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GARY K. NELSON, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

September 9, 1970

DEPARTMENT OF LAW OPINION NO. 70-23 (R-83)

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REQUESTED BY: THE HONORABLE DAVID B. KRET  
Arizona State Senator

- QUESTIONS:
1. Is it not incumbent upon the Legislature to fulfill the requirements of the Constitution by enacting laws as required for the establishment and maintenance of kindergartens in our school system and provide equivalent support thereof?
  2. Since the Legislature has not enacted laws to establish and maintain kindergartens in the State of Arizona, what recourse through the courts is available to: (1) an individual or (2) a public official, to secure substantial compliance with the constitutional requirement?
  3. Could a Writ of Mandamus require the Legislature to fulfill the constitutional requirement to establish and maintain kindergartens in the State of Arizona?

- ANSWERS:
1. See body of opinion.
  2. Not applicable.
  3. Not applicable.

The Arizona Constitution, Article 11, § 1, provides:

"Section 1. The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school

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system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university. . . ."

This provision of the Constitution is a mandate to the Legislature for the establishment and maintenance of laws providing for kindergartens in our school system. The Constitution further provides in Article 2, § 32:

"Section 32. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."

A.R.S. § 15-1212.C defines "common school" as the first to eighth grades inclusive and "high school" as the ninth to twelfth grades inclusive. In the statutes which have been enacted by the Legislature, there is a distinction maintained between high schools, common schools, kindergartens, normal schools and the universities. However, this is not to say that they are not all part of the same uniform system of public schools.

A.R.S. § 15-448 provides, in part, as follows:

"A. The board of trustees may:

"1. Establish kindergartens when in their opinion establishment of a kindergarten will not interfere with the work of or maintenance of efficiency in the grades. If kindergartens are established, the board may secure funds for their maintenance in the same manner other school funds are secured."

A.R.S. § 15-302 provides, in part, as follows:

"A. All schools other than high schools and evening or night schools shall, unless otherwise provided by law, admit children

between the ages of six and twenty-one years who reside in the district. A child shall be deemed six years of age if he will reach such age prior to January 1 of the current school year. If a kindergarten is maintained, a child shall be deemed five years of age and eligible for admission to kindergarten if he will reach such age prior to January 1 of the current school year."

It should be noted that A.R.S. § 15-448 authorizes the School Board to secure funds for the maintenance of the kindergarten in the same manner other school funds are secured. A.R.S. § 15-1212 authorizes the State Board of Education to apportion state school funds to the several counties on the basis of average daily attendance in the common and high schools in each county in accordance with the legislative formula. In the numerous amendments to A.R.S. § 15-1212, the Legislature has elected not to include kindergartens within the definition of "common school" and, therefore, the State Board of Education has no authorization to allocate state funds for the maintenance of kindergartens.

It should further be noted that other statutes providing state or county financial assistance for common and high schools do not include kindergartens (A.R.S. §§ 15-1221, 15-1225 and 15-1241), and A.R.S. § 15-1201 indicates that kindergartens are not eligible for state aid.

It is, therefore, the opinion of the Attorney General that the Legislature has fulfilled the requirements of the Constitution by enactment of laws which provide for the establishment and maintenance of kindergartens in our school system.

It is further the opinion of the Attorney General that if kindergartens are established, school boards may secure funds for their maintenance in the same manner other school

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funds are secured, except that the Legislature has by other statutory enactments limited the definition of "other school funds" so as not to include state aid apportionments.

Having concluded that the Legislature has complied with the constitutional mandate, we feel that the questions concerning the duty of the Legislature and processes for compelling the performance of the Legislature are not applicable to the facts.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary K. Nelson". The signature is written in dark ink and is positioned below the typed name.

GARY K. NELSON  
The Attorney General

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