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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

March 16, 1981

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ARIZONA ATTORNEY GENERAL

Mr. David H. Hunt
Deputy County Attorney
Office of the Cochise County Attorney
P.O. Drawer CA
Bisbee, Arizona 85603

Re: I81-043(R81-033)

Dear Mr. Hunt:

Pursuant to A.R.S. § 15-253.B, we decline to review your opinion dated February 17, 1981 to the Superintendent of Tombstone Unified School District concerning school budget revision.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:clp



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February 17, 1981

EDUCATION OPINION

ISSUE NO LATER THAN

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LASSEN

Mr. D. B. Forrest, Superintendent
Tombstone Unified School District No. 01
Post Office Box 1000
Tombstone, Arizona 85638

R81- 033

Dear Mr. Forrest:

This letter is in response to your request for an answer to the following question:

"Can a school district which was allowed to complete a budget revision under the provisions of A.R.S. §15-1212(J) revise its budget to an amount which is equal to the revised Maintenance and Operation Budget limit when the revision was made in response to an increase in enrollment?"

Your request is in response to a notice from the State Department of Education to the effect that your 1980-81 State Aid will be reduced by \$62,654, reflecting the amount by which you increased your 1979-80 budget in order to equal the 1979-80 final budget limit. As the reductions are scheduled to begin in March, 1981, you indicate that it may be impossible for your district to continue operations and meet its contractual obligations for the remainder of the school year.

The Department's action is based upon its interpretation of Attorney General's Opinion 80-86, which concluded that the Holbrook Unified School District could not raise its adopted budget to meet its aggregate budget limit. Based upon a review of your circumstances, it is my conclusion that your situation differs from that presented in the Holbrook case. Therefore, it would appear that, despite the conclusions of Attorney General's Opinion 80-86, your district could have raised your adopted 1979-80 budget to the limit prior to final enactment.

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It should initially be noted that the Holbrook District did not experience any growth between the time at which its average daily membership was estimated for inclusion in the adopted budget and the time at which its actual average daily membership was ascertainable. As a result, Holbrook could not properly rely on A.R.S. §15-1212(J) to justify its budget increase. Section 15-1212(J) provided that:

"On or before May 15 of the current year, the governing board of a school district shall adjust the expenditures based on the average daily membership or adjusted average daily membership as determined through April 15, or in accordance with the provisions of §15-1201.01(B) for school districts with a declining enrollment, so that the budget cost level for the current year reflects the average daily membership or adjusted average daily membership rather than the estimated average daily membership. School districts which appear to have over-estimated or under-estimated average daily membership or adjusted average daily membership count or which have had average daily attendance which falls below 94% of average daily membership shall begin to adjust their budgets not later than February 1, so that the final adjustment can be made by May 15."

Thus, under §15-1212(J), Holbrook could not have adjusted its budget upward unless its actual average daily membership exceeded the estimate on which the adopted budget was based. The Tombstone District did experience such a growth in membership, however, and should, under §15-1212(J) be able to increase its budget based upon that increase.

Attorney General Opinion 80-86 concludes that spending increases cannot result in an increase in per

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capita expenditures per student. While that determination may certainly be applicable to certain types of spending increase situations, it would not seem to be compelled in the present case. There is nothing in §15-1212(J) that suggests that such a limitation is in force. The statute only refers to increases in budgeted funds in response to increases in actual daily membership over previously estimated average daily membership. Indeed, there may be circumstances in which a given increase in average daily membership requires a larger-than-proportional increase in the budget due to indivisibility of certain resources necessary to accommodate increased enrollment. It does not appear that the legislature would intend, in the absence of express language, to rigidly lock budget increases occasioned by higher enrollment to an inflexible formula.

One factor cited by Attorney General Opinion 80-86 in support of strict limitations on permissible budget adjustments was the overall school financing scheme set forth in Chapter 12, Title 15 of the Arizona Revised Statutes and, specifically, the provisions of A.R.S. §15-1202. Section 15-1202(B) provides that budgets shall be subject to review by the residents and taxpayers of the district in a public hearing. The Attorney General's Opinion concedes that the "budget cost level" can only be estimated at the time of a public hearing, but also suggests that the public can still form opinions with respect to the district's revenue sources and planned spending, express their opinions on the budget and assess the board's response.

There may be situations in which a school board's upward adjustment of the budget following the public hearing would threaten the interest of local residents in controlling the nature and extent of district financial obligations. In the present case, however, it does not appear that local residents' and taxpayers' interests have been so compromised. The adjustments made to the district's budget did not affect the tax rate in any respect. The rate had been set at the time of initial adoption and was not subsequently adjusted. Although the district budget was adjusted upward to meet the district's spending limit, the

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additional funds necessary to so increase the budget came exclusively from state aid. No additional local funds were committed.

At the budget hearing, local residents approved the sources of district financing and the tax rate upon which expenditures from local sources would be based. Implicit in this approval was a recognition that certain district revenues would come from State Aid. Subsequently, and based upon an adjustment in average daily membership, the board determined that additional State Aid, up to the budget limit, would be in the district's best interest. There is no basis to conclude that local residents would have objected to receipt of additional State Aid as such monies represented benefits to be obtained at no additional cost to local taxpayers.

