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

BRUCE E. BABBITT
ATTORNEY GENERAL

June 23, 1977

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Mrs. Carolyn Warner
Arizona Department of Education
1535 West Jefferson
Phoenix, Arizona 85007

Re: 77-137 (R76-97)

Dear Mrs. Warner:

We have reviewed your February 13, 1976 letter asking whether several Johnson-O'Malley regulations conflict with the Arizona Revised Statutes and, if there is a conflict, which would govern. We have concluded that there is no conflict and therefore do not reach the question of which would govern in the case of a conflict.

The substantive content of the federal regulations, with which you are concerned is as follows:

25 C.F.R. §§ 273.16 establishes the powers and duties of the Indian Education Committee mandated by the Indian Education Assistance Act, 25 U.S.C. §§ 452, et seq. 25 C.F.R. §§ 273.17 requires the Indian Education Committee to approve all programs developed under the Johnson-O'Malley Act. Indian preference in employment and training opportunities, in connection with Johnson-O'Malley contracts made by the Bureau of Indian Affairs with a state, school district or Indian corporation, is mandated by 25 C.F.R. §§ 273.45. Under 25 C.F.R. §§ 273.52, the entry of state employees onto Indian land must be approved by the governing tribal body.

In possible conflict with these federal regulations are the general powers and duties granted to the Arizona State Board of Education described in A.R.S. §§ 15-102 and the general powers and duties accorded to boards of trustees as

* See. concerning the invalidity of State statutes and regulations inconsistent with federal regulations, the United States Supreme Court opinions in King v. Smith, 392 U.S. 309 (1968); Ivanhoe Irrigation Dist. v. McCracken, 357 U.S. 270 (1958) and Oklahoma v. U.S. Civil Service Comm'n, 330 U.S. 127 (1947).

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listed in A.R.S. §§ 15-442. These sections grant broad powers to the Arizona State Board of Education and boards of trustees to enter into contracts for educational purposes. The first rule of statutory construction, where statutes and other laws may conflict, is to avoid such a conflict by reconciling possibly inconsistent statutes and laws. See, Shirley v. Superior Court, 109 Ariz. 510, 513 P.2d 939, 942 (1973), cert. den. 415 U.S. 917, and the cases cited therein, and Adams Tree Service, Inc., v. Transamerica Title Ins. Co., 20 Ariz.App. 214, 511 P.2d 658, 661 (1973). The possible conflict can be avoided by reading all provisions of Title 15 together in order to ascertain the true meaning of any particular statutory section and to harmonize a potential conflict between statutes or other laws:

All of the provisions of the Educational Act [Title 15] should be read together to derive their true meanings. [cites] King v. Henderson, 5 Ariz.App. 95, 423 P.2d 370, 374 (1967). Cf., School Dist. No. 3 of Maricopa County v. Dailey, 106 Ariz. 124, 471 P.2d 736, 738 (1970).

Any possible conflict is readily resolved by A.R.S. §§ 15-1142.B:

Monies so appropriated [by act of Congress-- such as Johnson-O'Malley funds] shall be expended by the common and high school districts for the purposes and in the manner set forth in the federal grant. In the absence of federal regulation the state board of education shall determine the purposes and methods of expenditure in accordance with § 15-1142. . . . (Emphasis supplied.)

Thus, all federal regulations governing a particular federal grant become a part of the contract and, under A.R.S. §§ 15-1142.B, govern the manner of implementing the federal project. This conclusion is strengthened by the following statement of the Arizona Supreme Court in Uhlmann v. Wren, 97 Ariz. 366, 401 P.2d 113, 121-122 (1965):

When state legislation is enacted to take advantage of federal legislation, this court will refer to congressional legislative history to aid it in ascertaining legislative intent. [cite]

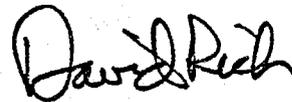
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Further, since A.R.S. §§ 15-1141, et seq., are more specific than the general powers and duties sections governing actions by boards of trustees and the Arizona Board of Education, the former govern. See, e.g., State v. Rice, 110 Ariz. 210, 516 P.2d 1222 (1973) and Webb v. Dixon, 104 Ariz. 473, 455 P.2d 447 (1969).

If you have any questions, please call.

Sincerely,

BRUCE E. BABBITT
Attorney General



DAVID RICH
Assistant Attorney General

DR:jrs