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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

OVER Ruled by
IYO-78

BRUCE E. BABBITT
ATTORNEY GENERAL

July 21, 1975

(R75-293)

75-197

Mr. Lloyd H. Robertson, Director
Arizona Department of Public Safety
P.O. Box 6638
Phoenix, Arizona 85005

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ARIZONA ATTORNEY GENERAL

Dear Mr. Robertson:

This is in response to your request of May 5, 1975 wherein you asked the following question:

Under the provisions of A.R.S. § 38-847, would the Director of the Department of Public Safety serve as chairman of the Department of Public Safety local retirement board?

The answer is "Yes". Of course, the chief elected official of the State of Arizona is the Governor of the State. However, since, pursuant to A.R.S. § 38-847(A)(1), the Governor is required to appoint three members of the five-member Department of Public Safety local board, it would appear somewhat incongruous for the Legislature to have intended that the Governor himself act as the chairman of the local board for the Department of Public Safety. Surely the power to appoint three of the five members of the board would give a governor (who also acts as chairman of the same board) a disproportionate amount of power over that particular administrative body. Where the meaning of a statute is not clear, a reasonable interpretation must be sought and in seeking a reasonable interpretation the court will not be bound by the letter, but will consider the statute as a whole to determine its intent and purpose. Continental Casualty Co. v. Grabe Brick Co., 1 Ariz.App. 214, 401 P.2d 168 (1965).

A.R.S. § 38-847(A)(1) provides as follows:

The administration of the system and responsibility for making effective the provisions thereof for each employer are vested in a retirement board, which in the case of employees of the state, other than the department of public safety, shall be the Arizona state retirement system board. The department of public safety, each county, each municipal fire department,



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and municipal police department shall have a local board. Each local board shall be constituted as follows:

1. The mayor or chief elected official as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the city council or governing body of the employer. The three appointed members of the department of public safety board shall be appointed by the governor. . . .

A.R.S. § 38-847(A) (1) set forth the manner in which each local board for the Public Safety Retirement System shall be constituted. As to those boards other than the Department of Public Safety, membership consists of (1) the mayor or chief elected official as chairman, (2) two members elected by secret ballot by members employed by the appropriate employer, and (3) two citizens, one of whom shall be the head of the Merit System, if it exists for the group of members, appointed by the mayor or chief elected official with the approval of the city council or governing body of the employer.

The local board for the Department of Public Safety consists of five persons: (1) two members elected by secret ballot by members employed within the Department, and (2) three members appointed by the Governor.

It can be seen from the above that although the statute requires that the chairman of each local board be either the mayor or the chief elected official of the particular agency involved, the statute is ambiguous to the extent that it does not contain any requirement that one of the three appointed members of the Department of Public Safety local board be a person falling within the above category. It is therefore reasonable to assume that the Legislature intended that the Governor appoint as one of the three appointed members of the Department of Public Safety Local Board an individual fulfilling duties comparable to those given the mayor or chief elected official of the various other county, state and

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municipal agencies participating in the system.

The problem arises by reason of the fact that the aforementioned statute designates the mayor or chief elected official as the chairman of each local board. Of course, the Director of the Department of Public Safety being an appointed rather than elected official falls into neither category. [A.R.S. § 41-1711(D) provides that the Director shall be appointed by the Governor pursuant to A.R.S. § 38-211 to serve for a term of five years.]

The primary consideration in interpreting statutes is the intention of the Legislature. Town of Florence v. Webb, 40 Ariz. 60, 9 P.2d 413 (1932). In order to determine properly which public official our Legislature intended to designate as the chairman of the local board of the Public Safety Retirement System for the Department of Public Safety, we should first examine the powers and duties of the local boards in general. These duties include, but are not limited to, the following:

1. To construe and interpret the system, decide all questions of eligibility and service credits, and determine the amount, manner and time of payment of any benefits under the system.
2. To prescribe procedures to be followed by the members and their beneficiaries in filing applications for benefits.
3. To make a determination as to the right of any person to a benefit and to afford any person dissatisfied with such determination the right to a hearing thereon, etc.

A review of these and the other powers of the board set forth in A.R.S. § 38-847(D) reveals the fact that board members, especially the chairman, should have a grasp of fiscal matters and should also have a certain degree of expertise in the area of personnel administration.

Where a statute is found to be ambiguous, the legislative intent may be gathered from statutes in pari materia, that is, relating to the same subject matter. Frazier v. Terrill, 65 Ariz. 131, 175 P.2d 438 (1947).

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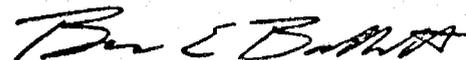
In that connection, we note that as late as 1974, our Arizona State Legislature, in prescribing the qualifications for membership on the State Retirement System Board, provided that every member of the State Retirement System Board "shall have not less than 5 years of administrative management experience". A.R.S. § 38-742, as amended by the Laws of 1974, Ch. 180, §2, effective January 20, 1975. It may be inferred from the use of such language that the Legislature intended to require that members of local boards affiliated with the Public Safety Retirement System have similar qualifications. Legislative construction in one act of the meaning of certain words is considered in construing the same words in another act. Washington Natl. Ins. Co. v. Employment Security Commission, 61 Ariz. 112, 144 P.2d 688 (1944).

The makeup of the State Retirement System Board is of particular interest by reason of the fact that its responsibilities include the administration of the State Highway Patrol Retirement System. A.R.S. § 38-765(A), now "inoperative" pursuant to A.R.S. § 38-778(A).

Although the Department of Public Safety has no chief "elected" official, it is clear that the director is the chief appointed official of that State agency. The word "chief" has been defined to relate to "paramount authority in a bureaucratic structure". State ex rel. Beam v. Civil Service Commission of the City of Spokane, 77 Wash.2d 951, 468 P.2d 998 (1970). A review of Title 41, Art. 2, which establishes the Department of Public Safety and defines the structure of that Department, reveals the fact that the director must be considered the chief executive officer of the Department of Public Safety. In addition to those duties set forth in A.R.S. § 41-1713, A.R.S. § 41-1741(D) requires the director of the Department of Public Safety to determine the compensation of employees of the Arizona Highway Patrol, a division within the Department. Such functions with regard to the establishment and control of the salaries of departmental employees should have a tendency to give the director an understanding of departmental financing which in turn give him the capability to handle the type of administrative matters coming before the local retirement board for the Department of Public Safety.

It is therefore concluded that it was the intent of the Legislature to provide that the Director of the Department of Public Safety be appointed as a member by the Governor, and that the Director serve as chairman of the local board for the Department of Public Safety of the Public Safety Retirement System.

Sincerely,



BRUCE E. BABBITT
Attorney General

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