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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

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June 13, 1977

Mr. Howard D. Watt, Esq.
Deputy County Attorney
Pima County Attorney's Office
111 West Congress, Suite 900
Tucson, Arizona 85701

Re: Opinion Request No. R76-261

77-132

Dear Mr. Watt:

We have reviewed your May 25, 1976, opinion to Mrs. Anita Lohr, Pima County School Superintendent, concerning the proposed contract clause on tax sheltered annuities of school districts. We informally concur in your opinion. This informal concurrence has no precedential value.

Thank you for forwarding the opinion to us for our review as required by A.R.S. §15-122.B.

If you have any questions, please call me.

Sincerely,

BRUCE E. BABBITT
Attorney General

David Rich

DAVID RICH
Assistant Attorney General

DR:dsw



OFFICE OF THE

Pima County Attorney

900 PIMA COUNTY COURTS BUILDING
111 WEST CONGRESS STREET

Tucson, Arizona 85701

792-8411

DENNIS DECONCINI
PIMA COUNTY ATTORNEY
DAVID G. DINGELDINE
CHIEF DEPUTY

May 25, 1976

Mrs. Anita Lohr
Pima County School Superintendent
131 West Congress
Tucson, Arizona 85701

Re: Tax Shelter Annuity Form

Dear Mrs. Lohr:

In response to your letter of April 29 regarding the proposed form on Tax Shelter Annuities which would allow automatic annual renewal, I would comment as follows:

A.R.S. §15-1198 B. states:

" . . . County School Superintendent, . . . , shall invest an amount to be reduced from the regular annual salary of the employee, as the employee may authorize, in annuities as provided by Title 26, §403, U. S. Code, as amended. The amount to be invested shall be determined by the employees not less than fifteen days prior to his first pay day in September, or at any time during the school year at the option of the governing board."

From this quoted section, it appears, without doubt, that the employee may designate an amount to be deducted for this purpose from the regular annual salary, if done prior to the first pay day in September. The above underlined quote, "or at any time during the school year at the option of the governing board," allows the School Board to make provision for "hardship" cases with a time provision that would be compatible with the clerical ability to make the change.

The provision for the authorization to be automatically renewed, subject to the 15-day first payroll date, would be

Mrs. Anita Lohr
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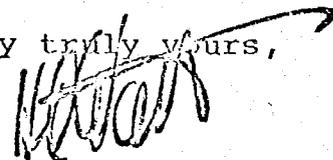
permissible, subject, of course, to any of the provisions of the annuity agreement which might contradict this. If the agreement would allow changes to be made by the employee during the course of the annual contract, I would further recommend that the Board create a time period to alleviate unexpected hardships, and would read as follows:

"This authorization is for one full contract term and shall be automatically renewed for each succeeding contract term during employment unless, no later than fifteen days prior to the first payroll date of the contract year, written notice of the increase, decrease, or revocation of the annuity is delivered by me to the business office of _____ School District, in which event the revised authorization shall be in effect the next contract term." Requests for reductions, increases, or termination will be considered by the Board upon notice being given fifteen days prior to the monthly meeting date."

In conclusion, the automatic renewal with the 15-day annual opportunity to change, and a hardship policy provision would be within the purview of A.R.S. §15-1198B.

A copy of this letter is being sent to the Attorney General for review.

Very truly yours,


Howard D. Watt
Deputy County Attorney

HDW:cl

cc: Mr. Alan S. Kamin
Assistant Attorney General