

KALLOF
Whiting
Green

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

October 27, 1955
Opinion No. 55-193

REQUESTED BY: Honorable Robert W. Prochnow
Coconino County Senator

OPINION BY: Robert Morrison, The Attorney General
Frederick E. Kallof, Asst. Attorney General

QUESTION 1: Would it be necessary to refer to the people
any measure affecting the distribution of ADA?

CONCLUSION: Yes.

QUESTION 2: May the Joint Education Study Committee set
a qualifying rate of \$1.00 for each school
district, a \$20.00 ADA rate for each county,
and the balance of a foundation program to
be furnished by the state, all of which fig-
ures would be tied to the Bureau of Labor
Statistics cost-of-living index and would go
up or down each year accordingly, with the
date of determination being placed probably
January 15th? May particular figures in
school bills be tied to a cost-of-living in-
dex which is prepared by an agency not within
the control of the Legislature or any admin-
istrative department of the State of Arizona?

CONCLUSION: No.

Question 1 is answered in the affirmative by Article 11,
Section 8 of the Arizona Constitution, which states:

"§ 8. (Permanent school fund.) -- * * * The income
derived from the investment of the permanent state
school fund, and from the rental derived from
school lands, with such other funds as may be pro-
vided by law shall be apportioned annually to the
various counties of the state in proportion to the
number of pupils of school age residing therein."

Thus it is seen that the Constitution requires that any distribut-
ion of state school funds must be made in proportion to the number
of pupils of school age residing within the counties.

The plan of tying figures to a cost-of-living index, as out-
lined in Question No. 2, would, in our opinion, be unconstitutional.

First, one Legislature can not restrict the powers of its successor. Harsha v. Detroit, 246 N.W. 849, 90 A.L.R. 853. Thus the purpose of such legislation would be defeated, in that the legislation would be designed to avoid the recurrence of the same issue year in and year out. Secondly, such legislation would be an unlawful delegation of legislative power. It has been generally held that the adoption by or under authority of a state statute of prospective federal legislation or federal administrative rules thereafter to be passed or promulgated constitutes an unlawful delegation of legislative power. See 133 A.L.R. 401.

The ordinary rule, of course, is that legislative powers can not be delegated to administrative bodies. Loftus v. Russell, 69 Ariz. 245, 212 P.2d 91; Tillotson v. Frohmler, 34 Ariz. 394, 271 Pac. 867; Crane v. Frohmler, 45 Ariz. 490, 45 P.2d 955. This does not mean that when authorized to do so by the act itself, administrative bodies may not make rules and regulations supplementing legislation for its complete operation and enforcement, if such rules and regulations are within the standards set forth in the act of the Legislature. Haggard v. Industrial Commission, 71 Ariz. 91. The standards required to be set by the Legislature are impossible of being established in determining the cost-of-living index, since the Legislature has no control over the Federal Bureau of Labor Statistics, the department which determines the cost-of-living index. In State v. Marana Plantations, 75 Ariz. 111, 252 P.2d 87, the Arizona Supreme Court said:

"It may safely be said that a statute which gives unlimited regulatory power to a commission, board or agency with no prescribed restraints nor criterion nor guide to its action offends the Constitution as a delegation of legislative power."

It is, therefore, the opinion of this office that the only way that a change in the distribution of ADA may be made is by constitutional amendment and that the tying of school financing to the Bureau of Labor Statistics cost-of-living index would be unconstitutional.

ROBERT MORRISON
The Attorney General

Frederick E. Kallof

FREDERICK E. KALLOF
Asst. Attorney General

/egm