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October 22, 1997

The Honorable Lisa Graham Keegan
Superintendent of Public Instruction
1535 W. Jefferson Street
Phoenix, AZ 85007

Re: I97-014 (R97-010)

Dear Superintendent Keegan:

You have asked whether a county school superintendent has the power to sponsor a charter school. We conclude that the Legislature has not provided statutory authorization for county school superintendents to sponsor charter schools.

Background

Charter schools are public schools established by a contract with an authorized sponsor. A.R.S. § 15-101(3). The Legislature authorized the State Board of Education, the State Board for Charter Schools, and school district governing boards to serve as sponsors for charter schools. A.R.S. §§ 15-101(3) and 15-183(C).

In defining "school district governing board" in Arizona Revised Statutes Annotated ("A.R.S.") § 15-101, the Legislature included county school superintendents but limited their authority to the operation of an accommodation school.¹ To answer your question, we must determine whether the reference to school district governing boards in A.R.S. § 15-183(C), the charter school legislation, expands the limited power of county school superintendents. *See Gibbons v. Superior Court*, 178 Ariz. 362, 363, 873 P.2d 700, 701 (App. 1994).

¹ A "school district" includes "a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools or an accommodation school." A.R.S. § 15-101(18). A "governing board" means either (i) a public body organized to govern and manage schools within a school district or (ii) a county school superintendent "in the conduct of an accommodation school." A.R.S. § 15-101(8).

Analysis

In establishing the Legislature's intent, when the statutory language is not determinative, we evaluate the historical background and subject matter of the legislation, and consider the effects of the statute and its context within the overall legislative scheme. *See Arizona Newspapers Ass'n, Inc. v. Superior Court*, 143 Ariz. 560, 562, 694 P.2d 1174, 1176 (1985). In 1995, legislation was proposed that, among other things, would have extended authorization for sponsoring charter schools to universities, community colleges, and county school superintendents. *See* S.B. 1361. Although this bill passed certain Senate committees,² the Senate eventually excluded the language extending the power to sponsor charter schools to county school superintendents.³ *See* Senate Engrossed S.B. 1361. We conclude that had the Legislature viewed its authorization of school district governing boards to act as charter school sponsors to encompass county school superintendents there would have been no need to propose the authority in S.B. 1361 to expand the power of county school superintendents. *Compare Wareing v. Falk*, 182 Ariz. 495, 500, 897 P.2d 1381, 1386 (App. 1995) (the Legislature is presumed to know existing law when it enacts a statute).

The legislative intent reflected by the legislative background is buttressed by other tools of interpretation. First, when the Legislature specifically lists certain items in a law "the exclusion of other items of the same class implies the legislative intent to exclude those items not so included." *Southwestern Iron & Steel Indus., Inc. v. State*, 123 Ariz. 78, 79, 597 P.2d 981, 982 (1979). Because the legislative grant of power for county school superintendents to act as school district governing boards is specifically limited to the conduct of accommodation schools, we infer that the Legislature intended to exclude from county school superintendents the general powers granted to other school district governing boards, including the power to sponsor charter schools. *Compare School Dist. No. 69 v.*

² *See, e.g., Arizona Senate Committee on Education, Hearing on S.B. 1361*, 42nd Arizona Legislature, 1st Reg. Sess (Feb. 6, 1995); *Arizona Senate Committee on Appropriations, Hearing on S.B. 1361*, 42nd Arizona Legislature, 1st Reg. Sess (Feb. 22, 1995).

³ Prior to passage of S.B. 1361 by the Committee of the Whole, the Senator sponsoring the bill proposed an amendment deleting county school superintendents from acting as sponsors for charter schools. *Senate Committee of the Whole, Discussion on S.B. 1361*, 42nd Arizona Legislature, 1st Reg. Sess. (March 3, 1995). The sponsoring Senator noted that, although the County School Superintendents' Association had certain critical needs that may be served through sponsoring charter schools, original widespread support and further study underscored his recommendation to withdraw county school superintendents as charter school sponsors until they could become more comfortable with the concept. *Id.* The Senate then adopted the floor amendment to remove county school superintendents from S.B. 1361. *Id.*

Altherr, 10 Ariz. App. 333, 338, 458 P.2d 537, 542 (1969) (school districts are creations of the Legislature and have only the power granted to them by the Legislature).

Second, in construing a statute, we presume that the Legislature says what it means, *Padilla v. Industrial Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976), and thus interpret the statutory language to ensure that no part is rendered superfluous, void, or contradictory. *Patterson v. Maricopa County Sheriff's Office*, 177 Ariz. 153, 156, 865 P.2d 814, 817 (App. 1993). Because the Legislature has geographically limited accommodation schools (to military reservations and territories outside the boundaries of a school district) and restricted the populations they may serve (e.g., homeless children and alternative education programs), A.R.S. § 15-101(1), it would be legally untenable to dissolve those restrictions by determining that county school superintendents have power to sponsor charter schools that are geographically unrestricted and that must admit all eligible pupils.⁴ See *King v. Henderson*, 5 Ariz. App. 95, 99, 423 P.2d 370, 374 (1967) (we read all provisions of the Education Act together to derive their meaning). Evaluating the limited power of county school superintendents in A.R.S. § 15-101 against the expansive authority of charter school sponsors and charter schools in A.R.S. §§ 15-183 and 15-184 requires the conclusion that county school superintendents are without statutory power to sponsor charter schools but are limited to providing statutorily authorized services through accommodation schools. A different interpretation would render the restriction of county school superintendents to the operation of accommodation schools in A.R.S. § 15-101 meaningless.

Finally, we recognize that when an entity is statutorily created for a special purpose it has only limited powers and cannot exercise other powers unless they are expressly or impliedly granted. See *Olmsted & Gillesen v. Hesta*, 24 Ariz. 546, 551, 211 P. 589, 590 (1922). When surveying the statutory authority of a county school superintendent to provide educational services, we again encounter the limitation of the accommodation school. 1997 Ariz. Sess. Laws ch. 231, § 5. Consequently, in reviewing the specific statutory authority of the county school superintendent and the limitations to that authority in A.R.S. §§ 15-101(1) and 1997 Ariz. Sess. Laws ch. 231, § 5 (authorization to provide educational services only through an accommodation school), we determine that it was not within the manifest intent of the Legislature to authorize county school superintendents to sponsor charter schools. See *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965).

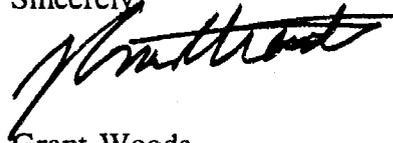
⁴ Charter schools may limit student admission to pupils in a specific age group or grade level but may not exclude students based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language, or athletic ability. A.R.S. § 15-184(B) and (C).

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Conclusion

County school superintendents are without statutory authority to sponsor charter schools and are limited to providing educational services through accommodation schools because of the legislative restrictions placed on county school superintendents in Title 15 of the Arizona Revised Statutes Annotated.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant Woods", written over a horizontal line.

Grant Woods
Attorney General