



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

BOB CORBIN
~~XXXXXXXXXXXXXX~~
ATTORNEY GENERAL

January 10, 1979

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ARIZONA ATTORNEY GENERAL

Mr. John T. Hestand
Deputy County Attorney
Pinal County Attorney's Office
P.O. Box 887
Florence, Arizona 85232

Re: I79-6 (R78-345)

Dear Mr. Hestand:

Pursuant to A.R.S. § 15-122(B), we decline to review your November 28, 1978 opinion addressed to the Pinal County School Superintendent relating to whether a member-elect of a board of trustees may take office when the member-elect's spouse is employed by the school district. We think A.R.S. § 15-436.B, shielding the board from personal liability when relying upon the Attorney General's written opinion, applies equally to board action taken in reliance on a County Attorney's opinion which we have declined to review pursuant to A.R.S. § 15-122.B.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

ROY A. MENDOZA
Pinal County Attorney

W. ALLEN STOOKS
Chief Deputy

LARRY N. MOREHOUSE
JOHN T. HESTAND
N. VICTOR COOK
TIM HOLTZEN
WILLIAM J. PEARLMAN
JOHN A. PAULSON
Deputies

OFFICE OF THE
County Attorney

PINAL COUNTY
FLORENCE, ARIZONA 85232

November 28

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ATTORNEY GENERAL
PHOENIX, ARIZONA

D. Rich

TELEPHONE
AREA CODE 602
868-5801, EXT. 215

P. O. BOX 887

R78-345

Office of the Attorney General
Arizona State Capitol
Phoenix, Arizona 85007

Attn: Mr. David Rich

Gentlemen:

Enclosed is a copy of an opinion my office has given to the Pinal County School Superintendent for your review pursuant to A. R. S. §15-122(B).

Thank you for your assistance.

Sincerely,

ROY A. MENDOZA
Pinal County Attorney

John T. Hestand
John T. Hestand
Deputy County Attorney

JTH:ct

enc.

ROY A. MENDOZA
Pinal County Attorney

W. ALLEN STOKS
Chief Deputy

LARRY N. MOPPEHOUSE
JOHN T. HESTAND
N. VICTOR COOK
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JOHN A. PAULSON
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OFFICE OF THE

County Attorney

PINAL COUNTY
FLORENCE, ARIZONA 85232

November 27,

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TELEPHONE
AREA CODE 602
868-5801, EXT. 215

P. O. BOX 887

R78-345

Hon. Sherry Ferguson
Pinal County School Superintendent
P. O. Box 769
Florence, Arizona 85232

Dear Mrs. Ferguson:

Your office requested a County Attorney's Opinion.

QUESTION: May an elector become a member of the Board of Education or Board of Trustees of a school district in which the spouse of the citizen is employed?

ANSWER: No. See body of opinion.

OPINION: This opinion is premised on the following facts:

Elections for the Boards of Education/Trustees of the various school districts in Pinal County were held on November 7, 1978. In the Mammoth Unified School District No. 8 a candidate was elected, whose wife is employed by the district as a janitor. In the Ray Unified School District No. 3 a candidate was elected, whose wife is a teacher employed by the district. The teacher is a Title I reading teacher, and, consequently, her salary is paid by federal funds and not local or state funds. The candidates have suggested that they would be willing to abstain from voting on any matter involving their spouses.

It is the opinion of this office that these individuals may not become members of the Board of Education/Trustees of their respective districts, as long as their spouses are employees of the district.

Hon. Sherry Ferguson
November 27, 1978
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A. R. S. §15-209(A) states:

"No employee of a common, unified or high school district, or the spouse of such employee, may hold membership on a board of trustees or board of education of a school district by which such employee is employed."

Another statute which should be considered is A. R. S. §15-443(C), which states:

"No dependent, as defined in §43-127, of a trustee may be employed in the district in which the person to whom such dependent is so related is a trustee, except by consent of the board."

Thus, the statutes clearly provide the circumstances under which a family member of a trustee may be employed by a school district. There is a flat prohibition on a school district having a trustee whose spouse is employed by the same district. This prohibition allows no exceptions and does not provide for curative devices, such as abstaining from voting on matters involving the spouse.

It is the opinion of this office that the two individuals in question may not become trustees of the districts where their spouses are employed. This office concludes that the fact that one spouse is a teacher paid by federal funds is of no significance. There would still be a serious conflict because the Board is the entity which would control whether the teacher was to be awarded a contract or granted tenure, and the Board would handle any discipline of the teacher. The potential for conflict of interest is apparently the underlying purpose of this statute and that conflict is present if a spouse of a trustee is employed by a district whether or not local funds are used to pay the teacher's salary.

Hon. Sherry Ferguson
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We offer the following advice to substantiate the oral instructions which were given to you:

The elections should be certified because the people in question were elected by the district's electors. No further action should then be taken until the date for swearing-in the trustees. If the spouses resign prior to the swearing in date, the prospective trustees should of course be sworn. If the prospective trustees resign prior to that date, the county school superintendent should appoint a person to the post. If neither the prospective trustees nor their spouses resign then the prospective trustees should not be given the oath of office nor allowed to perform any of the duties of a trustee. Within a reasonable time after the swearing-in ceremony, the county school superintendent should appoint a person to the vacancy. The refusal to seat the prospective trustee, if the spouse has not resigned, is supported by Attorney General Opinion 78-240, in which the Attorney General reviewed an opinion of the Pima County Attorney's Office. In that case a spouse of a trustee was hired after the trustee was seated on the board. The Attorney General stated:

"We concur with your conclusion (that no spouse of a district employee may be a trustee, except for cases where the trustees and spouses were so situated prior to the 1977 laws enactment,) and suggest that not only should the board member's resignation be solicited, but if it is not immediately forthcoming appropriate action should be taken to remove the board member from office."

