

**AG OPINIONS CITED IN 94-004**

I71-10-C  
I80-153  
I87-114  
I88-095  
I89-106  
I90-059

**STATUTES CITED IN 94-004**

ARS 15-341(A) (1)  
ARS 15-341(A) (5)  
ARS 15-342(19)  
ARS 15-545(C), LAWS 1966, CH. 85, SEC.1  
ARS 15-723(B)  
ARS 15-724(B)  
ARS 15-823(B)  
ARS 15-1121  
ARS 15-1125  
ARS 15-1126  
ARS 15-1141(3)  
ARS 15-1142(4)



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August 29, 1994

C. Diane Bishop,  
Superintendent of Public Instruction  
Arizona Department of Education  
1535 West Jefferson Street  
Phoenix, Arizona 85007

Re: I94-004 (R94-33)

Dear Ms. Bishop:

In an August 9, 1994 letter, you requested "guidance" concerning complaints that the Department of Education received from parents and guardians "regarding the legality of school districts assessing certain student fees." You reported that a unified school district governing board recently approved an "activity fee" in the amount of \$50.00 (for high school students) and \$35.00 (for junior high school students). You also cited one high school district's attempt to charge each student a \$10.00 "student service fee" and another high school district's requirement that each student pay a \$2.00 "student I.D." fee. In our opinion, a school district governing board cannot charge students fees unless the fees are authorized by statute.

It is now settled law in Arizona that school district governing boards have only the authority granted to them by statute. *School District No. 1 v. Lohr*, 17 Ariz. App. 438, 439, 498 P.2d 512, 513 (1972). *Campbell v. Harris*, 131 Ariz. 109, 112, 638 P.2d 1355, 1358 (App. 1981) Subject to the limitations in the Arizona Constitution,<sup>1</sup> legislative power over

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<sup>1</sup>For example, Article 11, Section 6 of the Arizona Constitution provides:

[T]he University and all other State educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible.

The Legislature shall provide for a system of common schools by which a free

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school districts is plenary. *Southern Pacific Company v. Maricopa County*, 59 Ariz. 369, 129 P.2d 312 (1942).

The Legislature has granted school districts statutory authority to charge specific kinds of fees to their students. See A.R.S. §§ 15-342(19) ("reasonable fees for students to use district-provided parking facilities"); -724(B) ("reasonable rental fee for the use of nonrequired textbooks, nonrelated subject matter materials and supplementary books by registered high school pupils"); and -823(B) (admission to the district of nonresidents' children "upon payment of a reasonable tuition fixed by the governing board").<sup>2</sup> None of the fees referred to in your letter fall within the scope of these statutes. "It is a familiar if overused rule that a statute's expression of one or more items of a class indicates legislative intent to exclude unexpressed items of the same class." *Estate of Hernandez v. Bd. of Regents*, 177 Ariz. 244, 866 P.2d 1330, 1335 (1994). Applying this rule of construction here, it is evident that the Legislature has not authorized these fees.

In *In the Matter of the Estate of Arizona Southwest Bank*, 41 Ariz. 507, 19 P.2d 1063 (1933), the Supreme Court struck down a school district's \$5.00 per pupil fee for attending the summer school, stating that "nowhere in the statute are trustees authorized or given the power to collect funds for the support of high schools in their districts, except a small tuition fee from nonresidents, or to require the payment of money by the pupils of their districts, for any purpose." *Id.* at 512, 19 P.2d at 1065.

The court in *Southwest Bank*, by dictum, approved a laboratory fee. Such a fee, however, "is merely held as security for that which they might take away or destroy." *Id.* at 515, 19 P.2d at 1066. While a security fee or deposit is permitted under *Southwest Bank*, none of the fees mentioned in your letter fall in that category.

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school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

Thus, the Legislature cannot authorize the school districts' governing boards to charge a fee that is inconsistent with this constitutional mandate.

