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OPINIONS
 OF THE
 ATTORNEY GENERAL
 OF THE
 STATE OF ARIZONA



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JOE CONWAY
 ATTORNEY GENERAL

FOREWORD

The office of Attorney General is necessarily devoted to legal conferences and consultations on matters pertaining to education laws. This edition contains the official opinions given the Superintendent of Public Instruction, County Attorneys and officials of the different school districts throughout the State on various parts of the Revised Educational Code of Arizona, 1928, and subsequent school legislation thereto.

Interesting questions which have arisen regarding law and policy in Arizona educational matters are included, and, it is our sincere hope and purpose that they may be both helpful and convenient to those interested in the interpretation of the school laws of our State.

All opinions are separately indexed for immediate reference to the subject matter to which they are related.

JOE CONWAY,
Attorney General of Arizona.

OPINIONS ISSUED BY THE ATTORNEY GENERAL

January 21, 1937.

State Board of Education,
State House,
Phoenix, Arizona.

Re: Closing Schools at McNary.

Dear Sirs:

Please be advised that it is the opinion of this office that:

(a) Teachers employed in the schools at McNary are entitled to be paid their salaries during the time in which the schools are closed because of the meningitis epidemic in the absence of a stipulation of their contracts against liability in such a contingency. This opinion is based upon the following:

In the case of Gladys Phelps vs. School District No. 109, Wayne County, Illinois, 134 N. E. 3012,—a case in which a school teacher who was regularly employed by the District to teach at a salary of \$50.00 per month, brought suit to recover for a period of two months during which time the school was closed by order of the State Board of Health on account of an epidemic of influenza. The Supreme Court of Illinois held that she was entitled to recover, stating:

“The general rule established by all the decisions is that, where performance on contract is rendered impossible by acts of God, or the public enemy, the district is relieved from liability, but where the school is closed on account of a contagious disease, or destruction of the school building by fire, and the teacher is ready and willing to continue his duties under the contract, no deduction can be made from his salary for the time the school is closed.”

In the case of Libby vs. Douglas, a Massachusetts case reported in 55 N. E. 808, the school was closed on account of an epidemic of diphtheria, and the Court held the Dis-

trict was liable to the teacher in the absence of a stipulation in the contract against liability in such a contingency.

This precise point has never, insofar as we have been able to ascertain, been before the Courts of this State, but we feel that in view of the fact that the decisions of other States are unanimously in favor of allowing recovery as pointed out by the Illinois court in the Gladys Phelps case supra, our Court would be inclined, should the opportunity arise, to follow the general rule.

(b) Schools closed down because of an epidemic such as it prevalent in McNary, may run for a period beyond a term for which the teachers are now employed in order to offset the shut down period. Should this be done however, it will be necessary for the District to enter into new contracts of employment for the period beyond which the present staff of teachers are employed, which we understand is nine months from and after August 31, 1936, in the instant case. Moreover, it will be necessary for the District to have sufficient funds with which to carry on beyond the present teachers' contracts.

The above opinion is based upon the following Section of the 1928 Revised Code:

"Section 1025; Boards of Trustees shall maintain the schools established by them for a period of not less than eight months during each school year, and if the funds of the district are sufficient, they shall maintain them for a longer period, and, as far as practicable, with equal rights and privileges."

It will be seen by an examination of the above statute that the same contemplates employment of teachers for a school year of at least eight months. And further, where the funds of the District are sufficient, they shall maintain them for a longer period.

Trusting the above fully answers your telegraphic inquiry under date of January 19th, I beg to remain,

Very truly yours,

J. B. SUMTER,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

January 23, 1937.

Mr. Edward Y. Weeks,
Deputy County Attorney,
Globe, Arizona.

Dear Sir:

Please be advised that it is the opinion of this office that school district trustees come under the classification set forth in Section 91, Article 4 of Chapter 3, R. C. A. 1928.

The above opinion is based upon the following:

Section 1 of Article II, Constitution of Arizona, imposed upon the legislature the duty of "enacting such laws as shall provide for the establishment and maintenance of a general and uniform school system."

Pursuant to the power expressly conferred upon it by the constitution the legislature enacted Chapter 21, R. C. A. 1928, which said chapter and the amendments thereto provide for the establishment, maintenance and supervision of the entire educational system of the state. The supervision of the public schools is lodged (1) in the board of education, (2) a state superintendent, (3) a county superintendent, and (4) boards of trustees.

Public School Dist. No. 11, of Maricopa County
v. Holson, 252 Pac. 509.

The powers and duties of these boards and officers are necessarily different, each one exercising different powers and duties—but powers and duties in the interests of the district, on behalf of the state. The basis of the entire educational system of the state is the school districts. Section 996, Art. 4, Chap. 21, R. C. A. 1928. These districts are political subdivisions of the county in which they are situated.

Sorenson vs. Superior Court

31 Ariz. 421.

254 Pac. 230.

The chief characteristics of a political subdivision are
"* * * They embrace a certain territory and its inhabitants, organized for the public advantage, and not in the interest of particular individuals or classes; that their chief design is the exercise of governmental functions, and that to the electors residing within each is, to some extent, committed

the power of local government, to be wielded either mediately or immediately, within their territory, for the peculiar benefit of the people there residing. Bodies so constituted are not merely creatures of the state, but parts of it, exerting the powers with which it is vested for the promotion of those leading purposes which it was intended to accomplish, and according to the spirit which actuates our republican system." 41 N. J. Law, 154, cited with approval by the Supreme Court of Arizona in the Sorenson case, supra.

In order to exercise the powers with which these districts are vested, Section 104 R. C. A. 1928, as amended by Section 1, Chapter 65, Session Laws 1933 (Section 1004 Supplement 1936) provides for the election of three trustees—for each district, whose tenure of office is three years. The trustees are the governing body of the district. In other words, they are the officers of the district—invested with certain enumerated powers and charged with certain duties. Being officers of a political subdivision they are necessarily public officers. A public officer has been defined as: An officer who discharges any duty in the discharge of which the public is interested, or which is invested with the authority and is required to perform the duties of a **public office**, the term, as usually employed, meaning one who by lawful authority has been invested with a portion of the sovereign power of the government—in any of its branches, legislative, executive, or judicial.

46 C. J. 924, Par 3 B

22 R. C. L. 381 Sec. 12

Winsor vs. Hunt (Ariz.), 243 Pac. 407

When the trustees act in their official capacity they act for and on behalf of the district.

Webster et al., Trustees of School Dist. No. 12
vs. Heywood, 192 Pac. 1069

Invested as they are with a portion of the sovereign power of the government—in the exercise of which they act for and on behalf of (1) the district, and (2) the State of Arizona—it naturally follows that they are officers within the purview of Section 91, Article 4 of Chapter 3, R. C. A. 1928, and as such are prohibited from being interested either **directly** or **indirectly** in any contract or in any sale or purchase made by them in their official capacity, or by any **body** or **board** of which they are members.

Your specific problem. Mr. Sullivan by owning the controlling interest in the Mine Supply & Hardware Company, as well as being the active manager thereof, certainly has, to say the least, an indirect interest in any contract he, as a school district trustee, might make for and on behalf of the district because with his left hand he is acting for and on behalf of the corporation in which he owns a controlling interest and is the managing director, while with his right hand he is contracting for and on behalf of the district.

Bone vs. Bowen, 20 Ariz. 592-596, 185 Pac. 133

Even if we had no statute governing the subject, the Courts have almost universally held that such dealing is against public policy and void. The rule laid down is as follows:

“The principle upon which this public policy is founded is that where one is acting in a fiduciary capacity for another, he will not be permitted to make a contract with himself in an individual capacity relative to the subject matter of such employment. The member of the board owes the school district an undivided loyalty in the transaction of its business and in the protection of its interest; this duty he could not properly discharge in a matter in which his own personal interests are involved.”

Trusting the above fully answers your inquiry under date of December 30, 1936, and assuring you that this office will at all times be glad to serve you, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

January 26, 1937.

Mr. Chas. Rogers,
County Attorney,
Graham County,
Safford, Arizona.

Dear Mr. Rogers:

You asked the proper procedure to follow in organizing a high school district composed of two or more districts, so that the separate common school districts could retain their legal entity and have control of their own common schools, and also the method of dissolving or withdrawing from a high school district by a common school district once the same was organized.

It is my opinion that you should proceed under Article 9 of Chapter 21 of the Revised Code of Arizona, 1928, beginning with paragraph 1068 and continuing throughout the article. Paragraph 1068 was amended by the laws of 1931, Chapter 50.

You will note that Article 9 sets out the method of organizing union high school districts and permitting the common school districts to retain their entity. Prior to the amendment of 1931, there was no means of withdrawal by a common school district except to join another high school district. In 1931 the Legislature set up the things necessary to be done to withdraw from a high school district.

From your explanation of the situation, your common school districts could not withdraw once they had become members of the union high school district because the school house in neither of the districts is as much as twenty-five miles from the high school building. That being the case, it would appear that once having joined the union high school district, it might be impossible for your districts to withdraw unless a future amendment was made to the statute.

You also asked about the federal grant and loan and expressed the opinion that unless they could be had, the common school districts did not want to join in the organization of a union high school district. It is my opinion that you should go to the men in charge of these Government loan applications and get a commitment before you organize this union high school district, as I understood you did not desire to organize the district unless the grant and loan could be had.

I trust this answers your requirements.

Very truly yours,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

January 29, 1937.

Mr. J. A. Riggins, Statistician,
Department of Public Instruction,
State House,
Phoenix, Arizona.

My Dear Mr. Riggins:

Answering your question: "Does the State Board of Education have the authority, under its general supervisory powers, to regulate the size of classes receiving instructions in the common and high schools of the state?" I will state that as a broad general principle the school authorities have the power to provide such apparatus and equipment and such accommodations and facilities for carrying on the work of the schools as are reasonably necessary and useful for the comfort and convenience of teachers and pupils. The extent of their powers however, depends in each particular case on the provisions of the controlling statute and it will depend entirely upon the method you propose to pursue in bringing about a reduction in the size of classes. If you have equal facilities available to all pupils without constructing new buildings and purchasing new apparatus and your regulations will not work a discrimination as between pupils, then it is the opinion of this office that the State Board of Education has the authority under its general supervisory powers to regulate the size of classes in the common and high schools of the state.

Trusting the above answers your inquiry and assuring you of our desire to serve you, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

February 13, 1937.

Board of Education,
State House,
Phoenix, Arizona.

Attention: Mr. J. A. Riggins.

Dear Sir:

Please be advised that it is the opinion of this office that:

1. When a common school district annexes itself to a single high school district, as provided in Section 1003, Revised Code, 1928, such district does not lose its separate and distinct identity as a common school district.
2. Such annexation does not change a single high school district into a union high school district.

Yours very truly,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

February 24, 1938.

Mr. Glenn Copple,
County Attorney,
Yuma, Arizona.

