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September 11, 1985

The Honorable Robert B. Usdane
Arizona State Senator
State Capitol, Senate Wing
Phoenix, Arizona 85007

Lloyd F. Novick, M.D., Director
Arizona Department of Health Services
1740 West Adams
Phoenix, Arizona 85007

RE: I85-105 (R85-107)

Dear Sirs:

We received Senator Usdane's letter of July 31, 1985, and Dr. Novick's letter of August 9, 1985, asking for opinions concerning the application of A.R.S. § 36-883.02 and related statutes. Because both requests seek an interpretation of one provision of the statutory scheme regulating child day care centers, our response will be consolidated in one opinion.

Specifically, the questions asked are whether certain categories of persons are covered by the definition of child care personnel set out in subsection H of the statute and must, therefore, comply with the fingerprinting and other requirements of A.R.S. § 36-883.02. The specific categories of persons inquired about are the following: parents who provide volunteer services; university students receiving practicum experience; teachers who supervise university students in their training at the center; special instructors of children at the center such as dance teachers; substitute teachers; and parents who are required to attend a fixed number of classes for parent participation while a paid teacher is present.

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A.R.S. § 36-883.02 provides as follows:

A. Beginning July 1, 1985, child care personnel shall register with the Department in order to work in a day care center.

B. Beginning July 1, 1985, child care personnel shall be fingerprinted and submit the form prescribed in subsection E of this section to the Department within twenty days after the date they begin work for a day care center. Registration is conditioned on the results of the fingerprint check.

C. For the purpose of screening child care personnel, the Department of Public Safety shall provide information from its records relating to convictions for public offenses to the Department of Health Services. Fingerprint checks shall be conducted pursuant to Section 41-1750, Subsection G.

D. The Department shall charge the prospective employer of child care personnel for the costs of fingerprint checks. The employer may charge those costs to its fingerprinted employee.

E. Child care personnel shall certify on forms that are provided by the Department and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

- (a) Sexual abuse of a minor.
- (b) Incest.
- (c) First or second degree murder.
- (d) Kidnapping.
- (e) Arson.
- (f) Sexual assault.

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- (g) Sexual exploitation of a minor.
- (h) Contributing to the delinquency of a minor.
- (i) Commercial sexual exploitation of a minor.
- (j) Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
- (k) Burglary.
- (l) Robbery.
- (m) A dangerous crime against children as defined in Section 13-604.01.
- (n) Child abuse.
- (o) Sexual conduct with a minor.
- (p) Molestation of a child.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in Section 8-201, Paragraph 11, Subdivision (b).

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

F. Employers of day care center personnel shall make documented, good faith efforts to contact previous employers of day care center personnel to obtain information or recommendations which may be relevant to an individual's fitness for employment in a day care center.

G. The notarized forms and fingerprint checks are confidential.

H. For the purposes of this section, "child care personnel" means any employee or volunteer who directly supervises children in a day care center.

(Emphasis added.)

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In interpreting the above-cited statute, we follow the rule of statutory construction that we must ascertain and give effect to the intent of the Legislature. Lake Havasu City v. Mohave County, 138 Ariz. 552, 555, 675 P.2d 1371, 1374 (App. 1983). Words used in a statute must be given their plain and natural meaning unless the context or other circumstances suggest a different meaning. Holding v. Industrial Com'n of Arizona, 139 Ariz. 548, 550, 679 P.2d 571, 573 (App. 1984); State v. Arthur, 125 Ariz. 153, 155, 608 P.2d 90, 92 (App. 1980). Webster's Third New International Dictionary, 1976 defines "employee" as "one employed by another usually in a position below the executive level and usually for wages, and "employ" means "to make use of." A "volunteer" is defined as "one who enters into or offers himself for service of his own free will." Webster's Third New International Dictionary, 1976. Based on the plain meaning of these words, every person listed in the questions asked would either be an employee, or volunteer, or both at the day care centers, because he would be earning wages or rendering services of his own free will. The fact that an individual is a parent of a child in the day care center does not, ipso facto, except him or her from the statute's requirements.

Employees or volunteers would be required to conform to the fingerprinting and registration requirements, however, only if they directly supervise children. A.R.S. § 36-883.02.H. "Supervise" means "to coordinate, direct, and inspect continuously and at first hand the accomplishment of" or "oversee with the powers of direction and decision the implementation of one's own or another's intentions." Webster's Third New International Dictionary, 1976. The definition of "directly" includes "face-to-face: in person." Webster's Third New International Dictionary, 1976.

Whether the persons listed in your question directly supervise children depends on the responsibilities they undertake or are required to perform. It would appear that all of them could have face-to-face contact with children and be authorized to coordinate, direct, and inspect the children's activities, even though another supervisor or paid employee would be required to be present at the time. If so, they must be fingerprinted, submit the required affidavit, and be registered. On the other hand, if a person such as a volunteer or parent participant, for example, had no in-person contact with children and did not assist in coordinating or directing children, and their services were limited to other areas and

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functions of the day care center, such as bookkeeping,
carpentry work, cooking, etc., the statute would not apply to
them.

Sincerely,

BOB CORBIN
Attorney General

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