

2003 AG Opinions

Date	Description
December 19, 2003	No. I03-011 (R03-041) Re: Use of Building Renewal Fund Balances for Preventative Maintenance
December 15, 2003	No. I03-010 (R03-029) Re: Clarification of the Rollover Provision in A.R.S. § 42-16002
December 3, 2003	No. I03-009 (R03-016) Re: Arizona Board of Nursing Jurisdiction Over Licensees Who Practice Exclusively on Federal Enclaves
December 3, 2003	No. I03-008 (R03-036) Re: Availability of Tax Credit for Fees Paid for Dental Care Provided to Students at a Public School
December 3, 2003	No. I03-007 (R03-028) Re: Tribal Member Eligibility to Serve on Commission on Appellate Court Appointments
November 5, 2003	No. I03-006 (R03-024) Re: Eligibility of Employees of Voluntary Associations to Participate in the Arizona State Retirement System
August 11, 2003	No. I03-005 (R03-024) Re: Conflicts of Interest
August 4, 2003	No. I03-004 (R03-008) Re: Fire District Services
July 30, 2003	No. I03-003 (R03-019) Re: Campaign Finance Law
July 25, 2003	No. I03-002 (R03-010) Re: Application of Proposition 203 to Charter Schools
July 21, 2003	No. I03-001 (R03-014) Re: Guidelines Governing Waivers from English Immersion Programs

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 19, 2003	No. I03- 011 (R03- 041) Re: Use of Building Renewal Fund Balances for Preventative Maintenance
--	---

To: Bill Bell, Executive Director
Arizona School Facilities Board

Questions Presented

You have asked the following questions: (1) may school districts use accrued and unused building renewal fund monies for routine preventative maintenance, and (2) if so, how is the amount available for that purpose calculated?

Summary Answer

School districts may use accrued and unused monies in their BRF accounts to satisfy the legislative mandate of performing routine preventative maintenance. The School Facilities Board should use the formula codified at A.R.S. § 15-2031(J) to calculate the amount that the districts may use from their BRF accounts for this purpose.

Background

Students FIRST, enacted in 1998, was the Arizona Legislature's response to the supreme court's ruling that the state's system for financing capital improvements for public schools was unconstitutional. *See Roosevelt Elementary School District No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994); *Hull v. Albrecht*, 192 Ariz. 34, 960 P.2d 634 (1998); 1998 Ariz. Sess. Laws 5th Spec. Sess., ch. 1. Students FIRST created the School Facilities Board ("SFB") to, among other things, establish minimum adequacy standards for school facilities, monitor district compliance with the standards, and distribute State monies for school facilities from three new funds: the Deficiencies Correction Fund, A.R.S. § 15-2021; the Building Renewal Fund ("BRF"), A.R.S. § 15-2031; and the New School Facilities Fund, A.R.S. § 15-2041. The question you have asked pertains only to BRF monies.

The BRF is intended to provide funds to maintain existing school facilities at minimum adequacy levels consistent with the State's standards. A.R.S. § 15-2031. School districts that receive BRF monies establish their own building renewal fund accounts. A.R.S. § 15-2031(F). The BRF monies that districts do not use remain in those accounts and do not revert to the State. *See* A.R.S. § 15-2031(F).

School districts may use BRF monies only for specified purposes. A.R.S. § 15-2031(B). The Legislature has also specified the purposes for which BRF monies may *not* be used. A.R.S. § 15-2031(C). Before 2002, A.R.S. § 15-2031(C) expressly prohibited school districts from using BRF monies for routine maintenance. 1999 Ariz. Sess. Laws, ch. 299, § 36, and ch. 5, § 5. In the 2002 legislative session, however, the Legislature added a requirement that school districts perform routine preventative maintenance on school facilities. 2002 Ariz. Sess. Laws, ch. 330, §§ 33, 38

("the 2002 Act"). Specifically, the Legislature (1) defined routine preventative maintenance as "services that are performed on a regular schedule [at certain intervals and] that are intended to extend the useful life of a building system and reduce the need for major repairs;" (2) required school districts to develop guidelines for routine preventative maintenance and the SFB to inspect the schools to ensure compliance; (3) required districts to use BRF monies to bring into compliance any school found to be inadequately maintained; (4) permitted districts to use eight per cent of the BRF formula amount for routine preventative maintenance; and (5) provided that building renewal monies are to supplement, not supplant, expenditures for the maintenance of school buildings. *Id.*

Although the Legislature has not funded the BRF according to the statutory formula in A.R.S. § 15-2031 since fiscal year 2002, school districts have accumulated balances in their BRF accounts. The 2002 Act did not specifically address the use of amounts in school district BRF accounts for preventative maintenance. The 2002 Act did, however, suspend the BRF formula for fiscal years 2002-2003 and 2003-2004 and appropriated only \$38 million to the BRF for FY 2002-2003. 2002 Act §§ 45, 61(A), (B). In subsequent legislation, the Legislature did not appropriate any BRF monies for fiscal year 2004.

The SFB has approved routine preventative maintenance guidelines that the districts have adopted. Because there is no BRF money appropriated for the current fiscal year, some districts would like to use their accrued BRF monies for this purpose. Thus, questions arise whether the Legislature intended that districts access their accrued BRF funds for routine preventative maintenance and, if so, how the eight percent cap established in A.R.S. § 15-2031(J) is calculated.

Analysis

The primary goal in interpreting statutes is to ascertain and give effect to the Legislature's intent. *Detention of Wilbur W.*, 203 Ariz. 301, 305, 53 P.3d 1145, 1149 (App. 2002). To determine legislative intent, a court first looks at the language of the legislation and ascribes plain meaning to its terms unless they are ambiguous. *Long v. Napolitano*, 203 Ariz. 247, 258, 53 P.3d 172, 183 (App. 2002). In interpreting an ambiguous statute, it is appropriate to look at the legislative intent and history of the statutory scheme to give purpose to all enacted provisions. *Stulce v. S.R.P. Agric. Improvement & Power Dist.*, 197 Ariz. 87, 90, 3 P.2d 1007, 1010 (App. 1999).

The 2002 Act required districts to develop routine maintenance guidelines and to maintain their schools in compliance with those guidelines. A.R.S. § 15-2002(K). That legislation amended A.R.S. § 15-2031(C)(6) to provide that BRF monies may not be used for routine maintenance “*except as provided in § 15-2002, subsection K and subsection J of this section.*” (Emphasized language added by the 2002 Act.) The 2002 Act also added subsection J to A.R.S. § 15-2031 which, in pertinent part, provides:

Notwithstanding subsections B and C of this section, a school district may use eight per cent of the building renewal amount computed pursuant to [the formula] for routine preventative maintenance.

These 2002 amendments demonstrate that the Legislature intended districts to spend BRF monies for preventative maintenance. Because subsection J of A.R.S. § 15-2031 begins with the language “[n]otwithstanding subsections B and C,” subsection J governs the analysis of the use of building renewal monies for preventative maintenance. The Legislature reduced the BRF allocation in the same legislative session and failed to fund the BRF for fiscal year 2003-04. It is logical to

conclude that the Legislature intended districts to access the only BRF monies available, which are the unspent balances in the school districts' building renewal accounts.

The purposes of the Students FIRST legislation support this interpretation. The Students FIRST statutes were intended to cure the state constitutional infirmities that the court outlined in *Roosevelt v. Bishop* and to ensure that school facilities met State standards. If no new money is appropriated, the only building renewal fund monies that school districts will have available are unused BRF monies that the districts received in previous fiscal years.

The purposes of the 2002 Act also support the conclusion that school districts may use BRF balances to pay for routine preventative maintenance. The 2002 Act requires school districts to develop routine preventative maintenance guidelines (and, impliedly, to maintain their facilities in accordance with the guidelines) and the SFB to inspect the facilities to ensure compliance. To help fund this requirement, the Legislature permitted the districts to use a limited amount of their BRF monies. A.R.S. § 15-2031(J). Any other reading of the statutes would render the legislative mandate inoperative when there are no BRF monies appropriated in a particular fiscal year. A presumption against such a result exists. *State v. Cassius*, 110 Ariz. 485, 487, 520 P.2d 1109, 1111 (1974) ("The presumption is that the legislature did not intend to do a futile thing by including in a statute a provision which is non-operative.").

Finally, this conclusion is consistent with other Students FIRST statutes. Pursuant to A.R.S. § 15-2002(K), if the SFB finds that a facility fails to comply with the district's guidelines, the district must use BRF monies to bring the facility back into compliance. Logically, if a district is required to use BRF monies to return a facility to compliance, the district should also be able to use BRF monies to prevent the facility from falling below acceptable standards in the first place. This

construction is a sensible one that accomplishes the legislative intent, avoids an absurd result, and protects the public fisc. *See Better Homes Const. Inc. v. Goldwater*, 203 Ariz. 295, 300, 53 P.3d 1139, 1144 (App. 2002) (statute's language should be liberally construed to achieve intended public protection purpose). The State has expended millions of dollars to ensure that Arizona's public schools achieve minimum adequacy standards. It is only logical that the Legislature intended to protect this huge investment by providing funds for school districts to maintain the facilities at minimum adequacy standards.

You have also inquired how the eight percent figure is calculated when the Legislature does not appropriate BRF funds according to the formula set forth in A.R.S. § 15-2031(J). That statute refers to "eight per cent of the building renewal fund computed pursuant to [the formula set forth in] subsection G" of that statute. It does not refer to the amount actually appropriated for BRF funds. Thus, in determining the amount of BRF balances that may be used for routine preventative maintenance, the SFB should annually calculate the appropriate amount pursuant to the formula, even if in a particular fiscal year the Legislature has not actually appropriated that amount.

Conclusion

School districts may use their building renewal fund balances for preventative maintenance. Pursuant to A.R.S. § 15-2031(J), the SFB should annually calculate the appropriate amount pursuant to the building renewal formula and inform the districts of the computed number. The districts may use a maximum of eight per cent of that computed number from their BRF monies to perform routine preventative maintenance in that fiscal year.

Terry Goddard
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 15, 2003	No. I03-010 (R03-029) Re: Clarification of the rollover provision in A.R.S. § 42-16002
--	---

To: Elliott Hibbs, Director
Arizona Department of Revenue

Questions Presented

You have asked the following questions concerning Arizona Revised Statutes § 42-16002:

1. Does A.R.S. § 42-16002(B), the "rollover provision," apply to decisions made by assessors under the administrative valuation review process prescribed in A.R.S. § 42-16051? If so, does it apply to "no change" as well as "change decisions" made by the assessors?¹
2. Does A.R.S. § 42-16002(B) apply to decisions made by the county or state board of equalization if the taxpayer's appeal is wholly denied?
3. In the year subsequent to an appeal is the full cash value of a property (with no new

¹"No change" decision denotes that no change was made to the original valuation after review by the assessor pursuant to A.R.S. § 42-16051. "Change decision" denotes that the original valuation was changed after review by the assessor pursuant to A.R.S. § 42-16051.

construction, structural change, or change in use) the value that was determined at the highest level of appeal in the preceding year in accordance with A.R.S. § 42-16002(B) or is the prior year's appeal decision subject to further appeal in accordance with A.R.S. § 42-16002(C)?

4. Does A.R.S. § 42-16002(C) allow taxpayers to appeal values determined in the prior year at the highest level of appeal year after year, thereby preventing assessors from revaluing property based on current market conditions?

Summary Answers

1. The rollover provisions of A.R.S. § 42-16002 apply to decisions made by assessors under the administrative valuation review process. However, only decisions that have changed the value must be rolled over.

2. Similar to appeals at the assessor level, A.R.S. § 42-16002(B) applies to decisions at the county boards or at the State Board of Equalization level only where the value was changed.

3. In the year subsequent to an appeal where the valuation was changed, the full cash value of property is the value determined at the highest level of appeal. However, A.R.S. § 42-16002(C) gives the taxpayer an opportunity to appeal the rollover valuation.