Dear Mr. Copple:

I have your letter of February 21st in which you request an opinion upon the question submitted by the County School Superintendent of your county, that is:

"Some months ago I appointed Robert Harris to fill a vacancy on the Salome School Board of Trustees. I was under the impression Mr. Harris was a resident of the Salome School District at that time. However, I have since learned that Mr. Harris is actually living in the Wenden School District.

"Will you please give me an opinion as to whether Mr. Harris can legally hold the position of school

trustee in the Salome School District and reside in the Wenden School District?"

Your attention is directed to Section 1009, Revised Code of Arizona, 1928, which provides as follows:

"Every person who is a qualified elector of the state, and who has been a resident of the district for thirty days immediately preceding the day of election, and who is the parent or guardian of a minor child residing in the district, or who has paid a state or county tax, exclusive of poll, road or school tax, during the preceding year, is eligible to the office of trustee, * * *"

In the event of a vacancy in any board of trustees, a person appointed to such vacancy must meet the requirements of the above quoted section.

It is therefore my opinion that Mr. Robert Harris cannot legally hold the position of school trustee in the Salome School District.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

February 26, 1937.

Mr. Henry C. Perkins,
Principal Eden District School,
Eden, Arizona.

Dear Sir:

This will acknowledge receipt of your letter of February 23rd, requesting an opinion as to the authority of school teachers over students between their homes and the school grounds and the authority of a teacher to expel a student.

It is the general rule that although a school teacher ordinarily has no right of control over a child after he has returned to his home or his parents' control and cannot

punish him for ordinary acts of misbehavior thereafter. The supervision and control of the teacher over a pupil and of a school board to make these school rules for the conduct of a pupil is not confined to the school room and school premises but extends over the pupil from the time he leaves home to go to school until he returns home from school.

It may be further said that where the effects of acts done out of school room while the pupils are going to or going from school reach within the school room and are detrimental to good order and the best interest of the school such acts may be forbidden and the teacher may punish an offending pupil when he comes to school.

In answer to your second question, I will refer you to Section 1041, Revised Code of Arizona, 1928, which provides in substance as follows: "Every teacher shall: hold pupils to a strict account for disorderly conduct on the way to and from school; suspend from school any pupil for good cause and report such suspension to the board of trustees." It is the general rule that a pupil may be properly expelled or suspended for an infraction of or for a refusal to comply with a reasonable rule or regulation of the school board or of the teacher and it is within the power of the board or teacher to determine what constitutes disobedience or misconduct justifying expulsion or suspension. I might also state that the decision of a school board in expelling or suspending a pupil is final so far as it relates to the right of a pupil to enjoy the privileges of the school and is not subject to judicial interference unless it acts arbitrarily or maliciously.

A teacher may base the suspension of a pupil upon either written evidence or oral evidence of any other facts which might be brought to the attention of the teacher.

In other words, a teacher would not perform the duties of his employment without maintaining proper and necessary discipline in the school and for this reason this action in the expelling or suspending a pupil when exercised to further the best interest of the other pupils and the school and is reasonable will usually be justified by the courts.

The length of time a pupil may be expelled is a matter that is within the control and discretion of the teacher and the school board and if reasonably exercised will be upheld.

Trusting that the above answers your inquiry and as-

sureing you of our full cooperation in any matters that may arise in your locality, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

March 12, 1937.

Department of Public Instruction,
State House,
Phoenix, Arizona.

Attention: Mr. J. A. Riggins.

Gentlemen:

This will acknowledge receipt of your letter requesting an opinion from this office as to:

“Does the change in boundary lines of an incorporated town or city automatically take into same another school district that may come within its new confines.”

The statute of the State of Arizona prescribes the method for changing the boundaries of school districts and such districts can be changed only by statutory authority. Section 997 and 999 of the Revised Code of 1928 provides the method and authority to change the boundaries of a school district and this must be strictly followed.

In other words, a school district, the territorial boundaries of which are coterminous with the boundaries of an incorporated town or city in which it is situated, is a corporate entity separate and distinct from a city or town as such an entity, and if the boundary lines of such city or town are changed it does not change the boundary lines of such school district.

Therefore, the change in boundary lines of an incorporated town or city does not take into such town or city another school district that may come within the new ter-

ritory so taken in by such city. The school district remains the same.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

March 24, 1937.

Edith P. Martin,
Superintendent of Schools,
Apache County,
St. Johns, Arizona.

Dear Madam:

I submit herewith the following opinion in answer to the question contained in your letter of recent date, which reads as follows:

“Do teachers salaries have preference over any other bills of the school district?”

It is provided in Section 1026 of the Revised Code of Arizona 1928, as amended by the First Special Session of the Legislature in 1936, as follows:

“Boards of Trustees shall use the school money received from the state and county school apportionment exclusively for the payment of salaries of teachers and other employees and contingent expenses of the district. All warrants registered after January 1, 1936, drawn on the County Treasurer against the school fund of the district by the County School Superintendent upon the order of the Board of Trustees, shall be entitled to preference of payment out of the school fund according to priority of registration.”

Therefore, I am of the opinion that the salaries of teachers and other employees and the contingent expenses of the district, do have a preference over other obligations

of the district as long as the district has funds on hand; but when the funds of the district received from the state and county school apportionment are exhausted and it becomes necessary to register warrants; the holders of these warrants are entitled to payment according to priority of registration.

In answer to your next inquiry relative to the rule adopted by the Board of Education that the principal must sign every voucher before a warrant can be written on same. Would you, as County School Superintendent, ever be justified in writing a warrant without this signature.

Your attention is directed to section 992 of the Revised Code of Arizona 1928, which provides in part as follows:

“On the order of the board of school trustees of any district, he (county school superintendent) shall draw his warrant on the county treasurer for all necessary expenses against the school fund of any such district; the warrants must be drawn in the order in which vouchers therefor are filed in his office.”

Therefore, pursuant to this provision of our statutes, the county school superintendent has no authority to draw a warrant on the school fund without an order from the board of trustees of such district.

Your last inquiry as to whether or not a board of school trustees can legally overdraw their budgets, is answered as follows:

The only budget applicable to schools is the estimate of the county school superintendent and the estimate of the district boards, as provided in section 1090. This estimate is very different from the state, county and city budgets. It is not regulatory of the expenditures of the district but is merely a basis for the computation of the county and district school tax levies. It is therefore my opinion a board of trustees may legally overdraw their budget and when this is done the additional or extra expense must be met by registered interest bearing warrants, as provided in section 1026, as amended.

Trusting the above fully answers your inquiries, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

March 26, 1937.

Department of Public Instruction,
State House,
Phoenix, Arizona.

Gentlemen:

In response to your request for an opinion as to whether or not pupils absent from school on account of sickness and quarantine can be counted as present in school for the purpose of preventing a decrease in the average daily attendance, so that such schools per capita apportionment would not be materially decreased, is answered herewith.

It is the opinion of this office that pupils who are absent on account of sickness, even tho in quarantine, must be counted as absent. This opinion is based upon the following grounds; section 1089 of the Revised Code of Arizona, 1928, as amended provides in substance:

"the school day for the common school shall be divided into two sessions, the attendance of any child shall not be counted unless he is actually and physically present during one or both of said sessions." Section 1098 provides in substance:

"Whenever on account of an epidemic any school is closed for any period that tends to reduce the daily average attendance of pupils in the county, and thereby reduce the estimate of funds needed below that of the previous year, the county school superintendent shall use the daily average attendance of such county for the previous year in making his estimate of funds needed for school purposes, not less than the estimate for the previous year."

Therefore, unless the school is actually closed on ac-

count of an epidemic, pupils absent on account of sickness must be counted as such, as the above quoted section expressly provides that a pupil must be actually and physically present to be included in the per capita apportionment.

In answer to your second inquiry relative to money received by schools from the sale of old school buildings, old material and miscellaneous receipts, your attention is directed to section 1026 of the Revised Code of Arizona, 1928, as amended by the special session of the twelfth legislature which provides the purpose for which school money may be used and states the disposition of any balance remaining in the school fund of a district after the expenses of maintaining the school has been paid. There is a further provision in this paragraph that any funds received from sources other than state, county or school district levies may be used in building schools or in the purchasing of land for schools.

It is the opinion of this office that money received by a school from the sale of old school buildings or old material, either or both of which has been purchased with proceeds of the tax levy either general or special does not lose its identity as the proceeds of the state, county or district levy and must be deposited in the funds from which the purchase was made. In the case of the old buildings if purchased from the tax levy which went into the building fund as the proceeds of bonds then it must be deposited in the building fund. All miscellaneous receipts, such as athletics, rental, entertainment, tuition fees, etc., must go into the general fund of the school district and a record and account kept thereof.

It is the opinion of this office that proceeds from the sale of old buildings which were originally paid for out of tax levies cannot be used for general expenses of schools but must only be used for the purpose of which originally levied. Miscellaneous receipts may be used either for general school purposes or for the purchase of lands or buildings for schools.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

April 14, 1937.

Department of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Richards.

Gentlemen:

This will acknowledge receipt of your letter of April 8th requesting an opinion regarding the validity of a claim to be paid from county school funds allotted to the office of County School Superintendent of Gila County, Arizona.

It is provided in Section 992, Revised Code of Arizona, 1928, that the County School Superintendent shall attend annual meetings of the county school superintendents called by the Superintendent of Public Instruction. In addition to the salary already allowed by law, he shall receive **his mileage and travelling expenses.**

It is further provided by Section 2803, Revised Code of Arizona, 1928, as amended, as follows:

“Whenever the official duties of a public officer make it necessary for him to travel from the point where he is required by law to maintain his office, he shall be allowed actual mileage and travelling expenses * * *”

The chief elements to constitute a “public officer”, have been stated as follows:

“The specific position must be created by law; there must be certain definite duties imposed by law on the incumbent, and they must involve the exercise of some portion of the sovereign power.”

Winsor v. Hunt, 29 Ariz. 520.

It is, therefore, clear that a deputy county school superintendent is a public officer.

Section 60 of the Revised Code of Arizona, 1928, provides that “each deputy of any State or county officer possesses the powers and may perform the duties of the principal, and whenever the official name of any principal officer is used in law conferring power, or imposing duties, liabilities or prohibitions, it includes his deputies.”

It is, therefore, the opinion of this office that the deputy county school superintendent of Gila County in making a

trip to Phoenix, to attend a conference sponsored by the Superintendent of Public Instruction was performing a part of the official duties of his office and that such duties required the officer to travel from the county seat where he is required by law to maintain his office, to the City of Phoenix; and that such officer should be allowed his actual mileage and travelling expenses, to be computed as provided by law. And that such expenses are a proper county charge and may be paid out of the travelling expense fund of the County School Superintendent's budget.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

April 16, 1937.

Mr. John J. Bugg,
County School Superintendent,
Florence, Arizona.

Dear Sir:

This will acknowledge receipt of your letter of April 12th, which was addressed to Mr. Chandler, County Attorney of your county and has been forwarded to this office as requested by you.