<sup>2</sup>Pursuant to A.R.S. § 15-1142(4), a school district governing board may "[e]stablish tuition and fee charges for community school programs." The fees and tuition for a community school program are not charged to students in connection with their common or high school education. See A.R.S. § 15-1141(3).

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In *Carpio v. Tucson High School District No. 1 of Pima County*, 111 Ariz. 127, 524 P.2d 948 (1974), the Supreme Court held that the word "free" in Article 11, Section 6 of the Arizona Constitution as it applies to common schools "was intended to include free instruction and textbooks;" the court further announced that the words "as nearly free as possible" as they apply to "[t]he University and all other State educational institutions" do not require that instruction or textbooks be provided without charge "although they could be if the Legislature in its discretion saw fit to do so." 111 Ariz. 128-129, 524 P.2d 949-950. *Carpio* does not stand for the proposition that a high school district may charge a fee without statutory authorization because the then existing statute specifically provided for high school governing boards to purchase textbooks for the use of students and charge a reasonable rental fee. See former A.R.S. § 15-545(C), Laws 1966, Ch. 85, §1. Subsequently, the Legislature enacted a free textbooks provision for high school students. See A.R.S. § 15-723(B).

This Office has rendered opinions regarding fees assessed by a school district in the past. In Arizona Attorney General Opinion I80-153, we stated that a school district which chose to provide transportation to its students could not charge a fee for such service absent statutory authority. In that opinion, we noted:

The statutory scheme governing public education contained in Title 15 of the Arizona Revised Statutes supports the proposition that school districts are not authorized to charge students for educational services which they provide. Where fees may be charged, statutory authorization has been clearly set forth.

Our opinion, which relied upon the rule that a school district's fee-assessment authority is prescribed by statute, draws no distinction between common school and high school districts. See also, Ariz. Att'y Gen. Op. I90-059 (A.R.S. §§ 15-723 and -724 prohibit school districts from charging rental fees for textbooks required as part of a high school course of study, whether or not the course is optional); Ariz. Att'y Gen. Op. I89-106 (school districts have no statutory authority to charge fees for materials connected with the general operation and maintenance of their schools); and Ariz. Att'y Gen. Op. I88-095 (school districts have no statutory authority to require parents to pay a fee for an outside evaluation to determine if early kindergarten admission is in the best interest of an underage child).

To the extent that we have indicated in statements in previous opinions that school districts may charge students fees that are not authorized by statute, those statements are

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expressly disapproved.<sup>3</sup> See Ariz. Att'y Gen. Op. I89-106 ("Student fees may be charged only for non-required materials, courses or activities."); Ariz. Att'y Gen. Op. I87-114 ("School district may collect fees for textbooks in non-required courses, materials, use of towels and lockers, and other similar items based upon A.R.S. § 15-341(A)(1) and (5) and common law interpreting the Arizona Constitution and a person's right to a free public education."); and Ariz. Att'y Gen. Op. 71-10-C ("Optional student activities may be an exception [to the rule that education in common schools is to be free], but these should be kept to a minimum, and the charge should be as low as possible").

In conclusion, it is our opinion that a fee<sup>4</sup> may not be charged to either to common or high school students, unless the fee is specifically authorized by statute.

Sincerely,



Grant Woods  
Attorney General

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<sup>3</sup>Section 15-1121, A.R.S., defines student activities monies as "[a]ll monies raised with the approval of the governing board of a school district by the efforts of students in pursuance of or in connection with all activities of student organizations, clubs, school plays or other student entertainment other than funds specified in §§ 15-1125 and 15-1126. . . ." Sections 15-1125 and 15-1126, A.R.S., concern auxiliary operation funds which are raised from the activities of school bookstores and athletic activities. This opinion does not affect these student activities monies, which are raised by the students and governed by statute.

<sup>4</sup>"Fee" includes any monetary charge or contribution of materials as a condition of school enrollment or the attendance of a particular class. "Fee" does not, however, include a security deposit. See *Southwest Bank*, 41 Ariz. at 515, 19 P.2d at 1066.