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

BRUCE E. BABBITT
ATTORNEY GENERAL

May 6, 1977

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Mr. Albin Krietz
Deputy Pima County Attorney
Suite 600
131 West Congress
Tucson, Arizona 85701

Re: 77-100 (R76-208)

Dear Mr. Krietz:

This office has reviewed your opinion letter, dated April 26, 1976, to Mr. Frederick Jipson of the Pima County Special Services Cooperative. The following is a revision of that opinion pursuant to A.R.S. § 15-122.B.

The question presented is whether a probationary teacher, who is not offered a contract for the next ensuing school year because of a lack of pupils, has a preferred right of reappointment in the event services are reestablished. The answer is yes.

The resolution of this question depends upon an interpretation of A.R.S. § 15-257:

Nothing in this article shall be interpreted to prevent a school board from reducing salaries or eliminating teachers in a school district in order to effectuate economies in the operation of the district or to improve the efficient conduct and administration of the schools of the district, but no reduction in the salary of a continuing teacher shall be made except in accordance with a general salary reduction in the school district by which he is employed, and in such case the reduction shall be applied equitably among all such teachers. Notice of a general salary reduction shall be given each teacher affected not later than May 1 of the calendar year in which the reduction is to take effect. A teacher dismissed for reasons of economy or lack of pupils shall have a preferred right of reappointment in the order of original employment by the board in the event of an increase in the number of teachers or the reestablishment of services within a period of three years.

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The statute protects against both reduction in salaries and elimination of teachers. Only continuing teachers are protected against a future reduction in salary. The question remains whether probationary teachers are entitled to preferential reappointment if "dismissed for reasons of economy or lack of pupils. . . ."

In Board of Education Tucson H. S. Dist. No. 1 v. Williams, 1 Ariz.App. 389, 403 P.2d 324, 328 (1965) the Court stated that the teacher tenure act (A.R.S. §§ 15-251 et seq.) ". . . should be given a liberal interpretation to carry out its obvious purpose to give protection to the teaching profession from arbitrary dismissals or reduction in salary. . . ." Since the purpose of the tenure act, including A.R.S. § 15-257, is to lend protection to the "teaching profession", the use of the term "teacher" by itself in the last sentence of that section, without distinguishing between continuing and probationary teachers, should apply also to probationary teachers who are "dismissed" for lack of pupils. Further, since only continuing teachers are protected against a future salary reduction, the statutory implication is that both continuing and probationary teachers are protected, for a three year period, in the event of a reduction in force. The question then is whether a probationary teacher who is not tendered a contract for the ensuing school year has been dismissed.

The Arizona Supreme Court in Tempe Union H. S. Dist. v. Hopkins, 76 Ariz. 228, 262 P.2d 387, 390 (1953) stated that a probationary teacher who was informed in writing that her contract "would not be renewed" had been terminated or dismissed. Squarely contrary is Board of Trustees of Tanque Verde School District v. Superior Court, 25 Ariz. App. 47, 540 P.2d 1266, 1268 (1975), holding that "Failure to re-employ a probationary teacher is not a 'dismissal'." This case and the cases cited therein, however, are concerned with the due process hearing rights of a dismissed teacher, and therefore are properly distinguishable. See the interpretation of A.R.S. § 15-265 in Tanque Verde, supra. The last sentence of A.R.S. § 15-257 evidences a legislative intent that a reduction in force be considered a dismissal. Compare the changes made in A.R.S. § 15-259 upon its 1974 repeal and rewritten incorporation into A.R.S. § 15-252.B. The equivalency of dismissal to a probationary teacher's failure to obtain contract renewal because of a reduction in force is reinforced by the language of A.R.S. § 15-252.B. The title of this section is entitled "Offer of

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contract to probationary or continuing teacher; acceptance; notice to probationary teacher of intention to terminate." This section is subject to the provision of A.R.S. § 15-257 and equates "intention not to reemploy" with "intention to terminate", as contained in its title.¹

Previous Attorney General Opinions provide support for the conclusions reached here. Atty.Gen.Op. No. 75-15-C and No. No. 56-68.²

Sincerely,
BRUCE E. BABBITT
Attorney General

David Rich

DAVID RICH
Assistant Attorney General

DR:jrs

1. The title of a statute may be considered in determining legislative intent, if the statutory language is ambiguous. Nunez v. Superior Court in and for Pima County, 18 Ariz.App. 462, 503 P.2d 420 (1972), and State v. Govorko, 23 Ariz.App. 380, 533 P.2d 688 (1975).

2. There is language in Atty.Gen.Op. No. 72-17-C which is inconsistent with the result here reached. But from a review of the facts involved in that opinion, it is clear that A.R.S. § 15-257 was not there applicable, because the teacher vacancies which there existed did not arise as a result of "an increase in the number of teachers or the reestablishment of services," the statutory preconditions to the application of that section. Rather the vacancies arose because of teacher resignations.



OFFICE OF THE
Pima County Attorney
COUNTY GOVERNMENTAL CENTER
600 ADMINISTRATION BUILDING
131 WEST CONGRESS STREET
Tucson, Arizona 85701
792-8411

DENNIS DECONCINI
PIMA COUNTY ATTORNEY
DAVID G. DINGELDINE
CHIEF DEPUTY

April 26, 1976

Mr. Frederick J. Jipson, Ed.D.
Program Director
Pima County Special Services Cooperative
Pima County Government Center
131 West Congress Street
Tucson, Arizona 85701

Dear Mr. Jipson:

You have asked me if a probationary teacher who is not offered a contract for the next ensuing school year because of a lack of pupils has a preferred right of re-appointment in the event of the re-establishment of services. The answer is no.

A.R.S. §15-257, "Limitations Upon Reductions Of Salaries Or Personnel", gives such a right to a teacher who has been "dismissed for reasons of economy or lack of pupils". However, a probationary teacher who is not offered a contract for an ensuing year has not been "dismissed". Only a continuing teacher has a right to re-employment in ensuing years. It is my opinion that A.R.S. §15-257 was intended to minimize a continuing teacher's loss of tenure rights caused by circumstances beyond the teacher's control. It should not be interpreted to give tenure rights to a probationary teacher.

I am forwarding this opinion to the Attorney General for his concurrence.

Sincerely,

Albin Krietz

ALBIN KRIETZ
Deputy County Attorney

CC: Mr. Bruce E. Babbitt
Attorney General
(Attention: Allan S. Kamin)