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STATE CAPITOL  
PHOENIX, ARIZONA

February 6, 1969

DEPARTMENT OF LAW LETTER OPINION NO. 69-4-L (R-57)

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REQUESTED BY: SARAH FOLSOM, SUPERINTENDENT  
Department of Public Instruction

QUESTION:

1. If, after a thorough investigation by personnel of the State Department of Public Instruction, a school district is found to have serious deficiencies in the curriculum, school plant, equipment, teaching, supplies, etc., does the State Superintendent of Public Instruction or the State Board of Education have the authority to close the school or schools within such a district?
2. If the answer to the above question is "Yes", what action can be taken to close such a school district or schools within a school district and, further, what procedures should be taken for such action?

ANSWERS:

1. No.
2. See body of opinion.

The powers and duties of the State Board of Education are set out in A. R. S. Sec. 15-102 and the provisions applicable to your question are set forth below:

"Sec. 15-102. Powers and Duties

The state board of education shall:

\* \* \*

12. Ascertain that the school laws are properly enforced.
13. Aid in the enforcement of laws relating to schools, health, compulsory education, child labor and child conservation.

- "14. Exercise general supervision over and regulate the conduct of the public school system.
  15. Prescribe and enforce a course of study in the common schools.
  16. Prescribe the subjects to be taught in all common schools.
- \* \* \*
18. Prescribe textbooks for the common schools, and shall prepare a list of not less than three nor more than five textbooks for each grade and each subject taught in the common schools for the selection by the school district of one book from such list for each student. The books so selected shall be purchased by the school district direct from the publisher as provided in this title. Textbooks selected pursuant to the provisions of this title shall not be changed during the next five years."

A. R. S. Sec. 15-431 provides that the governing body of the school district shall be a board of trustees and A. R. S. Sec. 15-442 sets forth the general powers and duties of the board of trustees, which primarily vests in them complete administrative control and management of the district and specifies certain duties.

The State Board of Education is given the power to exercise general supervision over and regulate the conduct of the public school system. (A. R. S. Sec. 15-102, para. 14). The State Superintendent of Public Instruction is given the power to superintend the public schools of the state. (A. R. S. Sec. 15-121). However, neither is given the power to direct the administration of the local affairs of the school district. Board of Education, Tucson High School District No. 1 vs. John W. Williams, 1 Ariz. App. 389, 403 P. 2d 324.

Although the State Board of Education does have the power and authority to enforce school laws and its own rules and regulations with respect to courses of study in the common schools, the subjects taught in the common schools, and the textbooks selected, there is nothing in the law which can be construed as giving the State Board of Education or the State Superintendent of Public Instruction the authority to close schools.

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This is not to say that the State Board has no control or recourse whatsoever. The State Board does have authority, after notice and hearing, to withhold state aid monies from school districts which are not complying with school laws and the rules and regulations of the State Board of Education designed to carry out the state school laws.

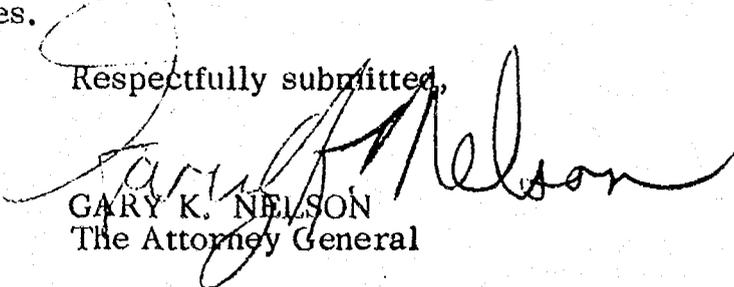
Furthermore, if the board of trustees are not fulfilling their statutory duties as prescribed by A. R. S. Sec. 15-442, and the other school statutes, the State Board of Education may request this office to bring an action for a writ of mandamus to compel the school officers to perform their duties according to law. Arizona State Land Department v. Yale McFate, 87 Ariz. 139, 348 P. 2d 912.

Finally, it should be pointed out that A. R. S. Sec. 38-443 provides, "A public officer or person holding a position of public trust or employment who wilfully omits to perform any duty the performance of which is required of him by law is guilty of a misdemeanor." Consequently, criminal sanctions also exist for those school officers who wilfully omit to perform a duty which they are required by law to perform.

Question One is answered negatively; consequently, the first part of the second question need not be answered.

In answer to the second part of the second question, one possible procedure to determine the fact of non-compliance would be for the State Board, upon receiving information that a school district does have serious deficiencies in certain areas or is not complying with the school laws, to order an investigation by personnel of the State Department of Public Instruction. If the investigation reveals that provable violations of school laws exist, then the state board may request this office to bring an action for a writ of mandamus against the school officers. If the state board elects to withhold state aid, then a hearing should be scheduled and notice given to the school district board of trustees in order that the local board is given an opportunity to be heard and present evidence on its own behalf prior to the state board withholding state aid monies.

Respectfully submitted,

  
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The Attorney General

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