsequently counted and tabulated by vote tabulating equipment at one or more counting centers." A.R.S. § 16-444(A)(6). In this Opinion, an electronic voting system and vote tabulating equipment are referred to collectively as "electronic voting equipment."

A.R.S. §§ 16-1021 to -1038).² Local governments purchase voting equipment based on the established statutory requirements and procedures. The Legislature permits a county to pay for such equipment "by such method as it may deem for the best local interests." A.R.S. § 16-451.

Analysis

The powers and duties of the Secretary of State are prescribed by law. Ariz. Const. art. V, § 9. Her powers include those expressly or necessarily implied by statute. *Cf. Cracchiolo v. State*, 146 Ariz. 452, 457, 706 P.2d 1219, 1224 (App. 1985) (describing powers of administrative agencies).

The first issue is whether the Legislature has expressly given the Secretary of State the authority to decertify electronic election equipment. Section 16-442, A.R.S., establishes a process for the Secretary of State to adopt electronic voting equipment that counties and other political subdivisions may purchase. That statute does not, however, establish a process for decertifying equipment that the Secretary of State has previously adopted. Thus, the statutes do not give the Secretary of State express authority to decertify election equipment.

The next issue, then, is whether the statutes imply the Secretary of State has such authority. To determine whether authority is implied in statutes, courts examine the statutory language and overall statutory scheme. *Cf., e.g., Home Builders Assoc. of Central Ariz. v. City of Apache Junction*, 198 Ariz. 493, 11 P.3d 1032 (App. 2000) (city not authorized to impose development fee to finance school capital costs); *Goode v. Alfred*, 171 Ariz. 94, 95, 828 P.2d 1235, 1236 (App. 1991) (Legislature implicitly authorized Board of Regents to establish a police force). The statutory scheme at issue here does not suggest that the Legislature intended to give the Secretary of State

²The statutes in this 1966 legislation were renumbered in 1979. *See* 1979 Ariz. Sess. Laws ch. 209 (now codified at A.R.S. §§ 16-441 to 16-453).

the authority to decertify electronic election equipment. Section 16-442(C) permits a local governing body to provide for the experimental use of vote tabulating equipment that has not been adopted by the Secretary of State. The use of that experimental equipment at an election "is as valid as if the machines had been *permanently adopted*." A.R.S. § 16-442(C) (emphasis added). This language indicates that when the Secretary of State adopts election equipment, the Legislature considered this decision to be permanent.

In addition, the overall statutory scheme establishes a State system for approving election equipment *before* counties and other political subdivisions purchase the equipment. *See* A.R.S. § 16-442. Counties and other jurisdictions purchase their equipment in reliance on the fact that the equipment is properly adopted in accordance with the statutory process. The statutes suggest a deliberate effort to balance local decision making authority and financial responsibility with the need for statewide standards. *Cf., e.g.,* A.R.S. § 16-441 (article governing electronic voting equipment applies only in counties in which board of supervisors has provided, by resolution, that it shall apply). Permitting the Secretary of State to decertify equipment that local jurisdictions purchased in reliance on the fact that the equipment was properly approved is a significant power for the Secretary of State not necessarily implied by the Legislature's statutory scheme. To ensure the integrity of the State's election equipment, a procedure for decertifying election equipment may make sense, but this is a policy decision for the Legislature.³

As your opinion request indicates, the continued use of punch card systems raises some potential legal issues in light of technological advances since those systems were developed and

³As for decertifying punch card ballots, it is interesting to note that the definition of "electronic voting system" expressly includes punch card ballot systems. *See* A.R.S. § 16-444(A)(6) (electronic voting system includes "a system in which votes are recorded on a paper ballot or ballot cards by means of marking or punching").

adopted. *See Bush v. Gore*, 531 U.S. 98, 126 n. 4 (2000) (Stevens, J., dissenting) (punch card system has a 3.92% error rate compared to the optical scan system's error rate of 1.43%). Your opinion request specifically referred to a federal district court ruling that nine counties in California may not use punch card voting equipment for the 2004 elections. *Common Cause v. Jones*, No. 01-CV-3470 (C.D. Cal. Feb. 19, 2002) (order requiring decertification of punch card voting systems). The California Secretary of State had decertified punch cards by the 2006 elections. The California statutes, however, expressly give the California Secretary of State the authority to withdraw approval of a voting system. Cal. Elec. Code § 19222 (West 2002) ("The Secretary of State shall review voting systems periodically to determine if they are defective, obsolete, or otherwise unacceptable. The Secretary of State has the right to withdraw his or her approval previously granted. . . of any voting system or part of a voting system should it be defective or prove unacceptable after such review."). The Arizona Secretary of State lacks such authority under our statutes.

