



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

BRUCE E. BABBITT  
ATTORNEY GENERAL

June 13, 1977

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ARIZONA ATTORNEY GENERAL

Mr. Lawrence Ollason  
Office of the Pima County Attorney  
131 West Congress, Suite 600  
Tucson, Arizona 85701

Re: Opinion Request No. R76-434

77-133

Dear Mr. Ollason:

We have reviewed your October 21, 1976, opinion to Mr. Lew Sorenson, Superintendent of the Catalina Foothills School District, concluding that the district can enter into a contract with a private carrier to transport children to and from school and further concluding that a tenured teacher has the right of seniority over a probationary teacher after the tenured teacher's special program is eliminated, if the program for which the tenured teacher is certificated is still continued within the district.

We informally concur in the results reached by your opinion. This informal concurrence has no precedential value.

I have enclosed a copy of Attorney General Opinion No. 77-70 dealing with seniority rights of tenured and probationary teachers and a copy of a rough draft of an opinion to be issued soon regarding transportation contracts with private companies or individuals providing transportation to school children, both of which support your conclusions.

Thank you for forwarding your opinion to the Attorney General for 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/ews



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Pima County Attorney

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Tucson, Arizona 85701

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DENNIS DECONCINI  
PIMA COUNTY ATTORNEY  
LAWRENCE OLLASON  
SPECIAL DEPUTY COUNTY ATTORNEY  
FOR SCHOOL AFFAIRS

O.R.

R76-434

Pontius

October 21, 1976

Mr. Lew Sorensen  
Superintendent  
Catalina Foothills School Dist.  
1926 E. River Road  
Tucson, Arizona 85718

Dear Lew:

This is in reply to your letter of October 5, 1976.

Question #1: Can CFSB enter into a contract with a private carrier for the purpose of transporting K-12 children to and from school?

The power and authority of School Districts is purely statutory. In School Dist. #1 of Pima County v. Lohr 17 AZ. App. 438, 498, P.2d 512 (1972) the Court said, "School Boards have only the authority granted by statute which must be exercised within the mode and limits permitted by statute." 498 P.2d at p.513.

The Arizona statutes do not specifically give school districts or boards of trustees the power to contract, but it is reasonable that this power can be implied from other powers and duties given these organizations by the statutes. CJS §270 says "School Districts, or other local organizations ordinarily possess the power to contract and it has been held that they have the power to entering into such contracts as are expressly or impliedly authorized by statute.

ARS §15-442, entitled, General Powers on Duties provides; The Board of Trustees shall:

...A4 Provide transportation for any child or children when deemed for the best interest of the district, whether within or without the district, county or state."

This statute does not specifically state or even hint at any particular mode or method of transportation that the school district must or should provide. The silence on this matter can be reasonably understood as allowing each district to decide for itself how it can provide for the safest and most efficient method of transporting its pupils to and from school. Given such broad statutory language and no authority to the contrary, I believe it can be assumed that CFSD can enter into a multi-year contract with a private carrier. As long as the contract is "reasonable" and the bidding is competitive it is unlikely that the Court would interfere with such a contract.

Question #2: If a special program is eliminated, does the tenured teacher of that program have the right of seniority over a regular classroom teacher and, if a special program is eliminated in one school but not in another school, does the tenured teacher have rights over the non-tenured teacher teaching the same subject?

ARS §15-257 provides:

"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 on the re-establishment of services within a period of three years."

I was unable to find any Arizona case law on this subject but several other authorities and jurisdictions have taken the position that a tenured teacher cannot be dismissed while a non-tenured teacher is retained in a class or subject area which the tenured teacher is qualified to teach. This topic is given a very thorough treatment in 100 ALR2d 1141. This article states that while it has been held that a non-tenured teacher may be hired or retained although as a result of this a tenured teacher is dismissed where the dismissed teacher is not qualified to teach the courses to be taught by the non-tenured teacher, but that a school board cannot dismiss a tenured teacher and retain a non-tenured teacher to teach in the same position or in the same general area of competence, interest or training as the tenured teacher. The article further states that discontinuance or abolishment of a particular class or service, not involving the abolishment of a particular department or course of study will not serve to authorize the dismissal of the teacher concerned.

In Williams vs. School Dist. #40 of Gila Bend, 4 Ariz. App. 5, 417 P.2d 376 (1966) the Court said "the statutory power of a school board to discharge teachers is always freely construed and good cause includes any ground which is put forward by the Board in good faith and which is not arbitrary irrational, unreasonable or irrelevant to the board's task. 417 P.2d at p. 377. In Williams, supra, the Court was considering the Board's dismissal of a tenured teacher charged with unprofessional conduct after having been arrested for drunk and disorderly conduct. The Court in Williams, supra affirmed the Board's decision that the arrest was good cause for dismissal; however, in a case on point arising in New Mexico the Supreme Court there held that a reduction in teaching staff without more, is not a good and sufficient reason for dismissal of a tenured teacher when other teachers without tenure are retained in the tenured teachers place. Hensley v. State Board of Education 71 N.M. 182, 376 P.2d 968 (1966). The New Mexico Court in another case, Penasco Independent School Dist. #4 v. Lucero 86 N.M. 683, 526 P.2d 825 (1974) held that the Board of Education which asserted no grounds personal to the tenured teacher in refusing to re-employ had the burden of proving that no position was available for which the teacher was qualified.

A reading of the Arizona Statute's wording..."shall have a preferred right of re-appointment in the order of original employment..." in the light of cited authority leads me to believe that Arizona probably follows the majority rule that a tenured teacher cannot be dismissed unless he or she is not qualified for any other position open or presently held by a non-tenured teacher since the statutes and cases are dealing with School districts and not singular schools, positions in the entire district must be considered in determining whether a tenured teacher can be re-assigned to a position for which he or she is qualified.

We call your attention to Section 15-122 B as amended, requiring all school opinions to be forthwith submitted by the County Attorney to the Attorney General for concurrence or disaffirmance. We also again call your attention to Section 15-436B as amended, that you are relieved from personal liability for acts done in reliance upon the written opinion of the Attorney General. If you act without waiting

for the Attorney General's concurrence or disaffirmance of the opinion, and any damage results from your actions, you are liable both as a member of the Board of Trustees of Catalina Foothills School District and personally. Bear in mind that reliance in the opinion of the Attorney General relieves you only from personal liability and not from liability as a member of the Board of Trustees.

The request for the opinion contained herein and this letter are being sent by this office to the Attorney General's office.

Sincerely yours,

DAVID DINGELDINE  
PIMA COUNTY ATTORNEY

By: Lawrence Ollason  
Special Deputy County Attorney  
For School Affairs

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cc: Attorney General of Arizona  
Capitol Building  
Phoenix, Arizona