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August 18, 1975

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ARIZONA ATTORNEY GENERAL

Mr. Albert Firestein  
Chief Civil Deputy  
Maricopa County Attorney  
101 West Jefferson  
Phoenix, Arizona 85003

Dear Mr. Firestein:

We have reviewed your letter opinion (School Opinion No. 75-23) dated August 13, 1975, addressed to Mr. Richard L. Harris, Maricopa County Superintendent of School, concerning an interim appointment to the Pendergast Board of Trustees, which was supplemented by your letter to this office dated August 15, 1975.

We concur in your opinion as supplemented.

Sincerely,

BRUCE E. BABBITT  
Attorney General

BEB:ASK:lc

Addr 75-502

OFFICE OF THE MARICOPA COUNTY ATTORNEY

MOISE BERGER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



August 15, 1975

The Honorable Bruce E. Babbitt  
Attorney General  
State of Arizona  
Capitol Building  
Phoenix, Arizona 85007

Attention: Alan Kamin  
Assistant Attorney General

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ATTORNEY GENERAL  
PHOENIX, ARIZONA

Dear Sir:

This letter will supplement our Opinion Letter No. 75-23 dated August 13, 1975 discussing the question of whether the county school superintendent has authority to make an ad interim appointment pending the election of a board member.

In the case of McCall v. Cull (75 P.2d 696) the general statement of authority to the governor to make ad interim appointments was limited in the opinion to extend for the duration of the term of office then vacant. This limitation was placed because of the existence at that time of a statute, Section 56, Revised Code 1928, which specifically required that vacancies could be filled "only for the unexpired term of such office or member".

That statute has been carried over into Arizona Revised Statutes 1956 as Section 38-295 (C).

This section has been interpreted by the Court in the case of Bolin v. Superior Court in and for Maricopa County, 85 Ariz. 131, 333 P.2d 295, to apply only to vacancies on a board "where no particular provision is made for filling such vacancy".

In our case there is a specific provision allowing the county school superintendent to fill such vacancies, namely §11-512 (7). Therefore the restriction of ad interim appointments to the unexpired term of an office does not apply to a county school superintendent's action in making appointments to a school board.

I conclude that my previous opinion stands and that the county school superintendent has the power to make this limited interim appointment under McCall v. Cull as modified and the general case law cited in my previous letter.

Very truly yours,

MOISE BERGER  
Maricopa County Attorney

*Albert Firestein*

Albert Firestein  
Chief Civil Deputy

AF:mfg

OFFICE OF THE MARICOPA COUNTY ATTORNEY

MOISE BERGER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



August 13, 1975

School Opinion No. 75-23

REQUESTED BY: Richard L. Harris  
Superintendent of Schools

OPINION BY: Albert Firestein  
Chief Civil Deputy

QUESTION: May the County School Superintendent make an interim appointment to the Pendergast Board of Trustees to last until a special election is held on November 12, 1975?

ANSWER: Yes.

I understand the facts to be as follows:

The Pendergast School District has a three man board and the president has just resigned. The Superintendent of Schools has issued a call for a special election to choose his replacement on November 12. Patrons of the district have expressed grave concern that the affairs of the district will suffer because one of the members of the board is not able to consistently attend to his duties and there is a potential disagreement between the remaining two members of the board which could result in a total failure of the board to operate the school district. In their opinion a true emergency exists and they strongly request that a third member be appointed to serve until the election. There is apparently some sentiment to file a court action in the event of the failure to appoint a substitute.

In A.R.S., §11-512 (7) it is stated that the superintendent "shall appoint trustees of school districts to fill all vacancies, but may, when he deems it in the best interests of the community, call a special election to fill the vacancies."

The question is whether or not an interim appointment is included within this language.

I believe that it is. There is language in the case of McCall vs. Cull, 51 Ariz. 237, 75 P.2d 696, indicating that our Supreme Court recognizes the existence of "ad interim appointments."

August 13, 1975  
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In this case a member of the Lifestock Sanitary Board had resigned and the governor made an "ad interim" appointment for the balance of the term. There was no statute expressly allowing the governor to make this type of appointment. The Court held that "ad interim appointments by the appointive power are lawful and the appointee upon his qualification is entitled to possession of the office if it is vacant".

The general law on this question is sparse, however the authorities I have discovered are in agreement with this position. See 63 Am. Jur. 2d., Public Officers, Section 128, and 67 C.J.S., Officers, Section 51, p. 214. A very late Indiana case decided that the appointing officer had "implied authority" to make an interim appointment. See Roberts v. State, 278 N.E.2d 285.

I therefore conclude that under the facts of this case the County School Superintendent has authority to make an ad interim appointment to the Board of the Pendergast School District to last until a successor is elected and qualified.

A copy of this opinion is being sent to the Attorney General for concurrence.

Very truly yours,

MOISE BERGER  
Maricopa County Attorney

Albert Firestein  
Chief Civil Deputy

AF:mfg