The primary role of statutory construction is to discern the intent of the Legislature, and the best indication of the Legislature's intent is statutory language. *See e.g., Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). These principles support the conclusion that the Secretary of State cannot decertify equipment that has been previously adopted.

Conclusion

Although Section 16-442 provides the Secretary of State with the authority to adopt the types, makes, or models of vote recording or tabulating machines or devices, it does not authorize her to decertify those same machines or devices.

Janet Napolitano
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL April 17, 2002	No. I02-005 (R02-011) Re: School Facilities Board Jurisdiction Regarding Accommodation Schools; School Facilities Board Funding to Eliminate Debt
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TO: Dr. Philip E. Geiger, Executive Director
Arizona School Facilities Board

Questions Presented

You have asked the following questions regarding the role of the School Facilities Board (“SFB”):

1. Are accommodation schools within the SFB’s jurisdiction; *i.e.*, is the SFB responsible for providing monies from Students FIRST funds to accommodation schools for their facilities?
2. Can the SFB use monies from the New School Facilities Fund facilities to eliminate the outstanding balance on a lease-purchase agreement entered into by a school district for an existing facility?

Summary Answers

1. Because accommodation schools fall within the definition of a “school district,” the SFB is responsible for providing Students FIRST funds for the renovation, repair and construction of accommodation school facilities.

2. Section 15-2041, Arizona Revised Statutes (“A.R.S.”), which governs the New School Facilities Fund, does not authorize the SFB to distribute monies from the Fund to pay off the outstanding balance of a debt on an existing facility.

Background

The SFB is charged with establishing minimum adequacy standards for school facilities and distributing funds from three different sources to: (1) bring existing facilities up to standards (the Deficiencies Correction Fund); (2) maintain all facilities at the adequacy level (the Building Renewal Fund); and (3) construct new facilities for growing school districts (the New School Facilities Fund). A.R.S. §§ 15-2021 through -2041.

An “accommodation school” is a school that is operated through the county board of supervisors and the county school superintendent and that serves a military reservation or territory which is not included within the boundaries of a school district. A.R.S. § 15-101(1)(a). A school that provides educational services to homeless children or alternative education programs as provided in A.R.S. § 15-308(B) may also be an “accommodation school.” A.R.S. § 15-101(1)(b).

According to your opinion request, the Maricopa County Regional School District (the “District”) is the accommodation district for Maricopa County, and it operates the Thomas J. Pappas School. In August 1996, the District entered into a lease-purchase agreement with the Maricopa County Public Finance Corporation to finance the building of the Pappas School. The agreement currently has an outstanding balance of approximately \$2 million. The District has asked the SFB to provide it with the necessary funds to pay off the outstanding balance on the lease-purchase agreement, thereby allowing the District to purchase the school facility.

Analysis

A. The SFB's Jurisdiction Extends to Accommodation Schools.

An administrative agency has no powers except those expressly conferred or necessarily implied in the statutes governing the agency. *Pressley v. Indus. Comm'n*, 73 Ariz. 22, 31, 236 P.2d 1011, 1017 (1951). The statutes governing the SFB clearly limit the SFB's authority to overseeing and providing funding for the facilities of school districts. *See e.g.*, A.R.S. §§ 15-2021 (the SFB shall use the monies in the Deficiencies Correction Fund to correct existing deficiencies in school districts); -2031 (the SFB shall distribute monies in the Building Renewal Fund to school districts "for the purpose of maintaining the adequacy of existing school facilities"); -2041 (the SFB shall distribute monies in the New School Facilities Fund to school districts for the purpose of constructing new school facilities). The Legislature defined the SFB's mission as follows:

The purpose of the school facilities board is to evaluate the school capital needs of *school districts* and to distribute monies to *school districts* in order to cure existing deficiencies, for building renewal and for the construction of new facilities.

1998 Ariz. Sess. Laws, 3d Spec. Sess., ch. 1, § 7 (emphasis added).

A "school district" is "a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools or *an accommodation school*." A.R.S. § 15-101(20) (emphasis added). Thus, because the SFB is responsible for providing monies to school districts for the renovation, repair and construction of school district facilities, and because accommodations schools are school districts, the SFB is responsible for providing funding from the Students FIRST funds for the renovation, repair and construction of accommodation school facilities.