4. Although taxpayers are not precluded from appealing the valuations of their property each year, only those appeals where the valuation of property was changed require a rollover value. Therefore, the assessor would not be precluded from revaluing property each year based on current market conditions where the property was not successfully appealed during the previous year.

Background

Arizona Revised Statute § 42-16002(B) (hereinafter referred to as "the rollover statute") was amended in 2002 to read as follows:

A. The county assessor or county treasurer, whichever is appropriate, shall make the necessary changes in the tax roll and records to reflect the determinations on appeal under this chapter.

B. In the year subsequent to an appeal, the valuation or classification of property is the valuation or classification that was determined in the preceding year at the highest level of appeal unless there is new construction, a structural change or a change of use on the property.

C. This section does not limit the right of a property owner to appeal the valuation or classification of the property.

Amended by 2002 Ariz. Sess. Laws ch. 278, § 1. (emphasis added to subsection B.) Prior to the amendment, A.R.S. § 42-16002(B) read as follows:

B. In the year subsequent to an appeal, the valuation or classification of property is the valuation or classification that was determined in the preceding year at the highest level of appeal unless the assessor reviews the current facts that apply to a revaluation or change in the classification and determines that an adjustment in the valuation or change in the classification is appropriate.

The predecessor statute, A.R.S. § 42-247, later renumbered § 42-16003 and then § 42-16002, was added by 1991 Ariz. Sess. Laws ch. 203, § 7 and contained only two subsections:

A. In the year subsequent to an appeal, the valuation or classification of property shall be the valuation or classification that was determined in the prior year at the highest level of appeal unless the assessor reviews the current facts which apply to a revaluation or a change in the classification and determines that an adjustment in the valuation or a change in the classification is appropriate.

B. Nothing in this section shall limit the right of a property owner to appeal the valuation or classification of his property.

Analysis

In interpreting the statutory language of A.R.S. § 42-16002(B) and (C), the primary goal is to find and give effect to legislative intent. *Mail Boxes v. Industrial Comm'n of Arizona*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). Words have their ordinary meaning unless the context of the statute requires otherwise. *Carrow Co. v. Lusby*, 167 Ariz. 18, 20, 804 P.2d 747, 749 (1990). The clear language of a statute is given its usual meaning unless impossible or absurd consequences would result. *In re Marriage of Gray*, 144 Ariz. 89, 91, 695 P.2d 1127, 1129 (1985).

The questions concerning A.R.S. § 42-16002 result not only from the statutory changes in 2002, but have existed since the adoption of the original predecessor rollover statute in 1991. The questions will be analyzed in order.

Questions Presented

1. Does A.R.S. § 42-16002(B), the "rollover provision," apply to decisions made by assessors under the administrative valuation review process prescribed in A.R.S. § 42-16051? If so, does it apply to "no change" as well as "change decisions" made by the assessors?

The answer to this question depends on whether the term "appeal" includes the assessor's review of a petition filed pursuant to A.R.S. § 42-16051. Each of the rollover statutes since 1991 has used the word "appeal." A taxpayer initiates administrative review of the valuation or classification of his/her property by filing a petition with the assessor pursuant to A.R.S. § 42-16051. If the taxpayer's request to reduce valuation is denied, the taxpayer may further appeal to either the county board of equalization or the State Board of Equalization depending on the county, or to Tax Court or Superior Court. A.R.S. § 42-16056. Although the rollover provision itself does not use

the term "appeal," the chapter heading that proceeds A.R.S. § 42-16051, "Property Tax Appeals and Reviews," supports the conclusion that the assessor's review constitutes the first level of appeal. *State v. Eagle*, 196 Ariz. 188, 190, 994 P.2d 395, 397 (2000) (although title and section headings are not law, courts may look to them guidance in interpreting statutes and determining legislative intent).

This conclusion finds further support in the legislative history of A.R.S. § 42-16002. When the legislature compressed the levels of property tax appeals from three to two in 1994, the legislative history referred to the assessor as a level of appeal. Senate Bill 1362, in 1994, reduced the available administrative levels of property tax appeals from three to two:

Maricopa and Pima county property owners will no longer have three levels of appeals (assessor, County Board of Equalization, State Board of Tax Appeals). Instead, these counties will have two levels, first to the assessor and then to a new "hybrid" State Board of Equalization.

Ariz. House Representatives, Bill Summary for SB 1362; 41st Leg., 2d Reg. Sess. (1994).

Courts generally defer to the interpretation of administrative agencies charged with implementation of a statute unless inconsistent with the Legislature's intent. *Foster v. Anable*, 199 Ariz. 489, 491, 19 P.3d 630, 632 (App. 2001); *Capitol Castings, Inc. v. Ariz. Dep't of Econ. Sec.*, 171 Ariz. 57, 60, 8 P.2d 781, 784 (App. 1992). The Arizona Department of Revenue, as well as Maricopa and Pima Counties, refer in various publications to the ability of their taxpayers to seek review of valuation with the assessor as an appeal. For example, the Assessment Procedures Manual published by the Arizona Department of Revenue, describes administrative appeals as having two levels:

Such appeals are commenced by filing a petition for review of valuation or reclassification with the County Assessor (Level 1). Further administrative appeals (Level 2) may be taken to the State Board of Equalization

Arizona Dep't of Revenue, *Assessment Procedures Manual* 1.1.12 (2002).

The Personal Property Manual published by the Department of Revenue similarly states that "the administrative appeals process for personal property valued by the County Assessor is originated when a property owner, or their agent, files a Petition for Review . . . with the County Assessor in the county where the property is located." *Personal Property Manual*, 8.4 (2003).

The Maricopa County Assessor publishes "Appeals Information" on its website. *See*, http://www.maricopa.gov/assessor/appeals_info.asp. It states: "If the taxpayer chooses to appeal either the Full Cash Value or classification of their property, they may do so by filing an administrative appeal with their County Assessor" The Pima County Assessor publishes a brochure entitled "Understanding Your Assessment." *See* Understanding Your Assessment, *available at*: <http://www.asr.co.pima.az.us/ASRT/HTML/pSERVICE/pSERVICE.htm>. The brochure differentiates between "formal review" and "assessor review," which is the first step in the appeals process. "The first step in the appeals process is to file a 'Petition for Review of Valuation' with the assessor's office." *Id.*

Similarly, The Arizona Tax Court also has described the process in terms of "appeal":

For persons whose property is subject to a tax assessment, Arizona has chosen to provide a series of administrative appeals. For property assessed by a county assessor, the first level of appeal is to the assessor himself. Subsequent administrative appeals are to the County Board of Equalization and, from there, to the State Board of Tax Appeals.

Berge Ford, Inc. v. Maricopa County, 172 Ariz. 483, 485, 838 P.2d 822, 824 (Ariz. Tax Ct., 1992) (internal citations omitted).

Thus, the initial review of the property valuation by the assessor upon the filing of a petition by a taxpayer pursuant to A.R.S. § 42-16051 constitutes an appeal, and assessors therefore must rollover changes to the valuation or classification of property arising out of an "appeal" to the assessor.

Because a petition for review to the assessor constitutes an appeal under the rollover statute, the next question is whether the valuation determined by the assessor is rolled over to the subsequent year even if the assessor did not change the value. The rollover statute provides that the valuation or classification as determined at the highest level of appeal shall be rolled over to the subsequent year. A.R.S. § 42-16002(B). Although the statute does not differentiate between a change in value and a determination that the assessor's valuation was correct, common sense would dictate that only a change in value must be rolled over. This conclusion is supported by both the general rules of statutory construction and the legislative history of the rollover statute.

As discussed above, the clear language of a statute is given its usual meaning unless impossible or absurd consequences would result. *In re Marriage of Gray*, 144 Ariz. at 91, 695 P.2d at 1129. If a "no change" determination were rolled over, the result would be that property valuations potentially could be frozen indefinitely, without regard to whether the taxpayer won or lost an appeal, simply by appealing the valuation every year. If that were the case, the assessor would be precluded from ever revaluing property based on current market conditions. This interpretation would result in an absurd consequence.

The legislative history of the rollover statute demonstrates that this was not the result

intended by the legislature. The Senate Revised Fact Sheet for House Bill 2596, which amended A.R.S. § 42-16002(B), states: "[f]or valuations that have been successfully appealed, the assessor is required to make the following year's valuations based on the appeal decision." 45th Leg., 2d Reg. Sess. (2002)(emphasis added). Thus, the rollover statute does not apply to "no change" determinations and does not require the assessor to rollover a value unless the taxpayer successfully challenged the valuation on appeal.

2. Does A.R.S. § 42-16002(B) apply to decisions made by the county or State Board of Equalization if the taxpayer's appeal is wholly denied?

Although the rollover statute applies to appeals to a county board or to the State Board of Equalization, the statute does not apply to decisions made if the taxpayer's appeal is wholly denied for the same reasons that the statute did not apply to appeals to the assessor unless the taxpayer prevailed. Accordingly, "No change" determinations at the county or State Board of Equalization level do not have to be rolled over.

3. In the year subsequent to an appeal is the full cash value of a property (with no new construction, structural change, or change in use) the value that was determined at the highest level of appeal in the preceding year in accordance with A.R.S. § 42-16002(B) or is the prior year's appeal decision subject to further appeal in accordance with A.R.S. § 42-16002(C)?

Since the predecessor statute to A.R.S. § 42-16002 was adopted in 1991, the statute has contained a provision stating that nothing in the rollover statute limited the right of a property owner to appeal the valuation or classification of property. This provision is clear on its face. The 2003 amendment did not change that provision. Although the assessor must rollover the value determined at the highest level of appeal, if the taxpayer's appeal was successful, the Legislature has not limited

the right of a taxpayer to appeal the value in the second year.

4. Does A.R.S. § 42-16002(C) allow taxpayers to appeal values determined in the prior year at the highest level of appeal year after year, thereby preventing assessors from revaluing property based on current market conditions?

Although taxpayers are not precluded from appealing the valuations of their property each year, only those appeals where the valuation of property was changed require a rollover value. Therefore, the assessor would not be precluded from revaluing property each year based on current market conditions where the property was not successfully appealed during the previous year. However, the assessor must use the rollover value each year subsequent to that where a taxpayer appeals and prevails.

Conclusion

The rollover provisions of A.R.S. § 42-16002 apply to decisions made by the assessor pursuant to A.R.S. § 42-16051, as well as decisions of the county or State Board of Equalization pursuant to A.R.S. § 42-16056. In the year subsequent to an appeal, the full cash value of property is the value determined at the highest level of appeal. A.R.S. § 42-16002 requires a rollover value only where the valuation of property was changed as the result of an appeal. Although taxpayers are not precluded from appealing the valuation of their property each year, including the rollover

...

valuation, the assessor is not precluded from revaluing property each year based on current market conditions where the property was not successfully appealed during the prior year.

Terry Goddard
Attorney General

407757

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 3, 2003	No. I03-009 (R03-016) Re: Arizona Board of Nursing Jurisdiction over Licensees Who Practice Exclusively on Federal Enclaves
---	---

TO: Joey Ridenour, Executive Director
Arizona State Board of Nursing

Questions Presented

You have asked whether the Arizona State Board of Nursing ("Board") retains jurisdiction to discipline for unprofessional conduct those of its licensees or certificate holders, or the licensees or certificate holders from the Compact states, who practice exclusively on federal enclaves within the State of Arizona.¹

¹ The Nurse Practice Act ("Act") establishes the Board as the agency authorized to regulate the practice of nursing in Arizona. The Board's licensee's include Nurse Practitioners, Nurse Midwives, Certified Registered Nurse Anesthetists, Registered Nurses, Licensed Practical Nurses and Certified Nursing Assistants. The Board's statutes and rules establish the scope of practice for licensees and parameters for imposing discipline against their licenses. Arizona Revised Statutes ("A.R.S.") §§ 32-1601 through -1669; Arizona Administrative Code ("A.A.C.") R4-19-101 through -815.

