



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

August 10, 1979

Ms. Teri Dettmer
Deputy County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: I79-222 (R79-217)

Dear Ms. Dettmer:

We have reviewed your opinion dated July 17, 1979 to Mr. Jim Rhoades of the Mayer Unified School District No. 43, and concur in your conclusion that the school district's status as a "base-period employer" pursuant to A.R.S. §§ 23-606 and 23-607, and its election to make payment in lieu of contributions pursuant to A.R.S. § 23-750, requires the school district to pay the Arizona Department of Economic Security for a proportion of the unemployment benefits paid to a former employee of the district.

Sincerely,

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

BOB CORBIN
Attorney General

BC/mm



R79- 217

W. L. L. HICKS
COUNTY ATTORNEY

OFFICE OF

County Attorney

YAVAPAI COUNTY COURTHOUSE
PRESCOTT, ARIZONA 86301
445-7450 EXT. 208

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July 17, 1979

Mr. Jim Rhoades
Mayer Unified School District #43
Mayer, AZ 86333

Dear Mr. Rhoades:

You have asked this office whether the school district may pay a bill it has received from the Arizona Department of Economic Security (DES) for \$806.40 for unemployment benefits paid to a former employee of the school district.

As I understand the situation, the individual was employed by the school district in August, 1977 and quit the employment July 28, 1978. He was then employed by a different employer(s) but lost this employment on January 5, 1979 under circumstances that DES determined entitled him to unemployment compensation.

Under A.R.S. § 23-615.01 services performed for "any political subdivision of this state or any instrumentality of such political subdivisions," constitute employment for purposes of Title 23, Chapter 4, which deal with employment security. The school district has elected to make payments in lieu of contributions under the provisions of A.R.S. §23-750 and this election was in effect during the time the individual was employed by the school district. Unemployment compensation contributions made for employees of the school district are employee benefit costs (see A.R.S. §15-1201.02) which the school district would be authorized to spend under A.R.S. §15-443.

Under A.R.S. §23-750(B)(4):

[a]n employing unit shall pay to the department [DES] for the fund an amount equal to the amount of regular benefits. . . which were based upon wages paid during the employing unit's period of election to make payments in lieu of contributions. . .

Benefits are payable under A.R.S. §23-750 on the same terms as benefits payable on the basis of other employment. A.R.S. §23-750(E). Under A.R.S. §23-727(C),

Mr. Jim Rhoades
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. . . benefits paid to an individual shall be charged against the accounts of his base-period employers. The amount of benefits so chargeable against each base-period employer's account shall bear the same ratio to the total benefits paid to the individual as the base-period wages paid to the individual by the employer bear^{to} the total amount of base-period wages paid to the individual by all his base-period employers.

Under A.R.S. §23-727(D), benefits paid to an individual that are based on employment which the individual voluntarily left without good cause are not used in determining the future contribution rate of that employer. Under A.R.S. §23-750(B)(4), however, this provision is not applicable to employers who elect to make payments in lieu of contributions.

The "base-period" is defined as the "first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. . ." A.R.S. §23-605. All employers that paid the individual wages during the base period are "base-period employers". A.R.S. §23-606 and 23-607.

The individual's benefit year in this case, according to DES, began January 7, 1979. His base period was therefore from October 1, 1977 through September 30, 1978, which includes part of the period the individual was employed by the school district. The school district was, therefore, one of the individual's base period employers. The total wages paid during the base period, again according to DES., were \$4,864.59, \$4,614.59 of which came from the school district. A.R.S. §§23-750 and 23-727 appear to require that the school district pay to DES approximately 94.8608% of the total benefits paid last quarter (\$850.) which equals \$806.32.

In conclusion, it appears that Mayer Unified School District was a base-period employer of the individual in question. DES made a determination that the individual was entitled to unemployment compensation. Under the applicable statutes, benefits paid are charged on a proportionate basis against the accounts of the base-period employers. There are provisions for not charging a base-period employer's account under certain circumstances but these provisions do not apply to employers who elect to pay on a reimbursement in lieu of contribution basis. Therefore, it appears that the provisions of Arizona Revised Statutes, Title 23, Chapter 4, would require that the school district pay the above amount.

A question has been raised as to whether these payments would constitute a gift of public funds under Article 9, Section 7 of the Arizona Constitution. The test established to determine whether an expenditure constitutes such a prohibited gift is whether the expenditure is for a public purpose. Town of Gila Bend v. Walled Lake Door Co. 107 Ariz. 545 (1971) In addition, under Prescott Community Hospital Commission v. Prescott School District No. 1 57 Ariz. 492 (1941), the expenditure must benefit the school district. Elimination of economic

OFFICE OF THE TAVAPAI COUNTY ATTORNEY

Mr. Jim Rhoades
July 17, 1979

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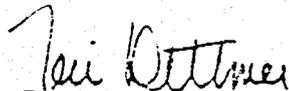
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insecurity of unemployment through the compulsory accumulation of funds was declared to be a public purpose in A.R.S. §23-601. See also Attorney General Opinion 70-19. Also, the discharge of the statutory obligation imposed on the school district would be a sufficient benefit to the school district to remove it from the restrictions of Prescott Community Hospital.

According to DES, they will be mailing another statement to the school district on August 1, for an additional charge of \$723.39. After this bill, there should be no further charges for this individual.

If you have any further questions concerning this matter, please contact me. Pursuant to A.R.S. §15-122(B), a copy of this letter is being sent to the Attorney General's Office.

Very truly yours,



Teri Dettmer
Deputy County Attorney

TD/st

cc: Attorney General

Dr. Gene Hunt, Superintendent
of Schools