B. The SFB Cannot Use the New School Facilities Fund to Pay-Off Prior Debts of School Districts.

Section 15-2041, A.R.S., enumerates the exclusive purposes for which the SFB may distribute monies from the New School Facilities Fund. Pursuant to that statute, the SFB may distribute New School Facilities Fund monies only for constructing new school facilities and for acquiring land for new schools either through purchase or long-term lease. A.R.S. § 15-2041(C), (F). There are no provisions in A.R.S. §15-2041 or any other law that authorize the SFB to distribute monies from the New School Facilities Fund to pay off the outstanding balance of a debt on an existing school facility. Because the SFB cannot exercise powers that are not conferred upon it by law, it does not have the authority to pay off the outstanding balance on a lease purchase agreement with monies from the New Schools Facilities Fund. *See Pressley, 73 Ariz. at 31, 236 P.2d at 1017.*

Conclusion

The SFB is responsible for providing monies to school districts for the renovation, repair and construction of school district facilities. Because accommodation schools fall within the definition of a “school district,” the SFB’s statutory responsibilities over school facilities extend to accommodation school facilities. However, there are no provisions in A.R.S. § 15-2041 that would authorize the SFB to distribute monies from the New School Facilities Fund to pay off the outstanding balance of a debt on an existing facility.

Janet Napolitano
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL April 10, 2002	No. I02-004 (R02-009) Re: Classroom Site Fund Monies for Committed Youth
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TO: The Honorable Jaime Molera
Superintendent of Public Instruction

Question Presented

You have asked whether both the Department of Corrections and the Department of Juvenile Corrections are eligible for Classroom Site Fund monies provided to the "state education system for committed youth" pursuant to Arizona Revised Statutes ("A.R.S.") § 15-977(G).

Summary Answer

The Department of Juvenile Corrections is eligible for Classroom Site Fund monies pursuant to A.R.S. § 15-977(G) and A.R.S. § 15-1373, but the Department of Corrections is not.

Background

A. Classroom Site Fund

During a special session in June of 2000, the legislature passed S.B. 1007 which created, among other things, the Classroom Site Fund ("CSF") to provide funding to school districts and charter schools for designated purposes. 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 16

(codified as A.R.S. § 15-977). The bill's provisions were contingent upon voter approval of Proposition 301, which proposed to increase the state transaction privilege tax rate by 0.6% to fund specific education programs, including the CSF. The measure took effect after voters approved Proposition 301 at the 2000 general election.

The Department of Education administers the CSF and allocates CSF funds to school districts and charter schools based on student count and other factors specified by statute. A.R.S. § 15-977(B). Schools receiving CSF funds must spend the money at school sites according to certain statutory requirements. *See* A.R.S. § 15-977(A).

In 2001 the Legislature specifically authorized CSF monies for the Arizona State Schools for the Deaf and the Blind and the "state education system for committed youth:"

The Arizona State Schools for the Deaf and the Blind and the state education system for committed youth shall receive monies from the classroom site fund in the same manner as school districts and charter schools. The Arizona State Schools for the Deaf and the Blind and the state education system for committed youth are subject to this section in the same manner as school districts and charter schools.

2001 Ariz. Sess. Laws, 2d Spec. Sess., ch. 6, § 1 (codified as A.R.S. § 15-977(G)).

In addition, the 2001 legislation established the State Education System for Committed Youth Classroom Site Fund ("Committed Youth CSF"), which is to be administered by the Department of Juvenile Corrections. A.R.S. § 15-1373. Monies received from the Department of Education pursuant to section 15-977 are deposited in this fund. A.R.S. § 15-1373. The monies in the Committed Youth CSF are exempt from lapsing and are continuously appropriated. *Id.*

B. Education Within the Arizona Department of Juvenile Corrections and the Arizona Department of Corrections

Both the Arizona Department of Juvenile Corrections ("ADJC") and the Arizona Department of Corrections ("ADOC") are charged with providing an education to youth within their jurisdiction. ADJC provides for the supervision, rehabilitation, treatment and education of youth who have been adjudicated delinquent and committed to ADJC by juvenile courts. A.R.S. §§ 8-341(A)(1)(e); 41-2802(B). Youth committed to the ADJC and confined in a secure care facility who have not received a high school diploma or a high school certificate of equivalency are required to attend school full time, unless the director of ADJC has provided for an exception from this requirement. A.R.S. § 41-2822.01(B).

The youth in ADOC have been convicted of felonies and sentenced to a prison term. *See* A.R.S. §§ 13-501 (charging persons under 18 with crimes); - 701 (sentence of imprisonment). The ADOC is responsible for providing educational services to inmates under the age of eighteen (and age twenty-one or younger for pupils with disabilities). A.R.S. § 15-1372(A).