Furthermore, the interests of the State, and its taxpayers, in conserving State Aid funds were not compromised by the board's adjustments. The State Aid Equalization Plan establishes a five-year period over which aid to school districts is to be equalized. Since your district is classed as a "low spending district", any cuts made in allowable aid based on mandated reductions in the 1979-80 budget will result in compensatory increases in aid in subsequent years.

The board's action cannot be said to have thwarted the interest of local residents in control of local expenditures nor compromised the fiscal interests of the state. However, if your State Aid is, in fact, adjusted downward for the present budget period, it would do significant harm to the local residents by crippling the operations of your school district but will not result in any long-term savings for state or local taxpayers due to the operation of the equalization mechanism. Thus, even if the Holbrook Board's proposed actions did compromise

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the interests of state or local taxpayers, any concerns expressed in that regard by the Attorney General's Opinion should not be applicable to your case.

In attempting to determine the intent of the legislature with regard to adjustments in budgets and limits, Attorney General's Opinion 80-86 also considered A.R.S. §15-1245, which provided that a district might exceed its budget in situations involving increased membership or destruction of school facilities. As written at that time, §15-1245 required review of any such spending plans by the County School Superintendent and a hearing by the Board of Supervisors. The Attorney General further noted that §15-1245, as then in effect, prohibited such excess spending for increases in school membership where it would:

". . . increase the per capita expenditures per school child allowed by the budget for the districts for that year."

The Attorney General's intent in citing §15-1245 was, first, to stress the severe procedural limitations placed on those who sought to exceed established spending levels and, second, to illustrate that such spending would not be permitted to increase the per capita expenditure per child. In the present case, however, the board did not attempt to spend in excess of its established budget. It merely made an adjustment in its adopted budget prior to final enactment of the 1979-80 budget.

Within its appropriate context, the provisions of §15-1245 do appear logical. In cases where a finally-enacted budget must be exceeded, it is likely that such action will result in an additional financial burden on local residents and should, therefore, be subject to close scrutiny. Here, however, neither overspending a final budget nor additional fiscal commitments are at issue. Thus, it would appear that application of the language or rationale of §15-1245 would not be appropriate in regard to the action taken by your board.

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A.R.S. §15-1202(A) provides that budgets prepared for submission to the County School Superintendent and the Superintendent of Public Instruction:

". . . shall contain the information and be in the form as provided by the State Department of Education."

You have indicated that your district has, as a matter of course, consulted with the Department of Education in regard to the mechanics of revising initially adopted budgets. In response to your requests, you have been informed that adherence to the format set out in Department of Education Budget Forms provides guidance for the handling of budget revisions of this nature. Examination of ADE Form 41-110R has apparently led you to conclude that budget revisions of the type undertaken by your board for the 1979-80 school year were appropriate and were in compliance with established procedures of the Arizona Department of Education. These forms provide space for revision of each budget and limit item addressed in this opinion. In the "Expenditures" section, columns have been allocated for both adopted and final budget amounts. It would seem that the board could reasonably conclude that a revised budget could be amended to any level within the revised budget limit.

The district has apparently acted consistently in accord with procedures as apparently established by the Department of Education, and it would appear that such reliance is justifiable. Furthermore, you have indicated that many of the financial commitments entered into pursuant to the district's action in reliance on Department of Education procedures, such as the approval of teachers' contracts and their execution, would, by law, have to be made prior to any notifications of change in established policy and would also have to have been undertaken prior to issuance of Attorney General's Opinion No. 80-86.

In conclusion, it would appear that your district had ample justification for revising the initially adopted 1979-80 budget to meet the budget limit. First, the board took such action in response to an increase in district

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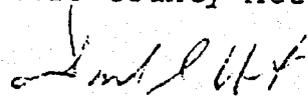
membership, a situation which did not exist in the Holbrook District. Second, neither local nor state fiscal control or expenditures are compromised by the budget revisions. Third, since the action taken by your board did not involve spending in excess of an established budget, but only revisions to a budget prior to final enactment, the procedures and rationale of A.R.S. §15-1245 should not apply. Finally, your board appears to have acted in justifiable reliance on procedures established by the Department of Education in respect to such revisions.

Please be aware that this opinion is based upon interpretation of statutes in effect at the time the 1979-80 budget was enacted. Subsequent statutory changes, most particularly to the provisions of A.R.S. §15-1212(J) could lead to different conclusions based on board actions in subsequent years. Since, however, your question was not directed to such subsequent actions, these issues will not be addressed at this time.

I trust that this will assist you in evaluating the propriety of your board's actions in regard to the 1979-80 budget. Pursuant to A.R.S. §15-122(B), a copy of this opinion is being forwarded to the Attorney General for his concurrence or revision.

Very truly yours,

BEVERLY H. JENNEY
Cochise County Attorney



By:
DAVID S. HUNT
Deputy County Attorney

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