Summary Answer

Unless otherwise preempted by federal law, the Board has the authority to discipline for unprofessional conduct its licensees and certificate holders, and those of the Compact states, who practice exclusively on federal enclaves within the State of Arizona for violations of the Nurse Practice Act.²

Background

In 1989, the Board asked this Office to issue a formal opinion regarding whether the Board had jurisdiction over those licensees who practice in federal hospitals in Arizona or in other states, or on Indian reservations within Arizona. In Ariz. Atty. Gen. Op. I89-090, this Office opined that "the Nursing Board has jurisdiction over Arizona licensed nurses." The Opinion further stated that "the fact that a nurse chooses to practice on an Indian reservation or at a federal facility within or without Arizona does not alter the authority of the Nursing Board with respect to an Arizona license." Based upon this advice, the Board has historically imposed disciplinary sanctions on state licensees who violate the Nurse Practice Act while working for the federal government.

Your opinion request raises a particular concern about whether a state licensed nurse practitioner who works as a Pediatric Nurse Practitioner ("PNP") exclusively on a United States Air Force base may, in the course and scope of her federal employment, prescribe and dispense medications without having obtained prescribing and dispensing authority as required by Arizona

² In 2001 Ariz. Sess. Laws, ch. 101, § 1, the Arizona Legislature enacted A.R.S. § 32-1668, which joined Arizona as one of the Nursing Compact states. Thus, while the Attorney General opined in 1989 that the Board did not have the authority to discipline nurses licensed in other jurisdictions who worked for the federal government on land in Arizona, A.R.S. § 32-1668 distinguishes that part of the Opinion. Pursuant to the Compact, the Board now has broader authority to take disciplinary action against any nurse licensed in another Compact state who renders medical aid to patients in Arizona. A.R.S. § 32-1669(A).

law.³ Generally, prescribing and dispensing medication without first obtaining prescribing and dispensing authority as required by A.A.C.R. 4-19-507 would subject an Arizona licensee to Board discipline. Where the Air Force has specifically regulated the credentials and qualifications required to practice as an Air Force PNP pursuant to Air Force Instruction ("AFI") 44-119, *Clinical Performance Improvement*, § 6.10.2 and has authorized an Air Force PNP to prescribe and dispense medications, however, the Board may be preempted from taking disciplinary action against an Arizona licensee practicing exclusively on a federal enclave for lacking state prescribing and dispensing credentials.

Analysis

A. The Board Retains Jurisdiction Over Licensees Employed on Federal Enclaves When Their Actions are Not Subject to Federal Preemption.

In 1989, this Office generally concluded that if a federally employed professional obtains and maintains a state license, the state issuing that license retains the right to discipline that professional for violations of its practice act. That conclusion is more recently supported by *Colorado State Board of Medical Examiners v. Sullivan*, 976 P.2d 885 (Colo. App. 1999), where the court considered whether the Colorado Medical Board had exceeded its jurisdiction by revoking the state license of a civilian physician for treatment he rendered while employed at a federal military reservation hospital. The court determined that the medical board's authority to investigate and take disciplinary action against any licensee who engages in unprofessional conduct applies to conduct occurring both within and without Colorado, in order to protect the "citizenry against unauthorized,

³ Arizona Administrative Code ("A.A.C.") R4-19-507 requires that nurse practitioners obtain from the Board additional authority beyond their basic licensing status to prescribe and dispense medication. It expressly states that an Arizona licensed nurse practitioner may not prescribe or dispense medications without having the prior authority to do so from the Board.

unqualified, and improper practice of the healing arts in this state." *Id.* at 887-88. Specific to federal enclaves, the court recognized Congress's "exclusive legislative jurisdiction over the land that the United States has acquired," but determined that the medical board had simply revoked Sullivan's license to practice medicine in Colorado, and that it was not attempting to regulate or legislate medical practice on the federal enclave in violation of the federal Supremacy Clause. *Id.* at 888.

Under *Sullivan*, and as noted in Ariz. Atty. Gen. Op. I89-090, the Board may generally apply its statutory authority to discipline a federal employee who holds an Arizona or Compact license or certificate when that individual commits unprofessional conduct, regardless of whether the federal government might also take action for that same conduct. Nevertheless, there are circumstances where the Board may be prevented from acting, notwithstanding a violation of state law.

B. A State Cannot Enforce Its Law on a Federal Enclave when it is Preempted by Federal Law.

A fundamental principle of constitutional law is that Congress has the power to preempt state law. U.S. Const. art. VI, cl. 2; *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). State law is preempted where, under the circumstances of a particular case, it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Crosby*, 530 U.S. at 372-73. Even where the federal statute lacks an explicit preemption provision, state law is preempted by a congressional act in the following circumstances: 1) where Congress intends federal law to "occupy the field"; 2) where state law conflicts with a federal statute; and 3) where it is impossible for a private party to comply with both state and federal law. *Id.* In determining whether a federal law preempts state law, the entire statutory scheme must be considered. "If the purpose of the act cannot otherwise be accomplished – if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect --the state law must yield to the

regulation of Congress within the sphere of its delegated power." *Id.* at 373 (quoting *Savage v. Jones*, 225 U.S. 501, 533 (1912)).

Several courts have considered whether federal law preempts state law licensing requirements for federal workers. In *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956), the United States Supreme Court held that an Arkansas statute requiring contractors engaged in construction work costing \$20,000 or more to obtain a license conflicted with and therefore was preempted by the Armed Services Procurement Act of 1947 (the "Act"), 62 Stat. 21, 23, 41 U.S.C. §162 (current versions at 10 U.S.C.A. §§ 2301, -2303 through -2306, -2313). In reaching this conclusion, the Court found that subjecting a federal contractor to the Arkansas requirements would give the State's licensing board "a virtual power of review" over the federal determination of a contractor's qualifications and thus would frustrate express federal policy by adding qualifications in addition to those which the federal government had determined sufficient. *Leslie Miller*, 352 U.S. at 189-90. *See also Elec. Constr. Co. v. Flickinger*, 107 Ariz. 222, 485 P.2d 547 (1971) (citing *Leslie Miller* and holding that a subcontractor who was engaged to perform work on an Air Force base was not required to obtain a state contractor's license, even though the government had not made a direct determination of the subcontractor's qualifications).

In *Gartrell Constr., Inc. v. Aubry*, 940 F.2d 437 (9th Cir. 1991), the Ninth Circuit Court of Appeals considered whether a general construction contractor, who did not hold a California contractor's license, had violated California's Labor Code by contracting with the United States Department of the Navy to perform work at a Marine Corps Air Station located within the state. *Id.* at 438. The federal court enjoined California from enforcing the Labor Code against the contractor, holding that such application was preempted by federal law:

[A] state licensing requirement is invalid as applied against a contractor with the federal government because it results in interference with federal government functions and is in conflict with federal procurement legislation; its application is therefore precluded by the Supremacy Clause of the United States Constitution.

Id. (quoting *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956)). The court noted that when the factors a state considers before granting a professional license are similar to those the federal government considers in determining responsibility, the doctrine of Federal Supremacy acts to restrict the state from gaining a "virtual power of review over the federal determination of 'responsibility'" to accomplish the federal task at issue. *Id.* at 439. "Because the federal government made a direct determination of [the contractor's] responsibility, [the state] may not exercise a power of review by requiring [the contractor] to obtain state licenses." *Id.* at 441.

The Air Force credentials a PNP in accordance with AFI 44-119 § 6.10.2. In order to be certified as a PNP, this regulation requires graduation from an accredited baccalaureate degree program in nursing; completion of an approved nurse practitioner program; a master's degree from an accredited program in the specialty; licensure as an RN from at least one United States jurisdiction; and national certification in the speciality. AFI 44-119 § 6.10.2. The Air Force does not require any additional certification in order to prescribe and dispense medications on a United States Air Force base.

When the Air Force has determined that a nurse practitioner is "responsible" and has granted the nurse credentials and privileges to practice as a PNP for the Air Force, including prescribing and dispensing medication, the State cannot impose additional qualifications. Requiring an Air Force PNP to comply with the requirements of A.A.C. R4-19-507 to obtain prescribing and dispensing authority would add qualifications beyond those which the federal government has determined to

be sufficient, and would result in the identical conflict which was found to frustrate federal policy in the cases cited above. *Flickinger*, 107 Ariz. at 224, 485 P.2d at 549. Accordingly, when Arizona licensed nurse practitioners practicing on federal enclaves have been granted the authority to prescribe and dispense medications by federal law, the Board's authority to discipline such licensees for performing these responsibilities without first complying with state requirements is preempted.

Conclusion

Federal preemption prohibits the Board from requiring additional state licenses or certifications in order to practice on a federal enclave when federal law establishes qualifications for such work. When such preemption does not exist, however, the Board has the authority to take state disciplinary action against a federal employee who holds an Arizona or Compact license or certificate if the holder commits an act of unprofessional conduct.

Terry Goddard
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 3, 2003	No. I03-008 (R03-036) Re: Availability of Tax Credit for Fees Paid for Dental Care Provided to Students at a Public School
---	--

TO: The Honorable Slade Mead
Arizona State Senate

Question Presented

You have asked whether fees paid for dental care that a private dental clinic that leases school property provides to students at a public school qualify for an educational tax credit pursuant to A.R.S. § 43-1089.01.

Summary Answer

Fees paid to a private dental care clinic that operates on land that the clinic leases from a public school are not fees paid for an "extracurricular activity" within the meaning of A.R.S. § 43-1089.01.¹ Therefore, the statutory tax credit is not available to taxpayers who pay for such services.

¹This conclusion applies with equal force to both school districts and charter schools. See *Ariz. Att’y Gen. Op. 198-007*.

Background

A public 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. *See* Ariz. Att'y Gen. Op. I02-003. Under such an arrangement, customarily, the cost of services not covered by Arizona Health Care Cost Containment System ("AHCCCS") or insurance is the responsibility of the individual receiving the services, who pays the provider. *Id.*

The Legislature enacted the public school fees tax credit law, A.R.S. § 43-1089.01, in 1997 to "provide a tax credit for taxpayers who paid fees to an Arizona public school to support the school's extracurricular activities" or "character education" programs. *See* Ariz. Att'y Gen. Op. I98-007. The requirements for qualifying extracurricular activities are: (i) the public school sponsors the activity, (ii) students are enrolled in the public school, and (iii) a fee is required for students to participate in the activity. A.R.S §§ 43-1089.01(F)(2).

Your question requires us to determine whether services that the private dental clinic provides to students qualify as an "extracurricular activity" within the meaning of A.R.S. § 43-1089.01.

Analysis

Section 43-1089.01(A) entitles a taxpayer to a tax credit for the "amount of any fees or cash contributions made by a taxpayer during the taxable year to a public school located in this state for the support of extracurricular activities or character education programs of the public school."

Paragraph F(2) of A.R.S. § 43-1089.01 defines "extracurricular activities" as follows:

"Extracurricular activities" means school-sponsored activities that require enrolled students to pay a fee in order to participate including fees for:

- (a) Band uniforms.
- (b) Equipment or uniforms for varsity athletic activities.
- (c) Scientific laboratory materials.
- (d) In-state or out-of-state trips that are solely for competitive events. Extracurricular activities does not include any senior trips or events that are recreational, amusement or tourist activities.

"Fees" as used in these statutes primarily encompasses "legally authorized, non-state funded charges of public schools for privileges or services . . . beyond those required to complete the basic instructional program mandated by law." Ariz. Att'y Gen. Op. I98-007. Thus, pursuant to the statute, to qualify as an extracurricular activity, the school must sponsor the activity and the fees must be paid to the school. Under the arrangement at issue, the private dental clinic, not the school, provides the services and charges the fees.

Use of the term "including" in the definition of "extracurricular activities" indicates that items other than those specifically listed in the statute may be eligible for the tax credit. However, "any items that are construed to fall within the definition must be similar in nature to the listed items." *Keggi v. Northbrook Prop. and Cas. Ins. Co.*, 13 P.3d 785, 789, 199 Ariz. 43, 47 (2000). Dental care is not similar in nature to the equipment and travel related to the traditional student extracurricular activities that are on the list.

