



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

November 10, 1981

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ARIZONA DEPARTMENT OF ATTORNEY GENERAL

Mr. Sandy Shuch
Deputy County Attorney
Office of Maricopa County Attorney
101 W. Jefferson Street, Suite 400
Phoenix, Arizona 85003

Re: I81- 119 (R81-126)

Dear Mr. Shuch:

We have reviewed your letter dated June 8, 1981 to the President of the Board of Trustees of Tempe Elementary School District No. 3 concerning a Board policy establishing procedures to meet-and-confer with a teachers' association:

"Benefits and conditions in effect as a result of the existing board policy or established practices and those included within the items covered by this agreement and previous agreements shall continue unless altered by mutual agreement of the parties."1

The following is a revision of your opinion.

We conclude that the quoted policy provision violates several fundamental principles of law applicable to school districts. First, the policy provision purports to inhibit the discretion of the school district governing board by preventing it from changing previous board policy without consent of the teachers' association in contravention of the principle that the discretion statutorily vested in a school district governing board may not be delegated. See Peck v. Board of Education of Yuma Union High School, 126 Ariz. 113, 612 P.2d 1076 (App. 1980). In prior opinions, we have concluded that

1. We are informed that the word "parties" refers to the governing board and the teachers association.

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school districts may enter into an agreement with an employee organization, if the agreement does nothing more than provide for meetings and conferences between the governing board and the employee organization to discuss wages, terms of employment, working conditions and does not in any way attempt to restrict the board's control over such matters. See Attorney General Opinion Nos. 74-11 and 179-126.

Second, the policy, by providing for a continuation of existing benefits until modified by mutual agreement of the parties, offends the doctrine that a school district may not bind its successor boards. See School District No. 69 of Maricopa County v. Altherr, 10 Ariz.App. 333, 458 P.2d 537 (1969). School district boards have board discretion in contracting with teachers for fringe benefits, but in so doing they may not act in such a fashion as to preclude successor boards from exercising that discretion.

Third, the continuation of benefits provision contravenes budgetary law restrictions that generally limit a school district from entering into a contract for more than one year. See A.R.S. §§ 15-905 and 15-906 which limit a governing board's power to contract and make expenditures for goods and services to the current fiscal year. A school district may not bind itself to perform acts in the future which deal with budgetary matters except for those particularized exceptions specifically mandated or allowed by law, such as long-term leases and contracts with school administrators. A.R.S. §§ 15-342.10 and 15-503.B. Notwithstanding the fact that the individual teachers' contracts may incorporate general board policies into them, the duration of the benefits conferred thereunder may extend only for the duration of the individual contract. See Board of Trustees of Marana Elementary School District No. 6 v. Wildermuth, 16 Ariz.App. 171, 492 P.2d 420 (1972).

Finally, we are concerned that the term "established practices" as used in the provision is so vague as to be unenforceable. Moreover, a school district cannot be bound by estoppel as a result of "established practices" when they have no legal authority to bind themselves to a contract. See Oracle School District No. 2 et al. v. Mammoth High School District No. 88 et al., 2 CA-CIV 3816 (Ct.App. Div. 2, filed June 29, 1981).

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In summary, we conclude that the policy provision set forth above is invalid because it attempts to effect an unlawful delegation of the governing board's authority and limit the discretion of successor governing boards. The provision also raises issues relating to its enforceability because of budgetary law restrictions and the vagueness of the term "established practices".

Sincerely,



RODERICK G. McDOUGALL
Acting Attorney General

RGM:LPS:ta

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TOM COLLINS, COUNTY ATTORNEY

NORMAN C. KEYT, CHIEF DEPUTY

June 8, 1981

Mrs. Betty L. Hiett
President, Board of Trustees
Tempe School District No. 3
3205 South Rural Road
P.O. Box 27708
Tempe, Arizona

EDUCATION OPINION
ISSUE NO LATER THAN
11-2-81

9-4-81pc
LOWE
R81-126

Dear Mrs. Hiett:

This letter is in response to your request concerning the validity of the following Board Policy:

"Benefits and conditions in effect as a result of the existing Board policy or established practices and those included within the items covered by this agreement and previous agreements shall continue unless altered by mutual agreement of the parties."

The word "parties" refers to the Governing Board and the Teachers' Association.

The guiding principles involved are set forth in Communication Workers v. Arizona Board of Regents, 17 Ariz. App. 398, 408 P.2d 472 (1972). This case dealt with an attempt by a labor union to compel the Arizona Board of Regents to recognize the union as the bargaining agent for certain of the Regents' employees. The Court held that the Board could not be compelled to recognize or bargain with a union.

The Court based its reasoning on Article XI of the Arizona Constitution which directs the legislature to provide a public school system and legislative enactments passed pursuant thereto. These constitutional and statutory enactments provided that the Board of Regents make certain decisions concerning employment, personnel and so forth. The court held:

We deem the above-referred to constitutional and statutory provisions as being a prohibition against entering into a contract with a union which would deprive the Board of Regents of the power to make the above-referred to mandated decisions.
17 Ariz. App. at 400.

The reasoning is applicable to the present issue. Article XI, Section 1 of the Arizona Constitution mandates the legislature to provide a public school system. The legislature acting pursuant to this mandate has established school districts which are political subdivisions of the State governed by school district governing boards. A.R.S. §15-101(3)(7).

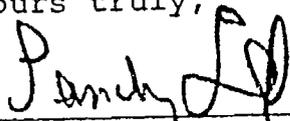
A.R.S. §15-341 mandates the governing board of a school district to:

- (1) Prescribe and enforce rules for the governance of schools in its district;
- (2) Maintain the schools in its district; and
- (18) Provide for the supervision of students by certified personnel.

These constitutional and statutory provisions like those in Communications Workers of America, supra, are a prohibition against a school district governing board entering into a contract, or passing a resolution which prevent it from making decisions the legislature has mandated that it make.

We conclude that the section of the policy cited above is invalid insofar as it attempts to prevent the Board from making decisions within its legislative mandate without the consent of the teachers' organization.¹

Yours truly,


 Sandy Shuch
 Deputy County Attorney

cc: All Board Members

(NOTE: This letter constitutes legal advice and is protected from disclosure by the attorney-client privilege. Unauthorized disclosure will result in a waiver of the privilege. The contents should only be disclosed after the Board decides upon such action in a formal meeting)

1. If Board policies contain benefits for teachers and the individual teachers' contract refers to the portion of the policy involved and incorporates that benefit reference the Board cannot unilaterally take the benefit away from the teacher. If the policy is changed and this results in the removal of a benefit, the teacher will have this benefit until the existing individual contract expires. Board v. Wildermuth, 16 Ariz. App. 171, 492 P.2d 420 (1972).