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Phoenix, Arizona 85007
Robert K. Corbin

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ARIZONA ATTORNEY GENERAL

July 17, 1984

Mr. Douglas S. Stanley
Hunt, Stanley, Hossler & Rourke, Ltd.
Attorneys at Law
Post Office Box 2919
Yuma, AZ 85364

Re: I84-100 (R84-097)

Dear Mr. Stanley:

Pursuant to A.R.S. § 15-253.B, we decline to review your opinion dated May 22, 1984 to Dr. Thomas McCraley, Superintendent, Yuma School District No. 1, concerning the period of notice required when notifying a teacher whose duration of current employment with the district is less than the ninety-day notice period specified in A.R.S. § 15-536.B.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:WJW:pd

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REPLY TO:

R84- 097

May 22, 1984

Office of the Attorney General
State Capitol
Phoenix, AZ 85007

Re: Request for review of Yuma School District No. 1 Attorney's opinion of the 22nd day of May, 1984

Dear Mr. Corbin:

Enclosed herewith is an opinion letter as the attorney for Yuma School District No. 1, Yuma County, Arizona. I am respectfully requesting pursuant to Attorney General's opinion No. 179-186 and A.R.S. 15-253 that you concur, revise or decline to review this opinion.

Thank you for your cooperation in this matter.

With best regards,

Douglas S. Stanley

cc: Board of Trustees, Yuma School District No. 1
Superintendent, Yuma School District No. 1
David Ellsworth, Yuma County Attorney
Ronald F. Jones, Attorney at Law, Yuma, Arizona

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REPLY TO:

R84- 097

May 22, 1984

Dr. Thomas McCraley
Superintendent
Yuma School District No. 1
450 W. 6th Street
Yuma, AZ 85364

RE: OPINION REGARDING STATUS OF A TEACHER WHO TEACHES A FULL SCHOOL DAY FOR A PART OF A SCHOOL YEAR

Dear Dr. McCraley:

This letter is in reply to your request letter, a copy enclosed herewith, wherein you posed the following questions:

> Question 1. Does a teacher, under the facts set forth herein, hired under a contract dated January 30, 1984, to replace a full time tenured teacher who has become ill, whose contract does not in any way designate that it is a probationary teacher's contract, qualify as a probationary teacher for the purposes of receiving notice under the provisions of A.R.S. 15-536, subparagraph B?
>
> Question 2. Can the teacher described in Question one and pursuant to the facts herein be estopped from asserting a violation of the notice provisions pursuant to A.R.S. 15-536B because of a contract rider that reads as follows:
>
>> The employee acknowledges and agrees that this contract is for the remainder of the 1983-84 school year, and that on or before April 15, 1984, the employee may receive notification of nonrenewal for the 1984-85 school year.

FACTS:

Yuma School District No. 1, Yuma County Arizona, entered into a contract with a teacher who will hereinafter be referred to as Mrs. X, on January 30, 1984. A copy of the contract with the actual name of the teacher excised is attached to this opinion as Exhibit A and by reference hereby incorporated. It is my understanding that Mrs. X was hired as a full time teacher to replace a teacher under contract who had tenure and who had suffered a serious illness and would not be able to return for the remainder of the school year 1983-84. The contract with Mrs. X covered the period of time from January 30, 1984 to May 31, 1984. It also contained a rider as follows:

> The employee acknowledges and agrees that this contract is for the remainder of the 1983-84 school year, and that on or before April 15, 1984, the employee may receive notification of nonrenewal for the 1984-85 school year.

It is my understanding that Mrs. X was subject to classroom observations by the administration at her school and was counselled concerning her performance in certain areas including but not limited to poor communications in dealing with students and parents; lack of classroom organizational skills; lack of classroom control and the resulting disciplinary problems. It is further my understanding that prior to April 15, 1984 she was given a notice of intent not to renew her contract for the 1984-85 school year. Attached hereto as Exhibit B and by reference hereby incorporated is a letter from the principal of Mrs. X's school, Gila Vista Jr. High School in Yuma, Arizona dated March 21, 1984 setting out the principal's criticism as to Mrs. X's performance and the areas that needed to be improved. Additionally attached hereto as Exhibit C and by reference hereby incorporated is a letter from the principal dated March 22, 1984 directed to the Superintendent of Yuma Elementary School District No. 1 with the recommendation that Mrs. X not be offered a teaching contract for 1984-85. Attached hereto as Exhibit D and by reference hereby incorporated is a copy of a memorandum of March 27, 1984 from the Superintendent to Mrs. X giving her notice of intent to recommend that she not be re-employed for the 1984-85 school year and that this recommendation would be presented to the board of trustees. Said memorandum had attached to it the March 22, 1984 letter, Exhibit C referred to supra from the principal to the superintendent. Subsequently at the

board meeting of April 12, 1984 Mrs. X appeared and presented her position in regards to the recommendation not to renew. The board voted 3-2 not to renew the contract.