The dental services are not "school sponsored" and are not "extracurricular activities" within the meaning of A.R.S. § 43-1089.01. Therefore, the cost of dental care does not qualify for the tax credit that the statute allows. This conclusion is consistent with this Office's previous conclusion that payments to a third-party provider that leased space on a school campus for an extended-day

kindergarten would not qualify for the tax credit. Ariz. Att'y Gen. Op. I98-007.

Conclusion

A public school fees tax credit pursuant to A.R.S. § 43-1089.01 is not allowed for fees paid to a private dental provider for dental care that a private dental care provider that leases public school property provides to students at the school.

Terry Goddard
Attorney General

404767

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 3, 2003	No. I03-007 (R03-028) Re: Tribal member eligibility to serve on Commission on Appellate Court Appointments
---	--

TO: The Honorable James Weiers
Arizona State Senate

Question Presented

You have asked whether a Navajo tribal member may serve as a member of the Commission on Appellate Court Appointments ("Commission").

Summary Answer

A Navajo tribal member may serve as a member of the Commission, provided that he or she otherwise meets the requirements for membership on the Commission.¹

Background

In 1974, Arizona voters amended the State Constitution to create a "merit selection and retention" system for selecting appellate and superior court judges in certain counties. Ariz. Const. art. VI, §§ 36, 37, 41. Under merit selection, the Governor appoints superior court judges in

¹Although you asked specifically about Navajo tribal members, this analysis would apply to any Native American. It also applies regardless of whether the person resides on a reservation or elsewhere within Arizona.

Maricopa and Pima counties and appellate court judges from a list of nominees submitted by a commission.² Ariz. Const. art. VI, § 36 (commission on appellate court appointments), § 41 (commission on trial court appointments). There are three judicial nominating commissions in Arizona — the Commission on Appellate Court Appointments, the Maricopa County Commission on Trial Court Appointments, and the Pima County Commission on Trial Court Appointments. *See* Merit Selection in Arizona <http://www.supreme.state.az.us/hrl/meritpage.htm>. Each commission has sixteen members: ten non-attorney members, five attorney members, and the Chief Justice of the Arizona Supreme Court, who serves as a voting chairperson. The commissions' members are appointed by the Governor and confirmed by the Senate.

All members of the Commission on Appellate Court Appointments are required to have resided in the state for not less than five years and may not hold any governmental office, elective or appointive, for profit. Ariz. Const. art. VI, § 36. In addition, non-attorney members may not be judges, retired judges or admitted to practice before the supreme court. *Id.* In making appointments to the Commission, "the Governor, the senate and the state bar shall endeavor to see that the commission reflects the diversity of Arizona's population." *Id.* at (C).

Analysis

The Arizona Constitution establishes that any person who has resided in Arizona for at least five years and meets other specified requirements is eligible to serve on the Commission. *See* Ariz. Const. art. VI, § 41. The fact that a person is a tribal member does not disqualify him or her from serving as a Commissioner. Tribal members born in the United States are citizens of the United States and of the State in which they reside. *See Goodluck v. Apache County*, 417 F. Supp. 13, 14-

²The Constitution requires merit selection of superior court judges in counties with populations of 250,000 or more. Ariz. Const. art. VI, §§ 37(A), 41(I).

15 (D. Ariz.1975), *aff'd.*, 429 U.S. 876 (1976). As state citizens, Native Americans have the right to vote in state elections, hold state public offices, receive state-supported benefits, and attend state-supported public schools. *See Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 467 (1976); *Rincon Band of Mission Indians v. County of San Diego*, 324 F. Supp. 371, 375 n. 4 (S.D. Cal. 1971); *Harrison v. Laveen*, 67 Ariz. 337, 341, 196 P.2d 456, 458 (1948) (Native Americans are "residents of the state" and therefore qualified to vote), overruling *Porter v. Hall*, 34 Ariz. 308, 271 P. 411 (1928). Moreover, the Arizona Constitution encourages Commission membership "to reflect the diversity of the population of Arizona." Ariz. Const. art. VI, §§ 36(C), 41(D). Native American membership on the Commission on Appellate Court Commissions furthers this goal.³

Conclusion

Native Americans who meet the requirements for membership set forth in Article VI, Section 36 of the Arizona Constitution are eligible to serve on the Commission on Appellate Court Appointments.

Terry Goddard
Attorney General

402424

³Your opinion request questions the ability of a member of a sovereign nation to participate "in the selection process of judges to courts that this individual may not be subject to as a result of his tribe's status." Although a comprehensive discussion of state court jurisdiction and tribal sovereignty is beyond the scope of this opinion, there are many circumstances in which state courts have jurisdiction over issues involving tribal members. *See Felix S. Cohen, Handbook of Federal Indian Law* § 3 at 119 n. 34 (1983).

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>November 5, 2003</p>	<p>No. I03-006 (R03-024)</p> <p>Re: Eligibility of Employees of Voluntary Associations to Participate in the Arizona State Retirement System</p>
---	--

To: Paul Matson
Director, Arizona State Retirement System

Questions Presented

Pursuant to Arizona Revised Statutes ("A.R.S.") § 38-727, employees of the State and political subdivisions of the State are eligible to participate as active members of the Arizona State Retirement System ("A.S.R.S."). In addition, A.R.S. § 38-743 permits ASRS members to enhance their retirement benefits by purchasing credit for prior employment with a State or political subdivision of a State.

You have asked whether voluntary associations comprised, in whole or in part, of political subdivisions or officers of political subdivisions are political subdivisions for the purposes of A.R.S. §§38-727 and -743.

Summary Answer

Associations that are neither created by state law nor designated as political subdivisions in the state's statutes or constitution are not political subdivisions under ASRS. Therefore, their employees cannot participate as active members of ASRS and prior employment with such an association is not eligible for public service purchase credit.

Background

Voluntary associations of governmental entities have existed in Arizona at least since 1937 when the Arizona League of Cities and Towns was formed. In *City of Glendale v. White*, 67 Ariz. 231, 194 P.2d 435 (1948), the Arizona Supreme Court recognized that municipalities may participate in such organizations. As you note in your opinion request, there are various organizations comprised of officers of a political subdivision and of political subdivisions and other entities.

Councils of governments, which are a type of voluntary association, have a unique history. In 1970, in response to federal enactments encouraging regional planning, Governor Jack Williams divided Arizona into six planning districts. Exec. Order No. 70-2 (July 8, 1970). Governor Williams and subsequent governors designated the associations in each of the six districts as the State's regional planning agencies for issues such as regional transportation and the environment. *MAG, History of MAG*, available at <http://www.mag.maricopa.gov/display.cms>. These planning agencies are commonly known as "councils of governments," or simply as "COGs."

Although some Arizona statutes have recognized the existence of COGs and regional planning agencies, *see, e.g.*, A.R.S. §§ 40-1152 and 48-5302, no constitutional or statutory provision expressly authorizes their creation. Rather, the members typically form non-profit corporations

under the general corporation laws of the state. Examples include the Maricopa Association of Governments ("MAG") (a non-profit corporation comprised of Maricopa County, twenty-seven municipalities, two Indian tribes and the Citizen's Regional Transportation Planning Authority) and the Southeastern Arizona Governments Organization ("SEAGO") (a non-profit corporation comprised of four counties, fourteen municipalities and five board members who represent the private sector.) See *MAG* at <http://mag.maricopa.gov/display.cms>; *SEAGO* at <http://www.seago.org>. MAG's website describes COGs as "public organizations," but the Pima Association of Governments ("PAG") asserts on its website that "PAG is not a government agency," and SEAGO's website states that it "is technically not a unit of government" and is "a private non-profit corporation." *MAG*, available at: <http://www.mag.maricopa.gov/about.cms>; *PAG, About Pima Ass'n of Gov'ts*, at <http://www.pagnet.org/AboutPAG/>; *SEAGO Background*, at: <http://www.SEAGO.org/backgrnd.htm>.

Analysis

When analyzing whether an entity is a political subdivision, Arizona courts have examined the entity's governmental attributes or looked to the enabling legislation to see if the Legislature expressly declared the entity to be a political subdivision. In *McLanahan v. Cochise College*, 25 Ariz. App. 13, 540 P.2d 744, (1975) the court of appeals applied the following test to determine whether a community college district was a political subdivision:

The attributes which are generally regarded as distinctive of a political subdivision are that it exists for the purpose of discharging some function of local government, that it has a prescribed area and that it possesses authority for subordinate self-government by officers selected by it.

Id. at 16, 540 P.2d at 747. After analyzing the relevant statutes, the court concluded that a community college district was a political subdivision.

In *Salt River Pima-Maricopa Indian Community. v. State*, 200 Ariz. 108, 113, 23 P. 3d 103, 108 (App. 2001), the court did not apply the *McLanahan* test to analyze whether charter schools were political subdivisions. Instead, the court determined that charter schools were not political subdivisions because nothing in the enabling statutes so described them. In contrast, the statutes specifically designated public school districts as political subdivisions. *Id.*, see also *Flood Control Dist. of Maricopa County v. Conlin*, 148 Ariz. 66, 70, 712 P.2d 979, 983 (App. 1985) (noting that statutes provided that flood control district was a political subdivision of the state).

The analysis of whether an entity is a political subdivision typically focuses on the relevant statutory scheme. See, e.g., *McLanahan*, 25 Ariz. App. at 16, 540 P.2d at 757, *Flood Control Dist. of Maricopa County*, 148 Ariz. at 70, 712 P.2d at 983; Ariz. Att'y Gen. Op. I89-063 (concluding that a regional public transportation authority is a political subdivision). No statute, however, creates the voluntary associations of public officers or public entities that are at issue here. The fact that these entities are not created by statute, and that no statute establishes their powers and duties indicates that they are not political subdivisions of the state.

These associations fall short of all three prongs of the *McLanahan* test. First, they do not "[exist] for the purpose of discharging some functions of local government." Their members may have the responsibility to discharge functions of local government, but the voluntary association itself does not. Second, they have no area of responsibility defined by the statutes or the constitution. They also do not possess "authority for subordinate self-government." They have officers, corporate boards, and articles of incorporation, but they are fundamentally controlled by their members. As PAG's website explains: "PAG is not a governmental agency and thus the

responsibility for implementing PAG plans or programs ultimately rests with its member jurisdictions."PAG-Member Jurisdictions, <http://www.pagnet.org/aboutPAG/MembersOverview.htm>.

A Second Circuit case concerning COGs is instructive. *See Education/Instruction, Inc. v. Moore*, 503 F.2d 1187, 1189 (2d Cir. 1974). The court concluded that the one-person, one-vote principle did not apply to COGs because COGs are "essentially advisory and non-governmental in both purpose and function." *Id.* In reaching its conclusion, the court analyzed the state laws establishing COGs and setting forth their responsibilities.

This is consistent with the analysis of this Office in 1975 concerning the nature of COGs. Attorney General Opinion No. R75-244 described COGs as "either voluntary unincorporated associations of local units of government or incorporated . . . non-profit associations." The Opinion observed that no constitutional or legislative authority permits a COG "to exercise the powers of a governmental agency." A COG "cannot tax, pass laws, govern inhabitants within its region, or exercise the powers of a sovereign, but can only carry out the function of providing planning input on the use of monies pertaining to federal financed programs." For these reasons, COGs were not governmental agencies for the purposes of A.R.S. § 11-951. *Id.*

Similarly, in 1990, this Office advised that the Arizona Interscholastic Association was not a political subdivision eligible to participate in ASRS. Ariz. Att'y Gen. Op. No. I90-071. In reaching this conclusion, the Opinion noted that this Office had previously concluded that the AIA, "is a private organization which is not a department or political subdivision of the State." *Id.* (citing Ariz. Att'y Gen. Ops. I89-010, I84-084). Although the AIA is a private organization, most of its members are school districts, which are political subdivisions of the State. Thus, neither the case law nor previous Attorney General Opinions support the conclusion that an organization comprised

primarily, or even exclusively, of political subdivisions is itself a political subdivision unless designated as such by statute.¹ *See also Weston County Hosp. Joint Powers Bd. v. Westates Constr. Co.*, 841 P.2d 841, 846 (Wyo. 1992) (rejecting argument that entity that is the aggregate of political subdivisions must itself be recognized as a political subdivision).