In answer to your question as herein set forth:

"A certain teacher was employed to teach in the Casa Grande Grammar School, Pinal County, Arizona, for the term 1936-37 at a stipulated salary of \$1,380.00 payable in 24 equal installments of \$57.50. This teacher was to teach for the term. She was not given a written contract but began teaching at the opening of the school term in September. At the end of the fifth month, she resigned to accept another position without the consent of the Board of Trustees. She had up to that time received \$575.00 of her annual salary. She now contends that she is entitled to \$191.66 additional, or that

she should receive a total of 5/9 of her salary since she taught five months of a nine months term."

It appears to the writer that it was the intention of the school district and the teacher that the compensation fixed by the verbal agreement should constitute salary for the teacher's services for the term to be taught during the school year 1936-37 and that payment in 24 equal installments was a mere device to which recourse was had for the convenience of the parties, or either of them.

In other words, the teacher was employed for the school year which consisted of nine months or 180 days at a fixed and stipulated salary of \$1,380.00 although, as above stated, it was divided into 24 equal installments payable semi-monthly as a matter of convenience.

It is the opinion of this office that the salary of this teacher was intended solely as compensation for services rendered for the school term, and that the teacher who taught less than the entire term of nine months, or 180 days, should be paid for her time a sum which would bear the same proportion to the entire salary as the number of days taught would bear to 180.

In other words, the teacher taught for a period of five months and she would be entitled to 5/9 of the yearly salary of \$1,380.00.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

April 22, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hendrix:

In your letter of April 19th, you ask:

"What disposition shall be made of all income and revenue derived from fees, rentals, matriculation, athletics, etc., by the two teachers' colleges and the university."

The Legislature in 1934 in its Third Special Session enacted Chapter 7 which has to do with educational institutions. By that act the two teachers' colleges and the State University were created bodies politic and corporate and separate and independent legal entities, and declared to be governmental instrumentalities. By that Act these three schools were given authority to issue bonds as obligations of the institution and not obligations of the state, and to secure the payment of such bonds were authorized to pledge the income you mention for the payment of the bonds and to appoint a trustee or trustees to hold the money and apply it to the payment of the bonds.

It is my understanding that all three of these institutions have issued bonds and have appointed trustees, and that the money from such sources as authorized by law is paid to these trustees who hold it for the purpose of paying the principal and interest of the bonds.

Very truly yours,

JOE CONWAY,
Attorney General,

E. G. FRAZIER,
Special Assistant Attorney General.

April 23, 1937.

Mr. M. J. Hurley,
Director of Certification,
Supt. of Public Instruction Office,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hurley:

This will acknowledge receipt of the letter from the Superintendent of the Ajo Public Schools relative to what disposition should be made of certain surplus money in the hands of the District; which money was realized by a levy for the purpose of paying certain bonds and interest

of the district, and remained on hand after the payment of all outstanding bonds and interest.

The authority to make a levy on a school district for the payment of bonds and interest will be found in Section 1022 of the Revised Code of Arizona, 1928; which states in substance as follows:

“ . . . the board of supervisors, at the time of making the levy of taxes for county purposes, must levy a tax in such school district for interest and redemption of school bonds and . . . **all money when collected**, shall be paid into the county treasury to the credit of the building fund of such district, and **must be used only for the payment of principal and interest on said bonds . . .** ”

This limitation and restriction on the use of the money so collected is in accordance with the constitutional provision which is found in Article IX, Section 3 of the Constitution of Arizona, which reads as follows:

“No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the tax, **to which object only it shall be applied.**”

The levy of a special tax in the Ajo School District by the Board of Supervisors of that County in accordance with Section 1022, supra, was made for a particular and special object, that is for the redemption of outstanding bonds and interest of that district of a certain issue. It is, therefore, apparent that the funds collected as a result of the levy made in accordance with section 1022, supra, must be used only for the purpose for which the levy was made.

This principle has been adopted by the courts in numerous cases, and the general rule is stated in Volume 56 Corpus Juris, at page 553, as follows:

“The general school fund may, of course, be used for general school purposes, but in the absence of statutory authority therefor, **funds set aside for particular purposes cannot be diverted to other purposes . . .** even tho the purpose for which the fund was established has been satisfied **so that the moneys therein represent a surplus.**”

In the case of *Hoboken v. Phinney*, 29 N. J. Laws, at page 67, the court of that state uses this language:

“Upon general principles of law, a fund raised for a specific purpose, and placed in the hands of an officer for such specific purposes, **cannot lawfully be applied to any other.** Any such other appropriation would be a violation of the trust, and so contrary to law.”

That statutes of the State of Arizona contain no authority permitting the use of funds set aside for a particular purpose or object to be diverted and used for other purposes; but on the contrary, expressly prohibit this practice.

It is apparent that the levy made for the payment of the outstanding bonds and interest was evidently excessive or such surplus would not have accumulated. No authority exists to levy taxes in excess of the needs of the district so that such district may accumulate a fund to be used in the future.

Therefore, it is the opinion of the Attorney General that the surplus funds on hand with the Ajo School District which were created as the result of a levy made in that district for the express object of paying certain outstanding bonds and interest of that district cannot be used for any other purpose, but must be placed in trust for the benefit of the district.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

April 27, 1937.

Mr. Marvin L. Burton,
County School Superintendent,
Tucson, Arizona.

Dear Mr. Burton:

This will acknowledge receipt of your communication of

April 24th, seeking an opinion from this office upon the following matter:

"Relative to vouchers submitted to the County School Superintendent by the local Boards of School Trustees for payment, it is mandatory that the County School Superintendent draw warrants for these items and amounts listed regardless of legality of payments?

Calling your attention to section 992 of the Revised Code of Arizona 1928, we find the following provision:

"* * * on the order of the board of school trustees of any district, he (the county school superintendent) shall draw his warrant on the county treasurer for all necessary expenses against the school fund of any such district; * * *"

The Supreme Court in the case of Coggins vs. Ely, reported in 23 Ariz. at page 165, in discussing the powers and duties of county school superintendents insofar as they relate to the moneys of the district, stated as follows:

"* * * the county superintendent of schools is not empowered to authorize the expenditure of the moneys of this district without an order of the board of school trustees **and his function in issuing warrants upon such order of the trustees is merely administrative or ministerial.**"

Ministerial functions have been defined as those that are absolute, fixed and certain in the performance of which the officer exercises no discretion whatsoever. *State vs. Lindquist*, 214 N. W. 260.

It is, therefore, the opinion of the attorney general that the county superintendent of schools, in issuing warrants after receiving proper vouchers from the boards of trustees of school districts, is purely a ministerial act of which the county superintendent of schools exercises no discretion, but merely follows the provisions of the statutes as contained in section 992, supra.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

April 27, 1937.

Mr. W. C. Sawyer,
Willcox City Schools,
Willcox, Arizona.

Dear Mr. Sawyer:

This will acknowledge receipt of your letter of April 23, requesting an opinion as to the legality of a school district procuring and paying for public liability insurance on a truck owned and used by the district in hauling gravel to be used in the construction of a building project of the school district.

In the case of Hartford Accident and Indemity Co. v. Wainscott, decided by the Arizona Supreme Court in 1933 and reported in volume 19, Pac. (2d) 328; in which case the Board of Supervisors of Maricopa County procured liability insurance on a fleet of trucks owned by the county, suit was brought to recover the amounts paid for such insurance, and recovery was had, the court said:

“ . . . neither the state nor any political subdivision thereof, . . . is liable for the negligence of its agents when such agents are engaged in a governmental function.”

A School district is a political or civil subdivision of the state formed for the purpose of aiding in the exercise of that governmental function which relates to the education of children or a district of and for the public schools, see volue 56 Corpus Juris at page 169.

It appears from the facts as set forth in your letter that the truck owned by the school district is being used in the performance of a governmental function; that is, hauling gravel to be used in the construction of buildings for the school district.

The Board of Trustees of a school district have only such powers as are expressly conferred upon them by statute and they can only spend school funds legally when the statutes authorizes it, if money is spent for a purpose which is not authorized by the statute, it is spent illegally. There is no expressed statutory authority for the board to spend school monies for public liability insurance for trucks owned and used by a school district.

It is therefore, the opinion of the Attorney General, that

a Board of Trustees of a school district may not legally spend school funds for the purpose of purchasing liability insurance for trucks or vehicles owned and used by the school district and that it is further our opinion that the school district, which is a political subdivision of the state, is not liable for the negligence of its agents when such agents are engaged in a governmental function.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

April 29, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hendrix:

You ask for the opinion of this office relative to the payment of school warrants under the law as amended by the Special Session of the Twelfth Legislature, 1936. This Act as you know amended Section 1026, Revised Code of Arizona, 1928. Under Section 1026 prior to the amendment, the Supreme Court had held that moneys of school districts in each fiscal year must first be applied to payments of the warrants and expenses of that particular fiscal year.

The amendment provided that all warrants registered after January 1, 1936, should be paid in the order of their registration out of any of the funds of the school district. Since that amendment, the proper method for school trustees to observe is to issue the warrant as always and then the treasurers should pay those warrants in the order of registration, regardless of the year in which the expense was incurred or the tax levied. In other words, the limi-

tation of using the money derived in any one year solely for that year was removed.

Very truly yours,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

April 30, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hendrix:

You ask:

“Whose duty is it to prescribe the qualifications for admittance to the state teachers’ colleges and the state university, and junior colleges?”

The constitution of this State provides that the general conduct and supervision of the public school system shall be vested in the State Board of Education, State Superintendent of Public Instruction, county school superintendent and such governing boards for the State institutions as may be provided by law.

The constitution also provides the personnel of the State Board of Education, and provides that the powers and duties of such Board shall be such as may be prescribed by law.

Chapter 21, Revised Code of Arizona, 1928, deals with education. Paragraphs 988 and 989 deal with the State Board of Education and prescribe its duties and powers. Among other things set forth therein we find the following:

“5. to prescribe and enforce a course of study in the common schools of the state, determine the number of credits necessary for graduation from the high schools, and prescribe the qualifications for admittance to the state teachers’ colleges and the state university;”

There may appear to be a conflict between this provision of the statute and other paragraphs. But a careful examination of the statute under the rules of construction laid down by the Supreme Court shows that there is no difficulty in reconciling the paragraphs.

Section 1107, Revised Code of Arizona, 1928, speaking of teachers' colleges, provides:

"The boards may make rules and requirements for the admission of pupils to their respective colleges, * * *"

This does not conflict with the language setting forth the powers and duties of the State Board of Education when you read the two together. The State Board may prescribe the qualifications necessary for an applicant to possess upon desiring to enter the State Teachers' Colleges or the State University. Such other rules and requirements as the board of the schools may desire to make are wholly within the power of the governing board of the school, and the State Board of Education has nothing to do with that. The same thing is true of Paragraph 1135 relating to the powers of the Board of Regents of the State University.

