



*Ginger*  
Attorney General  
1275 WEST WASHINGTON  
Phoenix, Arizona 85007

Robert R. Corbin

July 30, 1982

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**ARIZONA ATTORNEY GENERAL**

The Honorable Anne Lindeman  
Arizona State Senator  
State Capitol, Senate Wing  
Phoenix, AZ 85007

Re: 182-080 (R82-072)

Dear Senator Lindeman:

We are writing in response to your letter dated May 12, 1982. You asked several questions relating to A.R.S. § 15-447: whether common school districts must seek permission annually to offer high school subjects; whether permission may be restricted to offering less than all four grades of high school instruction; whether permission to offer instruction is invalid if the qualified electors of the common school district subsequently vote against the formation of a high school district.

A.R.S. § 15-447 reads in relevant part:

The State Board of Education may grant permission to a common school district to offer instruction in high school subjects, grades nine through twelve, but it shall not grant permission if the qualified electors of a common school district have voted against the formation of a high school district.

With respect to your first question, the statute is silent about whether permission must be granted annually. In the absence of a statutory directive, the State Board of Education may grant permission under such conditions or for such duration as it concludes is reasonable. Cf. A.C.R.R. R7-2-603 (teacher certificates granted for a six-year period by a State Board of Education rule).<sup>1/</sup>

1. That permission to offer instruction in high school subjects is granted for a specific duration or any indefinite period does not mean such permission is irrevocable. Such an inference would be inconsistent with the general principle against binding successor boards. See, generally, School District No. 69 of Maricopa County v. Alther, 10 Ariz. App. 333, 458 P.2d 537 (1969).

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With respect to your second question, we think that the State Board of Education may restrict its permission to offer instruction in high school subjects for fewer than all four grades. The phrase in A.R.S. § 15-447, "grades nine through twelve," merely explains what the Legislature considers to be high school subjects. There is no indication that the Legislature intended that all high school subjects must be taught. Moreover, our interpretation is consistent with the proposition that A.R.S. § 15-447 authorizes the State Board of Education to set such conditions on the grant of permission as the Board determines is reasonable.

With respect to your third question, the statute clearly states that the State Board of Education "shall not grant permission [to a common school district to offer instruction in high school subjects] if the qualified electors of a common school district have voted against formation of a high school district." A.R.S. § 15-447. The statute, however, is silent on whether permission once given is invalid if the qualified electors of the common school district vote against the formation of a high school district.

The statute states that permission shall not be granted when the people express their wishes with respect to formation of a high school district. We think the legislative policy of letting the public will prevail outweighs the technical fact that permission may have been granted prior to a vote. We are unable to discern a policy reason for making a distinction based on the timing of the grant of permission. We think, therefore, that the permission to offer high school courses becomes invalid in light of a vote against formation of a high school district.

We suggest that you may want to examine the permission issue legislatively, inasmuch as once a vote is taken, a district may be precluded forever from offering high school courses, a result that may, at some point in time, be adverse to the interests of the district.

Sincerely,



BOB CORBIN  
Attorney General