Conclusion

Voluntary associations of governments such as COGs are not "political subdivisions" for the purposes of the Arizona State Retirement System. They are not recognized by statute as political subdivisions. They are not created by statute; their duties and responsibilities are not prescribed by statute; and they lack the attributes of political subdivisions under state law. Therefore, absent a change in law, employment with a COG or other such voluntary association does not qualify a person for active ASRS membership and does not qualify as prior government service for the purpose of purchasing service credit in ASRS.

Terry Goddard
Attorney General

400155

¹Moreover, political subdivisions of the State are not the only participants in regional planning in Arizona. Regional planning in this State includes Indian tribes, which are sovereign entities and not political subdivisions of the State, but are nonetheless participants in regional planning issues and COG members.

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL August 11, 2003	No. I03-005 (R03-023) Re: Conflicts of Interest
--	---

TO: Linda Harant Good
Office of the Pinal County Attorney

Questions Presented

1. Must a member of a school district governing board, who has a conflict of interest relating to decisions regarding services provided to the district by the natural gas utility company that employs him, refrain from participating in any discussions regarding the choice of power to schools in areas that are not served by the member's employer?

2. Must the board member refrain from participating in general study sessions concerning the choice of power to be provided to district schools at a time when a decision relating to provision of utility services for a particular school is not pending before the board?

Summary Answer

A school district governing board member who has a conflict of interest relating to decisions regarding services provided to the district by the natural gas company that employs him must refrain

from participating in discussions relating to the choice of power in areas of the district that are not served by the member's employer. The board member must also refrain from participating in general study sessions concerning the choice of power for future schools. This prohibition on participating in discussions applies unless it is reasonably foreseeable that the issue of purchasing gas as opposed to electricity will not come to the governing board for action while the board member's employer is a potential provider to the district.

Background

Pursuant to Arizona Revised Statutes ("A.R.S") § 15-253, you submitted for this Office's review an opinion to the superintendent of the Coolidge Unified School District ("district") addressing whether a member of a district governing board ("board"), who is an employee of a public utility that supplies natural gas to areas in the district, has a conflict of interest relating to decisions and discussions concerning the choice of power to be provided to district schools.

According to opinion submitted for review, the district has several new schools under construction or planned for construction in the next few years. The board member in question is employed by a utility that is the sole provider of natural gas in most, but not all, areas within district boundaries. Before this board member was elected, the board took action to require two new schools to be designed as all-electric schools. The board member has now requested a board study session concerning the choice of electricity or natural gas as sources of power to be used in future school construction.

Your opinion concluded that the board member has a conflict of interest in decisions pending before the board regarding on the choice of power to serve schools in the district that are located in an area the board member's employer serves and advised that the board member must recuse himself

from these decisions. The opinion submitted for review also concluded that the board member could participate in discussions concerning the choice of power for schools that are not in an area served by the board member's employer and in general study sessions regarding the choice of power when there is no decision pending before the board.

Analysis

Pursuant to A.R.S. § 15-253, this Office declines to review your conclusion that, based on the facts presented to you, a member of the school district governing board has a conflict of interest in matters pending before the board relating to the choice of gas or electric power for schools in an area served by the board member's employer. This Office, however, revises the analysis and conclusions in the opinion submitted for review concerning the ability of that board member to participate in (1) discussions concerning the choice of power for schools that are not in an area served by the board member's employer and (2) general study sessions regarding the choice of utilities when there is no decision pending before the board. The analysis in this Opinion assumes that the board member has the conflict of interest you have identified relating to pending board matters.

Pursuant to A.R.S. §§ 38-502 and -503, a conflict-of-interest analysis must be applied to the questions relating to discussions about schools in areas where the member's employer does not provide service and general study sessions relating to utility services. The board member has a conflict of interest on any matter in which he has a "substantial interest." A.R.S. § 38-502(11). A determination of whether there is a substantial interest must be made on a "case-by-case" basis, which requires a determination of the board member's proprietary or pecuniary interest in the action. A.R.S. § 38-503; *see also* Ariz. Att'y Gen. Ops. I85-052 and I80-139. If the board member will benefit directly or indirectly from the fact that his employer may obtain business from the district for

its new schools, the board member has a substantial interest. A.R.S. § 38-502(11).¹ If the board member has a conflict of interest, it is not enough that he refrain from voting on a matter; he is also required to “refrain from participating *in any manner*” in a decision. A.R.S. § 38-503 (emphasis added).

The statutes addressing conflicts of interest of a public officer do not, by their express terms, prohibit discussion only on “pending” matters. A.R.S. §§ 38-502 through -511. The prohibition against participating in a decision or a contract, sale, or purchase in which a board member has a substantial interest applies with equal force to participating in any way in the process leading up to a decision. *See* Ariz. Att’y Gen. Op. I83-111 (an employee with a conflict of interest “must not make recommendations, give advice, or otherwise communicate in any manner with anyone involved in the decision-making process”); *see also* Ariz. Att’y Gen. Op. I82-004.²

Determining whether the board member may participate in a general study session concerning the merits of natural gas requires an analysis of the purpose of the discussion and the likelihood that the board will be making a decision in the future on the topic discussed. The connection between the discussion and possible board action should not be so narrowly construed to permit a board member to participate in a general discussion of the merits of natural gas merely because a decision is not pending, if such a decision may come before the governing board later. It is reasonable to anticipate that even though a decision about a particular school served by the member’s employer is not pending

¹A "substantial interest" is "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-501(11). A "remote interest" is one of ten interests enumerated by statute. A.R.S. § 38-502(10).

²In addition to the recusal, the board member must "make known . . . [the substantial] interest in the official records" of the school district. A.R.S. § 38-503(A), (B). The district must "maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known." A.R.S. § 38-509.

before the board, any general discussion would revolve around the relative merits of using gas power versus electric power, or a combination of both, versus relying exclusively on electric power. These discussions could potentially influence other board members when making future decisions that directly affect the board member's utility company. The communications would then constitute improper recommendations, advice or other communications made to the decision makers on future matters. Thus, if the board member has a conflict when there is a pending decision about schools that his utility company could potentially serve, he is also prohibited from participating in a general study session with fellow board members concerning choice of power when a matter is not pending, unless it is reasonably foreseeable that the issue will not come before the board for action while the board member's employer is a potential provider to the district.³

The same principles apply to the analysis of whether the board member may participate in discussions relating to the choice of power in areas of the district that are not served by the member's employer. These discussions are likely to involve the relative merits of one type of power over another. Although the immediate decision before the board may not directly benefit the board member's employer, these discussions, like the study group discussions, provide the opportunity to influence board members concerning future matters that would directly affect the board member's employer. Section 38-503, A.R.S., broadly prohibit participating "in any manner" in decisions in which the board member has a substantial interest. Thus, the board member must recuse himself

³Although it could be argued that the board member's expertise in this area may be of significant value, any benefit is outweighed by the essential requirement that public officers be unbiased in the performance of their duties. *See Maucher v. City of Eloy*, 145 Ariz. 335, 338, 701 P.2d 593, 596 (App. 1985) (Public officials should avoid situations where their professional or financial concerns might conflict with the unbiased performance of their duties.)

from discussions concerning the choice of power if it is reasonably foreseeable that the board will make similar decisions concerning the board member's employer.

Conclusion

A school district governing board member whose employer is a public utility that supplies natural gas to areas in the district must refrain from participating in any discussions or decisions concerning the choice of power to district schools when the board member's employer is a potential supplier. This rule applies to discussions relating to schools outside the employer's service area and to general study sessions on choice of power, regardless of whether there is a decision pending before the board, unless it is reasonably foreseeable that the issue of choice of purchasing gas as opposed to electricity will not come to the governing board for action while the board member's employer is a potential provider of services to the district.

Terry Goddard
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

By

TERRY GODDARD
ATTORNEY GENERAL

August 4, 2003

No. I03-004
(R03-008)

Re: Fire District Services

TO: The Honorable Linda Aguirre
Arizona State Senate

Question Presented

You have asked whether Arizona fire districts may enter into contracts to provide fire protection services for a fee to customers outside their territorial boundaries.

Summary Answer

Fire districts may enter into contracts to provide fire protection services for a fee to customers outside their territorial boundaries, under the circumstances authorized by Arizona Revised Statutes (“A.R.S.”) §§ 48-805(B)(8) and -814.

Analysis

A fire district is a quasi-municipal corporation. *Cal. Portland Cement Co. v. Picture Rocks Fire Dist.*, 143 Ariz. 170, 174, 692 P.2d 1019, 1023 (App. 1984). As such, it may exercise only those powers that the Legislature has conferred upon it. *City of Glendale v. White*, 67 Ariz. 231, 234, 194 P.2d 435, 437 (1948) (stating that municipal corporations "possess and can exercise only such powers as are granted in express words, or those necessarily or fairly implied in or incident to the powers expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation").

The cardinal rule of statutory construction is to give effect to the intent of the legislature. *See, e.g., Arizona Sec. Ctr., Inc. v. State*, 142 Ariz. 242, 244, 689 P.2d 185, 187 (App. 1984). Generally, the language of the statute is the best indicator of its meaning and where the language is clear, it is determinative of its construction. *Id.* Also relevant are the context, subject matter, effects and consequences, reason and spirit of the law. Statutory provisions should be construed in the context of related provisions and in light of their place in the statutory scheme. *City of Phoenix v. Superior Court*, 144 Ariz. 172, 175-76, 696 P.2d 724, 727-28 (App. 1985).

In the statutory scheme governing fire districts,¹ the Legislature has set forth the circumstances under which a fire district is authorized to enter into contracts to provide fire protection services for a fee to customers outside its territorial boundaries.

First, A.R.S. § 48-805(B)(8) provides that a fire district may "[c]ontract with a city or town for fire protection services for all or part of the city or town area until the city or town

¹ Arizona Revised Statutes §§ 48-802 through -834.

elects to provide regular fire department services to the area.”² *See also* Ariz. Att’y Gen. Op. I89-055 (the Legislature has limited a fire district’s extra-territorial fire protection activities to providing contract services to a city, town or district and to landowners outside the district under certain circumstances). Thus, the Legislature has authorized fire districts to enter into contracts with a city or town to provide fire protection services until the city or town decides to provide regular fire department services to the specified areas.

Second, A.R.S. § 48-814 authorizes a fire district to provide service to landowners outside its territorial boundaries under certain circumstances. Specifically, it provides that

An owner of land in an unincorporated area which is located outside the territory of a fire district shall reimburse a fire district which provides service *to extinguish a fire* on the owner’s property for a reasonable charge by the district for the cost of such service if the fire presented a fire hazard to any adjacent property of value within the limits of the territory of the fire district or if such service is provided on request of either the property owner or a law enforcement authority.

(Emphasis added.)

Thus, a fire district is authorized to provide service to extinguish a fire on land outside its boundaries if the fire threatens any adjacent property of value within the limits of the territory *or* when the landowner or a law enforcement authority has requested this service. In addition,

² *See also* A.R.S. § 48-813(C), which provides as follows:

If a city or town provides regular fire protection to its residents and is unable to provide equal fire protection to annexed or included territory, the city or town may contract with a fire district in proximity to the annexed or included territory for the purpose of supplying fire protection until the city or town is able to provide equal fire protection to the annexed or included territory.

A.R.S. § 48-814 authorizes a fire district to obtain a “reasonable charge” for providing the service described above.