In the cases at hand it would be the best course of action to simply not seat the trustees if their spouses are still district employees.

For your information, I am enclosing a copy of the Pima County Attorney's Opinion and the Attorney General's concurrence.

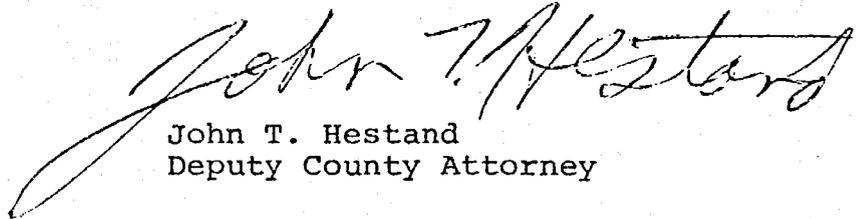
Hon. Sherry Ferguson
November 27, 1978
Page Four

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Should you have any further questions, do not hesitate
to call me.

Sincerely,

ROY A. MENDOZA
Pinal County Attorney

A handwritten signature in cursive script that reads "John T. Hestand". The signature is written in dark ink and is positioned above the typed name and title of the signatory.

John T. Hestand
Deputy County Attorney

JTH:ct

enc.



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

R78-345

JOHN A. LASOTA, JR.
~~RECEIVED~~
ATTORNEY GENERAL

October 30, 1978 COUNTY COUNSEL

NOV 1 1978

PIMA COUNTY ATTY.

Mr. Mark R. Christensen
Deputy County Attorney
Pima County Attorney's Office
900 Pima County Courts Building
111 West Congress Street
Tucson, AZ 85701

Re: I78-240(R78-297)

Dear Mr. Christensen:

We have reviewed your October 4, 1978 opinion addressed to the Ajo Unified School District, concluding that a member of its Board of Trustees may not continue to hold membership on the Board while his spouse is employed by the school district. We concur with your conclusion and suggest that not only should the Board member's resignation be solicited, but if it is not immediately forthcoming, appropriate action should be taken to remove the Board member from office.

Sincerely,

John A. Lasota, Jr.
JOHN A. LASOTA, JR.
Attorney General

file cc:

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R78-345

OFFICE OF THE

Pima County Attorney

900 PIMA COUNTY COURTS BUILDING
111 WEST CONGRESS STREET

Tucson, Arizona 85701

(602) 792-8411

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

DAVID G. DINGELDINE
CHIEF DEPUTY

RECEIVED
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PINAL
TORNEY

OPINION NO. 238

October 4, 1978

TO: Dr. Joseph H. Schlotterer
Superintendent of Schools, Ajo Unified School District, #15

FROM: Mark R. Christensen, Deputy County Attorney

QUESTION PRESENTED:

May a member of the board of education of a unified school district serve on said board while the board member or the board member's spouse is an employee of said district?

ANSWER:

No. See body of opinion.

From the facts as recited in your letter of September 11, 1978, it appears that the affected Board member may not hold membership on the Board of the Ajo Unified School District #15 concurrently with the employment of his spouse. This opinion derives from an examination of two of the statutes cited in your letter. A.R.S. Sec. 15-209(A) indicates that no employee or spouse of an employee may hold membership on the board of education or board of trustees of the school district by which the employee is employed. In this case, the spouse of the employee is the Board member and the employee was hired after the Board member was elected and while the Board member was serving. This section of the Arizona Revised Statutes became effective on August 27, 1977. It should be noted that a proviso was added to this section by 1977 Laws, Chapter 164, Section 18, which permits Board members who are employees or spouses of employees on the effective date of the act (August 27, 1977) to serve out their elected term. This proviso is inapplicable in the present case since the Board member in question was not "a spouse of an employee" as of August 27, 1977.

The other section which supports this conclusion is A.R.S. Sec. 15-443(C). It says that consent of the Board is required before a dependent of a trustee may be employed by the district in which the person to whom the dependent is related is a trustee. Previous versions of this statute included spouses as well as

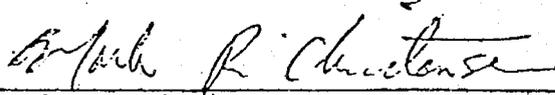
R98-345

dependents in their requirement of Board consent before employment. It seems clear that the current omission of "spouse" from this section, when read with section 15-209(A), leads inexorably to the conclusion that, except for the aforementioned proviso, members of a board of education or a board of trustees may not be either employees of the districts on whose board they serve or spouses of persons employed by such districts. It is therefore imperative that the resignation of either the board member in question or the spouse-employee be tendered forthwith in order for the board member to be in compliance with A.R.S. Sec. 15-209.

In accordance with A.R.S. Sec. 15-122(B), I am forwarding a copy of this opinion letter to the office of the Attorney General.

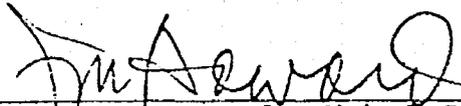
Respectfully submitted,

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

By 

Mark R. Christensen
Deputy County Attorney.

APPROVED:



James M. Howard, Chief Civil
Deputy County Attorney

MRC/ac