



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

BOB CORBIN
~~XXXXXXXXXXXXXXX~~
ATTORNEY GENERAL

January 9, 1979

Re: I79-3 (R78-317)

Mr. John R. Mayfield
Deputy County Attorney
Maricopa County Attorney's Office
400 Superior Court Building
101 West Jefferson
Phoenix, Arizona 85003

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Mayfield:

We have reviewed your October 26, 1978 opinion addressed to the Classified Personnel Director at Paradise Valley School District No. 69, and concur with your conclusions that a school district may not pay its classified employees more than one and one-half times the regular rate of compensation for over-time work performed on holidays. Based upon Attorney General Opinion 77-16, we conclude that school districts are not authorized to pay lump sum bonuses to school district employees who have performed exceptionally meritorious services or satisfactory services for lengthy periods of time.

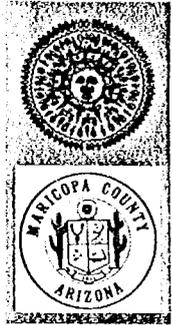
Sincerely,

BOB CORBIN
Attorney General

OFFICE OF THE MARICOPA COUNTY ATTORNEY

CHARLES F. HYDER COUNTY ATTORNEY

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



R78-317

October 27, 1978

OCT 30 11 47 AM '78
ATTORNEY GENERAL
PHOENIX, ARIZONA

Mr. John A. LaSota, Jr.
Attorney General
State of Arizona
Suite 200, Old Capitol Building
Phoenix, AZ 85007

Attention: David Rich
Assistant Attorney General

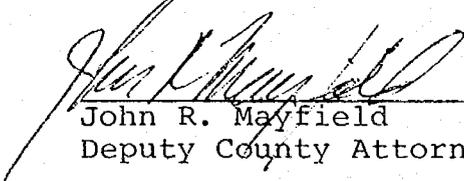
Dear Sir:

I am enclosing a copy of our School Opinion No. 78-25 dated October 26, 1978, and directed to Mr. Dennis E. Huebschman, the Director of Classified Personnel for Paradise Valley School District No. 69. This opinion deals with the payment of excess wages for services performed on Sundays or holidays, exceptionally meritorious services or satisfactory services for lengthy periods of time.

This opinion is forwarded to your office for review.

Very truly yours,

CHARLES F. HYDER
MARICOPA COUNTY ATTORNEY


John R. Mayfield
Deputy County Attorney

JRM:cap

Enclosure

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

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

R78-317



October 26, 1978

Mr. Dennis E. Huebschman
Director of Classified Personnel
Paradise Valley School District #69
3012 East Greenway Road
Phoenix, Arizona 85032

School Opinion 78-25

Dear Mr. Huebschman:

This opinion is in response to your request for an opinion dated August 10, 1978, wherein you asked for an opinion on the following questions:

(1) Does A.R.S. §23-391, or any other statute prohibit the payment of wages in excess of one and one-half times the regular rate of compensation for services performed on Sundays or holidays?

(2) Do the statutes prohibit the payment of lump sum bonuses to school district employees who have performed exceptionally meritorious services for the employer (i.e., merit bonuses)?

(3) Do the statutes prohibit the payment of lump sum bonuses to school district employees who have performed satisfactory services for lengthy periods of time (i.e., length of service bonuses)?

ANSWERS:

- (1) Yes.
- (2) Yes.
- (3) Yes.

Article 18 Section 1 of the Constitution of the State of Arizona provides:

"Eight hours and no more, shall constitute a lawful day's work in all employment by, or on behalf of, the State or any political subdivision of the State. The Legislature shall enact such laws as may be necessary to put this provision into effect, and shall prescribe proper penalties for any violation of said laws."

In the case of State vs. Boykin, 109 Ariz. 289, 508 P.2d 1151 (1973), the Arizona Supreme Court held that the language of Article 18 Section 1, does not confer a right to an eight hour day in the absence of implementing legislation. The Court also read the provision as meaning that eight hours constitutes a normal day's work, but does not prohibit an employee from working longer.

R78-317

The Court further held that compensatory time, like vacation time, is not a gratuity but is compensation granted for services rendered.

Therefore until the Legislature enacted legislation there was no right to an eight hour work day and even after implementing legislation was enacted a covered employee has not been prohibited from working more than eight hours.

