



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

JOHN A. LASOTA, JR.
[REDACTED]
ATTORNEY GENERAL

July 27, 1978

Q. Dale Hatch, Esq.
Chief Civil Deputy
Maricopa County Attorney's Office
101 West Jefferson Street
Phoenix, Arizona 85003

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Re: 78-166 (R77-241)

Dear Mr. Hatch:

We have reviewed your July 14, 1977 opinion addressed to the Phoenix Union High School District Governing Board, concluding that a previous year's teacher evaluation may be used in proceedings to dismiss the teacher in the current year. We concur in your opinion, based upon the provisions of A.R.S. § 15-263.D, as amended effective August 27, 1977, which provides in part:

No testimony shall be given or evidence introduced [at a hearing concerning the employment of a continuing teacher] relating to teaching adequacy which occurred more than four years prior to the date of the service of the notice. Evidence of records regularly kept by the governing board concerning the teacher may be introduced, but no decision relating to the dismissal or suspension of any teacher shall be made based on charges or evidence relating to teacher adequacy occurring more than four years prior to service of the notice. The four-year time limit shall not apply to the introduction of evidence in any area except that relating to adequacy of classroom performance.

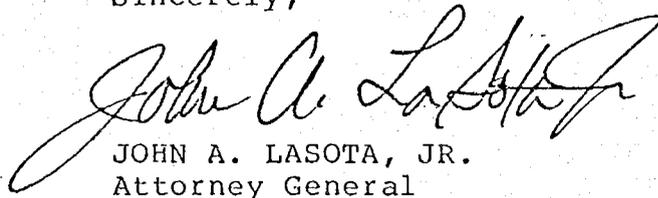
Therefore, evidence of inadequate classroom performance is limited to facts occurring within the four-year period prior to service of notice of hearing upon the affected teacher.¹

1. The Court of Appeals stated in Tsakiris v.

Office of the
Attorney General
Phoenix, Arizona

Q. Dale Hatch, Esq.
July 27, 1978
Page Two

Sincerely,



JOHN A. LASOTA, JR.
Attorney General

JAL:kk

(footnote 1 continued)
Phoenix Union High School System, 18 Ariz.App. 416, 419,
(1972), concerning the use of evaluation date from prior
years:

His new contract for 1972-73 came into
existence, and he could not be terminated
except for cause occurring thereafter.
[citations] This is not to say that
appellant's slate has been wiped clean
by the rehiring so that prior incompetency
or acts of misconduct may not be considered
in conjunction with incompetency or
misconduct demonstrated in the future
work of the appellant. (Emphasis in
original.)

The current version of A.R.S. § 15-263 was added in 1974,
two years after the decision in Tsakiris, supra. We believe
that A.R.S. § 15-263 still requires that acts forming the
basis for the teacher dismissal or suspension be repeated as
a foundation for a current year's hearing for dismissal or
suspension based upon inadequate classroom performance.

OFFICE OF THE MARICOPA COUNTY ATTORNEY
CHARLES F. HYDER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



July 18, 1977

Opinion Request
77-241

The Honorable Bruce E. Babbitt
Attorney General
State of Arizona
Suite 200 Old Capitol Bldg.
Phoenix, Arizona 85007

Attention: David Rich
Assistant Attorney General

Dear Sir:

I am enclosing a copy of our School Opinion No. 77-15, dated July 14, 1977 and directed to the Board of Education of the Phoenix Union High School District. This opinion deals with the use of evaluation data gathered in connection with fair dismissal proceedings of teachers.

This opinion is forwarded to you for review.

Yours very truly,

CHARLES F. HYDER
MARICOPA COUNTY ATTORNEY

J. Dale Hatch
Q. Dale Hatch
Deputy County Attorney

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ATTORNEY GENERAL
PHOENIX, ARIZONA

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OFFICE OF THE MARICOPA COUNTY ATTORNEY

CHARLES F. HYDER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



July 14, 1977

Board of Education
Phoenix Union High School District
2526 West Osborn Road
Phoenix, Arizona 85017

School Opinion No. 77-15

Dear Board Members:

This opinion is in response to your request for an opinion dated June 28, 1977, wherein you asked the following question:

Are we correct in our assumption that we may use evaluation data gathered the previous year in cases where the evaluation results lead to fair dismissal proceedings?

ANSWER: -

Yes as limited by the discussion.

DISCUSSION:

It is my understanding that you are concerned with the legality of using evaluation data gathered on a teacher during a prior year for or in a dismissal hearing in a subsequent year. This has prompted you to ask the above question concerning the use of evaluation data.

Offering a teaching contract to a tenured or continuing teacher in the spring of a school year waives any deficiencies in the teaching methods of the teacher which the school board knows about. See Palicka v. Ruth Fisher School District No. 90, Maricopa County, 13 Ariz. App. 5 (1970) and Flowing Wells School District v. Stewart, 18 Ariz. App. 19 (1972).

If the deficiencies in the teaching methods are repeated during the current year after the issuance of a contract or in the next school year, the school board can present evidence of past instances of inadequate classroom performance for the previous four years.

The distinction which must clearly be understood is that the offering of a contract in one school year for the next school year waives any

deficiencies of the teacher unless the teacher repeats the acts or is deficient in the same methods. If any evaluation done by the administration in the fall of the subsequent school year indicates that the teacher has not corrected his or her teaching inadequacies then the board may use past evaluation data.

The remedy, of course, is to dismiss the teacher during the year the inadequate classroom performance is discovered. If you desire further information on this subject please feel free to call our office.

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

Very truly yours,

CHARLES F. HYDER
MARICOPA COUNTY ATTORNEY

By Q. DALE HATCH
Q. Dale Hatch
Deputy County Attorney

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Phoenix Union High School System

DISTRICT ADMINISTRATIVE OFFICES

2526 West Osborn Road
Phoenix, Arizona 85017.

Telephone: 602 - 257-3131

Gerald S. DeGrow, Ed.D., Superintendent

June 28, 1977

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MARICOPA
COUNTY ATTORNEY

The Honorable Charles Hyder
Maricopa County Attorney
400 Superior Court Building
101 West Jefferson
Phoenix, Arizona 85003

Attention: Mr. Albert Firestein, Chief Civil Deputy

Dear Mr. Firestein:

In the system of assessment and evaluation of the performance of certified teachers in the Phoenix Union High School System developed by a joint effort of teachers and administrators, we made the assumption that evaluation data gathered on a teacher for the previous year would be valid in cases where the evaluation results lead to fair dismissal proceedings.

Question:

Are we correct in our assumption that we may use evaluation data gathered the previous year in cases where the evaluation results lead to fair dismissal proceedings?

BOARD OF EDUCATION
PHOENIX UNION HIGH SCHOOL SYSTEM

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