



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

July 3, 1979

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ARIZONA ATTORNEY GENERAL**

Mr. J. Wm. Brammer, Jr.
DeConcini, McDonald, Brammer,
Yetwin & Lacy, P.C.
240 North Stone Avenue
Tucson, Arizona 85701

Re: I79-186 (R79-170)

Dear Mr. Brammer:

Pursuant to A.R.S. § 15-122.B, we are authorized to concur, revise or decline to review school opinions of county attorneys. A school board appointed attorney may be deemed to hold the authority to exercise the office of county attorney only if the following requirements are satisfied:

A. He must be appointed by the board with the consent of the county attorney, pursuant to A.R.S. § 15-438.B.

B. He must be an elector of the county in which the school district is located before being eligible to be an officer of the county. Ariz.Atty.Gen.Op. No. 78-55.

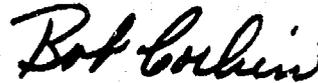
Although a school board may employ legal counsel without the consent of the county attorney under A.R.S. § 15-438.C., such counsel may not be deemed a special deputy county attorney.¹

1. Ariz.Atty.Gen.Op. No. 78-55. In contrast, A.R.S. § 15-438.B specifically authorizes appointed counsel "to represent the district" and A.R.S. § 15-438.G provides that "An attorney employed pursuant to subsection B shall represent the school district with powers and duties otherwise performed by the county attorney."

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It is our understanding that you were not employed pursuant to A.R.S. § 15-438.B, nor do you qualify as an "officer" of the county. We, therefore, are not authorized to review your opinion.²

Sincerely,



BOB CORBIN
Attorney General

BC/mm

2. Insofar as we stated in Ariz. Atty. Gen. Op. No. 78-55 that we would review opinions submitted by an attorney hired pursuant to A.R.S. § 15-438.C, that statement was incorrect.

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DINO DeCONCINI
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PLEASE REPLY TO: TUCSON

Dr. Patrick B. Henderson
Superintendent
Phoenix Union High School District
2526 West Osborn Road
Phoenix, Arizona 85017

Dear Dr. Henderson:

On April 6, 1979, a Phoenix Union High School District student and teacher, both males, became involved in an argument which led to an exchange of blows. Reports of the incident indicate that after a heated verbal exchange, the student struck the teacher multiple blows and the teacher responded to the blows by striking the student. As a result of this altercation, the Board of Education of Phoenix Union High School District has requested this office to render an opinion on the following legal issues.

ISSUES:

1. If a student commits an assault and battery upon a teacher, may that teacher in self-defense repel the attack if the force used by the teacher is reasonable under the circumstances?
2. In reacting to an assault by a student, is a teacher limited to retreating, restraining the student or parrying the student's blows, or may the teacher physically strike the student in self-defense, assuming the force used is reasonable?

ANSWERS:

1. Yes.
2. If the force used is reasonable under the circumstances, the teacher may physically strike the student.

ANALYSIS OF ISSUE NO. 1:

The use of reasonable force in self-defense is a complete defense to civil liability and criminal culpability for

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assault and battery. As stated in Prosser, Torts §19 (4th Ed. 1971):

"The privilege of self-defense rests upon the necessity of permitting a man who is attacked to take reasonable steps to prevent harm to himself, where there is no time to resort to the law. The early English law, with its views of strict liability, did not recognize such a privilege; concerning such cases, it was said that 'the man who commits homicide by misadventure or in self-defense deserves but needs a pardon.' But since about 1400 the privilege has been recognized, and it is now undisputed, in the law of torts as well as in the criminal law. The privilege extends to the use of all reasonable force to prevent any threatened harmful or offensive bodily conduct, or any confinement, whether intended or negligent." (Footnotes omitted).

6 Am.Jur.2d, Assault and Battery, §69, describes the right as follows:

"It is one of the elementary principles of natural law, and has universally been adopted by positive law, that in an appropriate case self-defense may be a justification of what otherwise would amount to a crime or a tort." (Footnote omitted).

The Arizona Criminal Code has codified this defense for criminal purposes in A.R.S. §13-404, which provides in relevant part as follows:

"A. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

B. The threat or use of physical force against another is not justified:

1. In response to verbal provocation alone; or

* * *

3. If the person provoked the other's use or attempted use of unlawful physical force, unless:

(a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and

(b) The other nevertheless continues or attempts to use unlawful physical force against the person."

Finally, numerous Arizona cases have recognized this defense. See State v. Jackson, 94 Ariz. 117, 382 P.2d 229 (1963); State v. Fields, 92 Ariz. 53, 373 P.2d 363, (1962); Everett v. State, 88 Ariz. 293, 356 P.2d 394 (1960); State v. Corrao, 115 Ariz. 55, 563 P.2d 310 (App. 1977). State v. Jackson, *supra* at 122, 382 P.2d at 232, declared the right of self-defense to be a "fundamental right."

Since the use of reasonable force in self-defense is neither a criminal act nor the basis for civil liability, such conduct cannot logically be considered improper or unprofessional when used by a teacher. This statement assumes, of course, that the amount of force used is reasonable under the circumstances. The doctrine of "reasonable force" is discussed in the analysis of issue number 2.