The question of junior colleges and the government thereof is treated in Paragraph 1086, Revised Code of Arizona, 1928. This paragraph provides that the Board of Education of the high school district may establish a junior college under certain circumstances and conditions. It further provides:

"* * * When established, such board of education shall possess and exercise in respect to such junior college, the powers and duties granted and imposed upon it as a high school board of education."

This paragraph further provides:

"* * * The board shall prescribe a junior college course of study, including not more than two years of work; * * *"

This provision must be read in the light of the powers and duties of a board of trustees of high schools generally, which is found in Paragraph 1074, Revised Code of Arizona, 1928. The particular language there applicable to the question reads as follows:

"* * * It shall prescribe the course of study, sub-

ject to approval by the state board of education." It follows as a matter of course the Board of Trustees of a junior college in fixing the course of study must do that subject to the approval by the State Board of Education. There seems to be no particular requirements for entrance qualifications provided by statute for entrance to a junior college. It would appear then that it would be necessary to go back to the general powers of boards of trustees of school districts found in Paragraph 1011, Revised Code of Arizona, 1928. This paragraph seems to contemplate a working together of the Board of Trustees and the State Board of Education in determining all questions of government of the schools.

I trust this answers your requirements.

Very truly yours,

JOE CONWAY,
Attorney General

E. G. FRAZIER,
Special Assistant Attorney General.

May 3, 1937.

T. J. Tormey, President,
Arizona State Teachers College,
Flagstaff, Arizona.

Dear President Tormey:

This will acknowledge receipt of your letter of April 26th relative to funds secured from fire insurance companies because of damage done by fire to certain buildings belonging to the Arizona State Teachers College.

This office agrees with the ruling of the State Treasurers office as outlined in your letter, that funds so received must be credited to the general fund of the state and not to the credit of the operation account of the Arizona State Teachers College.

The reason for this is that under the state financial code no money can be paid from the state treasury without legislative appropriation. In other words the state auditor has no authority to draw her warrants on any funds in

payment of any claim until the proper legislative appropriation has been made for payment of such claim.

It is, therefore, the opinion of the Attorney General's office that funds secured as above outlined must be credited to the general fund of the state and such funds may not be expended by the Arizona State Teachers College for the purpose of replacing or rebuilding such fire damaged buildings without direct legislative appropriation for such purposes.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

May 6, 1937.

Mr. J. Prugh Herndon, Comptroller,
University of Arizona,
Tucson Arizona.

Dear Mr. Herndon:

This will acknowledge receipt of your letter of recent date relative to traffic regulations on the University Campus.

The statutes of the State of Arizona in reference to speeding and reckless driving of a motor vehicle, prohibits such unlawful driving on a "highway". Section 1686, as amended, defines **Highway** as follows:

"**Highway** shall mean any way, road or place of whatever nature, open to the use of the public as a matter of right, for the purpose of vehicular travel."

It is clear from this definition that the driveways and roads on the University Campus are not classed as highways within the meaning of these statutes, for the reason such driveways and roads are not open to the use of the public as a matter of right.

However, Section 1587, subdivision (a) as amended, pro-

vides as follows in reference to the lawful rate of speed a motor vehicle may be driven at certain places:

"Fifteen miles per hour: 1. When passing a school building or the grounds thereof during school hours . . ."

We are of the opinion that this section is effective on the driveways and roads on the University Campus, regardless of the fact that such driveways and roads are not "public highways". And it, of course, follows that the driver of a motor vehicle violating this section may be prosecuted in the Justice Court of Pima County.

Regarding the student driving a car over the curb of a University driveway and onto the lawn in front of a building, I wish to call your attention to Section 4824 of the Revised Code of Arizona, 1928, which reads as follows:

"Destroying property: Every person who maliciously injures or destroys any real or personal property not his own . . . is guilty of a misdemeanor".

The acts committed by the student undoubtedly come within the provisions of this section and it is the duty of the County Attorney to prosecute for such an offense.

Insofar as parking of motor vehicles in restricted zones on the campus is concerned the fact such driveways are not "public highways" prevents such acts from constituting an offense under our laws. Of course, the University authorities may enforce these regulations so far as students are concerned.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

June 8, 1937

Coit I. Hughes, M. D.
State Superintendent of Public Health,
Phoenix, Arizona.

Dear Sir:

It is my opinion that the correct interpretation of Section 2705, Revised Code of Arizona, 1928, is this: The board of regents of the State University acts in the matter not as individuals but as a board, and would have one vote only. The State Superintendent of Public Health acting as an individual would have one vote. The natural result of that would be that no person could be appointed as director of the laboratory without the concurrence of both the board of regents and the superintendent of health. Neither could make the appointment alone.

Very truly yours,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

May 12, 1937.

Mr. M. J. Hurley,
State Department of Education,
Phoenix, Arizona.

Dear Mr. Hurley:

This will acknowledge receipt of a letter from Ruby E. Fulghum, addressed to your office requesting an opinion

relative to the right of a teacher to receive her salary from the date of the execution of her contract, and prior to the beginning of the school term and the performance of her duties under the contract.

The copy of the contract enclosed in your letter shows that the contract was entered into May 1st, her salary beginning on June 1st, and the school term commencing on the 1st of September, following. The contract is for her services as teacher for a year, at the rate of \$100.00 per month, beginning June 1st and to continue for twelve months with payments to be made in 24 installments of \$50.00 each.

It is first necessary to determine whether or not the Board of Trustees of a school district have the power and authority to enter into a contract of this nature. The duties and powers of a Board of Trustees are set forth in section 1011 of the Revised Code of Arizona, 1928, in which we find this:

“... enter into contracts with teachers ... necessary for the succeeding year ...”

It is the general rule of law that a school district is a public corporation, but with very limited powers. A school district may, through its board of trustees, exercise only such authority as is conferred by law, either expressly or by necessary implication. (*Finley v. School District*, 153 Pac. 1010).

It is further provided in section 992 of Revised Code of Arizona, 1928, as follows:

“... no warrant shall be drawn for any teachers salary unless the voucher shall state the monthly salary of the teacher and the name of the school month for which said salary is due ...”

We believe that the term “school month” as used in this section refers to the months that school is actually in session; and further that no salary is due until after services have been performed in accordance with the terms of the contract.

It is therefore the opinion of this office that there is no authority, either expressly or impliedly, permitting a Board of Trustees of a School District to enter into a contract for the payment of the services of a teacher prior to the time such teacher actually performs and renders services;

and further under Section 992, supra, a County School Superintendent cannot legally issue a warrant for the payment of a teacher's services except when it shows on the voucher that it is for a month that school is in session.

We do not wish to be understood in this opinion that a school district may not pay a teacher for twelve months of the year; but only that the salary of a teacher may not be paid until such time as services are rendered. It appears from the contract that it was the intention of the Trustees and teacher that the compensation fixed by the contract constitutes the salary for the teacher's services for the term to be taught during the school year 1937-38; and that the payment in 24 installments was merely for the convenience of the parties.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

May 24, 1937.

Miss Mary Brown,
County Superintendent of Schools,
Holbrook, Arizona.

Dear Miss Brown:

Mr. Peterson and Mr. Porter of School District No. 2 of your County are in the office this morning on the question of the use of the school funds of that district for the completion of a **gymnasium**.

In order to complete the gymnasium they estimate a need for \$2200.00. They advise me that they have \$2600.00 of their State apportionment as a reserve. Of this \$2600.00, 13% or \$338.00 was not derived from taxation according to the figures given us by the State Department of Education. This \$338.00 then is available for use in constructing the building, but no part of the reserve raised from taxation may be used for such purpose.

You would be within the law if you permitted the expenditure of \$338.00 from this fund for such purpose. It is the intention of the Board of Directors now to vote a \$1,000.00 bond in addition to those already outstanding, to apply on the gymnasium, and to include in their next annual budget a 10c levy on the taxable property in the district, from which these three items, \$338.00 from the reserve, \$1,000.00 from the bond issue and the proceeds of the 10c levy, will furnish sufficient amount of money to complete the work.

It is the opinion of this office that they may spend the balance of \$2600.00 or so much as is necessary of the reserve in the purchase of furniture, fixtures, and supplies for the gymnasium.

Very truly yours,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

May 26, 1937.

Arizona State Teachers College,
Flagstaff, Arizona.

Attention: Mr. Chandler M. Wood.

Gentlemen:

It is the opinion of this office that the final payment cannot be made on your contract with Del E. Webb Construction Company until all claims against the contractor by reason of the contract are paid.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

May 28, 1937.

Dr. H E Hendrix,
Superintendent of Public Instruction,
Phoenix, Arizona.

Attention: Mr. Hurley.

Dear Sir:

You ask as to the expenditures which may be lawfully made out of the building fund of ten cents on the hundred dollars valuation levied under authority of subdivision 10, of paragraph 1011, R. C. A. 1928.

There can be no doubt but that the only expenditures permitted and authorized to be made from this levy are expenditures for the purchase of sites for school buildings or for erecting or purchasing school buildings. No part of this levy is permitted under the law to be expended under the head of capital outlay for furniture, equipment, apparatus, supplies, books, or any other thing except the purposes specifically named in the statute which are as above set forth.

Your next question is: "May levy be made on the property in a school district for capital outlay which will become immediately available without waiting until the expiration of eight months of school?"

Under the statute, paragraph 1026, a restriction is placed upon the purposes for which the state and county apportionment of school money can be expended. The Supreme Court of this state has ruled that this restriction is mandatory and cannot be avoided. However, if in any district a levy is made for capital outlay such as school furniture, equipment, apparatus, supplies and library books, which is not included in the state or county apportionment, but is a special item levied upon the property situated in that school district, it is my opinion that such funds become immediately available for use for the purposes for which levied.

I trust this answers your questions.

Very truly yours,

JOE CONWAY,
Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

September 24, 1937.

Mrs. Bertha L. Ryan, R. N.,
Box 483,
Tucson, Arizona.

Dear Madam:

This will acknowledge receipt of your letter of September 21st in which you request an opinion as to whether or not the minimum wage law for women and the forty-eight hour a week law applies to nurses in institutions.

This is to advise you that a female nurse is excepted from the provisions of the forty-eight hour a week law.

It is our opinion that a registered nurse comes within the provisions and terms of Chapter 20 of the Thirteenth Legislature, Second Special Session.

For your information, it is provided in said chapter as follows:

"It shall be the duty of the commission, on the petition of twenty or more residents of the state, engaged in any particular occupation, to cause an investigation to be made of the wages being paid to women or minors in that occupation to ascertain whether any substantial number of women or minors in such occupation are receiving oppressive and unreasonable wages as defined in section two. * * *"

I regret that your letter was not received in time to have a reply in your hands at the time of the nurses' meeting mentioned in your letter.

Trusting that this fully answers your questions, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

June 3, 1937.

Mr. Charles E. Bill, Principal,
Murphy Public Schools,
District 21,
Phoenix, Arizona.