The education programs at ADJC and ADOC receive state funding based on the number of students and other factors similar to the equalization formula used to fund public schools. A.R.S. §§ 15-1371 (ADJC programs), -1372 (ADOC programs). Funds for the ADJC education program are deposited in the State Education Fund for Committed Youth. A.R.S. § 15-1371. Funds for ADOC's education program are deposited in the State Education Fund for Correctional Education. A.R.S. § 15-1372.

Analysis

Pursuant to A.R.S. § 15-977(G), "the state education system for committed youth shall receive monies from the [CSF]." For the reasons explained below, this statutory language indicates that CSF funding for the state education system for committed youth is for ADJC, but not ADOC.

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *Phoenix Newspapers, Inc. v. Superior Court*, 180 Ariz. 159, 161, 882 P.2d 1285, 1287 (App. 1993). To determine legislative intent, consideration must be given to the words, context, subject matter, effects and consequences, reason and spirit of the law. In addition, the statutory provisions must be construed in the context of related provisions and in light of their place in the statutory scheme. *See City of Phoenix v. Superior Court*, 144 Ariz. 172, 175-76, 696 P.2d 724, 727-28 (App. 1985).

A "committed youth" is "a person who is eight years of age or older but who has not yet attained the age of eighteen years and who has been committed according to law to *the department of juvenile corrections* for supervision, rehabilitation, treatment and education." A.R.S. § 41-2801(1) (emphasis added). Thus, the term "committed youth" refers to a person committed to ADJC, not a person incarcerated at ADOC.

Further, A.R.S. § 15-1371, which governs the distribution of state equalization assistance to ADJC's education program, refers to equalization assistance "for the state educational system for committed youth," and establishes "state education fund for committed youth." In contrast, the statute governing the ADOC's education program does not refer to "committed youth" or to "the state education system for committed youth." Instead, it refers to "pupils . . . committed to the [ADOC]" or "pupils in correctional education programs," and creates the State Education Fund for

Correctional Education. A.R.S. § 15-1372(A), (B). This statutory language indicates that the phrase "state education system for committed youth" refers to ADJC's educational program rather than ADOC's. The conclusion that the Legislature allocated CSF monies to ADJC and not to ADOC is also supported by the fact that ADJC is charged with administering the Committed Youth CSF. A.R.S. § 15-1373. The statute does not refer to ADOC.

Finally, the legislative history also supports this conclusion. Both the House and Senate fact sheets explain that the legislation authorized ADJC to receive Classroom Site Funds, but do not suggest the bill had any impact on ADOC. *See* ARIZONA SENATE STAFF, 45th Legis., 2d Spec. Sess., FACT SHEET FOR HB 2020 (December 14, 2001); ARIZONA HOUSE OF REPRESENTATIVES STAFF, 45th Legis., 2d Spec. Sess., FACT SHEET FOR HB 2020 (December 14, 2001).

Conclusion

The Department of Juvenile Corrections, but not the Department of Corrections, is eligible to receive monies from the Committed Youth CSF.

Janet Napolitano
Attorney General

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>
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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

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by THOMAS P. PROSE* CHIEF ASSISTANT ATTORNEY GENERAL February 26, 2002	No. I02-002 (R02-008) Re: Calculating Signature Requirements for Nomination Petitions
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TO: The Honorable Betsey Bayless
Secretary of State

Questions Presented

You indicated that the Congressional and legislative districts adopted by the Independent Redistricting Commission (“new districts”) have not yet been precleared by the United States Department of Justice (“DOJ”) as required by Section 5 of the federal Voting Rights Act, (42 U.S.C.A. § 1973c) and may not be precleared by March 1, 2002. Section 16-322, Arizona Revised Statutes (“A.R.S.”), requires the Secretary of State to calculate the number of nomination petition signatures required for candidates for the United States Congress and the State Legislature and other offices. You have asked:

*Attorney General Napolitano has recused herself from this matter. Accordingly, Thomas Prose, the Chief Assistant Attorney General, is authorized to sign this Opinion.

1. If the new district boundaries are not precleared by March 1, 2002, would the Secretary of State calculate signature requirements for nomination petitions for Congress and the Legislature based on the March 1 voter registration numbers?

2. If the calculations of signature requirements for Congress and the Legislature are based on March 1 voter registration numbers, should those calculations be based upon the current district lines or the new districts submitted to DOJ for preclearance.