The Arizona State Legislature in the last session repealed the former A.R.S. §23-391 and substituted a new section, A.R.S. §23-391, overtime pay; work week:

"A. Subject to availability of appropriated funds, an employee of the State or any political subdivision, serving in a position determined by the State Personnel Board, the Board of Regents, the State Community College Board of Directors, the Board of Directors for the School for the Deaf and Blind or the governing body of a political subdivision, in the direction of such board or body, to be eligible for overtime compensation who is required to work in excess of such person's normal work week, may be compensated for such excess time at a rate of either:

1. Not to exceed one and one-half times the regular rate at which such in person is employed.
2. One hour of compensatory off for each hour worked in lieu of cash payment.

B. Notwithstanding the provisions of subsection A, the State or a political subdivision may provide, by action of the board of Regents, the State Community College Board of Directors, the Board of Directors for the School for the Deaf and Blind or the State Personnel Board in the case of the State or of the governing body of the political subdivision, for a work week of forty hours in less than five days for certain classes of employees employed by the State or the political subdivision. Laws 1978, Chapter 104, Section 2. (Emphasis supplied)

A.R.S. §23-391, permits a school board, subject to availability of appropriated funds, to define those employees or classes of employees who will be eligible for either compensation not to exceed time and one-half or compensatory time for

hours worked in excess of such person's normal work week. A.R.S. §23-391, is not mandatory but is discretionary. However, should the Board not adopt a policy in accordance with the statute the holding in State vs. Boykin, would require payment of compensatory time as failure to do so would constitute unfair enrichment to the District without benefit to the employees affected thereby.

It should be noted that both under State vs. Boykin, and A.R.S. §23-391, the employee must be directed or required to work in excess of the normal work week in order to receive compensation time or compensation not to exceed time and one-half under the provisions of A.R.S. §23-391(A)(1).

Insofar as Sundays or holidays are concerned, reference must be made to A.R.S. §38-608, Compensation or time off for legal holidays, which provides as follows:

A. All public employees who work forty hours or more per week who do not receive either compensation or commensurate time off for legal holidays worked, regardless of the day of the week on which such legal holidays fall, shall receive, for each such holiday worked, one additional vacation leave or one day additional compensation for each such legal holiday worked.

B. For the purposes of this section, unless the context otherwise requires:

1. "Legal holiday" includes Christmas, Thanksgiving, Labor Day, New Year's Day and Independence Day.

2. "Public employee" includes the employees of the State, County, City, Town or any other political subdivision of the State, but does not include irrigation, power, electrical, agricultural, improvement, drainage and flood control districts, and tax-levying public improvement districts organized pursuant to law. (Emphasis supplied)

A.R.S. §38-608, has three requirements that must be met before its provisions apply:

1. The public employee must work forty hours or more in one week,
2. Must not have received either compensation or,
3. Commensurate time off for legal holidays work.

Therefore, if the school district pays the employee or grants him compensatory time then A.R.S. §38-608 would not apply. However, §15-301B, requires the district to pay teachers for the July 4, Veterans Day and Thanksgiving Day holidays, if they fall within the school week, and for any Christmas recess. AG Op. 78-77.

R 78-317

In other words, the Legislature has provided two statutes dealing with overtime work. A.R.S. §38-608 deals exclusively with legal holidays and is mandatory, whereas A.R.S. §23-391, which is discretionary, applies only when the normal work week is exceeded.

In any situation wherein an employee works in excess of his normal work week at the direction of the school board or its designated officer, the district cannot exceed one and one-half times the regular rate at which such person is employed.

Prior to the enactment of A.R.S. §23-391, school district employees could only receive compensation time for overtime worked unless they were doing manual or mechanical labor in an emergency situation. Now the school district may pay regular rate or a percentage of regular rate not to exceed time and one-half for overtime work. A.R.S. §23-391 grants the school district several options including the option not to adopt the provisions of A.R.S. §23-391. The board should consider this matter and adopt appropriate policies or revise current policy in line with what they feel will best serve the interests of the district.

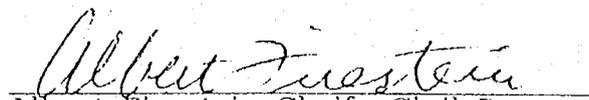
In so far as the other two questions raised, it is my opinion that such lump sum bonuses to school district employees for either meritorious services or for lengthy period of service would constitute a gift of school money and would be in violation of state law. This question has been raised before, and answered by the Attorney General, I am attaching a copy of Attorney General Opinion #71-16 which discusses the lump sum bonus question. A copy of this opinion is being sent to the Attorney General for his concurrence or revision.

Very truly yours,

CHARLES F. HYDER
MARICOPA COUNTY ATTORNEY

By 
John R. Mayfield
Deputy County Attorney

APPROVED AND RELEASED:


Albert Firestein Chief, Civil Bureau

JRM: ds