



Attorney General

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Robert R. Corbin

June 25, 1985

The Honorable Jim Green
State Capitol - House Wing
1700 West Washington Street
Phoenix, Arizona 85007

Re: I85-083 (R85-087)

Dear Representative Green:

You have asked whether the emergency clause on Senate Bill 1129 (Laws 1985, ch. 170) would allow school districts to "spend the amount of refunds [from the insurance refund fund] in maintenance and operations if they could get refunds this fiscal year."

A.R.S. § 15-386 as amended by Chapter 170, Laws 1985, provides:

15-386. Insurance refund fund

A. Monies retained for insurance premium payments which are refunded to a school district at the end of a fiscal year by an insurer with which the governing board contracted for that fiscal year may be deposited with the county treasurer who shall credit the deposits to the insurance refund fund of the district.

B. The insurance refund fund of a school district is a continuing fund not subject to reversion. Monies from the insurance refund fund may:

1. Be expended for insurance premium payments.

2. Be placed into a trust to be used for payments of uninsured losses, claims, defense costs and other related expenses as provided in section 15-382.

3. Be used for reduction of taxes in the budget year.

This amendment provides that "monies from the insurance refund fund may" be expended in three different manners. The word "may" when used in this context is not permissive, but is mandatory.

In Anthony A. Bianco, Inc. v. Hess, 86 Ariz. 14, 25, 339 P.2d 1038, 1045 (1959), the court observed:

In the case of Brook v. Moore, 60 Ariz. 551, 554, 142 P.2d 211, 212, this court quoted with approval the following rule:

"It is a general principal of statutory construction that, when the word 'may' is used in conferring power upon any officer, court or tribunal, and the public or a third person has an interest in the exercise of the power, then the exercise of the power becomes imperative, * * *"

The Act, with an emergency clause, was approved by the Governor on April 19, 1985 on which date it became effective under the Ariz. Const., art. IV, § 1(3). Accordingly, any refunds to school districts would then be available for the purposes stated in the statute, which includes "for insurance premium payments," for placement "into a trust to be used for payment of uninsured losses, claims, defense costs and other related expenses as provided in A.R.S. § 15-382" or to "be used for reduction of taxes in the budget year." These three alternatives do not include expenditure for maintenance and

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operations, except insofar as such would be allowed if the fund were used "for reduction of taxes in the budget year." See A.R.S. §§ 15-905 and 15-947.

Sincerely,

STEVEN J. TWIST
Chief Assistant
Attorney General

SJT/DR/sr