

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

September 25, 1990

The Honorable C. Diane Bishop
State Superintendent
Department of Education
1535 W. Jefferson
Phoenix, Arizona 85007

Re: I90-088 (R89-155)

Dear Superintendent Bishop:

You have asked whether any federal or state laws limit the information that a school district may provide pursuant to the employer reference check required by A.R.S. § 15-512(F) (subsection F).^{1/} Specifically, you have asked whether subsection F authorizes school districts to provide requesting school districts criminal history record information received as a result of the fingerprint check authorized by § 15-512. We conclude that because a school district may obtain criminal history record information only for employment purposes of the district, the district may not release the information for the employment purposes of another school district. We also conclude that school districts are immune from civil liability for communicating, in good faith, truthful information concerning a former employee's education, training, experience, qualifications and job performance pursuant to A.R.S. §§ 15-512(F) and 23-1361.

School districts are required to investigate the employment history of prospective employees pursuant to the

^{1/} Section 15-512(E) was relettered as (F) when the 1990 State Legislature amended the statute. See Laws 1990 (2nd Reg. Sess.) Ch. 291, § 1.

following provision of A.R.S. § 15-512(F):

[T]he district shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations which may be relevant to a person's fitness for employment. . . .

You have asked whether the above provision authorizes school districts to release criminal history record information for employment purposes of other school districts. To determine whether school districts may release criminal history record information for such purposes, we must read provisions of § 15-512 together with related statutes. All parts of a statute relating to the same subject are to be construed together. Stuart v. Winslow Elementary School District, 100 Ariz. 375, 383, 414 P.2d 976 (1966). If statutes relate to the same subject or have the same general purpose, they should be read in connection with other related statutes as though they constituted one law. State v. Sweet, 143 Ariz. 266, 270, 693 P.2d 921, 925 (1985).

The authority of school districts to obtain criminal history record information is found in the following pertinent portions of A.R.S. § 15-512:

A. Noncertificated personnel and personnel who are not paid employees of the school district and who are not either the parent or the guardian of a pupil who attends school in the school district but who are required or allowed to provide services directly to pupils without the supervision of a certificated employee and who are initially hired by a school district after January 1, 1990 shall be fingerprinted as a condition of employment. . . .

B. Fingerprint checks shall be conducted pursuant to section 41-1750, subsection G.

A.R.S. § 41-1750(G) provides in pertinent part:

All noncriminal justice agencies of the federal government, the state or its political subdivisions may receive criminal history record information from the department of public safety criminal identification section pursuant to specific authority granted to that agency by statute, ordinance, or executive order which states the agency's authorization to receive criminal history record information for purposes of employment or licensing

(Emphasis added.)

In our opinion A.R.S. § § 15-512 and 41-1750(G) specifically provide that a school district may obtain criminal history record information only through the Department of Public Safety for employment purposes of the district. This specific authority to fingerprint certain employees and to conduct criminal history record information through the Department of Public Safety must control over the general authority of school districts to obtain information of previous employers which is relevant to an applicant's fitness for employment. See City of Phoenix v. Superior Court, 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1984) (special or specific statutory provisions will usually control over those that are general). Therefore, we conclude that a school district may obtain criminal history record information only from the Department of Public Safety for employment purposes of the district, and that a school district is without authority to obtain the information from another school district.

You also asked whether any federal or state laws limit the release of other employment information to prospective employers pursuant to § 15-512(F). Subsection F provides civil immunity to previous employers who provide information relevant to an employee's fitness for employment by the school district and to school districts who use the information in making employment decisions under the following circumstances:

[P]revious employers who provide information pursuant to this subsection are immune from civil liability unless the information provided is false and is acted on to the harm of the employee by the school district and the previous employer . . . knows the information is false or acts with reckless disregard of the information's truth or falsity. A school district which relies on information obtained pursuant to this subsection in making employment decisions is immune from civil liability for use of the information unless the information obtained is false and the school district knows the information is false or acts with reckless disregard of the information's truth or falsity.

A.R.S. § 15-512(F).

Similarly, pursuant to A.R.S. § 23-1361, information concerning a former employee's education, training, experience, qualifications and job performance communicated by a former employer to a prospective employer is privileged, and those communications are civilly immune. A.R.S. § 23-1361 provides in

pertinent part:

B. It is not unlawful for a former employer to provide to a requesting employer, or agents acting in his behalf, information concerning a person's education, training experience, qualifications and job performance to be used for the purpose of evaluating the person for employment. A copy of any written communication regarding employment must be sent by the employer providing the information to the former employee's last known address.

C. A former employer making a communication pursuant to subsection B is immune from civil liability unless the information communicated is false and defamatory and is acted on to the harm of the employee by the prospective employer and the communicator knows the information is false or acts with reckless disregard of the information's truth or falsity.

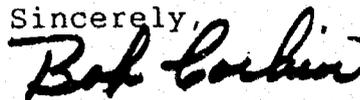
D. Communications concerning employees or prospective employees which are made by an employer or prospective employer, or by a labor organization, to a government body or agency and which are required by law or which are furnished pursuant to written rules or policies of the government body or agency are privileged.

E. An employer, including this state and its agencies, a labor organization or an individual is not civilly liable for privileged communications pursuant to subsection D.

Based upon this statute, we conclude that when truthfully communicating general employment information pursuant to §§ 15-512(F) and 23-1361, school districts are civilly immune from liability for such acts.

We conclude, therefore, that school districts must limit access to criminal history record information to persons who are directly involved in the school district employment function, and such information may not be released to a prospective employer unless otherwise provided by law. We also conclude that school districts would be civilly immune for truthfully communicating the general employment information pursuant to §§ 15-512(F) and 23-1361.

Sincerely,



BOB CORBIN
Attorney General