Summary Answer

If DOJ does not preclear the new districts by March 1, the Secretary of State should not use March 1 voter registration numbers to determine the signatures needed to qualify for the ballot for the Legislature and Congress. Instead, pursuant to A.R.S. § 16-322(D), the Secretary of State should use the voter registration numbers as of the date of preclearance or a court order authorizing the use of the new districts to make this calculation.

Because March 1 voter registration information is not used to calculate the number of petition signatures required if the new districts are not precleared by March 1, it is not necessary to answer your second question.

Background

A. Redistricting.

At the 2000 general election, Arizona voters approved a constitutional amendment creating an Independent Redistricting Commission that is now responsible for redrawing legislative and Congressional district boundaries following each decennial census. *See* Ariz. Const. art. IV, pt. 2, § 1 (as amended by Proposition 106). The redistricting process adjusts district boundaries to comply with constitutional requirements of one-person-one-vote based on the most recent census. *See*

generally *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). In addition, the new district boundaries and the redistricting process must comply with the federal Voting Rights Act, see 42 U.S.C. §§ 1973 to 1973bb-1, and other legal requirements.

Arizona is subject to Section 5 of the Voting Rights Act ("Section 5"). See 40 Fed. Reg. 43746 (Sept. 23, 1975). Because Arizona is a covered jurisdiction under Section 5, any change that affects voting in Arizona must first be precleared by the DOJ or approved by a three-judge panel in the District Court of the District of Columbia before it may be implemented. See *Lopez v. Monterey County*, 519 U.S. 9, 20 (1996); see also 28 C.F.R. § 51.10. This Section 5 review is designed to "forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process." *Lopez*, 519 U.S. at 23 (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981)). It was enacted as "a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down." *Beer v. United States*, 425 U.S. 130, 140 (1976). To obtain preclearance, a jurisdiction must show that a change that affects voting does not have the purpose or effect of denying or abridging minority voting rights. 42 U.S.C. § 1973c.

Redistricting changes are within the scope of Section 5. 28 C.F.R. § 51.13(e). Therefore, Arizona must comply with Section 5 before these new districts can be implemented. On January 24, 2002 the Independent Redistricting Commission sent a submission to DOJ seeking preclearance. Under Section 5, DOJ has 60 days from the date it receives such a submission to make a determination regarding preclearance. *Id.* This time may be extended if DOJ requests additional information from the State regarding the submission. 28 C.F.R. § 51.37. If DOJ requests additional

information, the 60 day review time begins again when DOJ receives the supplemental information from the State. *Id.* If DOJ objects to the new districts, those districts cannot be enforced unless the districts are modified to address DOJ concerns and those new district lines are then precleared, or unless DOJ withdraws the objection or some other court action authorizes the use of the new districts.

You note in your opinion request that DOJ has not yet precleared the new districts, and it may not do so by March 1.

B. Candidate Nomination Petitions.

Nomination petitions for candidates for the Legislature and for Congress for the 2002 primary elections must be filed with the Secretary of State by June 12, 2002. *See* A.R.S. §§ 16-311, -314 (candidate petitions due 90 days before primary). Candidates for Congress must have nomination petitions signed by

a number of qualified electors who are qualified to vote for the candidate whose nomination petition they are signing equal to at least one-half of one per cent but not more than ten per cent of the total voter registration of the party designated in the district from which such representative shall be elected.

A.R.S. §16-322(A)(2). Similarly, candidates for the Legislature must submit petitions signed by

a number of qualified electors who are qualified to vote for the candidate whose nomination petition they are signing equal to at least one per cent but not more than three per cent of the total voter-registration of the party designated in the district from which the member of the legislature may be elected.

A.R.S. §16-322(A)(3). The voter registration total used for this calculation is generally based on a report prepared on March 1 of the year in which the general election is held.¹ A.R.S. § 16-322(B).

¹ Section 16-322(B) provides: "The basis of percentage in each instance referred to in subsection A of this section [describing candidate nomination petition signature requirements], except in cities, towns and school districts, shall be the number of voters registered in the designated party of the candidate as reported pursuant to § 16-168, subsection G on March 1 of the year in which the general election is held."

The statutes recognize, however, that district boundaries may not be "established and effective" by March 1. A.R.S. § 16-322(D). In that situation, Section 16-322(D) provides that “the basis for determining the required number of nomination petition signatures is the number of registered voters in the designated party of the candidate in the . . . district . . . on the day the new districts . . . are effective.”