Mrs. X through her attorney has taken the position that she was hired as a probationary teacher and as such she mandatorily must be given a 90 day notice prior to April 15th pursuant to A.R.S. 15-536B if the nonrenewal is based on classroom inadequacies. Attached hereto and by reference hereby incorporated as Exhibit E is a letter from Mrs. X's attorney setting forth Mrs. X's legal position on this matter.

On the other hand it is the administration's position that Mrs. X was hired as a temporary teacher and that the rider was put on the contract to indicate to Mrs. X that she could be nonrenewed by notice being given to her of nonrenewal prior to April 15, 1984 without giving any reasons and specifically without having to follow the notice procedure set forth in A.R.S. 15-536, subparagraph B.

ANSWER TO QUESTION 1:

It is my opinion that under the facts in this case, the various relevant statutes, case law and Attorney General opinions that Mrs. X was not a probationary teacher for the purposes of the notice provisions set forth in A.R.S. 15-536B so that the notice presented to Mrs. X prior to April 15th pursuant to the rider on the contract notifying her of the board's intent not to renew her contract for the school year 1984-85 was proper as was the resulting school board action voting to nonrenew her taken on April 12, 1984.

SUPPORTING OPINION:

A.R.S. 15-501, Definitions, gives the following definition for probationary teachers:

> . . .5. "Probationary teacher" means a certificated teacher who is employed under contract by a school district as full-time classroom teacher, a school principal devoting not less than fifty percent of his time to classroom teaching or a supervisor of school children's activities and who is not a continuing teacher.

Attorney General's opinion I-83-131 (R83-126) states that a "full time classroom teacher", for purposes of A.R.S. 15-501.A.3 and 5 is a teacher who works full days.

A.R.S. 15-536A states as follows:

> Subject to the provisions of 15-539, 15-540, 15-541, 15-544 and 15-549, the governing board shall between March 15 and May 15, offer a teaching contract for the next ensuing school year to each probationary teacher under a contract of employment with the school district for the current school year, unless, on or before April 15, the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice to the probationary teacher of the board's intention not to offer a teaching contract, unless such teacher has been dismissed pursuant to 15-538, 15-539, 15-541 or 15-544. (Emphasis added)

For a teacher to qualify as a probationary teacher that has the right to the statutory notice set forth in A.R.S. 15-536B, that teacher must not only meet the definition of a probationary teacher as set forth in A.R.S. 15-501A.5. but also that definition set forth in A.R.S. 15-536A. which says the probationary teacher must be ". . . under a contract of employment with the school district for the current school year. . ." Only that probationary school teacher that is under a contract of employment with the school district for the ". . . current school year. . ." is to receive an offer of a teaching contract from the governing board between March 15th and May 15th unless on or before April 15th the governing board, etc., gives notice to that probationary teacher of the board's intent not to offer a contract, i.e. pursuant to A.R.S. 15-536B.

Mrs. X was not under a contract of employment with the school district for the "current school year". She had only contracted for a partial or a portion of the school year. In the recent Court of Appeals' case of Neary v. Frantz filed March 6, 1984, 1CA-CIV 6142, Department D, the Court of Appeals affirmed the trial court's dismissal of a special action brought by a teacher whose employment contract had not been renewed. Mr. Neary, the teacher in that case, entered into a written contract with the school district on February 2, 1978 limiting him to teach in the

Wilson district for 87 days during the second semester of the 1977-78 school year. Mr. Neary was to take the place of a permanent teacher who had become ill. He was later employed under contract as a full time teacher of the Wilson district for three consecutive school years, i.e. 1978-79, 1979-80 and 1980-81. Neary argued that his written contract for the 87 days for the second semester after he signed his contract on February 2, 1978 constituted a "year of employment" in order to give him tenure status. The Court disagreed stating as follows:

> Having found that Neary's teaching during the second semester of 1977-78 school year did not constitute a 'year of employment', we next addressed the issue of whether a contract encompassing only a partial school year can be counted towards tenure. This issue is one of first impression in Arizona.
>
> . . .
>
> Neary argues that the Arizona Teacher Tenure Act does not define the term 'year' and that the term 'year' must be given its plain and ordinary definition of a calendar year. However, this argument fails in light of the way in which it is used throughout Title 15.
>
> A.R.S. 15-801 expressly provides that the school year shall begin July 1 and end June 30. A.R.S. 15-536 (amended by Laws 1983, ch. 281, subsections 6 and 10) requires contract renewal between March 15 and May 15 for the school year, unless notice of non-renewal is given by April 15 to probationary teachers. Nothing in A.R.S. 15-536 (amended by laws of 1983, ch. 281, subsections 6 and 10) contemplates notice of intent not to renew probationary teacher's contract any time other than April 15, which means that the statute is predicated on a full 'year' of employment.