Arizona Revised Statutes § 48-814 must be read in conjunction with A.R.S. § 48-805(B)(12), which authorizes a fire district to “[e]nter into contracts and execute any agreements or instruments and do any other act necessary or appropriate to carry out its purposes.” *See Steer v. Eggleston*, 202 Ariz. 523, 527, 47 P.3d 1161, 1165 (App. 2002) (when reconciling statutes in *pari materia*, court of appeals construes them in a way that creates harmony and gives effect to all statutes involved). Pursuant to this rule of statutory construction, a fire district may enter into a contract with a landowner to provide service as set forth in A.R.S. § 48-814.

Finally, with respect to fees, both A.R.S. §§ 48-805(B)(8) and -814 must be read in conjunction with § 48-805(B)(14), which allows a fire district to establish a fee schedule for various services. Specifically, § 48-805(B)(14) provides that a fire district may adopt resolutions establishing fee schedules for providing fire protection services and services for the preservation of life including emergency fire and emergency medical services, plan reviews, standby charges, fire cause determination, users’ fees, facilities benefit assessments or any other fee schedule that may be required.

Prior to 2000, this provision expressly authorized a fee schedule that applied only to nonresidents and nontaxpayers of the district. In 2000, the Legislature amended the statute to eliminate the language that limited the fees to nonresidents and nontaxpayers.³ The legislative history of the statute supports the conclusion that in eliminating the specific reference to

³ *See* 2000 Ariz. Sess. Laws ch. 232, § 1.

“nonresidents and nontaxpayers of the district” the legislature did not intend to eliminate a fire district’s ability to obtain fees from those persons; rather, it was to broaden a fire district’s authority to establish fee schedules.⁴ Consequently, fire districts may now generally establish fee schedules for “fire protection services and services for the preservation of life.”

Reading all of the provisions⁵ together supports the conclusion that a fire district may enter into contracts to provide fire protection services for a fee to cities and towns and to provide service to landowners in unincorporated areas located outside its boundaries to extinguish a fire.

Conclusion

Pursuant to its statutory powers set forth in A.R.S. §§ 48-805 and -814, a fire district may enter into contracts to provide services for a fee to customers outside its territorial boundaries. Specifically, it may contract with a landowner in an unincorporated area located outside its territory to extinguish a fire and with a city or town to provide fire protection services for a fee.

Terry Goddard
Attorney General

399288

⁴ The House Bill Summary for SB 1310 states that the amendment “expands and clarifies the powers and duties of fire districts.” With respect to the fee issue, the Summary states that SB 1310 “[a]llows a fire district to establish fee schedules for fire protection services and services for the preservation of life,” noting that “[c]urrent law *limits* a district to establishing fees for services provided to non-residents and non-taxpayers.” (Emphasis added.)

⁵ A.R.S. §§ 48-805(B)(8), (12), (14) and -814.

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>July 30, 2003</p>	<p>No. I03-003 (R03-019)</p> <p>Re: Campaign Finance Law</p>
--	--

TO: The Honorable Jim Weiers
Arizona State Senate

Questions Presented

You have asked the following questions concerning the applicability of Arizona's campaign finance laws relating to a candidate's news media appearance or interview:

1. Do the provisions of Arizona Revised Statutes ("A.R.S.") § 16-901.01 mean that a candidate's interview with the news media or a candidate's appearance, individually or with other candidates, on news-oriented radio or television programs would constitute a campaign contribution by that media outlet?

2. If an appearance by a candidate on a television or radio outlet is considered a campaign contribution, how is such a contribution to be valued and reported?

Summary Answers

1. Arizona Revised Statutes § 16-901.01¹, which contains the definition of “expressly advocates,” does not apply to news media interviews or appearances on news-oriented radio or television programs. News media appearances and interviews do not constitute campaign expenditures by the media entity, and consequently do not result in campaign contributions to a candidate, as long as the news entity is not owned or controlled by a political committee, political party or candidate.

2. Because news media interviews or appearances by a candidate are not campaign contributions, it is not necessary to determine their monetary value for purposes of reporting campaign contributions.

Background

Candidates for state and local offices in Arizona must file campaign finance reports

¹A.R.S. § 16-901.01(A) provides:

A. For purposes of this chapter [chapter 6, title 16], "expressly advocates" means:

1. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates, or

2. Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):

(a) That in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents, or

(b) In the sixteen-week period immediately preceding a general election.

disclosing all contributions received. A.R.S. §§ 16-913, -915(A)(2). Organizations that make contributions to candidates or independent expenditures must register as political committees and file campaign finance reports disclosing all contributions and expenditures. *Id.*

A.R.S. § 16-901.01 provides a definition of the term “expressly advocates” for purposes of chapter 6, title 16 (Arizona’s campaign finance laws). The term “expressly advocates” only appears in chapter 6 in the definition of “independent expenditure” in A.R.S. § 16-901(14). That definition provides, in part, as follows:

“Independent expenditure” means an expenditure by a person or political committee, other than a candidate’s campaign committee, that *expressly advocates* the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.

(Emphasis added.)

Arizona’s campaign finance laws provide a specific exemption for broadcasts and publications by news media organizations. Section 16-901(8)(a), A.R.S., provides that the term “expenditure” does not include “[a] news story, commentary or editorial distributed through the facilities of any telecommunications system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by a political committee, political party or candidate.”

Analysis

A. Applicability of the definition of “express advocacy” to news coverage.

The definition of “expressly advocates” in A.R.S. § 16-901.01 applies only to a communication that is an “independent expenditure.” A.R.S. § 16-901(14). A communication is an “independent expenditure” only if it is made without cooperation or consultation with a candidate or a candidate’s committee or agent. *Id.*

Your question concerns press interviews or news appearances by a candidate. An interview or news appearance could not be conducted without the candidate's cooperation or consultation. Therefore, a news agency's production or publication of an article or story relating to a candidate's interview or news appearance would not come within the definition of "independent expenditure." Consequently, the definition of "expressly advocates" in A.R.S. § 16-901.01, which applies only to independent expenditures, is not applicable to the scenario you present.

B. Applicability of the news media exemption.

An ancillary question is whether some other provision of Arizona's campaign finance laws would require the media or a candidate to report the value of publishing or broadcasting an interview with a candidate. Historical background relating to Arizona and federal campaign finance provisions is helpful in making this determination.

In 1988, even though there was not yet a news media exemption in Arizona's campaign finance laws, the Arizona Attorney General opined that newspaper editorials would not constitute a campaign contribution, stating, "regulation of newspaper editorials would clearly run afoul of constitutional guarantees of freedom of the press. The First Amendment protects the media from indirect as well as direct restraints on publication" Ariz. Att'y Gen. Op. I88-020. In 1993, the Arizona Legislature created a statutory exemption from the definition of "expenditure" for a news story, commentary or editorial distributed by the news media. A.R.S. § 16-901(8)(a); 1993 Ariz. Sess. Laws, ch. 226, § 1.

Arizona's news media exemption is almost identical to an exemption in federal law, 2 U.S.C. § 431(9)(B)(i).² When Congress adopted the federal exemption in 1974, it stated it had no intention "to limit or burden in any way the first amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the . . . media to cover and comment on political campaigns." H. Rep. No. 93-943 at 4 (1974).

Two federal district court decisions considering ramifications of the federal news media exemption aid in understanding Arizona's exemption. In *Fed. Election Comm'n v. Phillips Publ'g, Inc.*, 517 F. Supp. 1308 (D.D.C. 1981) and *Reader's Digest Ass'n, Inc. v. Fed. Election Comm'n*, 509 F. Supp. 1210 (S.D.N.Y. 1981), the courts determined that because the federal press exemption was enacted to accommodate the news media's First Amendment rights, the Federal Elections Commission's ("FEC") authority to investigate allegations of campaign finance violations by news media is limited. Specifically, the courts held that the FEC's investigation of press entities is limited to an inquiry into whether the entity is owned or controlled by a political party or candidate, and whether it is performing the normal functions of a press entity when it distributes information or materials. *Phillips Publ'g, Inc.*, 517 F. Supp. at 1313; *Reader's Digest Ass'n, Inc.*, 509 F. Supp. at 1214-15. If the initial inquiry reveals that the news entity is not controlled by a political party or candidate and it is performing normal press entity functions, because further investigation would encroach upon the media's First Amendment rights, it is prohibited. *Id.*

Following the issuance of these opinions, the FEC has issued several advisory opinions stating that publication of candidate interviews by news entities does not constitute a campaign

² Federal law exempts from the definition of expenditure "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by a political party, political committee, or candidate."

contribution or expenditure. Specifically, the FEC has advised that a media entity would not be making a campaign contribution or expenditure by providing on its website gavel-to-gavel coverage of the Republican and Democratic national conventions, which would include interviews with political experts and candidates, and commentary by news personalities. FEC Advisory Opinion 2000-13.

The FEC made a similar determination regarding a media entity that proposed to conduct and provide news coverage of “Electronic Town Hall” discussions between presidential candidates and a live audience of invited guests via two-way television links. FEC Advisory Opinion 1996-16. The candidates would have the opportunity to make brief remarks and would be asked questions by audience members. The FEC found this proposal to be within the media exemption, stating that the entity proposed to “create and cover a news event in much the same way as a newspaper would arrange, report and comment on its own staff interview with a political candidate or cover a press conference.” *See also* FEC Advisory Opinion 1987-8 (publication of interviews of presidential candidates for the two major political parties in a news magazine, television series, and a book was not a contribution or expenditure). The FEC’s reasoning is directly applicable here.

The news media exemption in both federal and Arizona law accommodates the First Amendment protections the press enjoys when covering and reporting on political campaigns and candidates. Candidate interviews and appearances on news programs are exempted by Arizona’s news media exemption from campaign finance reporting, as long as the news entity is not owned or controlled by a political committee, political party or candidate.

Conclusion

The news gathering and reporting activities of a news media entity that is not owned or controlled by a political committee, political party or candidate, including interviews with candidates and their appearances on radio or television programs, do not constitute an expenditure made by the media entity or result in a contribution to a candidate. Because the value of the news coverage need not be reported by the media or candidates, it is not necessary to determine its monetary value.

Terry Goddard
Attorney General

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL July 25, 2003	No. I03-002 (R03-010) Re: Application of Proposition 203 to Charter Schools
--	--

TO: The Honorable Tom Horne
Superintendent of Public Instruction

Question Presented

You have asked whether Proposition 203, which generally requires that children in Arizona's public schools be taught in English, applies to charter schools.

Summary Answer

Charter schools are not subject to the requirements of Proposition 203 unless a school's charter provides otherwise.

Background

In 1994, the Legislature authorized the establishment of charter public schools to serve as alternatives to traditional public schools. A.R.S. § 15-181(A). It intended these schools to create a learning environment that would improve pupil achievement and provide additional academic

choices.¹ *Id.* The schools operate pursuant to a charter contract (“charter”) that their sponsor authorizes. *See* A.R.S. §§ 15-101(3), -183. A private entity, private person, or public body may hold a charter. A.R.S. § 15-183(B). The Arizona State Board of Education, the Arizona State Board for Charter Schools, or a school district governing board may sponsor a charter school. A.R.S. § 15-183(C).

Charter schools are not operated within the oversight framework that governs traditional public schools. They must comply with the statutes that govern charter schools (A.R.S. §§ 15-181 through -189.03) and with the provisions of their charters. They are exempt from all statutes and rules relating to schools, school districts, and school district governing boards unless the statutes that govern charter schools or their own charters provide otherwise.² A.R.S. § 15-183(E)(5). They are governed by their sponsoring entities, which have oversight and administrative responsibility for them. A.R.S. § 15-183(R). A board that is authorized to sponsor charter schools has no legal authority over or responsibility for a charter school that a different board has sponsored. A.R.S. § 15-183(D). This provision does not, however, prevent the State Board of Education from fulfilling its duty to exercise general supervision over the entire public school system, including charter schools. *Id.*

¹ Charter schools must provide a comprehensive program of instruction, but they may offer a curriculum that emphasizes a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language. A.R.S. § 15-183(E)(3). They are prohibited from excluding children based on their ethnicity, national origin, or proficiency in English. A.R.S. § 15-184(B).

