



Attorney General

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Phoenix, Arizona 85007

Robert E. Corbin

May 21, 1990

The Honorable Melvin R. Bowers  
Navajo County Attorney  
P.O. Box 668  
Holbrook, Arizona 86025

Dear Mr. Bowers:

Re: I90-045 (R90-034)

Pursuant to A.R.S. § 15-253(B), we have reviewed your opinion letter to the Show Low Unified School District concerning leaves of absence and compensation for school employees who have exhausted their sick leave.

We revise your opinion concerning whether employees who have exhausted their sick leave must obtain leaves of absence to protect certain rights, and conclude that pursuant to A.R.S. § 15-510, they must obtain leaves of absence to gain the protection of rights specified in statute.

A.R.S. § 15-510 authorizes school district governing boards (local boards) to allow leaves of absence under the following conditions:

A. The governing board may authorize leaves of absence for school district personnel when it deems such leaves of absence to be reasonable and for good cause and not detrimental to education within the school district.

B. Leaves of absence shall be limited to a period not to exceed one year.

C. Leaves of absence shall be granted upon application stating the purpose of the leave of absence, the facts as to its necessity or advisability and other information helpful to the governing board in making a determination as to whether the leave should be granted.

E. If leave is granted, all rights prescribed in §§ 15-538.01, 15-539 through 15-544 and 15-547 for certificated teachers who have been employed by the school district for more than the major portion of three consecutive school years and all rights of retirement, accrued leave with pay, salary increments and other benefits provided by law shall be preserved and available to the employee after the termination of the leave of absence.

Local boards have only the authority granted by statute, and such authority must be exercised in a manner permitted by statute. Campbell v. Harris, 131 Ariz. 109, 112, 638 P.2d 1355 (App. 1981). Because A.R.S. § 15-510 authorizes local boards to grant leaves of absence to protect certain rights, those rights may be protected only in the manner permitted by that statute.

We concur with your conclusions that Arizona statutes do not set a compensation adjustment rate for employees who have exhausted their sick leave and are absent from work because of medical reasons and that compensation to such employees must avoid being a gift of public funds; we revise your opinion to add that Arizona case law provides guidance as to the amount of salary that may be paid to employees for reduced services to avoid an improper gift of public funds.

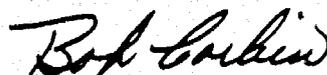
In 1984, the Arizona Supreme Court clarified the amount of consideration that a school district must receive in return for the salary paid to a teacher to avoid an improper gift of public funds. Wistuber v. Paradise Valley Unified School District, 141 Ariz. 346, 687 P.2d 354 (1984). In Wistuber, the Court held that Ariz. Const. art. IX, § 7 required not only that public funds be expended for public purposes, but also that the value of services to be received by a school district may not be "far exceeded" by the consideration paid by the district. 141 Ariz. at 349, 687 P.2d at 357.

Mr. Melvin R. Bowers, Jr.  
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Consequently, although Arizona statutes set no rate to adjust compensation for employees who have exhausted their sick leave, school district-employee agreements may be modified to provide reduced salaries in return for reduced services, so long as the district does not violate the Wistuber standard.<sup>1/</sup>

In summary, we conclude that only leaves of absences granted pursuant to A.R.S. § 15-510 protect the rights provided by that statute, and that Wistuber provides guidance for reduced compensation for reduced services agreements between local boards and employees who have exhausted their sick leave.

Sincerely,



BOB CORBIN  
Attorney General

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<sup>1/</sup>In our opinion, an agreement which accounts for a proportional reduction in compensation based upon the reduction of required services would satisfy this standard.



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NAVAJO COUNTY ATTORNEY OPINION #CAS-026

TO: SHOW LOW UNIFIED SCHOOL DISTRICT #10

FROM: MELVIN R. BOWERS JR., NAVAJO COUNTY ATTORNEY  
BY: THOMAS L. WING, DEPUTY *Thomas Wing*

DATE: FEBRUARY 26, 1990

RE: EXTENDED SICK LEAVE, i.e. BEYOND SICK LEAVE  
FRINGE BENEFIT

## QUESTION PRESENTED:

(1) When an employee has exhausted his/her sick leave days fringe benefit, must he/she obtain medical leave-of-absence to protect the rights of his/her contract?

(2) Does Arizona law provide the rate for adjustment of compensation to a contract employee who is absent from work due to medical condition or a medical leave-of-absence?

## STATUTE/AUTHORITY:

The foregoing questions involve consideration of (1) A.R.S. § 15-502 A; Arizona Constitution Article 9, Section 7; Opinion of Attorney General No. I 87-103; and Navajo County Attorney #CAS-025.

## CONCLUSIONS:

No state statute nor court decision appears to address the first question, above. Therefore, the proper procedure for the employee under his/her contract of employment would be determined by policy of the governing board of the school district, as authorized by A.R.S. § 15-502 A.

As to question two, above, no Arizona statute sets the rate for adjustment of compensation to a contract employee who is absent for medical reasons beyond the sick leave fringe benefit provided by the governing board of the school district.

Any adjustment in compensation to the contract employee must comply with the provisions of the Arizona Constitution, Article 9, Section 7, which prohibits governmental entities from making a "donation or grant" to an individual. See Navajo County Attorney's Opinion #CAS- 025.

DISCUSSION:

The governing board of a school district has authority to grant various "fringe benefits" to its employees. See A.R.S. Section 15-502 A. This authority includes granting employees sick leave under such policy and procedures as determined by the school board.

The statutes do not contain further direction or restriction on either the policy or procedures to be followed on administration of the sick leave benefits authorized under the foregoing statute. These are matters left to be set by the school district.

Since the contract employee is under contract to teach or work a designated period, absence from such employment obligation beyond that authorized as a sick leave benefit would require some action to avoid breach of the contract. What action is required of the employee is left to the school district to determine under direction from the governing board.

In a similar manner, the statutes do not set forth any formula or guideline for the adjustment of compensation to the school contract employee who is absent from employment beyond the fringe benefits allowed under the school district policy. Any formula or method of computing the adjustment in compensation to the contract employee who is absent from employment beyond that authorized under the school district fringe benefits policy must avoid being a "donation or grant" to the employee. See Arizona Constitution, Article 9, Section 7, and Navajo County Attorney Opinion #CAS- 025.

Case law applying the constitutional principle against granting a gift requires that funds be expended for a "public purpose", that "consideration" (or value) be received by the government, and that "courts must not be overly technical and must give appropriate deference to the governmental (governing) body". Wistuber v. Paradise Valley Unified School, 141 Ariz. 346, 349, 687 P.2d 354 (Sup.Ct., 1984).