Genine
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

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ARIZONA ATTORNEY GENERAL

January 29, 1980

Mr. Lawrence Ollason
Special Deputy County Attorney
Pima County Attorney's Office
182 North Court Avenue
Tucson, Arizona 85701

Re: I80-011 (R79-318)

Dear Mr. Ollason:

Pursuant to A.R.S. § 15-122(B), we decline to review your November 28, 1979 opinion addressed to the Superintendent of the Catalina Foothills School District concerning school employees' waiver of fringe benefits. We believe 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,

Bob Corbin

BOB CORBIN
Attorney General

BC/mm

OFFICE OF THE
Pima County Attorney
132 NORTH COURT AVENUE
Tucson, Arizona 85701
(602) 624-4477

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

LAWRENCE OLLASON
SPECIAL DEPUTY COUNTY ATTORNEY
FOR SCHOOL AFFAIRS

Rec'd 12-13-79

Rec'd 12-17-79 pc
POLLARD
R79- 318

EDUCATION OPINION
ISSUE NO LATER THAN
2-17-79

November 28, 1979

Mr. Larry E. Frase, Ed. D.
Superintendent
CATALINA FOOTHILLS SCHOOL DISTRICT
1926 East River Road
Tucson, Arizona 85718

Re: Fringe Benefits

Dear Mr. Frase:

Generally, rights to benefits that are provided for by either federal or state statutes cannot be waived. Agreements purporting to waive these rights are void and would not bar a claim by an unhappy or disgruntled teacher's aide sometime in the future for the fringe benefits he or she voluntarily gave up. For example, an Arizona statute, A.R.S. §23-784, prohibits the waiver of employment security benefits:

> No agreement by an individual to waive, release or commute his rights to benefits or any other rights under this chapter shall be valid.

This policy against waiver would also apply to any benefit or contribution that, instead of going directly into a public fund for eventual disbursement, goes into a private or alternative fund established in lieu of the pre-existing public fund. There are other provisions, similar to the one quoted above, which are applicable to other publicly bestowed benefits.

Yet, there does not seem to be a comparable limitation on the school district's ability to enter into an agreement with the teachers' aides that would waive their rights to benefits obtained solely on account of the private nature of your employment contract agreement with them. As neither the state or federal governments have articulated an interest in these rights, individual parties may agree to a release. Vacation time, bonuses, parking privileges, and contributions to medical or dental health insurance plans could, thus, probably be validly waived.

As I mentioned above, I think it would be unwise for the school district to enter into an agreement with the teachers' aides that purports to waive their rights to benefits statutorily derived. But, if you decide to go ahead and work around the "private" benefits, I suggest that we should write the new agreements carefully so that it is clear to all parties what their rights and obligations are.

I call your attention to Section 15-122 B, as amended, requiring all school opinions to be forthwith submitted by the County Attorney to the Attorney General for concurrence or disaffirmance. We also again call your attention to Section 15-436 B, as amended, that you are relieved from personal liability for acts done in reliance upon the written opinion of the Attorney General. If you act without waiting for the Attorney General's concurrence or disaffirmance of the opinion, and any damage results from your actions, you are liable both as a member of the Board of Trustees and personally. Bear in mind, that reliance in the opinion of the Attorney General relieves you only from personal liability and not from liability as a member of the Board of Trustees.

The request for the opinion contained herein and this letter are being sent by this office to the Attorney General's office.

Please contact me if any other matters arise.

Sincerely yours,

LAWRENCE OLLASON
Special Deputy County
Attorney for School Affairs

LO:ek

cc: The Attorney General