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January 22, 1987

The Honorable Ed Sawyer
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I87-018 (R86-118)

Dear Senator Sawyer:

You have asked whether school district employees are employees of the State of Arizona, in view of state certification of teachers, mandatory membership in state retirement plans and legislative control of school budgets.

For purposes of state personnel administration, A.R.S. § 41-762(1) defines an employee as "a person holding a position in state service." State service is defined in A.R.S. § 41-762(2) as "all offices and positions of employment in state government except offices and positions exempted by the provisions of this article."^{1/}

The first inquiry, then, is whether school district employees are "in state government," or "in state service" so as to be considered state employees under A.R.S. § 41-762(1) and (2) referred to above. A.R.S. § 15-101(15) defines a school district as 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.

^{1/}A.R.S. § 41-771 specifies these exemptions.

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In Amphitheater United School District No. 10 v. Harte, 128 Ariz. 233, 624 P.2d 1281 (1981), the Arizona Supreme Court considered whether a school district was included in the definition of "state" for purposes of A.R.S. § 41-1481(D), which permits the Attorney General to bring employment discrimination suits against employers "other than the state." The court, interpreting the employment discrimination statute, held that the term "state" does not include political subdivisions, and that school districts are political subdivisions.

Although the court in Amphitheater was interpreting the employment discrimination statutes, its holding is pertinent to the question under discussion. If school districts are not "state" employers, it follows that school district employees are not "state" employees. Rather, they are employees of political subdivisions, i.e. school districts.

You have pointed out that teachers are certificated by a state board, the Arizona State Board of Education.^{2/} However, the mere fact of licensure does not make a licensee an employee of the state. Many persons are licensed by state agencies and do not, as a result, become state employees. For example, doctors, cosmetologists, drivers and real estate agents are subject to licensure by the state. See A.R.S. §§ 32-1422 to -1431, 32-511, 28-422, 32-2122.

Similarly, the fact that teachers are members of the State Retirement System does not make them state employees. School district employees are eligible for the state retirement system if their employer district enters into an agreement with the state pursuant to A.R.S. § 38-745(A). Such membership is mandatory for certificated employees. That comes about because the statute specifically authorizes membership for employees of "political subdivisions" establishing a retirement system administered by the State Retirement Board in the state system and not because they are state employees. Similarly, A.R.S. §§ 38-501(A) and 38-502(2) make school district employees subject to the conflict of interest provisions of Title 38, Ch. 3, art. 8, Arizona Revised Statutes. On the other hand, political subdivision employees are excluded from the disclosure requirements of Title 38, Ch. 3, art. 9, Arizona Revised Statutes and the "mini-Hatch Act" requirements of Title 41, Ch. 4, art. 5, Arizona Revised Statutes.

^{2/}A.R.S. § 15-203(A)(21).

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Thus, although not state employees, school district employees may be bound by legal requirements applicable to state employees as well as eligible for benefits provided to state employees. It is within the discretion of the legislature to do either. School district employees do not become state employees as a consequence.

In our opinion, the fact that the state legislature has enacted legislation governing school district budgets^{3/} also does not result in school district employees becoming state employees. Arizona also has statutes governing many aspects of municipal law. See, for example, A.R.S. § 42-302, requiring annual preparation of a financial statement by cities, towns and counties. Nevertheless, municipal workers are city, not state employees, whose employment, salaries and duties are under the authority of a city council. See A.R.S. § 9-274.

For all the reasons discussed above, we conclude that school district employees are not employees of the state.

Sincerely,



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^{3/}Title 15, Chapter 9, Arizona Revised Statutes.