Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin

January 4, 1987

Mr. Gary L. Lassen
Deconcini McDonald Brammer
Yetwin Lacy & Zimmerman
2600 North Central Ave., Suite 1600
Phoenix, Arizona 85004-3016

Re: I88-003 (R87-185)

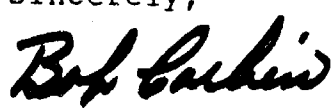
Dear Mr. Lassen:

Pursuant to A.R.S. § 15-253(B), the Attorney General has reviewed the opinions expressed in your November 3, 1987 letter to Kenneth E. Wissinger, Phoenix Union High School District, and concurs with your conclusions that a county may not charge fees for warrant and payroll services provided to school districts, authorized by Laws 1987 (1st Reg. Sess) Ch. 132, to participate in the pilot program to assume accounting responsibilities.

We revise that portion of your opinion which states "[p]ayroll service is not among the 'accounting responsibilities' specified in that statute [Laws 1987 (1st Reg. Sess.) Ch. 132, § 1] which Participating Districts are to assume." These districts are "to operate with full independence from the county school superintendents with respect to . . . expenditures . . . and issuing warrants and maintaining and verifying staff records for certification and payroll purposes." Laws 1987 (1st Reg. Sess.) Ch. 132, § 1. That

language, coupled with the language of subparagraph (B)(1)(b)[1] of Laws 1987 (1st Reg. Sess.) Ch. 132, § 2 provides that participating districts will handle payroll.

Sincerely,



BOB CORBIN
Attorney General

BC:TLM:gm

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[1]The district plan for accounting responsibility is to include administrative and internal accounting controls including

> (b) Procedures to ensure verification of administrators' and teachers' certification records . . . before issuing warrants for their services.

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LEASE REPLY TO PHOENIX

November 3, 1987

EDUCATION OPINION
ISSUE NO LATER THAN
12-31-87

87- 185
Martin
11/4/87

Mr. Kenneth E. Wissinger
Assistant Superintendent
Business and Operations
Phoenix Union High School District
415 East Grant Street
Phoenix, Arizona 85004

Re: Opinion - Laws 1987 (1st Regular Session)
Chapter 132 - Accounting

Dear Mr. Wissinger:

You have requested an opinion from this firm regarding whether Maricopa County can impose certain charges upon participants in the Accounting Responsibility Pilot Program (the "Participating Districts") implemented pursuant to Laws 1987 (1st Regular Session) Chapter 132. This law establishes a pilot program authorizing the State Board of Education to approve qualifying school districts' participation in a three-year pilot program allowing them to assume certain accounting responsibility independent of the County School Superintendent's office. You have informed us that the County Treasurer intends to charge participating school districts a fee for the supply of warrants while providing warrants to non-participating districts free of charge. You have also informed us that the County Department of Technology and Information systems (Data Processing Department) intends to assess a fee for payroll services to your district by means of an IGA for an estimated annual fee of $40,687.00 We have concluded that no authority exists in Arizona law for the imposition of such charges by the County nor for payment of the same by the Participating Districts. Therefore, it is our opinion that those charges cannot be legally imposed.

Payment by the Participating Districts to the County Treasurer for warrants and to the County Technology and Information Systems for payroll services are two distinct questions which we analyze below separately.

I. Payment for Warrants.

Chapter 132 does not, by its terms, grant the County Treasurer the right to charge the Participating Districts for the cost of warrants.

Section 4 of the Law is entitled " Standards for district interface with the county treasurer". This section states that the school district must notify the County Treasurer of its intention to apply for participation in the program by June 1, 1987. Upon notification, the County Treasurer shall establish acceptable standards for interface by Participating Districts with his office, including "specifications for hardware and software compatibility, and procedures to ensure the capacity of each school district for reconciliation of accounts with those of the County Treasurer" no later than September, 1987.

Section 4 is the only section of the new law which discusses interaction between the Participating District and the County Treasurer regarding the pilot program and it contains no mention of a fee to be charged to the Participating Districts. Section 4 is very specific in its description of the "acceptable standards for interface" which the Treasurer must establish, and none of those standards include one for compensation to the County Treasurer for services.

Section 3 of Chapter 132 grants specific authority to the Auditor General to collect a fee from each school which applies for participation in the program for evaluation of the application. This fee is only for services performed by the Auditor General in evaluating the application. There is no mention in this section of any fee to be paid to the County Treasurer for the cost of warrants.