ANALYSIS OF ISSUE NO. 2:

There is no duty to retreat instead of striking another person in self-defense regardless of the availability of a safe path to do so. In State v. Jackson, 94 Ariz. 117, 382 P.2d 229 (1963), the Arizona Supreme Court, quoting from Beard v. U.S., 158 U.S. 550, 15 S.Ct. 962, 39 L.ED. 1086 (1895), stated:

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"The weight of modern authority, in our judgment, establishes the doctrine that, when a person, being without fault, and in a place where he has a right to be, is violently assaulted, he may, without retreating, repel force by force ..." 94 Ariz. at 122, 382 P.2d at 232.

See also Restatement, Second, of Torts, §63.

A party being assaulted is not limited to retreating, restraining the attacker, or parrying the blows of the attacker. No exception to this rule is created by the existence of a teacher-student relationship. There is no authority in Arizona to indicate that the right of self-defense is modified or limited in any way when a teacher and a student are involved. Since the Arizona Supreme Court deems the right of self-defense to be "fundamental", it is unlikely that a distinction will be formulated under Arizona law with respect to teacher-student confrontations regarding the amount of force allowable, or its manner of application.

Withdrawing the right to physically strike the aggressor would unduly limit the right of self-defense. In measuring the amount of force allowable, courts have long recognized that self-defense is most often used in emergency situations where quick decisions are mandated. As explained in 6 Am. Jur.2d, Assault and Battery, §162:

"...[A] person is not privileged to use any means of self-defense which is intended or likely to cause a bodily harm or confinement in excess of that which he correctly or reasonably believes to be necessary for his protection. But since in the heat of conflict, or in the face of impending peril, a person cannot be expected to measure accurately the exact amount of force necessary to repel the attack, he will not be deemed to have exceeded his rights unless the force was so excessive as clearly to be vindictive under the circumstances of the case. It is thus seen that the right of self-defense is not limited by actualities, but by reasonableness of belief, and that a person may be justified by self-defense where he used such force as reasonably appeared to him necessary to repel the attack, although the force

used by him was greater than in retrospect appears to have been actually necessary." (Footnotes omitted).

This same reasoning should apply to the manner in which the force is applied. In an assault situation, it would be unreasonable to require the person attacked to restrain the attacker or parry the blows if more forceful action reasonably appears necessary.

Neither case law nor statutes from other jurisdictions limit the methods by which a teacher can respond to an attack by a student. In New Jersey, state law prohibits corporal punishment by a teacher upon a student. See N.J. Stat. Ann. §18:19-1 (1940). An explicit exception to this statute, however, is provided for situations in which the teacher is acting in self-defense. *Id.* In Arizona, corporal punishment, reasonable in degree, is allowable. *LaFrentz v. Gallagher*, 105 Ariz. 225, 258, 462 P.2d 804 (1964); A.R.S. §13-403(1). No authority was found indicating that a teacher would absolutely be prohibited from striking a student in self-defense.

In many situations, striking a student rather than retreating, restraining the student, or parrying the blows would be inappropriate. Such a finding would stem from the fact that, under the circumstances, the force used was excessive. For example, if a normally-sized and aged second grade student swung at a physically fit, middle aged male teacher, any action by the teacher in forcibly striking the student would seem excessive under the circumstances. The court in *Frank v. Orleans Parish School Board*, 195 So.2d 451 (La. 1967) sustained a verdict against a teacher and a school board for assault committed by the teacher upon the Plaintiff's minor son. The court found that the teacher, a 34 year old male weighing approximately 230 pounds, lifted Plaintiff's minor child off the floor, shook him, and dropped him on the floor causing the student to fracture his arm. Although the teacher claimed self-defense, the court rejected the assertion because the child was only 14 years of age, and weighed only 101 pounds. The court held that the teacher's actions "in lifting, shaking and dropping the boy were clearly in excess of that physical force necessary to either discipline or to protect himself". *Id.* at 453. Just as clearly, however, if a male high school senior of muscular stature physically attacked a female teacher of slight stature, it would seem unquestionable that the teacher could repel the attack with force. Between these two extremes fit the great majority of cases presented. In each case, the

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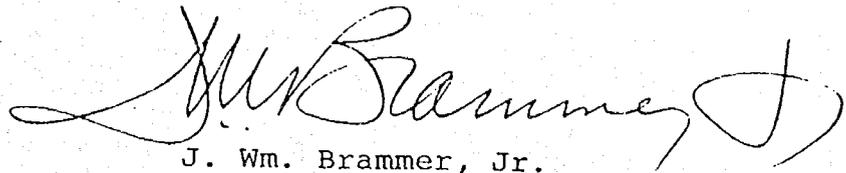
fact finder must determine whether the force used was reasonable under the circumstances. Consideration should be given to the numerous unique circumstances present in each case, including the age, sex, physical condition and relative physical strength of the parties. The teacher-child relationship is one factor that may be considered by the fact finder in considering whether the force used was justifiable under the circumstances, but this factor, as with the others, is not conclusive.

This opinion does not address the question of whether, on April 6, 1979, the Phoenix Union High School District teacher used reasonable force in self-defense against the alleged attack by the student. This determination should be made by the appropriate school authorities after consideration of the circumstances present at that time and place.

Pursuant to A.R.S. §15-122(B) a copy of this letter is being sent to the Attorney General, who may revise, concur with or decline to review the legal opinions expressed herein.

Sincerely,

DeCONCINI McDONALD BRAMMER
YETWIN & LACY, P.C.



J. Wm. Brammer, Jr.

JWB:rms