



Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007

Robert R. Corbin

December 22, 1982

Ms. Martha Blue
Ward, Blue & Itschnere, P.A.
Attorneys at Law
323 North Leroux Street
Flagstaff, AZ 86002

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 182-141 (R82-168)

Dear Ms. Blue:

We decline to review your opinion to the governing board of the Tuba City School District concerning the district employing the superintendent's wife as an accountant.

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

BC/VBW/kb

Ward, Blue & Itschner, P.A.
Attorneys at Law

Martha Blue
Dale Itschner
Roy Ward

❖
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P.O. Box 789
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October 18, 1982

❖
Tuba City, Arizona
(602) 283-6635

Mr. Robert K. Corbin
Attorney General
State Capitol
Phoenix, AZ 85007

EDUCATION OPINION

ISSUE NO LATER THAN

~~##~~ 12-16-82

10-21-82 ypc
WHITEHEAD
R82-168

RE: OPINION TO THE TUBA CITY SCHOOL DISTRICT

Dear Mr. Corbin:

I have been appointed by the Tuba City School District No. 15 as counsel. Enclosed herewith is a copy of my opinion letter in response to a request by the Board at a Board meeting.

I am respectfully requesting, pursuant to Attorney General Opinion I79-186 and A.R.S. §15-253 that you concur, revise or decline to review this opinion.

Thank you for your consideration in this matter.

With Best Regards,

Martha Blue

MARTHA BLUE

ba

Enclosure

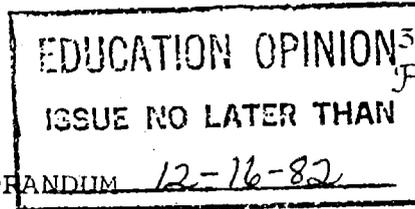
cc: Board of Trustees, Tuba City School District No. 15

Michael Prost, Coconino County Attorney's Office

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TO: TUBA CITY SCHOOL BOARD MEMBERS:
Wilma Seeley
Andrew Kelly, Sr.
Virginia Williams
Jimmy Holgate
Mary Martin; and
DR. MATTHEW LEVARIO, Superintendent

10-21-82 pc
WHITEHEAD
R82-168

FROM: MARTHA BLUE *MB*

DATE: August 28, 1982 (Redrafted September 16, 1982)

RE: SUPERVISION OF BARBARA LEVARIO

QUESTION FROM BOARD: How can Barbara Levario, accountant with Tuba City School District and spouse of the Superintendent, function within the district given her expertise and the District's needs without supervision by the governing board and within any legal restrictions?

ANSWER: Appoint the Assistant Business Manager as her supervisor.

FACTS: Barbara Levario, the Superintendent's wife, has been employed by the District since the summer of 1981 as an accountant, which position includes three major areas of responsibility: Food Service, General Fixed Assets Group Accounts, and Student Attendance. See attached description for accountant and accompanying memorandum from the prior Business Manager to the prior accountant marked Exhibit A. Ms. Levario's resume, Exhibit B, shows that she is well-qualified for this position.

APPLICABLE LAW AND DISTRICT POLICY: The Board is concerned about the statutory limits of A.R.S. §38-503, which provides:

A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

C. Notwithstanding the provisions of subsection A and B, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that a school district governing board may purchase, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a school board member and the board policy for such purchases must be approved annually.

A recent Attorney General's Opinion, I82-004, addresses the question of whether the employment of the school superintendent's spouse restricts the decisions and actions of the superintendent specifically under this statute.

The opinion concludes that the decisions in which the superintendent's spouse may have a substantial interest may cover any decision of the school district, not just the superintendent, but that each case must be decided on those particular facts. The opinion went on to state that where a spouse of the superintendent has only a remote interest, i.e. where the interest of a member of a class of persons is no greater than the interest of other members of that or similar class of persons, then the relationship between the two employees is not important.

The position description establishes the Business Manager as her supervisor. Since Tuba City School District Policy CD establishes a line staff policy with a line of authority to the next higher level of authority, it also places all personnel employed by the Board directly responsible to the Board through the Superintendent.

Other pertinent portions of the Tuba City School District Policy require the Superintendent to evaluate annually the administrative personnel reporting to him and to make appropriate recommendations, CGL. The policy designates line-staff positions directly responsible to the Superintendent as Assistant Superintendent, Directors, Personnel Director, Business Manager, Director of Special Education, Director of Maintenance, Principals of School, and the Athletic Director.

While the Superintendent must refrain from participating in any manner as a district superintendent in a decision, including supervision, affecting his spouse, the Board may select¹ someone not subject to any control or supervision by the Superintendent to make decisions concerning that employee.

Obviously, since the Business Manager for the District is charged with management procedures for the buildings and grounds and District finances, EB and DAA, this position was designated as the supervisory one for the accountant position. However, the Business Manager is directly supervised by the Superintendent, as indicated above, and it would be improper for him to continue this supervision.

In my opinion, the supervision and decision making involved in overseeing the accountant should be handled by an employee within the Business Office who is not directly responsible to the Superintendent. The Assistant Business Manager is the most likely candidate to undertake this function. See Job Description Exhibit C and the enumeration of her responsibilities. The duties of the accountant enumerated before fall within the areas of responsibilities for the Assistant Business Manager. The Board then could designate the Assistant Business Manager to supervise and make decisions regarding the accountant and could specifically add to that designation that the Assistant Business Manager is not subject to any control and/or supervision by the superintendent and/or her supervisor, the Business Manager,² in her performance of these specially delegated responsibilities.

¹Under the Attorney General Opinion, the Board can make the decisions, but the Board here has declined to do so.

²Since the Business Manager is directly supervised by the Superintendent.

The Assistant Business Manager then would answer directly to the Board of Trustees. See Attorney General Opinion I80-200 and its attachments. This matter involved the hiring of a superintendent's wife for employment in the school district and the opinion stated that the superintendent must refrain from supervision of the spouse employee and recommends that she be supervised by someone who answers directly to the Board of Trustees.

ba

Attachments