



General
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Robert K. Corbin

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ARIZONA ATTORNEY GENERAL

March 19, 1980

Mr. Q. Dale Hatch
Deputy Maricopa County Attorney
Suite 400
101 West Jefferson
Phoenix, AZ 85003

Re: I80-044 (R80-015)

Dear Mr. Hatch:

We have reviewed your opinion dated January 11, 1980, to the Roosevelt School District concerning the release of personnel statistics to members of the public and the authority of the district to grant leaves of absence.

Your opinion first addresses the district's inquiry concerning the duty of the district to provide information concerning the number of applicants per personnel position by their race and national origin when requested to do so by a member of the public or a district board member.

The general rule of access to "public records" and "other matters" by the public is established by A.R.S. § 39-121, which provides:

Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person.

In Mathews v. Pyle, 75 Ariz. 76, 251 P.2d 893 (1952), the Arizona Supreme Court interpreted the statute to mean that "public records"^{1/} are always open to public inspection, but

^{1/} Public records are records "made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference." Mathews v. Pyle, 75 Ariz. 76, 78, 251 P.2d 893, 895 (1952).

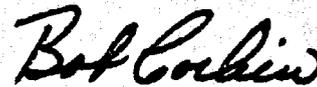
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"other matters" may be inspected by citizens unless they are confidential or of such a nature that disclosure of their contents would be against the best interests of the state.

If the school district is maintaining data on applicant flow by race and national origin pursuant to any applicable statutes or regulations, the data is a public record and must be made available to the public. However, even if this data is not kept as a public record but the district has such data, the school board must determine whether this information is confidential and whether its disclosure would be against the interests of the state. Absent such a determination, the requested information must be disclosed. Although this determination is a matter which falls within the discretion of the board, we note that, since those requesting the data are not seeking personal identification of the applications, we are not aware of any reasons for not providing the requested information.

The school district also asked whether it is permissible to grant a teacher a second consecutive leave of absence. We concur with your conclusion that A.R.S. § 15-444.02 does not prohibit the board from granting a second leave of absence, and that a district governing board has discretion to grant a second leave if it believes this to be in the best interest of the district.

Sincerely,



BOB CORBIN
Attorney General

BC/mm

CHARLES E. HYDER
MARICOPA COUNTY ATTORNEY

101 W. JEFFERSON STREET, SUITE 400
PHOENIX, ARIZONA 85003



RODGER A. GOLSTON CHIEF DEPUTY

LARRY CRONIN ADMINISTRATIVE DEPUTY

January 11, 1980

R80- 015

Dr. Russel Jackson
Superintendent
Roosevelt School District No. 66
6000 South 7th Street
Phoenix, Arizona 85040

School Opinion No. 80-2

Dear Dr. Jackson:

This opinion is in response to your request for an opinion dated December 7, 1979, wherein you asked the following questions:

1. May a committee organization, resident of a school community, or a member of the Board of Trustees of a school district request and receive, during a public meeting of the Board, the count of the number of applicants for a personnel position by the race and national origin of the applicants prior to or following the official employment action of an applicant recommended to the Board for employment?
2. May a Board of Trustees grant a second and subsequent Leave of Absence to a teacher following a Leave of Absence pursuant to A.R.S. §15-444.02?

ANSWERS:

1. See discussion.
2. Yes.

DISCUSSION

The answer to question one involves two issues. One, is the information a public record which must be released? Two, would the release violate any Federal law? In my opinion, the information requested is not a public record and does not have

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to be available to the public. I base this opinion on the definition of public record as stated by the Arizona Supreme Court in Mathew v. Pyle, 75 Ariz. 76 (1952). The court said:

"A public record, strictly speaking, is one made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference."

"Also, a record is a "public record" which is required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done."

Normally, E.E.O.C. advises that the race and national origin of an employee is not a suitable question to be asked on an employment application. Only under certain affirmative action plans should this be asked. Notwithstanding, if accurate information is available, it can be given to whomever the Board of Trustees desires as long as names are not released as part of the information. Such a release would not violate the Federal equal employment laws.

In answer to question two, it is my opinion based on A.R.S. §15-444.02, that a subsequent request for a leave of absence can be granted by the Board of Trustees even though it would be the teacher's second consecutive leave. A.R.S. §15-444.02.B limits leaves of absence to one year, but it does not prohibit the board from granting a second leave of absence upon request.

A copy of this opinion is being sent to the Attorney General for his concurrence, revision or non-review.

Very truly yours,

CHARLES F. HYDER
MARICOPA COUNTY ATTORNEY

APPROVED & RELEASED

Albert Firestein
Albert Firestein
Chief, Civil Bureau

J. Dale Hatch
Q. Dale Hatch
Deputy County Attorney