² The statutes and regulations to which charter schools are subject include (1) all federal, state, and local health, safety, civil rights, and insurance requirements, A.R.S. § 15-183(E)(1); (2) all federal and state laws concerning the education of children with disabilities that are applicable to school districts, A.R.S. § 15-183(E)(7); and (3) the financial and electronic data submission requirements that apply to school districts, A.R.S. § 15-183(E)(6).

In November 2000, Arizona voters approved Proposition 203,³ an initiative which generally requires that “all children in Arizona public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms.” A.R.S. § 15-752. This Opinion addresses the application of Proposition 203 to charter schools.

Analysis

The primary goal in interpreting an initiative is to effectuate the intent of the voters who adopted it. *Calik v. Congable*, 195 Ariz. 496, 498, 990 P.2d 1055, 1057 (1999). Charter schools are public schools. A.R.S. §§ 15-101(3), -181. Proposition 203 speaks in terms of children in all of Arizona’s public schools. *See* A.R.S. §§ 15-752 (stating that “all children in Arizona public schools” “shall be placed in English language classrooms” and “shall be taught English by being taught in English”); -754 (stating that “all Arizona school children” have the right to be provided with an English language public education at their local schools;⁴ that “the parent or guardian of any Arizona school child” may sue to enforce Proposition 203; and that elected officials found liable for refusing to implement Proposition 203 will be barred from holding any position “anywhere within the Arizona public school system” for five years); -755 (stating that to ensure the educational progress “of *all* Arizona students,” a standardized test must be administered yearly “to *all* Arizona public schoolchildren” above first grade level) (emphases added). On its face, this broad language encompasses charter schools as well as traditional public schools.

³ Proposition 203 is codified as A.R.S. §§ 15-751 through -755.

⁴ Proposition 203 does not define the term “local school.” It also uses the term in A.R.S. § 15-752, which explains how “local schools” will be encouraged to implement Proposition 203. Although other Arizona statutes refer to “local school” districts, none of them uses the term “local school” standing alone.

Those who enact statutes, however, are presumed to know the existing law. *State v. Garza Rodriguez*, 164 Ariz. 107, 111, 791 P.2d 633, 637 (1990). Therefore, Proposition 203's broad language must be read in the context of the statutory scheme that existed when the voters enacted it in 2000. *See Ariz. State Bd. of Dirs. for Junior Colleges v. Phoenix Union High Sch. Dist.*, 102 Ariz. 69, 72, 424 P.2d 819, 822 (1967) (stating that the court would not presume that the Legislature was unaware of an existing statute and would assume that the Legislature intended two statutes dealing with the same general subject matter to operate as a compatible whole).

Arizona Revised Statutes § 15-183(E)(5) provides that charter schools are exempt from *all* statutes and rules that relate to schools, school districts, and school district governing boards unless the statutes that govern charter schools or the schools' charters provide otherwise. The Legislature enacted this statute in 1994. 1994 Ariz. Sess. Laws, 9th Spec. Sess., ch. 2, § 2. The statutes that govern charter schools appear in chapter 1, article 8 of title 15 (A.R.S. §§ 15-181 to -189.03). Proposition 203 did not mention charter schools, or amend the statutes governing charter schools to provide that Proposition 203 would apply to them. *See McCandless v. United States Assurance Co.*, 191 Ariz. 167, 174, 953 P.2d 911, 918 (App. 1997) (if the Legislature adds a statute to an existing statutory scheme without amending an existing statute that would impact the new statute, the court will presume that the Legislature intended the existing statute to impact the new one). Because A.R.S. § 15-183(E)(5) specifically exempts charter schools from the related statutes governing schools, Proposition 203 does not apply to charter schools.⁵

The specific language of Proposition 203 supports this conclusion. A.R.S. § 15-753(B)(3) refers to the "school principal" the "local superintendent of schools" and "local school districts."

⁵This analysis applies to charter schools, as well as new charter school applicants.

It also refers to guidelines "established by and reviewed by the local governing board and . . . state board of education." This language refers to the infrastructure that governs traditional public schools, not charter schools. A.R.S. §§ 15-101(11) (defining the term "governing board" for purposes of title 15 as "a body organized for the government and management of the schools within a school district"); -501(6) (defining "superintendent" for purposes of chapter 5 of title 15, which deals with school employees, as "the superintendent of schools of a school district"); *see also* A.R.S. § 15-101(20) (defining a "school district" as "a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools"). This language indicates that Proposition 203 focused on school districts rather than charter schools.⁶

The publicity pamphlet that addressed Proposition 203 also supports the conclusion that the Proposition does not apply to charter schools. *See Calik*, 195 Ariz. at 500, 990 P.2d at 1059 (recognizing that publicity pamphlets accompanying initiatives may provide some insight into voter intent). The fiscal analysis in the publicity pamphlet refers to school districts. Like Proposition 203 itself, however, the analysis did not mention charter schools.

Moreover, to impose Proposition 203 on charter schools without a clear statutory directive undermines the purposes of charter schools which "provide additional academic choices for parents

⁶ The language governing a study committee that the Legislature established as part of the State's effort to comply with *Flores v. Arizona*, 172 F. Supp. 2d 1225, 1238 (D. Ariz. 2000) assumes that Proposition 203 applies to charter schools. *See* 2002 Ariz. Sess. Laws 2nd Spec. Sess., ch. 9, § 6. For example, the study committee is to review a form "developed by the state board of education to be used by all school districts and charter schools. . . for parental waivers pursuant to § 15-753." *Id.* But the statutes regarding charter schools and Proposition 203, rather than language in session law creating a study committee, determine whether charter schools are subject to the requirements of Proposition 203. This Office previously noted the uncertainty regarding the application of Proposition 203 to charter schools because of the exemption in A.R.S. § 15-183(E)(5). *See* Ariz. Att'y Gen. Op. I01-006 n. 4. No subsequent statutory change has limited the exemption for charter schools to impose the requirements of Proposition 203 on all charter schools.

and pupils." A.R.S. § 15-181(1); *see also* A.R.S. § 15-183(E)(3) (the charter for each charter school must ensure that the school "provides a comprehensive program of instruction . . . except that a school may offer this curriculum with an emphasis on a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language."). Because school districts must comply with Proposition 203, children at the local public schools have the opportunity to be educated in English. For parents and children choosing charter schools, however, "the specific learning philosophy or style" may vary. A.R.S. § 15-183(E)(3).

A charter school's decision not to follow Proposition 203, however, limits the State funding available to that school for students who are English learners. The school finance formula governing State aid to public schools provides additional funding for English learners who "do not speak English or whose native language is not English, who are not currently able to perform ordinary classroom work in English *and* who are enrolled in an English language education program pursuant to §§ 15-751, 15-752 and 15-753." A.R.S. §§ 15-901(B)(8) (emphasis added); *see also* A.R.S. § 15-943 (calculation base level); -185 (charter school financing). Sections 15-751 through -753 are statutes enacted as part of Proposition 203. Consequently, charter schools that do not follow Proposition 203 are not eligible for additional state funding for English learners.

Even though charter schools need not follow the mandates of Proposition 203, they must comply with the federal requirements under the Equal Educational Opportunities Act that requires any public school to take "appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f). The Department of Education is responsible for monitoring charter schools and school districts to ensure compliance with the State and federal requirements governing English learners. A.R.S. § 15-756(B).

Conclusion

Charter schools are not required to comply with Proposition 203 unless a school's charter provides otherwise.

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>July 21, 2003</p>	<p>No. I03-001 (R03-014)</p> <p>Re: Guidelines Governing Waivers from English Immersion Programs</p>
--	--

TO: The Honorable Pete Rios
Arizona State Senate

The Honorable John Loredo
Arizona House of Representatives

Question Presented

You have asked whether Arizona Revised Statutes (“A.R.S.”) § 15-756(B) authorizes the Guidelines that the Superintendent of Public Instruction (“Superintendent”) issued on February 12, 2003 concerning waivers from English immersion programs (the “Guidelines”).

Summary Answer

Section 15-756(B), A.R.S., authorizes the Department of Education (“Department”) to develop guidelines for monitoring public schools to ensure compliance with State and federal laws governing English language learners. Those portions of the Guidelines that address the requirements for waivers under A.R.S. § 15-753(B)(2) and (3) are consistent with this statutory authority.

Any guidelines for monitoring issued by the Superintendent that concern waivers under A.R.S. § 15-753(B)(1) must be consistent with testing requirements that the Board adopts under

A.R.S. § 15-756(A)(1) and with the requirements in A.R.S. § 15-753(B)(1) regarding scores on the relevant tests. The Board must determine which standardized tests or other procedures are used to determine English proficiency. In addition, the minimum test scores for a (B)(1) waiver, although an appropriate subject for monitoring guidelines, must be supported by facts that establish that the scores are the average for students at the appropriate grade level, as required by statute.¹

Background

Proposition 203.

In November 2000, Arizona voters approved Proposition 203, an initiative that requires public schools to use specific methods for English-language instruction. Codified as A.R.S. §§ 15-751 through 15-755, Proposition 203 generally requires that “all children in Arizona public schools shall be taught English by being taught in English and all children shall be placed in English-language classrooms.”² In addition, students who are English language learners (“ELLs”)³ must, subject to limited exceptions, be educated in “sheltered English immersion [classes] during a temporary transition period not normally intended to exceed one year.” A.R.S. § 15-752.

Proposition 203 permits parents to apply for waivers from these requirements. A.R.S. § 15-

¹You also asked whether the Guidelines constitute a "rule" under A.R.S. § 41-1001(17) and are, therefore, subject to rulemaking requirements under the Arizona Administrative Procedures Act. The Legislature has established specific procedures for making this determination. Section 41-1033 prescribes a procedure for petitioning the agency to determine whether an agency policy or practice is a rule within the Administrative Procedures Act. Alternatively, the question may be answered through a declaratory relief action pursuant to A.R.S. § 41-1034. Because these specific statutory procedures have been established to determine whether an agency policy is a rule, the question is not addressed in this Opinion. Attorney General's Opinions address only questions of law relating to the office of the official requesting the Opinion. A.R.S. § 41-193(A)(7).

²An “English language classroom” is “a classroom in which English is the language of instruction used by the teaching personnel, and in which such teaching personnel possess a good knowledge of the English language. English language classrooms encompass both English language mainstream classrooms and sheltered English immersion classrooms.” A.R.S. § 15-751(2).

³An ELL is “a child who does not speak English or whose native language is not English, and who is not currently able to perform ordinary classroom work in English.” A.R.S. § 15-751(5).

753. If a waiver is granted, a child is “transferred to classes teaching English and other subjects through bilingual education techniques or other generally recognized educational methodologies.” A.R.S. § 15-753. Waivers must be approved annually “with prior written informed consent” of the child's parents or legal guardians. *Id.* These waivers may be granted for children who: (1) “already possess[] good English language skills, as measured by oral evaluation or standardized tests of English vocabulary comprehension, reading and writing, in which the child scores approximately at or above the state average for his grade level or above the 5th grade average, whichever is lower;” (2) are age 10 years or older and for whom an alternate course of study would be “better suited to the child’s overall educational progress,” or (3) have special individual needs. A.R.S. § 15-753(B)(1)-(3).

Proposition 203 also requires standardized testing of students in second grade and higher to monitor academic progress. A.R.S. § 15-755. The Superintendent is responsible for selecting the test that will be used for this purpose. *Id.*

Subsequent Legislation Concerning English Proficiency.

After the voters approved Proposition 203, the Legislature enacted A.R.S. § 15-756, which addresses the responsibilities of the Board and the Department concerning English language proficiency and programs for ELLs. *See* 2001 Ariz. Sess. Laws, 2nd Spec. Sess., Ch. 9, §1. The 2001 legislation that included A.R.S. § 15-756 was enacted to comply with *Flores v. Arizona*, 172 F. Supp. 2d 1225, 1238 (D. Ariz. 2000), which establishes the State's responsibilities under the federal Equal Educational Opportunities Act, 20 U.S.C. § 1703. *See* Arizona State Senate Fact Sheet for HB 2010, 45th Legis. 2nd Spec. Sess (2001).