> This is a full school year. A contrary conclusion would require that there be alternative provisions for teachers who acquire tenure mid-year. It is clear that the directives of A.R.S. 15-501 et seq. are based upon a school year rather than a calendar year. See also Strejcek v.Board of Education of Berwyn School District No. 100, 78 Ill. App. 34, 400, 397 N.E.2d 448, 33 Ill. Dec. 942 (1979).
>
> Based on the foregoing we conclude that the trial court correctly found that Neary was not a continuing teacher and was not entitled to the statutory protection of Arizona's Teacher Tenure Act. (Emphasis added)

The same reasoning used by the court in the Neary case should be applied here. It is obvious that Mrs. X who was hired on January 30, 1984 could not be given a ninety day notice prior to April 15, 1984 pursuant to A.R.S. 15-536(B). Mrs. X was not employed by the school district for the "current school year" of 1983-84 (July 1, 1983 - June 30, 1984 pursuant to A.R.S. 15-801) but only for a partial or portion of the "current school year".

A teacher whose contract has been renewed for his fourth consecutive year has tenure. A.R.S. 15-501(B) states:

> For the purpose set forth in subsection A, paragraph 3, the major portion of a school year shall be the equivalent of a year of employment in a school district. (Emphasis added)

Therefore, a teacher who has been employed under contract by a school district as a full time classroom teacher for a "major portion" of a school year has satisfied a year of "probation" for the purposes of tenure and reaching the status of a continuing teacher as defined in A.R.S. 15-501(A)(3). The Court of Appeals in the Neary case, cited supra, discussed the provisions of A.R.S. 15-501(B) as follows:

> This statute has not been construed by an Arizona appellate court. However, two attorney general opinions on this subject are persuasive. In Ariz. Atty. Gen. Op. 75-48, the attorney general stated, 'under normally accepted dictionary definitions of the phrase 'major portion,' ...the statute contemplates at least employment 51 percent of the school year before credit will be given towards tenure.' Similarly, Ariz. Atty. Gen. Op. 78-150 indicates that under A.R.S. 15-501(B) a teacher would be entitled to status of 'continuing teacher' if half of the 175 day statutory period for pupil attendance days plus one day were served. These opinions support the conclusion that more than one-half of the school year as certificated teacher under contract is necessary to have that year counted toward tenure. We agree. In the instant case Neary was employed for 87 of the 175 student attendance days. During nine weeks of this time, he was not engaged in full-time classroom teaching activities but was completing his student teaching requirements. Assuming arguendo that his nine weeks of student teaching could be counted as full-time classroom teaching it is undisputed that his contract was only for 87 days. Fifty-one percent of 175 student attendnce days exceeds 87 days. Consequently, Neary's second semester employment does not count as a 'year of employment' for purposes of A.R.S. 15-501(A)(2) [current version A.R.S. 15-501(A)(3)].

Again, the same reasoning should be applied here. A teacher should have to be contracted with for a "major portion" of a

school year in order to be classified as under contract for the "current school year" and therefore a probationary teacher who has the right to the notice requirements in A.R.S. 15-536B.

Attached hereto as Exhibit F and by reference hereby incorporated is a letter with enclosures of April 30, 1984 from Ruben A. Perez, Assistant Superintendent of Yuma School District No. 1. This letter encloses an explanation of the district's school year compared to the contract period Mrs. X had with the school district along with a copy of the 1983-84 school calendar.(Note: The calendar and the contrats of the continuing teachers show that the teachers school year of 19831984 was to begin August 31, 1983 and end May 31, 1984). These computations were completed in order to determine whether Mrs. X was employed for a major portion of the school year in order to address an argument that having a contract for and/or working a majority of a school year would qualify her as having a contract of employment with the school district for the "current school year" in order to give her the status of a probationary teacher who would require the notice provisions under A.R.S. 15-536. The computations show under any interpretation, that Mrs. X fell short of having a contract for or working a major portion of the school year.

