



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

March 29, 1977

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

The Honorable Burton S. Barr
Majority Leader
Arizona House of Representatives
House Wing, State Capitol
Phoenix, Arizona 85007

Re: 77-76 (R77-97)

Dear Representative Barr:

Re: Indian Oasis School District No. 40--Use
of PL 73-167 (Johnson-O'Malley) Funds

This is in response to your letter of March 24, 1977, in which you requested a written opinion from this office regarding the financial emergency at Indian Oasis School District No. 40. Specifically, you ask whether PL 73-167 (Johnson-O'Malley Act) funds may be expended by the district if such would cause the district's budget, for the 1976-77 school year, to be exceeded.

It is our opinion that PL 73-167 (Johnson-O'Malley Act) funds may be expended in excess of the 1976-77 budget, provided that such expenditures meet the requirements of A.R.S. § 15-1141 et seq. and of 25 U.S.C. § 458.

A.R.S. § 15-1143 states:

A. A common or high school district which, by reason of an emergency, finds it necessary to expend monies in excess of its annual budget for any purpose set forth in § 15-1141 may apply to the state board of education for an apportionment from federal funds available under the provisions of this article.

Although A.R.S. § 15-1202.J prohibits a school district from exceeding its budget, § 15-1143 specifically allows a district to exceed its budget where an emergency exists and federal funds are available. A.R.S. § 15-1143.B grants discretionary power to the State Board of Education, after a hearing and investigation of the emergency declared by the school district, to "apportion such monies [appropriated by

The Honorable Burton S. Barr
March 29, 1977
Page Two

Act of Congress] as it deems necessary to the district" when needed "for the proper conduct of [the] school." The County Board of Supervisors must approve such actions of the State Board of Education:

The state board of education may, with the approval of the board of supervisors, authorize expenditure of monies received pursuant to this article in excess of the annual budgets of common and high school districts. A.R.S. § 15-1142.B.

Under A.R.S. § 15-1141, the funds apportioned must be federal funds:

A. The state board of education may accept on behalf of the state monies appropriated by act of Congress for defense in education, reduction of illiteracy, teaching of immigrants or other educational purpose.

Johnson-O'Malley Act funds qualify¹ since they are appropriated by act of Congress and are used for educational purposes (25 U.S.C. §§ 452 et seq.). In addition, the monies must be expended in conformance with the requirements of the federal grant:

Monies so apportioned shall be expended by the common and high school district for the purposes and in the manner set forth in the federal grant. . . . A.R.S. § 15-1142.B.

1. The Johnson-O'Malley grant in question was made to the Papago Tribe. Acting as a conduit, the Tribe, which obtained the funds for use by the school district, can transfer the grant proceeds to the State Board of Education for apportionment to the school district. Accordingly, the funds would retain their federal character as required by A.R.S. § 15-1141.

The Honorable Burton S. Barr
March 29, 1977
Page Three

Johnson-O'Malley funds are required to be supplemental in nature:

No funds from any grant or contract pursuant to this title [25 U.S.C. §§ 455-458.e] shall be made available to any school district unless the secretary is satisfied that the quality and standard of education, including facilities and auxiliary services for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources other than resources provided in this title [25 U.S.C. §§ 455-458.e], available to the local school district. 25 U.S.C. § 458.a, effective January 4, 1975, PL 93-638, Title II, Part C, § 205, 88 Stat. 2216.

Johnson-O'Malley funds may be expended in excess of the 1976-77 school district budget if the following requirements are met:

1. The school district declares a financial emergency and the State Board of Education finds that additional funds are needed for proper conduct of the school.
2. The funds will be used to supplement the basic school programs.
3. The apportionment by the State Board of Education is approved by the County Board of Supervisors.

2. As amended by Congress in 1974 (PL 93-638, 25 U.S.C. §§ 452 et seq.). Atty.Gen.Op. No. 68-9-L no longer is applicable to PL 73-167 in the manner stated, due to changes in the law. For legislative history changing the requirement to supplemental, see United States Code, Congressional and Administrative News, 93rd Congress, 2nd Session 1974, pp. 7776, "Purpose", 7780 "Part C, General Provisions".