Section 15-756 requires that the Department develop guidelines for the “monitoring of school districts and charter schools for the purposes of ensuring compliance with all federal and state laws regarding English learners.”⁴ A.R.S. § 15-756(B). This responsibility includes a requirement for certain reports with information specified by statute. *Id.* This statute also establishes the Board's responsibilities that include prescribing “the manner in which”:

- the primary or home language of a student is identified;
- the “English language proficiency of all pupils with a primary or home language other than English shall be assessed through the administration of English language proficiency exams,”
- ELLs are reassessed to determine English language proficiency; and
- former ELLs are evaluated.

A.R.S. § 15-756(A) (1)-(4).

The Content of the Guidelines.

On February 12, 2003, the Superintendent published the Guidelines for the implementation of Arizona’s English language immersion requirements. Some portions of the Guidelines simply restate relevant portions of the statutes. Other portions of the Guidelines describe the documentation that schools must provide to justify a waiver under A.R.S. § 15-753(B)(2) and (3). The Guidelines and the attachments to the Guidelines also set forth minimum test scores that children must achieve to have “good English language skills” necessary to qualify for a waiver under A.R.S. § 15-753(B)(1). The Guidelines define “good English language skills” as achieving test scores on any one of the tests in the “fluent to advanced English speaker” category.

⁴In addition to its specific responsibility for monitoring for compliance with the laws governing ELLs, the Department has general authority to “monitor school districts to ascertain that laws applying to the school districts are implemented as prescribed by law.” A.R.S. § 15-239(A)(1).

Analysis

Whether the establishment of the Guidelines is within the Superintendent's authority is determined by an analysis of the relevant statutes. The primary purpose of statutory construction "is to effectuate the intent of those who framed the provision and, in the case of an [initiative], the intent of the electorate that adopted it." *Calik v. Kongable*, 195 Ariz. 496, 498, 990 P.2d 1055, 1057 (1999) (quoting *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994)). The best indicator of a statute's meaning is its language. *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993). When the statutory language is not clear, a statute's history, context, subject matter, spirit and purpose may be examined to determine its meaning. *Wyatt v. Wehmuller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991). In addition, statutes are interpreted "in such a way as to achieve the general legislative goals that can be adduced from the body of legislation in question." *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996) (quoting *Dietz v. Gen. Elec. Co.*, 169 Ariz. 505, 510, 821 P.2d 166, 171 (1991)). This Opinion integrates the requirements of Proposition 203 with the responsibilities of the Board and the Superintendent as established by the Legislature after voters approved the Proposition.

At issue here is the scope of the Superintendent's authority under A.R.S. § 15-756(B), which requires the Department to establish guidelines for monitoring and to ensure compliance with state and federal laws regarding the education of ELLs. The obligation to monitor for compliance with state and federal laws regarding the education of ELLs includes the authority to monitor for compliance with the waiver requirements established by A.R.S. § 15-753. The waiver provisions are state laws regarding the education of ELLs. In addition, because "all executive, administrative and ministerial functions of the [D]epartment are vested" in the Superintendent (A.R.S. § 15-

231(B)), the Superintendent has the authority to adopt guidelines to fulfill the Department's responsibilities under A.R.S. § 15-756(B).

Section 15-756(B), however, does not define the Superintendent's monitoring responsibility or the term "monitoring." When the Legislature does not define words, and it does not appear from the context of a statute that a special meaning was intended, words are to be given their ordinary meaning. *See Mid Kansas Fed. Sav. and Loan Ass'n v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991). Webster's Dictionary defines "monitor" to mean "to check systematically or scrutinize for the purpose of collecting specified categories of data" or "to keep watch over: supervise." WEBSTER'S II NEW COLLEGE DICTIONARY 708 (1999). Applying this definition, the authority of the Superintendent and the Department to monitor to ensure compliance with laws affecting ELL's contemplates oversight responsibility.⁵

1. Documentation Requirements for a Waiver Under A.R.S. § 15-753(B)(2) and (3).

Portions of the Superintendent's Guidelines address the waivers for children over ten years of age, A.R.S. § 15-753(B)(2), and children with special needs, A.R.S. § 15-753(B)(3). The Guidelines address the documentation that schools must maintain regarding waivers that are granted. These Guidelines are within the Superintendent's authority pursuant to A.R.S. § 15-756(B) to monitor for compliance with the laws governing ELLs.

⁵Although "monitoring" is not specifically defined in chapter 7 of title 15, A.R.S., a state's authority to monitor for compliance generally involves such powers as conducting program reviews, inspecting documentation, and issuing corrective action or improvement plans when noncompliance or program violations are discovered. *Compare* 34 C.F.R. § 300.556 (outlining state education agency monitoring for local education agency compliance with the federal Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1487); 7 C.F.R. § 210.18 (setting forth procedures for administrative reviews of compliance with the National School Lunch Program that state agencies conduct).

2. Requirements for Waivers Under A.R.S. § 15-753(B)(1).

The analysis of the Guidelines concerning waivers for children who possess “good English language skills” (“(B)(1) waivers”) is more difficult. Those Guidelines do not focus on documentation required to establish compliance with the statutory requirements. They specify tests that will be used and the scores on those tests that will determine whether students qualify for waivers. The Department's monitoring responsibilities under A.R.S. § 15-756(B) do not contemplate prescribing tests and scores because monitoring generally involves oversight to ensure compliance with established requirements, rather than determining what the requirements are. *See supra* at 5, 6 (discussion of “monitoring”).

a. Designating Tests.

In Appendix A to the Guidelines, three tests are specified, as well as the test scores that are necessary for a child to be eligible for a waiver. The analysis of the Department's authority to specify the tests to determine eligibility for (B)(1) waivers is complicated, in part, because Proposition 203 itself did not assign the Superintendent, the Department, or any other State entity or officer the responsibility of designating tests for this purpose. *See* A.R.S. §§ 15-751 to -753. In contrast, Proposition 203 specifically assigned the Board authority regarding waivers for children with special needs. A.R.S. § 15-753(B)(3) (referring to “guidelines established by and subject to the review of the local governing board and ultimately the state board of education”). In addition, Proposition 203 specifically assigned to the Superintendent the responsibility for selecting a test to be implemented annually to monitor academic progress. A.R.S. § 15-755. However, it did not give the Superintendent similar authority regarding tests to determine “good English language skills.” *See Bates v. U.S.*, 522 U.S. 23, 29 (1997) (“[W]here Congress includes particular language in one

section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”) (citations and internal quotations omitted). Moreover, Proposition 203 repealed the statutes that had given the Superintendent the authority to establish requirements for determining English language proficiency. *See* Ariz. Att’y Gen. Op. I00-027.

The Legislature subsequently established responsibilities for testing and monitoring the education of ELLs in A.R.S. § 15-756. That statute assigned to the Board the responsibility for “prescrib[ing] the manner in which . . . English language proficiency of all pupils with a primary or home language other than English [will] be assessed through the administration of English language proficiency exams,” as well as the process of reassessing the proficiency of English language learners. A.R.S. § 15-756(A)(2), (3). While giving the Board the responsibility for prescribing certain tests concerning English-language proficiency, the same statute assigned the Department the responsibility for “developing guidelines for . . . monitoring” schools “for the purposes of ensuring compliance with all federal and state laws regarding English learners.” A.R.S. § 15-756(B).

Section 15-756 does not specifically address the waivers authorized in Proposition 203. However, the statutory scheme directs that the Board is responsible for prescribing the relevant tests concerning English-language proficiency, and gives the Department the responsibility for monitoring for compliance. In light of this statutory division of responsibilities, the Superintendent’s guidelines issued under A.R.S. § 15-756(B) may specify tests only if those tests have been previously designated by the Board pursuant to its authority under A.R.S. § 15-756(A).⁶

⁶It might be argued that the requirement that the Board’s authority under A.R.S. § 15-756(A) does not extend to tests to determine eligibility for waivers under A.R.S. § 15-753(B)(1) because the testing in A.R.S. § 15-756(A) focuses on identifying and monitoring English learners, not identifying students who may qualify for waivers under A.R.S. § 15-753(B)(1). Although the statutory language is not clear, establishing the testing

Consequently, as the Board adopts rules and policies under A.R.S. § 15-756, it should determine the testing requirements for (B)(1) waivers. Any Guidelines that the Superintendent establishes concerning (B)(1) waivers to fulfill the Department's monitoring responsibilities must be consistent with the testing requirements that the Board establishes.⁷

b. Scores on English Proficiency Tests.

The score required on any test used to determine whether a child qualifies for a (B)(1) waiver because he or she “already know[s] English” must be consistent with the statutory requirement that “the child score[] approximately at or above the state average for his grade level or at or above the 5th grade average, whichever is lower.” A.R.S. § 15-753(B)(1). The statute permits the use of an oral evaluation, as an alternative to a standardized test, but the same scoring requirements apply. That is, the child must score at his grade level average or 5th grade average, whichever is lower.⁸ The score required to obtain a waiver cannot exclude students who meet this statutory standard or include students who fail to meet this requirement.

The Guidelines at issue here focus on scores designated by test publishers rather than the statutory criteria. The Guidelines explain:

For grades K and 1, the scores shown on Exhibit A will be required for the waiver to apply. This is because "standardized tests of English vocabulary comprehension, reading, and writing" are not given in grades K and 1. For grades 2 and higher, the

requirements to determine whether a child qualifies for a (B)(1) waiver is more consistent with the Board's responsibilities to determine English-language proficiency under A.R.S. § 15-756(A) than with the Superintendent's monitoring role under A.R.S. § 15-756(B).

⁷The analysis of English-language proficiency determinations in this Opinion supercedes Ariz. Att'y Gen. Op. I00-027, which analyzed the authority of the Superintendent under statutes that were repealed by Proposition 203.

⁸The statutory language which includes, the phrase "in which the child scores approximately at or above the state average for his grade level or at or above the 5th grade average, whichever is lower" appears to apply to both "standardized tests of English vocabulary, comprehension, reading, and writing" and to oral evaluations.

waiver can be given if (1) the grades shown [in] Exhibit A are received, or alternatively, (2) if the child scores at or above the state average for his or her grade level in standardized tests of English vocabulary comprehension, reading, and writing. Performance at the 5th grade level is also sufficient.

Guidelines at 2.

The portion of the Guidelines that acknowledge that a child scoring at or above the state average for his or her grade level or at the 5th grade average is consistent with the Department's authority to monitor for compliance with the statute. The specifications of the test publishers, however, do not ensure compliance with the statutory parameters, which rely on test results in Arizona. Any policy determinations that may be necessary regarding the scores required for (B)(1) waivers should be made by the Board; the Department's monitoring guidelines should be consistent with those policies. *Cf.* A.R.S. §§ 15-203, -231 (describing powers and duties of the board and the department).

In sum, the Guidelines are within the Superintendent's statutory authority, except for the selection of specific tests to determine English proficiency. The Board must determine which standardized tests or other procedures are used to determine English proficiency. A.R.S. § 15-756(A). In addition, the minimum test scores for a (B)(1) waiver, although an appropriate subject for monitoring guidelines, must be supported by facts that establish that the scores are the average for students at the appropriate grade level, as required by statute.

Conclusion

Guidelines concerning waivers under A.R.S. § 15-753(B)(2) and (3) are consistent with the Superintendent's authority to monitor schools for compliance with the state and federal laws regarding the education of ELLS. The Board, however, has the authority to establish the tests to determine whether a child has “good English language skills” necessary for a waiver under A.R.S. § 15-753(B)(1). The Superintendent may establish monitoring guidelines consistent with the statutory requirements and with Board determinations concerning tests to determine English proficiency.

Terry Goddard
Attorney General