Dear Mr. Bill:

This will acknowledge receipt of your letter of recent date relative to an opinion of this office concerning the payment of teachers on a twelve month basis.

In that opinion this office rules that there is no authority permitting a Board of Trustees of a School District to

enter into a contract for the payment of the services of a teacher prior to the time such teacher actually enters into and performs her duties as a teacher under the contract.

This opinion was based upon the following grounds:

It is provided in Section 992 of Revised Code of Arizona, 1928, wherein it sets forth the authority of a county school superintendent to issue a warrant upon presentation of a proper voucher from a Board of Trustees and the following restriction is made:

“ . . . No warrant shall be drawn for any teachers salary unless the voucher shall state the monthly salary of the teacher and the name of the **school month** for which said salary is due . . . ”

We have taken the view that “school month” as used in this section refers to the months of the year that school is actually in session. And that, therefore, the County School Superintendent cannot legally issue his warrant to a teacher who has not at the time performed any services as a teacher, under the contract.

As was stated in our previous opinion, we do not wish to be understood that a school district cannot pay a teacher on a twelve month basis; but only that a teacher's salary cannot be legally paid until services as a teacher have been performed and rendered for the district. In other words, a Board of Trustees and a teacher may enter into a contract providing for a certain salary for the teacher for the school year, and as a matter of convenience for both parties have the payments made in 12 monthly installments; but such payments cannot legally begin until after the teacher has entered into the performance of such contract.

So far as the “Teacher's Duty Report,” of which you have enclosed a copy, is concerned, I do not believe that this changes the situation. While it is no doubt true, that by requiring the teachers of the district to do certain work along an educational line during the summer they are indirectly benefiting the district, nevertheless, a Board of Trustees has no authority to pay or order the payment of school funds until services as a teacher have been performed under a contract with the district. And that the rule of the district requiring teachers to attend summer school, travel or do organized reading along an educational line during the summer months cannot be considered as

such a performance of their contract as would permit the payment of their salary.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

June 7, 1937.

Mr. Earl Platt,
County Attorney,
Apache County,
St. Johns, Arizona.

Dear Mr. Platt:

We have received a request from Mr. J. Smith Gibbons of Springerville, Arizona, for an opinion on several questions concerning the St. Johns High School. These matters will probably be referred to you in due course of time so for that reason I am sending you our opinion on these questions and advising Mr. Gibbons to consult you at your office in regard to the questions asked by him.

The first question asked by Mr. Gibbons is, "whether or not the County School Superintendent of Apache County has anything to do with the disbursement of funds of the high school of that district or may the high school draw warrants direct on the county treasurer.

In answer to this question it will be necessary to state briefly the background of the legislative enactments on this point. The legislature during the session of 1921, enacted Chapter 155, which authorized the establishment of one or more county high schools in counties of the fourth class; wherein it was provided that in counties of the fourth class the county high school board of education may draw warrants direct on the county treasurer.

In 1928, at the time of the revision of the Laws of Arizona, Chapter 155 of the Session Laws of 1921, was condensed into one section, which appears in the 1928 Code

as Section 1082. In that section all reference to the authority of the high school board of education in counties of the fourth class, to issue warrants on the county treasurer, was omitted.

The courts in passing upon these questions have adopted as a general rule of statutory construction that:

“Changes made by a revision of the statutes will not be regarded as altering the law, unless it is clear that such was the intention, and, if the revised statute is ambiguous or is susceptible of two constructions, reference may be had to prior statutes for the purpose of ascertaining the intention.” *Libby v. Pelham*, 166 Pac. 576.

The Supreme Court of Arizona has passed upon this question in several cases, and as said in the case of *In re Sullivan's Estate*, 300 Pac. 193:

“We should . . . presume that when a word, a phrase, or a paragraph from the 1913 Code is omitted from the Code of 1928, the intent is rather to simplify the language without changing the meaning, than to make a material alteration in the substance of the law itself . . .”

Therefore, it is the opinion of this office that in interpreting Section 1082 of the Revised Code of Arizona, 1928, it is necessary to refer to Chapter 155 of the Session Laws of 1921, for the purpose of ascertaining the intention of the legislature.

From a careful reading of said Chapter 155, we believe that it was the intention of the legislature in passing that chapter, to place high school boards of counties of the fourth class under a special statute and to provide a separate and distinct mode of procedure for their operation; and excluding them from the general provisions for the operation of other high school boards in the state.

Therefore we are of the opinion that applying the rule of statutory construction as laid down by the Supreme Court in the case of *In re Sullivan's Estate*, supra, that it was not the intent of the legislature in omitting certain parts of said Chapter 155 in the revision of the 1928 Revised Code of Arizona, to materially alter that chapter, but merely to simplify the language; and that for the purpose of a practical operation of said Section 1082, it is necessary to refer

to Chapter 155 and that the provision therein contained relative to the authority of high school boards in counties of the fourth class, to issue warrants direct on the county treasurer, is effective.

The next question presented by Mr. Gibbons is, "whether or not the St. Johns High School may maintain a branch high school at Sanders, Arizona?"

It is the opinion of this office, there is no authority permitting the St. Johns High School district to maintain and operate a branch high school at Sanders and the only way a high school can be established there is by following the method set forth in the Revised Code of Arizona, 1928, by holding an election of the registered electors of that county.

The third question presented by Mr. Gibbons is "whether or not Mr. Eddie Schuster who is a stock holder in the corporation of A & B Schuster Company, may contract with the high school district for supplies, etc., to be purchased by such district.

I am enclosing herewith a copy of an opinion previously rendered by this office upon this question which I am sure will fully answer the question.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

July 9, 1937.

Mr. Hyrum K. Mortensen,
Principal Pomerene Public School,
Pomerene, Arizona.

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office concerning the

hiring of teachers and other employees for the school who are related to members of your school board.

It is provided by Section 1352b of the 1936 Code Supplement, of Arizona, as follows:

"Employment of relatives unlawful. It shall be unlawful for an executive, legislative, or judicial officer to appoint or vote for the appointment of any person related to him by affinity or consanguinity within the third degree to any clerkship, office, position, employment or duty in any department of the state, district, county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member . . . The designation executive, legislative, ministerial or judicial officer includes . . . public school trustees . . ."

It is therefore the opinion of this office that in accordance with the above section a Board of School Trustees may not enter into a contract employing teachers or other employees for the district, when they are related to such person by affinity or consanguinity within the third degree.

Trusting that the above fully answers your inquiries, I remain,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General

July 13, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Riggins.

Dear Sir: .

This will acknowledge receipt of your letter of July 6th requesting an opinion on the following question:

"A high school student residing in a certain high school district attends a high school in an adjoining district. Which district receives the average daily attendance of this student, the sending or receiving district?"

In answer to this question we wish to refer you to Section 1011, subdivision 5, R. C. A. 1928, wherein it provides as follows:

"The board of trustees may admit pupils from any other district upon the written permit from the board of such other district; provided, however, that if the board admits a pupil from any other district without such written permit, the attendance of such pupil shall be credited to the district in which such pupil resides."

It is therefore the opinion of the Attorney General that, if the receiving district admitted the student upon written permit from the board where said student resided, the receiving district is entitled to the average daily attendance of such student. But, if the receiving district did not admit the pupil upon written permit, then the average daily attendance shall be credited to the district in which such pupil resides.

Trusting that this fully answers your inquiry, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

July 13, 1937.

Dr. Grady Gammage, President,
Arizona State Teachers' College,
Tempe, Arizona.

Dear Sir:

Re: Slayton v. Arizona State Teachers' College at Tempe.

We have on hand a copy of your letter written to Mr. V. L. Hash, Attorney. We also have the original letter written by Mr. Hash to you with reference to a judgment obtained against your school for \$192.00, together with costs allowed in the sum of \$25.05 and interest at the rate of 6%.

If this judgment was obtained in a court of competent jurisdiction, and if it is an obligation of your school, I would suggest that you report the matter to the Board so that they may take proper action in satisfying said judgment. Under the provisions of Section 4384, Revised Code of Arizona, 1928, a report must be made to the Legislature at each session by the Governor of all judgments rendered against the State. The judgment to which you refer should be reported so that funds may be appropriated for its satisfaction.

Very truly yours,

JOE CONWAY,
Attorney General.

ALBERT M. GARCIA,
Assistant Attorney General.

Approved:
E. G. FRAZIER,
Special Assistant Attorney General.

July 31st, 1937.

Dr. T. J. Tormey, President,
Arizona State Teachers' College at Flagstaff,
Flagstaff, Arizona.

Dear Dr. Tormey:

We have your request of June 22nd for an opinion as to the disposition and handling of certain funds received by the Arizona State Teachers' College at Flagstaff from sources other than the state appropriation and funds derived from the state lands.

The precise question presented by your letter is whether the Board of Education of the Arizona State Teachers' College at Flagstaff is bound by, and should conform to, covenants or agreements lawfully entered into by the Board under powers granted by the Educational Institutions Act of 1934, or whether a part of the general appropriation passed

by the last regular session of the Legislature for the Arizona State Teachers' College at Flagstaff, containing appropriations of these funds for the college, should govern. The question of the application of Section 2617, R. C. A. 1928, is disposed of by the provision of the Act of 1934, hereinafter referred to, expressly making the provisions of that Act controlling over any general or special Statutes then existing.

We are of the opinion that the Arizona State Teachers' College at Flagstaff is bound by, and should conform to, any and all agreements entered into under the provisions of the Educational Institutions Act of 1934 with reference to the deposit of certain revenues of the institution and to the application of these revenues to the payment of bonds issued under this Act and sold to the Federal Government.

We do not feel that it is necessary to consider the question raised as to the constitutionality of the portion of the appropriation act quoted by you in your letter as being in conflict with Section 20 of Article IV of the Constitution of Arizona, inasmuch as the question is controlled by the provision of the Constitution of the United States forbidding the enactment of any legislation by any state impairing the obligation of any contract theretofore entered into.

The Supreme Court of the State of Arizona, in the case of **Maloney v. Moore**, 52 Pac. (2d) 467, had before it a somewhat similar situation, where a law enacted subsequent to the issuance and sale of certain bonds of the Roosevelt Water Conservation District, a municipal corporation, changed the provision made by the statute in force at the time of the issuance and sale of the bonds for the payment of the bonds. The Supreme Court held in that case that the Legislature might not, by a change in the law, deprive the holder of the bonds of his right to have certain revenues applied to the payment of the bonds, and that likewise, the Legislature might not, by a change in the law, substantially change the time, place or manner of payment of the bonds.

Under the express provisions of the Educational Institutions Act of 1934, the provisions of that Act are made controlling over all special or general statutes then existing, and it therefore operates to suspend, at least, the provisions of Section 2617, insofar as such provisions govern the disposition of funds derived by the institution in question from

sources such as those enumerated in the Act of 1934 and pledged to the payment of bonds issued and sold under the authority of that Act.

