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Robert R. Corbin

May 18, 1982

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ARIZONA ATTORNEY GENERAL

Mr. James A. Shiner
Stompoly & Eves, P.C.
Attorneys at Law
120 West Broadway, Ste. 370
Tucson, AZ 85701

Re: I82-060 (R82-052)

Dear Mr. Shiner:

Pursuant to A.R.S. § 15-253.B, we decline to review your opinion dated April 7, 1982, to the Director of Business Affairs of the Sunnyside Unified School District concerning whether salary adjustments may be made for a district's classified employees after the execution of their contracts.

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

BC:CWL:lm

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April 7, 1982

EDUCATION OPINION
ISSUE NO LATER THAN
6-11-82

4-15-82 *pc*
LOWE
R82-052

Hector M. Encinas
Director of Business Affairs
Sunnyside Unified School District
Post Office Box 11280
Tucson, Arizona 85734

Dear Mr. Encinas:

This correspondence is in response to your letter to me of March 16, 1982. In that correspondence you advised me that in the spring of 1981 a salary and job description study with respect to the District's classified employees¹ was conducted by an outside consultant. Based upon the consultant's recommendation, a job description and salary schedule was adopted by the School Board subject to the proviso that no employee could receive an increase in salary over the preceding year of more than 17% as a result of the new salary schedule. Some classified employees entered into contracts for the 1981-82 school year to perform services at a salary that was less than the salary schedule proposed for the job and years of service. The lower salary was based upon the limitation imposed by the Board when it adopted the new salary schedule. The School Board is now considering elimination of the proviso appended to the classified employee salary schedule and wishes to set all classified employees' salaries in accordance with the job performed and the number of years served. Based upon the foregoing, you have asked:

1. May the Board, if it chooses, increase the salary of those classified employees whose salary in the 1981-82 school year was limited by the proviso discussed above to the salary they would have received but for the proviso, effective immediately?
2. If the answer to question no. 1 is in the affirmative, may the Board, if it chooses, make such increases retroactive to July 1981?

¹Classified employees are those who do not hold teaching certificates and do not perform services for the District that require certification.

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The answer to question no. 1 is NO. Likewise, the answer to the second question is NO.

At the time each of the classified employees affected by this opinion entered into a contract with the District, they agreed to perform specified services at a stated salary. The proposed adjustment will not alter the services these employees are required to perform for the District during the remainder of the contract term. It was recently succinctly stated by the Pinal County Attorney in an opinion that the Attorney General declined to review that:

"A school district may, within reason, set the salary and fringe benefits which it desires. But they must be adopted prior to the signing of a contract. Salary and fringe benefits are not gifts of public [sic] funds if implemented prior to the contract being accepted. They become the consideration to the employee in exchange for the employee's labor. However, if the contract is signed and the employee is obligated to do the work anyway, it would be a gift of public funds to increase his/her compensation." Atty. Gen. Op. No. R 81-176. (18-143)

This conclusion was predicated upon the Arizona Supreme Court's decision in Prescott Community Hospital Commission v. Prescott School District No. 1 of Yavapai County, Arizona, 57 Ariz. 492, 115 P.2d 160, 161 (1941):

"... [S]chool districts are not permitted to give away the property of a district even for the most worthy purpose... ."

Any attempt to give away School District property is "ultra vires and void." id P.2d at 161

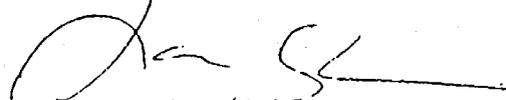
Since all of the employees who would receive a salary increase as a result of the proposed Board action are already contractually obligated to provide services, and since there will be no change in the duty or obligations imposed upon these employees by the District, any increase would constitute a gift of public funds and is impermissible.

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This rationale applies to both increases effective immediately and increases effective retroactive to the beginning of the contract period.

This opinion is being forwarded to the office of the Attorney General for concurrence or review pursuant to A.R.S. §15-436(b). Unless circumstances require immediate action upon this opinion, you should await my forwarding to you the response of the Attorney General before acting upon the opinion set forth above.

Very truly yours,



James A. Shiner

JAS:law