Not only does the Law not specifically permit the County Treasurer to charge the Participating Districts for services, it also does not authorize Participating Districts to pay such fee to the County Treasurer. The Law authorizes the Participating District to assume its own "accounting responsibility". This responsibility is detailed in Section 1, and does not include responsibility for payment to the County Treasurer for services.

Section 1 reads as follows:

> "For purposes of this act, "accounting responsibility" means authority for school districts to operate with full independence from county school superintendents with respect to revenues and expenditures,

> including allocating revenues, monitoring vouchers, authorizing and issuing warrants and maintaining and verifying staff records for certification and payroll purposes."

According to the expressio unius est exclusio alterius rule of statutory construction, the expression of one or more items of a class in a statute by the Legislature and exclusion of other items of the same class implies the Legislature's intent to exclude those items not specifically included. Southwestern Iron and Steel, Inc. v. State, 123 Ariz. 78, 597 P.2d 981 (1979). According to this rule, the Legislature's failure to include provisions for payment to the County Treasurer by Participating Districts within the specifically articulated requirements for interfacing between the Participating Districts and the County Treasurer in Section 4, implies that no such fees can be formulated and charged by the County Treasurer for participation in this pilot program. Additionally, failure by the Legislature to specifically state that the County Treasurer could charge such a fee, when it specifically stated that the Auditor General could charge fees to Participating Districts under this statute, also indicates that no such fees can be charged by the County Treasurer.

The legislature did not include a provision for payment of a fee to the County Treasurer for payment of warrants within the specifically articulated elements of the "accounting responsibilities" which are to be undertaken by Participating Districts, despite the fact that the Participating Districts were specifically granted the power to authorize and issue those warrants. Pursuant to the expressio unius exclusio alterius rule of statutory construction, failure to include payment to the County Treasurer for warrants within the definition of "accounting responsibilities" indicates that Districts will not undertake that responsibility by merely participating in the Accounting Responsibility Pilot Program.

The Legislature also amended the duties of County Treasurers by Laws 1987, (1st Regular Session) Chapter 345. The Legislature's lack of intent for the County Treasurer to be able to impose fees for his services upon Participating Districts is further evidenced by Chapter 345, which specifically relates to the duties of a County Treasurer and school district funds. This law was passed during this same legislative session and is instructive in interpreting Chapter 132. Chapter 345 amends A.R.S. §15-996, and as amended this statute states, regarding payment of warrants from school district funds as follows:

"The County Treasurer shall:

(1) Receive and hold all school district monies and . . .

* * *

(5) Pay warrants issued by the county school superintendent duly endorsed by the person entitled to receive the monies."

A.R.S. §15-996, as amended, dictates the powers and duties of the Treasurer as they relate to the school districts' funds, and the statute by its terms, does not grant the County Treasurer the right to condition payment of warrants upon a payment of a fee by the Participating Districts.

Where pertinent statutes have been passed during the same legislative session, courts construe their provisions together so that they remain intact, in absence of irreconcilable conflict. Salahub v. Montgomery Ward Company, 41 Or. App. 775, 599 P.2d 1210 (1979). Reading Chapters 132 and 345 together, it is clear that the Legislature did not intend to grant the power to County Treasurer to charge Participating Districts for the payment of warrants.

We further find no support in other statutes regarding the County Treasurer's powers and duties for the authority to charge for the costs of warrants. Generally, reference to other statutes bearing on the same subject matter can be used in construction of other statutes. State v. Stone, 8 Ariz. App. 118, 443 P.2d 933, vacated 452 P.2d 513, 104 Ariz. 339 (1968).

A.R.S. §15-999 provides a general discussion of payment of school district warrants by the County Treasurer. That statute does not mention payment of a fee as a precondition for payment of warrants. Further, the duties of the County Treasurer as they relate to the disbursement of school districts' funds was discussed in the Ariz. Atty. Gen. Op. No. I85-123. In that Opinion, the Attorney General described the County Treasurer's principal functions with regard to school district money as the receipt, investment and disbursement of that money. The Opinion neither discusses nor grants to the County Treasurer a right to collect a fee for its services or to precondition performance of those services based on payment of a fee by a school district.

A.R.S. §11-493 describes the duties of the County Treasurer in general, without specific reference to school district monies. Section 1 of that statute states:

"County Treasurer shall:

(1) Receive all money of the county, and other money directed by law to be paid to him, safely keep it, and apply and pay it out, rendering account thereof as required by law."

Again, this statute neither grants the County Treasurer the right to charge a fee for his services, or grants the County Treasurer the right to make performance of its services contingent upon payment of a fee.