We conclude, therefore, that you should conform to the agreements and stipulations entered into by the Arizona State Teachers' College at Flagstaff at the time these bonds were issued, on the strength of which the Government purchased the bonds from your institution, and that insofar as the appropriation act of the last regular session attempts to otherwise appropriate funds lawfully pledged for the payment of these bonds or the interest thereon, such attempted appropriation is contrary to the Constitution of the United States and of no force or effect.

We trust that this answers your inquiry.

Yours very truly,

JOE CONWAY,
Attorney General.

MARK WILMER,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

August 18, 1937.

H. E. Hendrix, Superintendent
of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Riggins.

Dear Sir:

This will acknowledge receipt of a letter directed to your office from Mrs. Edith Martin, County Superintendent of Schools of Apache County, in which information is desired concerning the disbursement of funds of a high school district in a county of the fourth class.

In answering this question it will be necessary to briefly state the background of the various legislative enactments of this question. The Legislature, during the session of 1921, enacted Chapter 155, and authorized the establishment of one or more county high schools in counties of the fourth class, wherein it was provided that in counties of the fourth class the county high school board of education may draw warrants direct on the county treasurer.

At the time of the revision of the laws of Arizona in 1928, Chapter 155 of the Session Laws of 1921 was condensed into one section, which appears in the 1928 Code as Section 1082. In that section all reference to the authority of high school boards of education in counties of the fourth class to issue warrants on the county treasurer was omitted.

The Supreme Court of Arizona has in many cases passed upon similar questions wherein certain sections were omitted from the 1928 Code, and, as was stated in the case of *In Re Sullivan's Estate*, 300 Pac. 193:

"We should presume that when a word, a phrase or a paragraph from the 1913 Code is omitted from the Code of 1928, the intent is rather to simplify the language without changing the meaning, than to make a material alteration in the substance of the law itself"

It is therefore the opinion of this office that in interpreting Section 1082, *supra*, it is necessary to refer to Chapter 155 of the Session Laws of 1921 for the purpose of ascertaining the intention of the Legislature, and that applying the rule of construction as laid down by the Supreme Court in the *Sullivan* case, we are of the opinion that Chapter 155 of the Session Laws of 1921 relative to the authority of high school boards in counties of the fourth class, is in effect.

Mrs. Martin, the County School Superintendent of Apache County, states in her letter that the county treasurer of that county refused to cash warrants issued by the high school board and secretary for the reason that they were not under bond. We have searched the statutes and fail to find any statute which requires the high school board or the secretary to be under bond.

I am returning herewith the letter from Mrs. Martin.

Yours very truly,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

August 19, 1937.

Mr. M. J. Hurley,
State Department of Education,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hurley:

I am in receipt of a letter addressed to your office from Mr. Douglas Brubaker, County School Superintendent of Greenlee County in which the following question is asked:

"Is it legal possible for a trustee in a rural school district to also serve as the school bus driver when the driver is hired by this office and paid out of the County School Reserve Fund?"

I presume that the authority for hiring and paying the school bus driver comes within the provision of Subdivision D of Section 1094 of the 1936 Supplement wherein it is provided in substance that the County School Reserve Fund may be used for the transportation of children to and from one and two room rural schools or for the transportation of children in unorganized territory to organized districts.

We are of the opinion that a school trustee may be hired as bus driver when hired by the county school superintendent and paid out of the County School Reserve Fund. The only prohibition contained in our statutes is Section 91, of the R. C. A. 1928, which prohibits a trustee from being interested in any contract made by the Board of Trustees.

Trusting that this fully answers your inquiry, I am,

Yours very truly,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

September 11, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Phoenix, Arizona.

Attention: Mr. W. H. Harless, Director of Research.

Gentlemen:

We have received your request of September 10th for an opinion as to whether the State Board of Health, or the Superintendent of Education, has authority to require teachers to pass a physical examination.

We note from an examination of Dr. Hughes' letter a copy of which accompanied your request, that the Arizona State Board of Health has not attempted to enact a rule or regulation requiring such a physical examination, the letter merely stating that they believe it advisable for the health and welfare of all the children of the state that such an examination be made.

However, with reference to the question asked, we are of the opinion that this authority is limited to the boards of trustees of the various schools of the state. Section 1045 R. C. A. 1928 prohibits the employment of teachers suffering from pulmonary tuberculosis and authorizes the various boards of trustees to require a physical examination as often as twice a year.

We believe that this question is resolved by the application of the general principle of statutory construction that when a statute specially imposes a duty or grants a power that such grant is exclusive and that general authority to make regulations must be construed subservient to the special grant of power.

We are, therefore, of the opinion that only the boards of trustees or the boards of education of the various school districts have authority to require this examination.

Yours very truly,

JOE CONWAY,
Attorney General.

MARK WILMER,
Assistant Attorney General.

E. G. FRAZIER,

September 16, 1937.

Mr. R. A. Holy, Superintendent,
Casa Grande Public Schools,
Casa Grande, Arizona.

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office upon the following question:

“Whether or not the Casa Grande School District which is the owner of several school buses used for the transportation of school children to and from school, may legally purchase liability insurance on these buses.”

There is no express statutory authority for a board of trustees to spend school moneys for the purpose of purchasing public liability insurance on busses owned and operated by the school district.

It is, therefore, the opinion of this office that the board of trustees of your school district cannot legally expend school moneys for the purpose of purchasing liability insurance for such busses.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

September 14, 1937.

Mr. Joseph B. Judge,
County Attorney,
Tucson, Arizona.

Dear Mr. Judge:

This will acknowledge receipt of your letter of September 4, in which you ask an opinion from this office upon the following question:

"May a County School Superintendent refuse to issue a warrant for the payment of items submitted to him upon proper vouchers by school trustees, which items are included in the budget of the district?"

This office, under a letter dated April 27, 1937, rendered an opinion to Mr. Marvin L. Burton, County School Superintendent at Tucson, upon this same question, a copy of which is enclosed.

In answer to your second question, that is:

"Is it your opinion that, where the Board of Trustees, contemplating the purchase of a site and having the money available for that purpose, have followed the procedure specified in subdivision 10 of Section 1011, are the trustees to present the question of whether or not the site shall be purchased, or the building constructed, to a vote of the people in the district?"

The members of this office have studied this question quite seriously and have come to the conclusion that it is necessary to call a vote of the district before the Board of Trustees may purchase a building site or purchase school buildings from funds secured under the provisions of subsection 10 of Section 1011, R. C. A. 1928.

We believe that under this interpretation of subsection 10 effect can be given to both that subdivision and also subdivision 3. We believe that under subsection 10 the Board of Trustees may include in their annual budget an amount not to exceed 10c on each \$100.00 of valuation of the property of such district, and if such levy is made and the money received thereunder, it then becomes necessary under the provisions of subsection 3, before such money can be expended, to do so only after a vote of the district.

Trusting that the above fully answers your inquiries,
I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

September 14, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
State Capitol Building,
Phoenix, Arizona.

Attention: Mr. Harless.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you inclosed a letter from Mrs. Martin, County School Superintendent of Apache County, requesting an opinion with reference to the employment of a teacher in a school district and the payment of such teacher's salary from the county school reserve fund.

Under the provisions of Section 1094, subsection (d) Revised Code of Arizona, 1928, as amended, it is expressly provided for what purposes the county school reserve fund may be used. We are of the opinion that, under the above-quoted section, the county school reserve fund may not be used for the payment of a teacher's salary.

In answer to Mrs. Martin's second question, that is:

"Whether or not is is legal for the school district to own jointly with local merchants a light plant and water plant and whether or not the school district can pay part of the expenses in the operation of this equipment."

We are of the opinion that a school district may not legally enter into a joint business venture with private in-

dividuals for the operation of the light and water plants, as outlined in your letter.

We believe that it would be advisable and legal for the school district to contract with the owners of such water and light plants for the use of water and lights for the school district, and if this is done, such expenses will be legal charges against the school district.

Trusting that the above fully answers your inquiries, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

September 16, 1937.

Mr. H. E. Hendrix,
State Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hendrix:

We submit herewith our opinion in reference to questions presented to your office by Mr. Marvin L. Burton, county school superintendent of Pima County concerning contracts entered into by school district No. 1 in Tucson with their teachers. As stated in Mr. Burton's letter these contracts provide for payment during the nine months school is in session and an additional three months pay in one lump sum payable at the end of the school year.

It is our opinion that the school district may enter into these contracts and if the method of payment is agreeable to both contracting parties, payment may be made in that manner so long as the full amount of such teacher's salary is paid before the end of the fiscal year.

It is further my opinion that a teacher who leaves the employ of the district during the school year and has taught

less than the entire term of nine months or 180 days would be entitled to receive for her services an amount which would bear the same proportion to the entire salary as the number of days taught would bear to 180.

I am returning herewith Mr. Burton's letter.

Trusting that the above fully answers the inquiries contained in Mr. Burton's letter, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

E. G. FRAZIER,
Special Assistant Attorney General.

September 20, 1937.

Mr. Geo. J. Coleman, Principal,
Willcox Grammar School,
District No. 13,
Willcox, Arizona.

Dear Sir:

We are in receipt of your letter of September 16th, in which you request an opinion from this office on the following question:

“Whether or not it is lawful for a school district to carry a mutual type of insurance on district owned school buses.”

Under the provisions of Section 1011, Subdivision 3, Revised Code of Arizona, 1928, it is the duty of the board of trustees to insure the school property of the district.

However, we are of the opinion that a school district may not legally spend school funds for the purpose of purchasing liability insurance for school buses for the reason that a school district is not liable for the negligence of its agents when such agents are engaged in a governmental function. Therefore it is our opinion that under the provisions of the above quoted section a school district may only

purchase fire or theft insurance on such buses, and the cost of such insurance would be a proper charge against the school district.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

September 21, 1937.

Mr. J. B. Seale, Clerk,
Texas School District No. 7,
Webb, Arizona.

Dear Sir:

This will acknowledge receipt of your letter of September 15th in which you request an opinion from this office upon the following facts: That is, a family residing in your school district about ten miles from the school are seeking transportation for their four children and at present are going to another school and you ask:

"If we pay their transportation would we get their attendance, or would it go to the other school?"

It is provided by Section 1011, Subdivision 5, Revised Code of Arizona, 1928 as follows:

"The board of trustees may admit pupils from any other district upon the written permit from the board of such other district; provided, however, that if the board admits a pupil from any other district without such written permit the attendance of such pupil shall be credited to the district in which such pupil resides."

It is therefore apparent from this section that if the children reside in your district and are attending a school outside of your district without the written permit from your board of trustees, your school district is still entitled to the attendance of such pupils.

The above quoted section is also applicable to your second question. When children are attending school in your

district with the permission of the trustees of the district in which they reside, your district is entitled to be credited with their attendance. However, your district is not entitled to the attendance of pupils who are enrolled in your school and reside in another district, unless written permission is obtained from the board of trustees of the district in which such children reside.

Trusting that this fully answers your question, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

September 25, 1937.

