

95-20

STATUTES CITED

ARS 41-1092.01
ARS 41-1092.01(E)
ARS 41-1092.02(A)
ARS 32-106(A)(5)
ARS 41-1095.01(E)

SESSIONS LAWS CITED

1935 LAWS, CH. 32, SEC. 8
1995 LAWS, CH. 251, SEC. 14
1995 LAWS, CH. 251, SEC 18(F)



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025

TELECOPIER : 542-4085

GRANT WOODS
ATTORNEY GENERAL

December 29, 1995

Ronald W. Dalrymple
Executive Director
Arizona State Board of
Technical Registration
1951 W. Camelback, Suite 250
Phoenix, Arizona 85051

Re: I95-020 (R95-34)

Dear Mr. Dalrymple:

You have asked whether A.R.S. § 41-1092.01(E) requires the Arizona Board of Technical Registration ("Board") to contract with the Office of Administrative Hearings ("OAH") to conduct its administrative hearings in contested cases. We conclude that the Board is required to use the services and personnel of the OAH to conduct only those administrative hearings in contested cases that the Board delegates to a hearing officer. This conclusion is applicable to all state agencies and boards that have express or implied statutory authority to conduct hearings directly.

Background

Chapter 1 of Title 32 of the Arizona Revised Statutes governs the Board and regulates architects, assayers, engineers, geologists and surveyors. Since 1935, the Board has been required to "[h]ear and pass upon complaints or charges or direct a hearing officer to hear and pass on complaints and charges" against licensees. A.R.S. § 32-106(A)(5); *see also* 1935 Ariz. Sess. Laws, Ch. 32, § 8. Thus, the Legislature has authorized the Board to hear and adjudicate complaints itself or to delegate the task to a hearing officer. Similar authority for alternative means of conducting hearings is given to many other state agencies and boards.

In 1995, the Legislature created the OAH. 1995 Ariz. Sess. Laws, Ch. 251, § 14;

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A.R.S. § 41-1092.01. Subsection (E) of that statute provides:

All state agencies, unless exempted by this article, shall use the services and personnel of the office to conduct administrative hearings. All agencies supported by other than general fund sources shall contract for administrative hearing services from the office.

A.R.S. § 41-1092.02(A) states that the new law applies to all contested cases, but enumerates thirteen agencies exempted from the provisions of A.R.S. § 41-1092.01(E). The Board is not exempt. Id. However, the Legislature did not simultaneously amend A.R.S. § 32-106(A)(5) to remove the Board's authority to hear complaints directly. Therefore, an ambiguity exists because it is unclear whether the Board (and other non-exempt agencies and boards) must refer all hearings in contested cases to the OAH or only those that would otherwise be delegated to a hearing officer.

Analysis

The fundamental rule of statutory interpretation is to determine the intent of the Legislature. City of Phoenix v. Superior Court, 139 Ariz. 175, 677 P.2d 1283 (1984). This is done by examining the law's language, context, subject matter, effects and consequences, historical background, purpose, and spirit. State v. Johnson, 171 Ariz. 39, 827 P.2d 1134 (App. 1992). Moreover, as the Arizona Supreme Court explained in State ex rel. Larsen v. Farley, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970):

If reasonably practical, a statute should be explained in conjunction with other statutes to the end that they may be harmonious and consistent. If the statutes relate to the same subject or have the same general purpose--that is, statutes which are in *pari materia*--they should be read in connection with, or should be construed together with other related statutes, as though they constituted one law. As they must be construed as one system governed by one spirit and policy, the legislative intent therefor must be ascertained not alone from the literal meaning of the wording of the statutes but also from the view of the whole system of related statutes. This rule of construction applies even where the statutes were enacted at different times, and contain no reference one to the other, and it is immaterial that they are found in different chapters of the revised statutes.

Basic principles of statutory construction provide that a statute of general applicability

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and a special statute dealing with the same subject more specifically should be read together and harmonized, if possible. Arden-Mayfair, Inc. v. State Dep't of Liquor Licenses and Control, 123 Ariz. 340, 599 P.2d 793 (1979). Additionally, if inconsistencies exist between the provisions of a general statute and a more specific statute, the specific statute will control. Id.

Here, the specific statutes that previously existed authorizing agencies and boards to conduct their own hearings or refer matters to a hearing officer reflect a legislative intent that those entities may hear cases directly. The general statutory language used in the new A.R.S. § 41-1092 through -1092.02, coupled with the absence of any amendments to limit an agency's or board's specific authority to handle hearings directly, do not indicate an express intent to usurp the power of an agency director or board to conduct hearings directly.¹

Moreover, the legislative appropriation accompanying the creation of the OAH does not provide for any funding to cover the cost of those hearings which traditionally have been conducted by the agency director or board and not referred to hearing officers. The lack of any funding further shows that the Legislature merely intended to replace the current practice of state agencies and boards using their own hearing officers with the centralized independent services and personnel from the OAH.

Finally, a review of the legislative committees' minutes of the debate on Senate Bill 1274 (now 1995 Ariz. Sess. Laws, Ch. 251) reveals an intent merely to use the OAH for those contested cases that otherwise would be referred to hearing officers. For example, when the bill's sponsor, Senator Brenda Burns, spoke before the House Appropriations Committee, she noted that existing administrative law judges "will be consolidated and transferred into a new Office of Administrative Hearings" Most significantly, the legislative committees' minutes reflecting the debate on this bill do not suggest anywhere that it was intended to have the dramatic effect of stripping all power away from agencies and boards to conduct their own hearings.

It is our opinion that a non-exempt agency, such as the Board of Technical Registration, which has statutory authority to conduct its own contested case hearings, can continue to do so under the specific legislative authority granted to the agency, e.g., A.R.S. § 32-106(A)(5). If, however, an agency or board chooses to delegate its authority to a hearing officer, the non-exempt agency or board is required to use the OAH. A.R.S.

¹"While a statute may be repealed by implication as well as by direct language, such repeals are not favored and will not be indulged if there is any other reasonable construction." City of Mesa v. Salt River Project Agric. Imp. & P. Dist., 92 Ariz. 91, 105, 373 P.2d, 722, 732 (1962). Here, there is a reasonable construction supported by the legislative history that negates any arguments about a repeal by implication.

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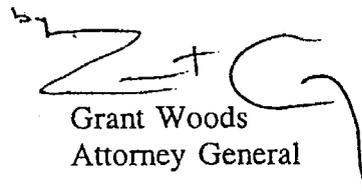
§ 41-1095.01(E).

The OAH provisions of A.R.S. § 41-1092.01 apply to hearings occurring after January 1, 1996, such as a hearing noticed and scheduled after January 1, 1996, and any hearing noticed in 1995 but scheduled for 1996. 1995 Ariz. Sess. Laws, Ch. 251, § 18(F). However, the new legislation would not apply to (a) a hearing commenced in 1995 but recessed to be concluded in 1996, or (b) a hearing originally scheduled for 1995 but postponed until 1996 as a result of a motion to continue or other substantive or procedural motion decided in 1995.

Conclusion

The Board of Technical Registration (and other non-exempt state agencies and boards with express or implied statutory authority to conduct their own hearings) may continue to conduct administrative hearings directly, but if the Board chooses to delegate its authority to a hearing officer, then the Board must contract with the Office of Administrative Hearings to conduct such administrative hearings.

Sincerely,


Grant Woods
Attorney General