



Attorney General

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Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

November 16, 1984

John White
Deputy Yuma County Attorney
168 S. Second Avenue
P. O. Box 1048
Yuma AZ 85364

Re: I84-157 (R84-187)

Dear Mr. White:

Pursuant to A.R.S. § 15-253.B, we decline to review the opinions expressed in your letter to S. R. Grande, Superintendent of the Antelope Union High School District, regarding the propriety of payment of a \$900 annual stipend to certified teachers living in the Antelope School District pursuant to the March 19, 1984 resolution of the local governing board.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

BC:TLM:mch

OFFICE OF THE COUNTY ATTORNEY



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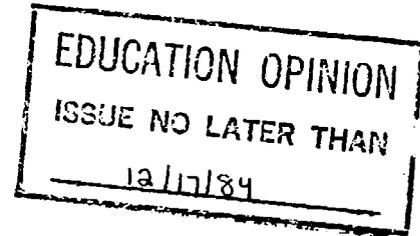
DAVID S. ELLSWORTH
COUNTY ATTORNEY

TIM HOLTZEN
CHIEF DEPUTY

October 4, 1984

184 - 187

S.R. Grande
Superintendent
Antelope Union High School
Rte. 1 Box 26
Wellton, AZ 85356



Re: Request for opinion August 27, 1984

Dear Sid:

You have requested that this office render its opinion on the following facts and questions.

On March 19, 1984, the Antelope Union High School Board of Education--"board"--resolved that the district policy handbook contain a provision providing for a stipend to be given to certain teachers, to wit:

--moved that a stipend of \$900.00 be added to the contract of those teachers (certified personnel) living in the district to help offset the cost of living. This stipend would not apply if school housing or facilities were available.

The initial inquiry must focus on whether it is permissible to provide payment to teachers based upon residency in the school district in which they teach. The Attorney General has addressed the issue of residency, as a condition of employment, and found such a residency requirement by a school district to be unlawful because the statutes do not expressly grant school districts the authority to impose residency requirements. Atty. Gen. Op. No. 183-013.

The board's resolution, however, falls within the statutory authority of the board to compensate its teachers. A.R.S. §§15-341, and 15-502, Atty. Gen. Op. Nos. 77-172 and 80-138. The resolution does not require residency as a condition of employment, but, rather, provides an economic incentive to live in the school district--which is 35 miles from major shopping,

housing and hospital facilities located in the City of Yuma. Such a practice would distinguish, for pay purposes of certified teachers, between district residents and non-district residents. Is this permissible?

The Arizona Court of Appeals in the case of Edwards v. Alhambra Elementary School District, 15 Ariz. App. 293, 488 P.2d 498 (1971) was presented with the situation where a school district allowed payroll deductions for union dues on behalf of its teachers but not on behalf of its non-teachers. The question that Court was whether this classification was constitutionally permitted. The Court noted that "neither the State nor Federal constitution prohibits all discrimination or inequality of treatment but only requires that all in a given class be treated equally and that the classification itself be reasonable and not arbitrary or capricious." Id. at 295.

In analyzing the reasonableness of the district's practice the Edwards Court focused on and analyzed the difference between teachers and non-teachers. Stating that teachers "occupy a unique status" and that "the very existence and purpose of a school district depends upon the employment of qualified and dedicated teachers together with the necessity to compete with other school districts for such personnel" the Court held that a contract of employment could legally have as a condition of employment "the right to teachers to have payroll deductions for whatever purposes they may desire and could legally, by contracts of employment, withhold this same privilege from non-teachers as a condition of their employment." Edwards, supra at 296.

The Court's analysis is instructive in our case because of the question analysed: "whether there exists a valid reasonable classification between teacher employees and non-teachers employees for the purpose of allowing the school district to contract on different terms of employment between these groups." Id at 296

For our purpose the question would be whether there exists a valid reasonable classification between certified teachers who were district residents and those who were non-district residents for the purpose of allowing the school district to contract on different terms of employment between these groups. We conclude that the answer is yes.

Given the geographical location of Antelope Union High School--35 miles from the nearest major shopping, housing and medical facilities-- and the need of the school district to fulfill its educational purpose by competing with other Yuma County School districts for qualified teachers, the inducement held out to teachers of \$900.00 added to their contract to help offset the cost of living in the community in which they teach would not be impermissible although such money was not held out to non-district teachers.

In a decision distinguishing and clarifying a long line of residency requirement cases, the United States Supreme Court in McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645 (1976), upheld a regulation which required city employees to continue to reside in the city. McCarthy, the plaintiff in that case, had been a fireman who had lived in Philadelphia for 16 years and then moved out of the city and the city used its residency regulation in termination of employment. This case is instructive because it notes that a public agency's relationship with its own employees may justify greater control than a local government may exercise over its general citizenry. The case dealt directly with the issue of continuing residency as a condition of employment and found such to be constitutional.

In our situation, the board's resolution does not condition employment on prior or continuing residency--which, arguably, under the rationale of McCarthy, supra it could do, assuming it had statutory authority to do so--but, rather, adds an economic incentive to certified teachers--which it has statutory authority to do--to induce them to reside and teach in the district.

With the foregoing in mind, we now address your questions of whether the \$900.00 may now be added to the contracts after they have been signed and what the tax consequences of such payment are.

The proper county official to contact with respect to the tax consequences of adding \$900.00 is the County School Superintendent. I have spoken with the deputy County School Superintendent and he told me that there are a number of IRS regulations covering tax consequences of the board's proposal and that he would be happy to answer your questions in that regard. To that portion of your question which may address the tax consequences to the affected teacher, the office does not state an opinion, and such employee must seek his/her own counsel for tax advice.

With regard to the matter of adding the \$900.00 after the contracts have been signed it should be noted that the terms of a teacher's contract may include any rule or regulation of the school district. Haverland v. Tempe Elementary School Dist. No. 3, 122 Ariz. 487, 595 P.2d 1032 (1979). To the extent that the board's resolution of March 19, 1984 is included in the school district handbook, and assuming that the rules and regulations contained in that handbook are required to be followed by teachers under contract, the terms of the teachers' contracts already include such provision and those certified teachers residing in the district would receive the additional payment. It should be noted that this resolution must have been adopted prior to the signing of the contracts in order to be included in the contracts. Otherwise such payment would be a gift of public money because the obligation to perform and the compensation for such performance would have been agreed to prior to the

resolution being adopted and placed in the district handbook.

Conclusion: Assuming the school district adopted the March 19, 1984 provision as part of its rules and regulations prior to the signing of the contracts, then the added money is already included in the affected teachers' contracts; assuming that the provision became effective after the contracts were signed, then the obligation for performance and its corresponding compensation have already been agreed upon, and adding more money by addendum or otherwise would be impermissible as a gift of public money.

Pursuant to A.R.S. § 15-253, this opinion is being transmitted to the Attorney General for his concurrence, revision or declination. Should the Attorney General revise this opinion, his opinion shall prevail. There is a statutory time of sixty (60) days allowed for review of this opinion by the Attorney General.

Sincerely yours,

David S. Ellsworth
Yuma County Attorney



John White
Deputy County Attorney