Mr. H. K. Mangum,
County Attorney,
Flagstaff, Arizona.

Dear Karl:

This will acknowledge receipt of your letter of September 22d in which you state that the Flagstaff School District has recently consolidated with a nearby school district and that the Board of Trustees of the Flagstaff District now desires to sell the school site belonging to the district which consolidated with the Flagstaff District, and you ask whether or not it is necessary to submit the proposition of sale of said school site to a vote of the qualified electors of the district.

Your attention is directed to the provisions of Section 1001, Revised Code of Arizona, 1928, wherein it is provided in substance as follows:

“* * * The property of the several districts shall become the property of the newly formed district;
* * *”

It is further provided in Subsection 3 of Section 1011, Revised Code of Arizona, 1928 as follows:

“* * * when directed to do so by a vote of the

district, construct school buildings, or purchase or sell school sites; * * *"

It is therefore the opinion of this office that it will be necessary to submit this proposition to a vote of the registered electors of the district as provided by the above quoted sections.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

September 30, 1937.

Mr. H. E. Hendrix, Superintendent
of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Harless.

Dear Sir:

This will acknowledge receipt of your recent inquiry requesting an opinion as to whether or not, due to the shortage in State funds for the purpose of purchasing State adopted textbooks, a school district may use district funds for the purchase of State adopted textbooks.

Your attention is directed to Section 1048, Revised Code of Arizona, 1928, as amended, which specifically deals with the method of furnishing and paying for free textbooks for use in common schools. This section provides as follows:

"Free textbooks. **The state shall furnish free textbooks** for the common schools and for all state welfare institutions maintaining educational facilities, and the **cost thereof and the contingent expenses necessarily incurred** in complying with the provisions of this article **shall be appropriated out of the general fund, for the use of the state board of education.** The several county superintendents of schools shall furnish to the secretary of the state board of education, on or before the first day of

April in each year, a complete list of textbooks necessary for the schools of their respective counties, and the secretary of the board of directors of state institutions shall furnish a list of textbooks necessary for state welfare institutions, and the state board of education shall supply the books requested."

It is my opinion that a school district may not use district funds to purchase State adopted textbooks.

This opinion is based upon the general rule of statutory construction that where authority is given to do a particular thing and the mode of doing it is prescribed, it is limited to be done in that mode and all other modes are excluded.

Applying this rule to Section 1048 supra, we find that authority is given to furnish and pay for textbooks for common schools and that the procedure for obtaining such textbooks is set forth therein. Therefore, the furnishing of textbooks is limited to the provisions of this section and any other manner or method of furnishing textbooks is excluded.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

October 1, 1937.

Mr. H. E. Hendrix, Superintendent
of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Harless.

Dear Sir:

In response to your request for an opinion as to whether or not Edna Garcia of Naco, Arizona, upon the facts hereinafter stated, may attend the public schools of that city without paying tuition.

The information submitted by your office shows that Edna Garcia was born in the United States and her parents

are Mexican citizens now permanently residing in Mexico. It is claimed that Edna Garcia resides permanently with her grandfather in Naco, Arizona.

It is provided in Section 1030, Revised Code of Arizona, 1928, as follows:

“Every school, other than high schools, unless otherwise provided by law, must be open for the admission of children between the ages of six and twenty-one years, **residing in the district.** * * * The board of trustees may admit adults and children not residing in the district, but within the State upon such terms as it prescribes. The children of non-residents of the State may be admitted upon the payment of a reasonable tuition fixed by the board. * * *”

It is also provided in Section 1033, Revised Code of Arizona, 1928, as follows:

“**Every person** in the State having control of any child between the age of eight and sixteen years, shall send such child to a public school for the full time that such school is in session within the district **where such child resides.** * * *”

The last above quoted statute makes it the duty of **every person** having control of a child of compulsory school age to send such child to school and imposes a penalty for the neglect of such duty. It must be noted that not parents and guardians alone, **but every person having control of a child between school age.** It is evident, therefore, that the language used above is designedly used to recognize the mobility of school population or persons of school age.

Generally speaking the residence of a minor child follows that of his parents. But this is not so in considering the residence of a child for attending school under our statutes. We do not believe that our statutes intended that a child must acquire a residence in the district in the technical sense of the term.

The following, we believe, is the rule as to what constitutes residence entitling children to the privileges of public school:

“So far as a rule can be deduced from the cases upon this subject, it seems to be that a child is entitled to the benefit of the public schools in the

district in which it lives, if it has gone there in good faith for the purpose of acquiring a home, and not for the purpose of taking advantage of school privileges, but that it will not be permitted to go into a district chiefly for the purpose of getting school advantages."

It is the general rule and has been followed by a majority of the courts in passing upon the question that it is the duty of the boards of trustees to determine in the first instance who are and who are not non-resident pupils. The board of trustees in acting in such matters act in a quasi-judicial capacity and the courts will not interfere with the proper exercise of its discretion.

It is our opinion that under the facts above outlined and following the rules herein set forth, it is the duty of the board of trustees of that district to determine the residence of Edna Garcia. If the board is satisfied that the child resides in Naco, Arizona, with her parents' consent, and that she is cared for by her grandfather and expects to live with him permanently, she has a right to attend the schools in that district, without the payment of tuition.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

October 11, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Phoenix, Arizona.

Attention: Mr. Hurley:

Dear Mr. Hendrix:

We are in receipt of a letter from Mr. C. E. Rose, Superintendent of Public Schools at Tucson, Arizona, in which an opinion is asked upon the following question:

"Is it possible under Section 1089 to excuse a child from school to take piano lessons from a teach-

er who holds an Arizona certificate and still credit the child with a full day's attendance at school?

We are of the opinion that a child who is excused from school to take piano lessons from an accredited teacher and such child is given credit by the school for such instruction, that a full day's attendance at school shall be given.

In answer to your second question, that is

"Is is legal to dismiss a school a half hour early once a month in order that the teachers may attend the Parent Teachers' Association of that building and still count a full day's attendance?"

Section 1089, Revised Code of Arizona, 1928, as amended provides as follows:

"A minimum school day's attendance for pupils of the first and second grades of the common schools shall be not less than two hundred and forty minutes, * * * a minimum school day's attendance for pupils of grades three to eight, inclusive, of the common schools, shall not be less than three hundred and sixty minutes * * *"

It is apparent from reading the above quoted section that a school must be kept open the number of hours set forth in that section, and we are of the opinion that it would not be legal to dismiss school half hour early once a month for the purpose of having the teachers attend the Parent Teacher's Association, and if such is done a full day's attendance cannot be counted.

Trusting that this fully answers your questions, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

October 13, 1937.

Mr. H. E. Hendrix, Superintendent
of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Hurley.

Dear Sir:

This will acknowledge receipt of a letter addressed to your office from Mr. Alfred P. Freestone of Sedona, Arizona, in which he requests an opinion concerning the consolidation of School District No. 59, Yavapai County, with a school district known as Grasshopper Flat.

Upon investigation with Mr. Hurley of your office we find that these two school districts are not in the same county, and it is the opinion of this office that under our statutes a consolidation of school districts may not be made where the school districts are in different counties.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

October 13, 1937.

Mr. Glenn Copple,
County Attorney,
Yuma, Arizona.

Dear Mr. Copple:

This will acknowledge receipt of your letter of October 7th in which you ask for an opinion concerning the payment of traveling expenses incurred by a principal of a school district in Yuma County, and whether or not such expenses may be legally paid from school funds.

The Supreme Court of the State of Arizona in several cases stated:

"The first and principal rule to be followed, in determining whether a claim against a county is

legal, is that the person making the claim must show some statute affirmatively authorizing it, either directly or by reasonable implication." *Austin v. Barrett*, 16 Pac. (2) 12; *County v. Barnes*, 9 Ariz. 42.

We are of the opinion that this same rule must be applied in determining whether or not a claim against a school district is legal.

There is no provision of our statute which permits the payment of traveling expenses incurred by the principal of a school district, and we are therefore of the opinion that such expenses may not be legally paid out of school funds.

Trusting that this fully answers your inquiry, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

October 13, 1937.

Mr. H. E. Hendrix, Superintendent
of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Hurley.

Dear Mr. Hendrix:

This will acknowledge receipt of your letter of October 11th requesting an opinion from this office on the following question:

"May a father-in-law be a member of the school board without jeopardizing the position of the teacher, where the other members of the board are not related, within the degree as specified as under Section 1352b."

We are of the opinion that under the provisions of Section 1352b the father-in-law mentioned in your question may be a member of the school board, and this would in no way jeopardize the position of the teacher of that district who is related to such member.

In other words, it is the opinion of this office that the provisions of Section 1352 are operative and apply to public school trustees, and that the legislature in passing said Section 1352b repealed the provisions of Section 1011, subdivision 3 of the Revised Code of Arizona, 1928.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

November 8, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Phoenix, Arizona.

Dear Sir:

Under date of October 1st you forwarded to us a letter from James A. Diffin, Superintendent of Superior Public Schools, wherein he asks questions set out below:

- (1) May school money derived from tax levies be used to pay for
 - (a) athletic uniforms and equipment purchased by the school and used by school athletic teams?
 - (b) uniforms and equipment used by school bands, orchestras, glee clubs, etc?
- (2) May school moneys derived from tax levies be used to pay
 - (a) the doctor bills of school athletics injured while participating in the school's athletic program?
 - (b) fees of persons engaged by the school to officiate at interscholastic contests of any sort?
 - (c) transportation of school athletic teams to and from interscholastic contests.

- (3) May a school bus bought with school money derived from tax levies be used to transport school athletic teams?

In answer to question 1, section a, we are of the opinion that money derived from tax levies may be used for the purchasing of athletic uniforms and equipment to be used by the school and by the athletic teams representing such schools.

The Supreme Court of the State of Arizona in the case of *Alexander v. Phillips*, 254 Pac. 1056, has held that physical education is one of the special subjects permitted by law. The court in the case said:

"... we are of the opinion (1) that physical education is one of the branches of knowledge legally imparted in the Phoenix union high school; (2) that competitive athletic games and sports in both intra and inter mural games are legal and laudable methods of imparting such knowledge. . ."

Certainly if physical education is permitted to be taught in the schools, the necessary equipment and supplies to be used in the teaching of that subject may be purchased by the school.

Music is also one of the special subjects that may be taught in the public schools. We are of the opinion that equipment and supplies necessary for proper instruction in this subject may also be purchased by the schools.

In answer to question 2, section a, it is the opinion of this office that medical services necessary for a student injured while participating in the school's athletic program, may only be furnished by the school in so far as the board of trustees is empowered to employ physicians under the provisions of subsection 3 of Section 1011, Revised Code of Arizona, 1928.

In answer to sections b and c under question 2, it is our opinion that money derived from tax levies of the district may be used for these purposes.

In answer to your question 3, we are of the opinion that the school bus, purchased with school moneys derived

from tax levies, may be used to transport school athletic teams.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

November 18, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Hurley.