Analysis

The issue is whether subsection B or subsection D of A.R.S. § 16-322 determines the voter registration date the Secretary of State is to use to calculate the signature requirement for nomination petitions for the Legislature and Congress if the new districts are not precleared by March 1. The analysis hinges upon when the new district boundaries become "effective" for the purposes of A.R.S. § 16-322(D).

The constitutional provision governing the Independent Redistricting Commission does not expressly establish an effective date. Under article IV, part 2, § 1 (16), the Independent Redistricting Commission is required to make a draft map available for 30 days before a final map is adopted. After this time passes, the Commission may establish final district boundaries. The Independent Redistricting Commission must certify to the Secretary of State after it has established the districts. Ariz. Const. art. IV, pt. 2, § 1 (17). This language suggests that the new district boundaries are effective under State law after certified to the Secretary of State, and this occurred well before March 1.

Section 5 of the Voting Rights Act, however, must also be considered because Arizona is a covered jurisdiction. Under Section 5, the new districts cannot be enforced until they are precleared. 28 C.F.R. § 51.10. A voting change in a jurisdiction subject to Section 5 "will not be effective as

la[w] until and unless [pre]cleared" as prescribed by Section 5. *Clark v. Roemer*, 500 U.S. 646, 652 (1991) (quoting *Connor v. Waller*, 421 U.S. 656 (1975)). Courts in other jurisdictions have concluded that under Section 5, the candidate nomination process cannot proceed until the district lines are precleared. *See Puerto Rican Legal Defense and Educ. Fund v. New York*, 769 F. Supp. 74, 76-77 (E.D.N.Y. 1991); *South Carolina v. United States*, 585 F. Supp. 418 (D.D.C. 1984). Therefore, until DOJ preclears the new districts, those districts are not legally effective.

Consequently, if the new districts are precleared by DOJ between March 1 and the filing deadline for candidate nomination petitions, A.R.S. § 16-322(D) determines the date for calculating voter registration to determine how many signatures candidates must obtain. Reading the "established and effective" language in A.R.S. § 16-322(D) to require preclearance is consistent with the statutory language and with the Voting Rights Act. Sections 16-322(A)(2) and (3) require that the signature requirements be based on registered voters in the district from which the candidate will be elected. The signature requirements, therefore, must be based on the districts that will be used for the election, and this is not known with certainty until the preclearance process is completed (or until a court order determines what districts will be used for the 2002 election). Under A.R.S. § 16-322(D), the signature requirements are calculated based on the number of registered voters "on the day the new districts. . . are effective," rather than March 1.²

² For the 1992 election, a court order ultimately determined what legislative districts would be used. *Arizonans for Fair Representation v. Symington*, 1993 WL 375329 (D. Ariz. 1992). Following the 1990 decennial census, the Legislature had not obtained preclearance of legislative districts before the candidate filing deadline, and the district court permitted the State to use the districts approved by the Legislature for the 1992 election, despite the lack of preclearance. When the Court issued that order, the Legislature, which was then responsible for redistricting, had modified its redistricting plan in response to an objection from DOJ, but the State had not yet submitted and obtained preclearance for the modified plan. The court concluded that authorizing interim use of the modified redistricting plan was appropriate, rejecting alternatives such as proceeding with the election using the 1982 redistricting plan, delaying the 1992 primary election, or ordering at-large elections for the entire Legislature. The order regarding interim use of legislative districts was issued June 19, 1992, six days before the June 25 deadline for filing candidate nomination petitions. The court made it clear that this order was to address the immediate needs of the 1992 election,

Conclusion

If the new districts are precleared between March 1, 2002 and the deadline for filing candidate nomination petitions, the signature requirements for candidate nomination petitions for candidates for Congress and the Legislature are based on the voter registration as of the date of preclearance or a court order authorizing the use of the new districts for the 2002 election.

Thomas P. Prose
Chief Assistant Attorney General

and the State was still required to obtain preclearance from DOJ for use of those district boundaries in any future elections.

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS PROSE* CHIEF ASSISTANT ATTORNEY GENERAL</p> <p>January 10, 2002</p>	<p>No. I02-001 (R01-050)</p> <p>Re: Restrictions on Qualifying Contributions by Lobbyists During Legislative Session</p>
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TO: The Honorable Wes Marsh
State Representative

Question Presented

You have asked whether the prohibition in Arizona Revised Statutes ("A.R.S.") § 41-1234.01 against lobbyists making campaign contributions to and soliciting campaign contributions for legislators during the regular legislative session applies to "qualifying contributions" under the Citizens Clean Elections Act.

Summary Answer

Yes. A qualifying contribution, as described in A.R.S. § 16-946, is subject to the prohibitions in A.R.S. § 41-1234.01.

