



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

February 1, 1983

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ARIZONA ATTORNEY GENERAL

Mr. James Brunstein
Arizona Department of Education
1535 West Jefferson
Phoenix, Arizona 85007

Re: 183-009 (R82-172)

Dear Mr. Brunstein:

This letter is in response to your inquiry concerning the applicability of A.R.S. § 15-905, paragraphs I and J, to school districts which have expended in excess of the maintenance and operation or capital outlay budget limits^{1/} during the 1981-82 fiscal year.

The 1981-82 fiscal year commenced July 1, 1981, and ended June 30, 1982. See A.R.S. § 15-101.3. As you pointed out, the Second Regular Session of the 35th Legislature amended A.R.S. § 15-905 adding, *inter alia*, paragraphs I and J which became effective July 24, 1982. By their language, these paragraphs penalize a school district for spending in excess of its budget limits as follows:

I. The State Board of Education shall hold a hearing if expenditures by any school district exceed the maintenance and operation budget limit prescribed in § 15-947, subsection C, or the capital outlay budget limit prescribed in § 15-961, subsection D. If the expenditures of any school district exceed the maintenance and operation budget limit or the

1. Throughout this opinion, the pertinent budget limits referred to are the maintenance and operation budget limits and the capital outlay budget limits.

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capital outlay budget limit without authorization as provided in § 15-907, the State Board of Education shall reduce the state aid for equalization assistance for education in the school district computed as provided in § 15-971 during the current fiscal year or the subsequent fiscal year, as necessary, by an amount equal to the excess expenditures.

J. The governing board of a school district shall reduce the maintenance and operation budget limit or the capital outlay budget limit for the year subsequent to the year in which the budget was in excess of the applicable limit by the amount determined in subsection I of this section. The reduction in the limit is applicable to each school district which has exceeded the maintenance and operation budget limit or the capital outlay budget limit even if the reduction exceeds the state aid for equalization assistance for education for the school district.

Prior to the addition of paragraphs I and J to § 15-905, Title 15 prohibited school districts from spending in excess of budget limits.² However, until the 1982 amendments became effective, there was no penalty imposed upon a district in the event its expenditures did, in fact, exceed budget limits in any fiscal year. With the addition of paragraph I, school districts now may lose state aid for equalization assistance in an amount equal to the overexpenditure. Paragraph J mandates a reduction in budget limits by the amount of excess expenditure,³ thereby inhibiting a district's spending power in the subsequent fiscal year. Because paragraphs I and J became effective after the end of the 1981-82 fiscal year, we must determine whether they may be applied to that budget year retroactively.

The terms "retroactive" and "retrospective" are used interchangeably to describe laws which "operate on transactions which have occurred or rights and obligations which existed before passage" of the law. 2 Sutherland Statutory

2. See e.g., A.R.S. § 15-905.F.

3. Paragraph J is not designed merely to allow districts to adjust budgets to reflect the loss of state aid; it specifies that budget limits shall be reduced in the amount of over-expenditure--even if that amount is greater than the amount of state aid withheld.

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Construction, § 41.01 (4th ed. 1973). Every statute which takes away or impairs vested rights, creates a new obligation, imposes a new duty, or attaches a new disability in respect to past transactions is deemed retrospective. Tower Plaza Investments, Ltd. v. De Witt, 109 Ariz. 248, 250, 508 P.2d 324 (1973), appeal dismissed for lack of substantial federal question, 414 U.S. 1118 (1974).

The 1981-82 fiscal year ended 25 days prior to the date paragraphs I and J became effective. Although school districts which exceeded the 1981-82 budget limits will not actually lose state aid until the 1982-83 fiscal year, the reduction itself would be based upon the previous fiscal year. Thus, paragraphs I and J would have the effect of attaching a new disability to a past transaction if applied to overspending during the 1981-82 fiscal year. For this reason, we believe that A.R.S. § 15-905, paragraphs I and J would be retroactive laws if applied to overspending during the 1981-82 fiscal year.

In Arizona, statutes are presumed to have prospective rather than retroactive effect. Geitz v. Webster, 46 Ariz. 261, 50 P.2d 573 (1935). A.R.S. § 1-244 provides, "No statute is retroactive unless expressly declared therein." We find nothing expressly indicating a legislative intent to give paragraphs I and J retroactive effect.

Moreover, in the history of the pertinent amendments there is no implicit indication that the legislature intended that these new laws apply to overspending during the 1981-82 fiscal year. House Bill 2432 which added paragraphs I and J to A.R.S. § 15-905 was signed by the Governor on April 22, 1982. Ch. 198, 1982 Ariz. Sess. Laws, 2nd Reg. Sess. The legislation became effective 91 days later on July 24, 1982. See Ariz. Const., Art. 4, Part 1, § 1. If the legislature had intended that House Bill 2432 take effect before the end of the 1981-82 fiscal year, it could have included an emergency clause rendering the bill effective on the date it was approved by the Governor. See Clark v. Boyce, 20 Ariz. 544, 185 P. 136 (1919). To the contrary, at no time did House Bill 2432 ever include an emergency clause.^{4/}

4. By contrast we note that the same legislature did include an emergency clause when it enacted Senate Bill 1158 which pertains to capital outlay revenue and budget limits and maintenance and operation budget limits. See Ch. 290, 1982 Ariz. Sess. Laws, 2nd Reg. Sess. That law became effective on May 3, 1982, when it was signed by the Governor, thereby manifesting a legislative intent that it apply to the 1981-82 fiscal year.

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We find no indication that the legislature intended to apply the penalties imposed by paragraphs I and J to school districts which overspent during the 1981-82 fiscal year. For instance, there is no reference in the language of House Bill 2432 to the 1981-82 fiscal year.^{5/}

In light of the presumption that statutes have prospective effect and in the absence of any suggestion, direct or indirect, that the legislature intended that the pertinent provisions apply retroactively, we conclude that paragraphs I and J of A.R.S. § 15-905 may not be applied to school districts which expended in excess of their budget limits during the 1981-82 fiscal year.

Sincerely,



BOB CORBIN
Attorney General

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5. In Ariz. Atty. Gen. Op. 180-065, we examined major revisions to Arizona's school finance laws enacted by the 2nd Special Session of the 34th Legislature and concluded that the legislature intended the bill to have retroactive effect based, in part, upon specific reference in the bill to a budget year which had passed by the time the legislation became effective.