



OFFICE OF THE
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(R75-166)

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BRUCE E. BABBITT
ATTORNEY GENERAL

April 14, 1975

Honorable Richard J. Riley
County Attorney
Post Office Drawer CA
Bisbee, Arizona 85603

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ARIZONA ATTORNEY GENERAL

Dear Mr. Riley:

Receipt is acknowledged of your correspondence of March 21, 1975, explaining your interpretation of A.R.S. §§ 15-252 and 15-265 and what advice you have in the past rendered to your school districts in light of your interpretation.

Specifically we note that you draw a distinction between the two statutes based upon the notice requirement of A.R.S. § 15-252, which recites that the board's intention not to re-employ a probationary teacher must be delivered to the teacher on or before April 15, and the notice requirement of A.R.S. § 15-265, which recites that a school district board will not formulate any charges of incompetency against a continuing or probationary teacher unless 90 days prior to the notice to the teacher of intention to dismiss the board advises by additional written notice the grounds of incompetency so that the teacher will have an opportunity to correct such. We agree with your distinction that A.R.S. § 15-252 applies to the situation where a school board does not intend to offer a new contract to a probationary teacher, while A.R.S. § 15-265 applies to the situation of the dismissal on incompetency grounds of a continuing or probationary teacher during the term of the teacher's existing contract.

Additionally, however, we believe that should a school board give the A.R.S. § 15-252 April 15th notice to a probationary teacher that his contract will not be renewed the following year, and list incompetency as one of the reasons for such non-renewal, a court of law might be persuaded to construe A.R.S. § 15-265 as applicable to such a situation (since the statute particularly speaks of continuing or probationary teachers). Therefore, if there are reasons other than incompetency for non-renewal of a probationary teacher's contract, you

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might consider listing only the grounds other than incompetency in the April 15 notice (see attached letter of Al Firestein, Chief Civil Deputy, Maricopa County Attorney's Office, to Don Wagner, Superintendent, Buckeye Elementary Schools, and our attached letter of agreement).

As a further guide, we call your attention to the Arizona Supreme Court decision of School District No. 8, Pinal County v. Superior Court, 102 Ariz. 478, 433 P.2d 28 (1967), wherein the Court deemed the following notice sufficient for non-renewal of probationary teacher's contract:

"* * * Your contract of employment has been terminated for the following causes:

- "1. Lack of cooperation
- "2. Insubordination"

The rule of law expounded by the Court provided in conclusion:

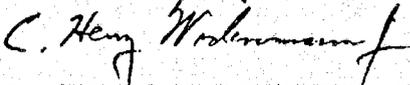
"We hold, therefore, that the notice of dismissal or termination contemplated by the statute in the case of probationary teachers need not specify in detail the time, place or circumstance of the conduct which the school administrator or school board finds detrimental to her efficiency as a teacher, and that the language of a notice is sufficient if it simply states undesirable qualities which merit a refusal to enter into a further contract."

The Arizona State University Time Line Analysis enclosed with your letter was not cleared through this office. It has no legal weight of which we are aware.

If you have any further questions, please let us know.

Very truly yours,

BRUCE E. BABBITT
Attorney General


C. HENRY WIDENMANN, JR.
Assistant Attorney General

CHW:c1
Enclosure
cc: Mr. Albert Firestein