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ARIZONA ATTORNEY GENERAL

January 30, 1985

Mr. Ray Borane
Member, Arizona Board of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

Re: I85-013 (R84-208)

Dear Mr. Borane:

You have asked us to determine whether the Arizona State Board of Education (Board) is required to approve personnel changes of the Arizona Department of Education (Department). Your inquiry arises from certain ambiguities in Title 15 of the Arizona Revised Statutes as they relate to employees of the Board and employees of the Department.

To answer your question, we must first note a distinction between employees of the Board and employees of the Department. As to personnel employed by the Board, A.R.S. § 15-203.A.6 provides that the Board¹ shall "[a]ppoint its

1. The Board is composed of nine members, including the Arizona Superintendent of Public Instruction. A.R.S. § 15-201.

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employees, on a recommendation of the superintendent of public instruction." Thus, in the case of employees of the Board, the hiring recommendations of the Superintendent of Public Instruction are subject to the final approval of the Board. The power of appointment likewise extends to the power to dismiss and, therefore, A.R.S. § 15-203.A.6 gives the Board the power to dismiss its employees.

The actual supervision of the performance of Board employees is subject to A.R.S. § 15-251.6 which provides that the Superintendent of Public Instruction shall:

Direct, under general rules and regulations adopted by the state board of education, the work of all employees of the board who shall be employees of the department of education.

This statute must be read in conjunction with A.R.S. § 15-203.A.7 which authorizes the Board to make rules and regulations for the government of its employees. Thus, the Superintendent of Public Instruction is responsible for the supervision of the performance of Board employees subject, however, to general rules and regulations adopted by the State Board.² Unlike A.R.S. § 15-203.A.6 which specifically addresses appointment of Board employees, there is no statute expressly providing for appointment of Department employees.

The specific reference to Board employees in the statutes setting forth the powers of the Board and the absence of any reference in those statutes to employees of the Department leads us to conclude that A.R.S. § 15-203.A.6 which empowers the Board to approve certain personnel decisions pertaining to Board employees does not, likewise, apply to Department employees. With respect to the latter, the Superintendent of Public Instruction is the officer responsible for the "performance of executive, administrative or ministerial

2. For instance, the State Board, if it wished to do so, could promulgate rules providing for approval of transfers, demotions, certain salary changes and promotions of Board employees.

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functions by the department of education or divisions or employees thereof." A.R.S. § 15-251.9.

For the foregoing reasons, we conclude that, unlike Board employees, Department employees are not appointed or supervised by the Board. That task rests with the executive officer of the State Department of Education; that is, the Superintendent of Public Instruction. Thus, in response to your question, the State Board of Education does not need to approve personnel decisions pertaining to employees of the State Department of Education.

Sincerely,



BOB CORBIN
Attorney General

BC:SMS:kmc