The Honorable Burton S. Barr
March 29, 1977
Page Four

In your letter you state that Johnson-O'Malley funds are available through the Papago Tribe. To bring the expenditure of funds within the requirements of A.R.S. § 15-1141, et seq., the Papago Tribal Council must offer the funds to the State Board of Education for the exclusive benefit of Indian Oasis School District No. 40 in the manner set forth in the federal grant to the Tribe.

The following procedures should be followed:

1. The school district declares a financial emergency, and applies, under A.R.S. § 15-1143.A, to the State Board of Education for an apportionment of federal funds.
2. Resolution by the Papago Tribal Council offering the funds to the State Board of Education for the benefit of Indian Oasis School District No. 40.
3. Acceptance of the funds by the State Board of Education for the benefit of Indian Oasis School District No. 40.
4. Hearing and investigation by the State Board of Education to determine that the funds are needed for the proper conduct of the school.
5. Apportionment of the funds by the State Board of Education to the school district.
6. Approval by the Pima County Board of Supervisors of the State Board of Education authorizing expenditure of the funds in excess of the district's budget.

The funds shall be disbursed as set forth in A.R.S. § 15-1144:

When money is apportioned to a common or high school district pursuant to this article, the state board of education shall direct the commissioner of finance to draw

The Honorable Burton S. Barr
March 29, 1977
Page Five

his warrant for the amount apportioned, and the state treasurer shall pay the warrant upon presentation, as provided by law. The school district shall immediately deposit the money with the county treasurer of the county in which the district is located and the treasurer shall place it in the appropriate fund to the credit of the district. Thereafter the monies shall be disbursed by the county treasurer only on the voucher of the district and the warrant of the county school superintendent.

See also Atty.Gen.Op. Nos. 59-73 and 57-96.

Further, you ask whether the County School Superintendent can provide educational services to the school district as an accommodation school pursuant to A.R.S. § 11-512.B.

Accommodation schools are schools established on a military reservation. A.R.S. § 15-912. The term "military reservation" does not include the Papago Reservation. Cf. United States v. Tichenor, 12 F. 415 (9th Cir. 1882). Since the Papago Reservation is not a "military reservation", the Indian Oasis School cannot qualify for funding as an accommodation school, and the County School Superintendent cannot provide educational services to the school as an accommodation school.

Your last question is whether the school district can enter into an agreement with the Papago Tribe, with the Tribe assuming those liabilities of the district that are in excess of the adopted budget.

A.R.S. § 15-1202.J states:

No expenditure shall be made by any school district for a purpose not particularly itemized and included in the budget and no expenditure shall be made and no debt, obligation or liability shall be incurred or created in any year for any

The Honorable Burton S. Barr
March 29, 1977
Page Six

purpose itemized in the budget in excess of the amount specified for such item irrespective of whether the district at any time has received or has on hand funds in excess of those required to meet the expenditures, debts, obligations and liabilities provided for under such budget except pursuant to the provisions of § 15-1245.

Though the tribe can contract with the school district for services, A.R.S. § 15-1202 prohibits a school district from exceeding its budget.

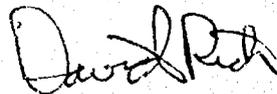
There are only two general exceptions to this prohibition: A.R.S. § 15-1143 (see Atty.Gen.Op. No. 68-9-L) and A.R.S. § 15-1245. As discussed above, A.R.S. § 15-1143 permits the expenditure of federal funds in excess of a school district budget under emergency circumstances. However, this may only be done under the administration and supervision of the State Board of Education. Such administration and supervision can occur only after the State Board of Education has accepted the monies on behalf of the State of Arizona. A.R.S. § 15-1141.

The other situations where a school district can exceed its budget are when a school has an increased average daily membership or suffered damage or destruction to its facilities. A.R.S. § 15-1245. Indian Oasis School District No. 40 meets none of these requirements.

Should you have any questions concerning this opinion, please call me.

Sincerely,

BRUCE E. BABBITT
Attorney General



DAVID RICH
Assistant Attorney General

DR:lc