



Ginger
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

March 16, 1981

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Janice M. Urbanic
Deputy County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

Re: I81-044(R81-028)

Dear Ms. Urbanic:

We have reviewed your opinion dated February 5, 1981, to Douglas Williams of the Prescott Unified School District, regarding the district's revised unused sick leave policy. We concur with your opinion that the revised policy is in compliance with the provisions of the Age Discrimination in Employment Act (29 U.S.C. §623 et seq.) and the Arizona Civil Rights Act (A.R.S. § 41-1401 et seq.) since it does not make age a relevant factor in considering payment for unused sick leave, and that it does not violate Arizona constitutional or statutory law.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:clp



CHARLES R. HASTINGS
COUNTY ATTORNEY

OFFICE OF

County Attorney

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

EDUCATION OPINION
ISSUE NO LATER THAN
4-21-81

CARL H. COAD
DEPUTY
STEVEN B. JAYNES
DEPUTY
LINDA J. POLLOCK
DEPUTY
JAMES H. LANDIS
DEPUTY
JANICE M. URBANIC
DEPUTY

February 5, 1981

2-20-81 pc
AUSTIN
R81-028

Mr. Douglas Williams
Prescott Unified School District
P.O. Box 1231
Prescott, Arizona 86302

Dear Doug:

Prescott Unified School District has requested review of the district's revised unused sick leave policy.

Briefly, the factual circumstances of this matter center on age discrimination challenges brought against the district's current policies. Upon the district's own review of the policies and counsel by the Civil Rights Division of the Office of the Attorney General, the revised payment of unused sick leave policies have been proposed as follows:

REVISED CLASSIFIED UNUSED SICK LEAVE POLICY

Accumulation of sick leave days is unlimited. Upon either (1) retirement, or (2) severance after fifteen (15) years of employment, the classified employee will receive pay for unused sick leave equal to one-half of the employee's daily rate of pay for the last year of service, up to \$12.50 per day for each day of accumulated sick leave. Employees who are dismissed for cause, are not eligible for unused sick leave payments.

REVISED CERTIFIED POLICY

Accumulation of sick leave days is unlimited. Upon either (1) retirement, or (2) severance after fifteen (15) years of employment, the certified employee will receive pay for unused sick leave equal to one-half the

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substitute teacher's pay for each day of accumulated sick leave. Employees who are dismissed for cause, are not eligible for unused sick leave payments.

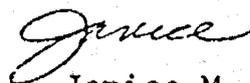
This office has reviewed and approved the above policies in light of federal and state laws concerning age discrimination. Subsequent to said review and approval, the revised policies were directed to the Civil Rights Division of the Office of the Attorney General. Although the attorneys of the Civil Rights Division believed the revised policies complied with federal and state requirements, they were unable to provide written approval. It was suggested that the policies be forwarded to the Education Division of the Civil Section of the Office of the Attorney General for additional review. Thus, I am providing said Division with a copy of this letter in order that Prescott Unified School District may rely upon statutorily-mandated review by the Office of the Attorney General.

As I have indicated, I believe the revised policies are in compliance with the provisions and intent of the federal Age Discrimination in Employment Act, (29 U.S.C.S. §623 et seq.) Under the terms of the proposed policies, age is not an entitlement factor. District employees may freely elect to take advantage of the policies' provisions either upon (1) severance after 15 years employment, or (2) retirement.

As for Arizona law, the Education Division of the Office of the Attorney General has had the opportunity to review and approve school district unused accrued sick leave policies on numerous occasions. A survey of Opinions of the Attorney General dealing with employee benefits indicates the rationale behind compensation for unused accrued sick leave is that such compensation serves a valid public purpose; and thus, it does not violate Article IX, Section 7 of the Arizona Constitution prohibiting gifts of public funds. (Op. Atty. Gen. No. 76-238; Op. Atty. Gen. No. 77-16; Op. Atty. Gen. No. 179-278; Op. Atty. Gen. No. 80-69; Op. Atty. Gen. No. 80-120.)

Please feel free to contact me if you have any questions. As stated above, a copy of this letter shall be forwarded to the Office of the Attorney General. It is in the district's best interests to refrain from formal adoption of the proposed policies pending review.

Sincerely,



Janice M. Urbanic

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cc: Dr. Gene Hunt
Yavapai County Superintendent of Schools
Courthouse
Prescott, Arizona 86301

Gary Lassen
Office of the Attorney General
159 State Capitol
Phoenix, Arizona 85007