A.R.S. §11-634 specifically describes the County Treasurer's duties regarding payment of warrants, and states as follows:

"When a warrant of the board or county superintendent of schools is presented for payment, the treasurer shall pay it and write or stamp on its face the word 'paid' and the date of payment."

This statute neither refers specifically to the right of the County Treasurer to elicit a fee for his services, nor does it refer to the ability of the County Treasurer to make performance of his services contingent upon payment of a fee.

Turning to case law, the County Treasurer is an administrative agent of the state and his authority is limited to that expressly provided by statute. Skidmore v. O'Rourke, 383 P.2d 473, 152 Colo. 470 (1963). As discussed, Arizona statutes do not specifically allow the County Treasurer to charge a fee to school districts for its services, nor does a right appear in Arizona statutes enabling the County Treasurer to condition performance of its duties upon payment of a fee by entities such as school districts. Additionally, it has been held in Arizona that county officers generally are not entitled to reimbursement for expenses incurred in performance of official duties, in the absence of statutory authorization. See Lee v. Coleman, 63 Ariz. 45, 159 P.2d 603 (1945).

In conclusion, as no specific authority exists in Arizona pursuant to statute or case law, for the County Treasurer to charge school districts who participate in the Accounting Responsibility Pilot Program for his services, we conclude payments cannot legally be required by the County Treasurer.

II. County's Charge for Payroll Services.

County Technology and Information Systems ("CTIS"), the data processing division of the County, currently provides payroll services to all school districts presently at no charge, through the County School Superintendent. This division proposes to provide payroll services directly to your District for an annual fee of $40,687.00.[1] Payment by the Participating Districts for payroll services is not specifically authorized by law, and therein, no specific budget category available to pay for these services.

A school district governing board possesses only the powers granted to it by the Legislature. School District No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 333, 458 P.2d 537 (1969); Ariz. Atty. Gen. Op. No. I85-015.

There is no duty imposed by statute upon school districts to pay the County for payroll services. Chapter 132 does not mandate that because the Participating Districts assume certain "accounting responsibilities" from the County Superintendent, that those Districts must also pay the County for payroll services. Payroll service is not among the "accounting responsibilities" specified in that statute which Participating Districts are to assume. According to rules of statutory construction already discussed, such a duty cannot be included by implication with those specifically articulated.

The school districts thus appear to not possess the authority or the duty to pay the County for such payroll services.[2] The Legislature has specifically granted to the school district governing boards the power and the duty according to A.R.S. §15-905, to prepare and furnish proposed budgets for the school year, to the Superintendent of Public Instruction and to the County School Superintendent. Section (N) of A.R.S. §15-905 provides that:

> "No expenditure shall be made by any school district for a purpose not included in the budget. . ."

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[1]We note that the County has indicated that the cost would be $28,305.00 in all seven eligible school districts would be included in the service.

[2]We note that the districts may also not have the resources to pay for these services as the budgets for the 1987-88 fiscal year were adopted prior to learning of the county's intended charges.

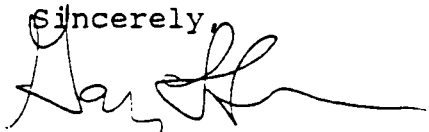
The governing board cannot pay for the payroll services unless that amount is included in the budget. The County, through CTIS, has rendered payroll services to school districts for some time. Payment by the school district governing boards for payroll services to the County has never been an item included in the budget, and the school districts have never had to pay for such services.

Forcing school districts who participate in the Accounting Responsibility Pilot Program to pay charges for services rendered by the County which are rendered to non-participating districts at no charge amounts to the imposition of a penalty for participation. This result appears contrary to the intent of the Legislature in drafting Chapter 132. Had the Legislature intended the County to be able to charge for these services, we think that the legislation would have so stated in Chapter 132. It is clear from an examination of Chapter 132 that it is an experimental program and that therefore, the Legislature will be reviewing its success. If there is a need to allow the counties to charge for these services, then legislation is required to provide for such authorization.

I hope that this analysis is helpful to you in your dealings with the County as a participant in the Accounting Responsibility Pilot Program. If you have any further questions regarding this matter or if I may be of help in any way, please feel free to contact me.

A copy of this Opinion is being sent to the Attorney General for his review pursuant to the provisions of A.R.S. § 15-253(B).

Sincerely,



Gary L. Lassen

cc: Honorable Bob Corbin
Attorney General

Theresa Martin
Assistant Attorney General

G. Eugene Neil
Chief Civil Bureau
Maricopa County Attorney's Office

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