

June 7, 1937

Mr. Earl Platt  
County Attorney  
Apache County  
St. Johns, Arizona

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**ARIZONA ATTORNEY GENERAL**

Dear Mr. Platt:

We have received a request from Mr. J. Smith Gibbons of Springerville Arizona, for an opinion on several questions concerning the St. Johns High School. These matters will probably be referred to you in due course of time so for that reason I am sending you our opinion on these questions and advising Mr. Gibbons to consult you at your office in regards to the questions asked by him.

The first question asked by Mr. Gibbons is, "whether or not the County School Superintendent of Apache County has anything to do with the disbursement of funds of the high school of that district or may the high school board draw warrants direct on the county treasurer.

In answer to this question it will be necessary to state briefly the background of the Legislative enactments on this point. The legislature during the session of 1921, enacted Chapter 155, which authorized the establishment of one or more county high schools in counties of the fourth class; wherein it was provided that in counties of the fourth class the county high school board of education may draw warrants direct on the county treasurer.

In 1928, at the time of the revision of the Laws of Arizona, Chapter 155 of the Session Laws of 1921, was condensed into one section, which appears in the 1928 Code as Section 1082. In that section all reference to the authority of the high school board of education in counties of the fourth class, to issue warrants on the county treasurer, was omitted.

The courts in passing upon these questions have adopted as a general rule of statutory construction that:

"Changes made by a revision of the statutes will not be regarded as altering the law, unless it is clear

that such was the intention, and, if the revised statute is ambiguous or is susceptible of two constructions, reference may be had to prior statutes for the purpose of ascertaining the intention." *Libby v. Helham*, 166 Pac. 576.

The Supreme Court of Arizona has passed upon this question in several cases, and as said in the case of *In re Sullivan's Estate*, 300 Pac. 193;

"We should . . . presume that when a word, a phrase, or a paragraph from the 1913 Code is omitted from the Code of 1928, the intent is rather to simplify the language without changing the meaning, than to make a material alteration in the substance of the law itself. . . ."

Therefore, it is the opinion of this office that in interpreting Section 1082 of the Revised Code of Arizona, 1928, it is necessary to refer to Chapter 155 of the Session Laws of 1921, for the purpose of ascertaining the intention of the legislature.

From a careful reading of said Chapter 155, we believe that it was the intention of the legislature in passing that chapter, to place high school boards of counties of the fourth class under a special statute and to provide a separate and distinct mode of procedure for their operation; and excluding them from the general provisions for the operation of other high school boards in the state.

Therefore we are of the opinion that applying the rule of statutory construction as laid down by the Supreme Court in the case of *In re Sullivan's Estate*, supra, that it was not the intention of the legislature in omitting certain parts of said Chapter 155 in the revision of the 1928 Revised Code of Arizona to materially alter that chapter, but merely to simplify the language; and that for the purpose of a practical operation of said Section 1082, it is necessary to refer to Chapter 155 and that the provision therein contained relative to the authority of high school boards in counties of the fourth class, to issue warrants direct on the county treasurer, is effective.

The next question presented by Mr. Gibbons is, "whether or not the St. Johns High School may maintain a branch high school at Sanders Arizona?"

It is the opinion of this office, there is no authority permitting the St. Johns High School District to maintain and operate a branch high school at Sanders and the only way a high school can be established there is by following the method set forth in the Revised Code of Arizona, 1928, by holding an election of the registered electors of that county.

The third question presented by Mr. Gibbons is, "whether or not Mr. Eddie Schuster who is a stock holder in the corporation of A & B Schuster Company, may contract with the high school district for supplies, etc., to be purchased by such district.

I am enclosing herewith a copy of an opinion previously rendered by this office upon this question which I am sure will fully answer the question.

Yours very truly,

JOE CONWAY  
Attorney General

J. M. JOHNSON  
Assistant Attorney General

E. G. FRAZIER  
Special Assistant  
Attorney General