

95-15

OPINIONS CITED

95-10

STATUTES CITED

ARS 15-101(3)
ARS 15-181(A)
ARS 15-183(B)
ARS 15-183(E) (1)-(4) & (6)-(8)
ARS 15-183(E) (5), (6)
ARS 15-213
ARS 14-213(A) (1)
ARS 15-905
ARS 15-905(C)
ARS 15-905(D)
ARS 41-2501

ADMINISTRATIVE CODE

R7-2-1001
R7-2-1184

SESSION LAWS

1984 ARIZ. SESS.LAWS, CH. 251, SEC. 1



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December 12, 1995

The Honorable Mary Hartley
Arizona State Senate
State Capitol Complex
1700 West Washington
Phoenix, Arizona 85007-2890

Re: I95-15 (R95-29)

Dear Senator Hartley:

This letter responds to your request for an opinion regarding whether charter schools must publish a proposed school budget and follow the State's procurement laws. We conclude that the Legislature, in A.R.S. § 15-183(E)(6), mandated that a charter school be subject to "the same financial requirements as a school district", including publication of its proposed budget as required by A.R.S. § 15-905(C) and the school procurement rules prescribed by A.R.S. § 15-213. We note, however, that the Legislature also authorized each sponsor of a charter school to include exceptions to the financial, procurement, and audit requirements of A.R.S. § 15-183(E)(6) in the school's charter, thus allowing individual charter schools to opt out of these requirements.

Background

Charter schools are public schools established by contract between a sponsor (which may be a school district governing board, the State Board of Education, or the State Board for Charter Schools) and a public body, private person, or private organization. A.R.S. §§ 15-101(3), 15-183(B). The Legislature authorized establishment of charter schools to provide both a learning environment that will improve pupil achievement and additional academic choices for parents and pupils. A.R.S. § 15-181(A).

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As set forth in detail in Ariz. Att'y Gen. Op. I95-10, charter schools are exempt from many of the requirements imposed on public school districts pursuant to A.R.S. § 15-183(E)(5), but they are not exempt from all requirements. For example, the charter of a charter school must provide a number of items. *See, e.g.*, A.R.S. § 15-183(E)(1)-(4) and (6)-(8); *see also* Ariz. Att'y Gen. Op. I95-10.

Analysis

In A.R.S. § 15-183(E)(6), the Legislature mandated that the charter of a charter school must ensure that the school

is subject to the same financial requirements as a school district including the uniform system of financial records as prescribed in chapter 2, article 4 of this title, procurement rules as prescribed in A.R.S. § 15-213 and audit requirements. A school's charter may include exceptions to the requirements of this paragraph that are necessary as determined by the district governing board, the state board of education or the state board for charter schools.

The cardinal rule of statutory interpretation is to determine the Legislature's intent. *Automatic Registering Machine Co., Inc. v. Pima County*, 36 Ariz. 367, 370-71, 285 P. 1034 (1930). Determination of intent is to be taken from the language of the statute before referring to any other sources. *E.C. Garcia and Co., Inc. v. Arizona State Dep't of Revenue*, 178 Ariz. 510, 875 P. 2d 169 (App. 1993). The words and phrases used in statutes have their ordinary meaning unless the context indicates otherwise. A.R.S. § 1-213; *State v. Wise*, 137 Ariz. 468, 671 P.2d 909 (1983). As a result, we first look to the language of A.R.S. § 15-183(E)(6) to answer your questions.

A. General Procedures

1. Notice of the Proposed Budget

The school district budgeting and financial assistance provisions in Title 15 establish the procedure school districts must follow in adopting their budgets. A.R.S. § 15-905 includes notice, publication, hearing, and public meeting requirements for approval of school district budgets. A.R.S. § 15-905(C) establishes notice requirements for a school district's proposed budget and states, in pertinent part, that "[t]he governing board of each school district shall publish, prior to the hearing and meeting, a copy of the proposed budget or the summary of the proposed budget and, in addition, a notice of the public hearing and board meeting no later than ten days prior to the meeting." (Emphasis

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added.)

Approval of a budget is the first step in establishing the financial framework within which a school will operate. A budget is the financial plan on which all audit and financial oversight is based. A.R.S. § 15-905(D) provides for a public hearing on the proposed budget including explanation of the budget by the governing board, if requested by any person, and the opportunity to protest the inclusion of any item in the budget. Publication of the proposed budget or a summary of the proposed budget provides the opportunity for public scrutiny and input and enhances the credibility and accountability of a school district's budget process.

A "financial" requirement is one "relating to accounts or the management of revenue. Of or pertaining to the public finances of a government or private finances of businesses." BLACK'S LAW DICTIONARY 630 (definition of "financial"), 712 (definition of "fiscal") (6th ed. 1990). Accordingly, we find that publication of a proposed budget or a summary of the proposed budget is a financial requirement placed on school districts that is applicable to charter school through A.R.S. § 15-183(E)(6).

2. Procurement Rules

In 1984, the Legislature -- to ensure the fair and equitable treatment of all persons who deal with public procurements, to foster effective broad-based competition within the free enterprise system, and to provide safeguards for the maintenance of a procurement system of quality and integrity -- adopted the Arizona Procurement Code. 1984 Ariz. Sess. Laws, Ch. 251, § 1. The Procurement Code covers every expenditure of public monies by the State, with certain statutory exceptions. A.R.S. § 41-2501.

The Legislature mandated the State Board of Education to adopt rules prescribing procurement practices of school districts according to the procedure established in A.R.S. § 15-213, including approval of the rules by the Auditor General. The legislative directive to the State Board of Education was that its rules be consistent "with the procurement practices prescribed in title 41, chapter 23 [Arizona Procurement Code]." A.R.S. § 15-213(A)(1). In 1987, the State Board of Education adopted procurement rules. A.A.C. R7-2-1001 through R2-7-1184. The Auditor General confirmed that the rules were consistent with the procurement practices of title 41, chapter 23. Thus, school districts have had to follow these rules for a number of years.

In A.R.S. § 15-183(E)(6), the Legislature specifically required that charter schools adhere to the procurement rules prescribed in A.R.S. § 15-213. Therefore, the procurement rules adopted by the State Board of Education must be followed by charter

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schools.¹

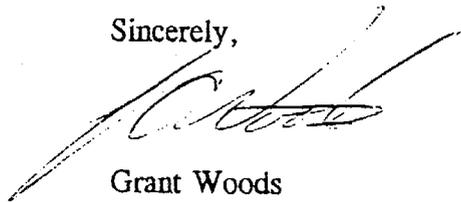
B. "Necessary" Exemptions to the Financial and Procurement Procedures.

The Legislature gave the sponsor of a charter school -- the district governing board, State Board of Education or the State Board for Charter Schools -- discretion to specifically exempt charter schools "as necessary" from the financial, audit and procurement requirements of A.R.S. § 15-183(E)(6). To be effective, however, any exemption must be included in the charter school's charter. *Id.*

Conclusion

A charter school is subject to the proposed budget notice requirements of A.R.S. § 15-905(C) and the procurement rules applicable to school districts, unless the charter school's sponsor determines that an exemption is necessary and includes an exemption in the school's charter.

Sincerely,



Grant Woods
Attorney General

¹Although the Arizona Court of Appeals recently declared the School District Procurement Rules unconstitutional in *R.L. Augustine Constr. Co., Inc. v. Peoria Unified Sch. Dist. No. 11*, 198 Ariz. Adv. Rpt. 7 (1995), the mandate has not issued because the decision had been appealed to the Arizona Supreme Court, which recently granted review. In any event, charter schools must follow the same rules as school districts, absent a specific exemption in their charter.