*** Attorney General Napolitano has recused herself from this matter. Accordingly, Thomas Prose, the Chief Assistant Attorney General, serves as the Acting Attorney General.**

Background

A. The Limits on Lobbyist Campaign Contributions in A.R.S. §41-1234.01.

Arizona prohibits lobbyists from soliciting campaign contributions for or making campaign contributions to legislators during the Legislature's regular session.¹ A.R.S. §41-1234.01. This prohibition became law in 1992 as part of a comprehensive overhaul of the laws regulating lobbyists. *See* 1991 Ariz. Sess. Laws, 3rd Spec. Sess., ch. 2. Specifically, A.R.S. §41-1234.01(A) provides:

While registered under this article [Title 41, ch. 7, art. 8.1], a principal, public body, lobbyist, designated public lobbyist or authorized public lobbyist shall not make or promise to make a campaign contribution to or solicit or promise to solicit campaign contributions for:

1. A member of the legislature when the legislature is in regular session.
2. The governor when the legislature is in regular session or when regular session legislation is pending executive approval or veto.

This prohibition applies to campaign contributions for legislators during a regular session of the Legislature, but it "does not prohibit . . . lobbyists from raising monies for any other purpose during the regular session of the [L]egislature." A.R.S. §41-1234.01(B).

B. The Clean Elections Act.

In 1998, Arizona voters approved the Citizens Clean Elections Act ("Act"). The Act states that it is intended to "improve the integrity of Arizona state government." A.R.S. §16-940. As a means to this goal, the Act authorizes public funding for the election campaigns of political candidates

¹The term "lobbyists" is used generally in this Opinion to refer to registered lobbyists, their principals, designated public lobbyists, and authorized public lobbyists, as defined in A.R.S. §41-1231.

who voluntarily limit campaign spending and fund-raising in statewide and state legislative elections. *See generally* A.R.S. §§16-940 through -961; Betsy Bayless, Secretary of State, Ballot Propositions For The General Election of November 3, 1998 at 84 (1998) (analysis by Legislative Council). Candidates who qualify for the clean elections program receive public funding for their campaigns, based on amounts specified in the Act. *See* A.R.S. §§16-951, -961(G), (H). To be eligible for public funding, a candidate must be certified as a participating candidate pursuant to A.R.S. §16-947, obtain the requisite number of qualifying contributions pursuant to A.R.S. §16-950(D), and comply with the other requirements in A.R.S. §16-950(E).

Qualifying contributions are \$5 contributions that meet certain statutory requirements set forth at A.R.S. §16-946. Pursuant to A.R.S. §16-946(B),

[t]o qualify as a "qualifying contribution," a contribution must be:

1. Made by a qualified elector as defined in section 16-121, who at the time of the contribution is registered in the electoral district of the office the candidate is seeking and who has not given another qualifying contribution to that candidate during that election cycle;
2. Made by a person who is not given anything of value in exchange for the qualifying contribution;
3. In the sum of five dollars, exactly;
4. Received unsolicited during the qualifying period or solicited during the qualifying period by a person who is not employed or retained by the candidate and who is not compensated to collect contributions by the candidate or on behalf of the candidate;

5. If made by check or money order, made payable to the candidate's campaign committee, or if in cash, deposited in the candidate's campaign committee's account; and
6. Accompanied by a three-part reporting slip that includes the printed name, registration address, and signature of the contributor, the name of the candidate for whom the contribution is made, the date, and the printed name and signature of the solicitor.

Qualifying contributions that are submitted by candidates seeking to qualify for public funding are deposited into the Clean Elections Fund (“Fund”). A.R.S. §16-950(B).

Analysis

Whether A.R.S. §41-1234.01 applies to qualifying contributions under the Act depends on whether qualifying contributions are campaign contributions. The language of the Act and the statutory definition of "contribution" indicate that they are.

Section 16-901(5), A.R.S., provides that for purposes of Arizona's campaign finance laws, a “contribution” is a “gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election.” Qualifying contributions fall within this statutory definition. Candidates cannot spend qualifying contributions, but such contributions enable candidates to qualify for much larger amounts of public funding. For example, a legislative candidate can submit 200 five-dollar contributions (\$1,000) and become eligible to receive \$26,970 in funds through the general election, as well as three times that amount in matching funds. A.R.S. §§16-952,

16-961(G), (H).² In this way, qualifying contributions are something “of value made for the purpose of influencing an election” within the statutory definition of "contribution" in section 16-901(5).