Mrs. X's interpretation of the statute, 15-536B, that it is mandatory to give 90 days notice even though the contract is made with the teacher within the 90 days notice is an absurdity. When construing language in statutes the rules of construction require that the court examine the content, subject matter, effects, consequences in spirit and reason of law; in addition, particular words in a statute must be construed in conjunction with the full text of the statute. See State vs. Sanchez (app. 1980) 128 Az. 547, 627 P.2d 698. Additionally a practical construction of a statute is preferred to a construction which is absurd. And a practical construction is required if a technical construction would lead to mischief or absurdity. See State vs. LeMatty, (1979) 121 Az. 333, 590 P.2d 449. The reasons the courts will avoid an interpretation that leads to an absurdity because an absurdity could not have been contemplated by the legislature. Knoell Bros. Const., Inc. v. State, Dept. of Revenue, (app. 1982) 132 Az. 169, 644 P.2d 905.

ANSWER TO QUESTION 2:

Under the facts in this case it is my opinion that a school district could assert the defense of estoppel against the

teacher.

SUPPORTING OPINION:

Obviously whether the school district treated Mrs. X as a probationary teacher that had such notice rights under A.R.S. 15-536B is not the determining factor as to whether she has a right to such notice as estoppel will not lie against a school district. See Mish v. Tempe School District No. 3, 125 Ariz. 258, 609 P.2d 73 (App. 1980). On the other hand a teacher can be estopped from contesting certain statutory requirements such as timeliness of service of charges, Mida v. Ambach, 467 NYS 2d 931 (NY App. Div. 1983). Apparently it is universally held that where a right has been given to an individual not alone for his private benefit but as a matter of public policy, in the interest of the state, it may not be waived by anyone (see City of Glendale v. Coquat, 46 Ariz. 478, 52 P2d 1178 (1935)). The Supreme Court of Arizona in the Coquat case explained the confusion between estoppel and waiver and described estoppel as follows:

> Equitable estoppel may be defined as the effect of the voluntary conduct of a party, whereby he is absolutely precluded from asserting rights which might have otherwise existed as against another person who, in good faith, has relied upon such conduct and has been led thereby to change his position for the worse. The essential elements of estoppel are that plaintiff, with knowledge of the facts, must have asserted a particular right inconsistent with that asserted in the instant action, to the prejudice of another who has relied upon his first conduct. Moore v. Meyers, 31 Ariz. 347, 253 P. 626.

To give any meaning to the rider to the contract, Exhibit A, which does not set out that the the school district must in any way give any type of 90 day preliminary notice of intent not to renew for 1984-85 school year if the reasons are for incompetency in the classroom, it should be construed by the courts that if the teacher had any notice rights she would be estopped from ascertaining them because the school district relied to its detriment upon the teacher's signing of the contract with the

rider; the detriment obviously being that the tenured teacher may return for the 1984-85 school year and the district would be held to contracting with another teacher for the same position.

The recent Arizona case of Phillips v. Flowing Wells Unified School District No. 8 of Pima County, 137 Ariz. 192, 669 P.2d 969 (Ariz. App. 1983) stands for the proposition that a contract must be construed so that every part is given effect. Mrs. X has taken the position in her attorney's letter of April 18, 1984 to the superintendent, Exhibit E, at page 2, paragraph 2, that this six line addendum to her written contract does nothing more than reiterate the statute as cited supra. It is suggested that she has not waived her right to 90 days notification of inadequacies or performance in the classroom and that such statutory rights cannot be waived. The rider however does not reiterate the statute 15-536B as it falls short of the notice requirements set forth in that statute. Mrs. X's interpretation of this rider would leave it meaningless and without any effect. The Court of Appeals in the Phillips case cited supra stated as follows at page 970:

> The meaning urged by the appellee is unreasonable. It gives no effect to paragraph 6 since the parties could always mutually agree upon termination. A contract must be construed so that every part is given effect. New Pueblo Const., Inc. v. Lake Patagonia Rec. Ass'n, 12 Ariz.App. 13, 467 P.2d 88 (1970); Reserve Insurance Company v. Staats, 9 Ariz.App. 410, 453 P.2d 239 (1969). A contract must be construed in its entirety. Cavanaugh v. Schaefer, 112 Ariz. 600, 545 P.2d 416 (1976). The obvious purpose of paragraph 6 was to provide that the apellee, who could otherwise be terminated for cause, could be terminated at will.

Tom, if you or any personnel of the school district have any questions in regards to this letter or the statute, please let me know and I will be glad to go over those; meanwhile, I am going to forward this letter on to the Attorney General for his concurrence or otherwise.

Pursuant to A.R.S. 15-253 if the Attorney General does not concur, revise or decline to review this opinion within 60 days from its receipt, the opinion shall be deemed affirmed.

With best regards,

Douglas S. Stanley

enc
fn

cc: Attorney General Robert K. Corbin
County Attorney David Ellsworth