



*Genine*  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

August 7, 1980

Russell H. Burdick, Jr., Esq.  
Deputy County Attorney  
Apache County Attorney's Office  
P. O. Box 637  
St. Johns, Arizona 85936

Re: I80-149 (R80-149)

Dear Mr. Burdick:

Pursuant to A.R.S. § 15-122(B), we decline to review your June 16, 1980 opinion addressed to the Business Manager of Chinle School District No. 24, concerning employee contracts, budgeting and Johnson-O'Malley funding. 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,

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

BOB CORBIN  
Attorney General

BC/eb

*Twist*

STEPHEN G. UDALL  
COUNTY ATTORNEY

OFFICE OF  
APACHE COUNTY ATTORNEY

TELEPHONE (602) 337-4364  
EXTENSIONS 31 & 36

WESSELL H. BURDICK, JR.  
CHIEF DEPUTY

P. O. BOX 637  
ST. JOHNS, ARIZONA 85936

June 16, 1980

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*R80-149*  
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*8-24-80*

Mr. Louis B. Ipharr  
Business Manager  
Chinle School Dist. No. 24  
P. O. Box 587  
Chinle, AZ 86503

Dear Bert:

You have requested an opinion concerning employee contracts, budgeting and Johnson-O'Malley funding (JOM). If I may paraphrase your request, you want to know what treatment should be accorded personnel contracts when those contracts are to be paid from JOM funds and there are insufficient funds in the general portion of the budget to cover those employees salaries. From your letter, it appears that JOM funds are not guaranteed until late fall.

Treatment afforded employees being paid through JOM funding will differ depending on their status either as certified employees covered under the teacher tenure act (generally full time teachers), or any other employees.

For all employees other than full time teachers, the school district should proceed in one of two ways. Assuming that there is no funding other than JOM from which these individuals may be paid, the school district should inform them that they are no longer employed with the school district but that contracts will be offered when the money becomes available. In the alternative the school district may enter into contracts with these individuals specifying that the contract is conditioned on the availability of JOM funding. It would seem that the second procedure would provide a better continuity of employment.

For certified employees covered by the teacher tenure act, some limitations are placed on a school district in its ability to make the contracts with those employees conditional. Continuing teachers may not be dismissed if they may replace probationary teachers working in other areas within the school district. See Attorney General's Opinions I79-055 and 77-70. (Copies attached).

June 16, 1980  
Mr. Louis B. Ipharr  
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It would also appear that there may be some limitation on the school district's ability to dismiss a probationary teacher if notice is not provided by April 15 as provided by A.R.S. §15-252, especially since the school district recognizes that Johnson-O'Malley funding is only speculative until the late fall.

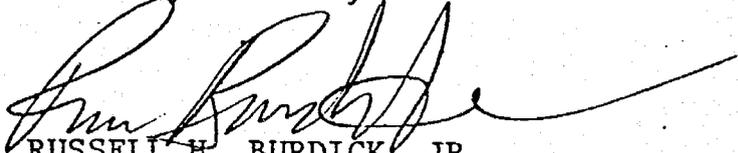
In summary it is my opinion that if no funds exist in the general portion of the budget under which employees may be hired the only proper procedure for hiring employees is under a conditional contract. See Carlson v. School District No. 6 of Maricopa County, 12 Ariz. App. 179. (1970). Otherwise the employee must be dismissed until monies are actually available. These alternatives are of course subject to the limitations of the teacher tenure act.

A copy of this opinion is being forwarded to the Attorney General for his review.

Sincerely,

STEPHEN G. UDALL  
Apache County Attorney

BY:

  
RUSSELL H. BURDICK, JR.  
Deputy County Attorney

RHB:mp  
encl.

cc: Attorney General  
Roland Kimbrough, Superintendent