The language of the Act also supports this conclusion. When describing a “qualifying contribution,” A.R.S. § 16-946(B) explains that "to qualify as a ‘qualifying contribution,’ a *contribution* must" meet specified requirements. (Emphasis added.) The clear language of a statute is given its usual meaning, unless an impossible or absurd consequence would result. *Herberman v. Bergstrom*, 168 Ariz. 587, 589, 816 P.2d 244, 246 (App. 1991). This language indicates that a qualifying contribution is a contribution, as that term is used in the campaign finance laws.

The reporting requirements in the Act provide additional support for the conclusion that qualifying contributions are a type of campaign contribution. The Act specifically exempts qualifying contributions from the general reporting requirements that apply to campaign contributions. Section 16-946(C) provides that "[d]elivery of an original reporting slip to the secretary of state shall excuse the candidate from disclosure of these contributions on campaign finance reports filed under Article 1." If qualifying contributions did not fall under the A.R.S. §16-901(5) definition of “contribution,” then such an exemption would be unnecessary and A.R.S. §16-946(C) would be mere surplusage.

Rules of statutory construction prohibit construing a statute in such a fashion. *Walker v. City of Scottsdale*, 163 Ariz. 206, 210, 786 P.2d 1057, 1061 (App. 1989) (statutes are to be construed so no parts are void, inert, redundant, or trivial).

² Section 16-961(G) and (H) set forth the primary and general election spending limits for candidates for eligible offices. Those limits are adjusted for inflation after the 2000 election pursuant to A.R.S. § 16-959. Thus, with the inflation adjustment, legislative candidates receive \$26,970 for the 2002 election cycle.

Your letter suggests that the \$5 qualifying contribution could be characterized as a donation to the Fund, rather than as a campaign contribution, because the qualifying contributions are deposited into the Fund. In the Act, however, qualifying contributions serve as evidence of support for a candidate, rather than as a fundraising tool for the Fund. Qualifying contributions must be made by qualified electors registered in the district of the office sought by the candidate receiving the qualifying contribution. A.R.S. §16-946(B)(4). In addition, qualifying contribution checks must be made payable to the candidate's campaign committee, rather than to the Fund. A.R.S. §16-946(B)(5). Moreover, the Act provides other direct avenues for making donations to the Fund. These include a \$5 check-off provision on the state income tax form that results in transferring \$5 to the Fund and providing the taxpayer with a \$5 reduction in his or her tax, A.R.S. §16-954(A), and a tax credit for donations to the Fund of up to \$500, A.R.S. §16-954(B).

Statutes are to be construed as a whole and in light of their purpose. *Wyatt v. Wehmueller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991). In the statutory scheme, qualifying contributions have a specific and obvious purpose – to demonstrate support for a particular candidate. This is consistent with the purpose of campaign contributions. *See Buckley v. Valeo*, 424 U.S. 1, 20-21 (1976) (“A contribution serves as a general expression of support for the candidate and his views. . . .”). Public campaign finance systems generally require a demonstration of support as a prerequisite to receiving public funding. *See id.* at 96. (“Congress’ interest in not funding hopeless candidates . . . necessarily justifie[d] the withholding of public assistance from candidates without significant public support.”); *Daggett v. Comm’n on Gov’t Ethics and Election Practices*, 205 F.3d 445, 471 (1st Cir. 2000) (upholding Maine’s Clean Elections Act and noting “[i]n order to gain these [public funding] benefits,

. . . the candidate must go through the paces of demonstrating public support by obtaining seed money contributions as well as a substantial number of \$5 qualifying contributions").

Your opinion request also suggests that a single \$5 qualifying contribution may not raise concerns about "the perception of a quid pro quo between a campaign contribution and a vote by the recipient." The prohibition in Section 41-1234.01, however, applies to all campaign contributions, not just to contributions over a certain amount. Moreover, the prohibition is broader than a single qualifying contribution because it also prohibits lobbyists from soliciting contributions for legislators during the legislative session. Absent the restrictions in A.R.S. § 41-1234.01, a lobbyist could solicit an unlimited number of qualifying contributions for a legislator during the regular session to help him or her qualify for public funding. Such solicitations for legislators while the Legislature is in session could create the perception of a possible quid pro quo. For these reasons, the language and the purpose of A.R.S. §41-1234.01 support applying the prohibitions in that statute to qualifying contributions.

Conclusion

Although qualifying contributions under the Act are highly regulated, they are nonetheless "contributions" for purposes of A.R.S. §41-1234.01. Thus, the prohibitions set forth in A.R.S. § 41-1234.01 apply to qualifying contributions.

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