Dear Sir:

I have before me a letter dated November 2, 1937, from Ruby E. Fulghum, County School Superintendent of Cochise County, which is addressed to your office, wherein an opinion is requested concerning certain questions that have arisen as a result of the school election held in the Buena District No. 68 of Cochise County.

It appears from the facts as stated in the above mentioned letter, that several persons residing on the Military Reservation, which is situated near the Buena District were assessed with Buena School District taxes for their motor vehicles and were permitted to vote at the school election held in that district. It is asked whether or not these persons can be counted as legal voters in that school district.

It is impossible for us to render an opinion on this question for the reason that the facts are so insufficiently stated that we have nothing on which to base an opinion.

For your information, I call your attention to Section 1009, Revised Code of Arizona, 1928, which sets forth the qualifications of the voters for school districts which reads as follows:

“Every person who is a qualified elector of the state, and who has been a resident of the district for thirty days immediately preceding the day of

election, and who is the parent or guardian of a minor child residing in the district, or who has paid a state or county tax, exclusive of poll, road or school tax, during the preceding year, is eligible to election to the office of trustee, and is a qualified elector at any school election. * * *

One of the necessary elements to be a qualified voter in a school election, which, as stated in the above quoted section, is to be a resident of the district for thirty days immediately preceding the day of election. If the persons living on the Military Reservation as above mentioned, have not resided in the district for thirty days immediately preceding the election, they are not eligible to vote. However, if they are residents of the district for thirty days immediately preceding the election, they are legal voters of the district. But as above stated, I cannot answer your question due to the fact that the necessary information is not contained in Mrs. Fulghum's letter.

Section 1326, Revised Code of Arizona, 1928, provides the procedure and grounds for contesting an election of this type.

Under the provisions of Section 1010, Revised Code of Arizona, 1928, it is the duty of the board of trustees of any school district in which an election has been held, to declare the person receiving the highest number of votes elected, and to issue to such person a certificate of election.

It is therefore the duty of the Board of Trustees of the Buena District to issue a certificate of election to the person or persons receiving the highest number of votes and such person shall be the legally elected trustee until some legal action is commenced under the provisions of Section 1326 Supra.

In answer to the County School Superintendent's question as to her power to fill a vacancy by appointment, I can only say that there is no vacancy in the Buena District until after a contest has been instituted in a court in that county and that court has declared the election illegal.

For the information of your office, the Attorney General wrote to the Superintendent of Schools at Bisbee on November 8, 1937, and requested that she obtain this information from the County Attorney of that County and if the County Attorney then desired the assistance of this

office, to inform us and to date we have never received any request from the County Attorney.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

December 6, 1937.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Phoenix, Arizona.

Attention: Mr. Harless.

Dear Sir:

This will acknowledge receipt of a letter addressed to your office from the Clerk of School District No. 35, Yavapai County, requesting an opinion as to whether or not School District No. 35 is obligated and may legally pay to Phoenix Union High School the sum of \$48.56 as tuition for one Melvin Biggs, said pupil being a resident of District No. 35 but attending high school in Phoenix.

Your attention is directed to Section 1075, Revised Code of Arizona, 1928, which provides in part as follows:

"Non-resident pupils of school age, otherwise qualified, residing in the county in which there is a high school but in a district having no high school nor a school wherein high school subjects are taught, shall be admitted to such high school on the same conditions as residents upon paying a reasonable fee, for each pupil, to be fixed by the board in charge of the high school, not to exceed however, such amount as would equal the average cost per pupil of the high schools of the county, after deducting the amount received from the state and county, such payments to be made monthly.

* * *

This section contemplates that non-resident pupils of any high school district who live within the county and in the district having no high school or school where high

school subjects are taught, must be allowed to enroll in the high school of a district maintaining a high school.

It is further my opinion that no high school is compelled to receive any student from without the county in which the high school is located.

I am further of the opinion that, and in accordance with previous opinions rendered by this office, no high school district can receive and educate a non-resident pupil of the county unless the pupil pays a tuition to be fixed by the Board which will fully compensate the district for the cost of his education. If the pupil comes from an outside county but within the State, the receiving high school is entitled to receive the State apportionment available for this pupil, but not the county apportionment of the county in which the high school is located. Tuition for such a pupil must be paid equal to the difference between the cost of his education in the high school and the State apportionment.

Therefore I am of the opinion that the sum of \$48.56 is not a legal charge against District No. 35, Yavapai County, and that district is not obligated to pay the same.

This identical question is again raised in a letter addressed to your office from Mr. A. J. Mitchell, Superintendent of Schools, Nogales, Arizona, and it is my opinion that the Nogales High School District must receive their tuition fees from the parents of the children mentioned in their letter less the amount received from the State apportionment.

Trusting that the above fully answers your inquiries, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

December 23, 1937.

Gila County School Superintendent,
Globe, Arizona.

Dear Madam:

This will acknowledge receipt of your letter of December 10th in which you request an opinion upon the hereinafter stated facts.

You state that a certain Mrs. Lyle moved from the Roosevelt School District No. 3 into Globe School District No. 1, rented a house and placed her daughter in the Globe High School, and that Mr. Lyle resides in the Roosevelt School District, and you ask:

“Is Roosevelt District No. 3 liable for the tuition of Louise Lyle or is she a resident of the Globe District?”

Your attention is directed to Section 1075, Revised Code of Arizona 1928, wherein it is provided in part as follows:

“* * * Non-resident pupils of school age, otherwise qualified, residing in the county in which there is a high school, but in a district having no high school, nor a school wherein high school subjects are taught, shall be admitted to such high school on the same conditions as residents, upon paying a reasonable fee for each pupil to be fixed by the board in charge of the high school, not to exceed, however, such amount as would equal the average cost per pupil of the high schools of the county after deducting the amount received from the state and county, such payment to be made monthly. Said tuition shall be a legal charge against the school district in which said non-resident pupil resides, * * *”

It appears from the facts as stated in your letter that this family is actually a resident of Roosevelt School District No. 3, and the mother of the family merely moves to Globe during the school year for the purpose of sending her daughter to the Globe High School.

It is our opinion that the permanent residence of this family continues in the Roosevelt School District No. 3, and that therefore the Roosevelt School District No. 3 is liable for the tuition as provided under the above quoted section.

You further state in your letter of December 10th that

there are certain other pupils who move into Globe each year when school opens and move away as soon as the school year closes.

We are of the opinion that the tuition costs of these pupils are a legal charge against the sending district as they cannot be considered residents of the Globe District.

Trusting that the above fully answers your inquiry, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

January 6, 1938.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hendrix:

I have your letter of January 4 requesting an opinion upon the following question:

“May Globe School District Number One send a teacher to Los Angeles in exchange for a Los Angeles teacher and then continue to pay their own teacher while she is teaching outside the local district?”

It is the opinion of this office that the Globe School District Number One may not legally pay a teacher who is not actually and physically in the Globe School District Number One rendering services for that district during the period of time for which she is paid.

We are also of the opinion that the County School Superintendent would be personally liable for issuing her warrant upon the County Treasurer in favor of a teacher for her salary when such school superintendent knows of her own knowledge that such teacher is not rendering

services within the district. This opinion is based upon the following reasons:

1. It is provided by Section 1088 R. C. A. as amended as follows:

“There shall be appropriated in the general appropriation act for **common and high school education in the state** during each fiscal year a sum of money not less than \$25.00 per capita per annum on all pupils in average daily attendance in the common and high schools of the state. * * *”

It is further provided in Section 1090 R. C. A. 1928 as amended as follows:

“On or before the first day of July of each year the trustees of common school districts and the board of education of high schools shall file with the County School Superintendent an itemized statement of the amount of money needed for defraying the expenses of the schools **within their respective districts** for the ensuing year. * * *”

The constitution of the State of Arizona, Article 9, Section 3, reads as follows:

“No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied.”

Certainly under the provisions of Section 1088 and 1090 supra, the authority to levy a tax for the common and high schools provide that such tax levied money shall be used for education in the state and in the district.

2. For the further reason that the contract entered into between the school board and the teacher was for the teacher's personal services and these services cannot be performed by another person, and such contract is not transferrable

Therefore, as above stated, we are of the opinion that should the board of trustees and the county school superintendent issue a voucher and warrant to a teacher who is not rendering services in the district that such payment would be illegal.

In answer to your second question, that is:

"Is it possible to consider the Los Angeles teacher a substitute, pay her accordingly, and pay the Globe teacher the difference between the substitute's salary and the contract salary of the Globe teacher?"

I am unable to answer this question for the reason that I do not have a copy of the Globe teacher's contract and am not familiar with the procedure followed by the school district in employing a substitute teacher.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

January 19, 1938.

Mr. W. F. Preston,
President,
Board of Trustees,
Pima Junior High School,
Pima, Arizona.

Dear Mr. Preston:

I have your letter of January 17 in which you desire an opinion from this office concerning the bonds voted in your district October 2, 1937. You state in your letter:

"At the time of voting these bonds, we were hopeful of getting a federal grant. Not having received the grant, we desire to know if the advertisement of the bonds according to the information enclosed, which was advertised in the Graham County Guardian, could be applied to building other than with the federal loan. Are we justified in going ahead and advertising these bonds for the purpose designated in the advertisement?"

I have checked the clipping you enclosed in your letter which is the published notice of a special school bond election in your district, and find that the purpose for the

election was to issue \$34,000 worth of bonds for the purpose of raising money for improving school grounds, building a school house on same and supplying it with furniture and apparatus.

The purpose for which this election was held is in accordance with Section 1014 R. C. A. 1928 and appears to be in due legal form.

It is therefore the opinion of this office that you may legally advertise these bonds as provided by law and use the money as provided in the notice of election, that is for improving the school grounds, building a school house on same and supplying it with furniture and apparatus.

The fact that you were not able to receive a federal grant in no way voids the purpose for which the election was held, and if you can receive additional funds through a W. P. A. project, that would be perfectly permissible.

Trusting that the above fully answers your inquiry and assuring you of our cooperation in any future matters that may arise in this connection, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

March 3, 1938.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Building,
Phoenix, Arizona.

Attention: Mr. Harless.

Dear Sir:

I have your letter of recent date in which you request an opinion concerning the provisions of Section 1094, R. C. A. 1928, as amended, wherein it reads as follows:

"Whenever it appears that a common or high school which has been maintained for four months, has an average daily attendance greater than it was during the preceding year, the Board of Trustees or Board of Education of such district may present a petition to the county superintendent requesting authority to incur liabilities in excess of the estimate of such district, in such amount as the board shall deem necessary to properly provide for such increased attendance. * * *"

You ask the following questions in reference to that section:

1. Does the reference, four months, mean the first four months or any four months after school has opened?

It is my opinion that the reference to four months means any four months after the school has opened.

2. If more than four months have elapsed, should consideration be given to all months that have elapsed or a selected four months from the elapsed time?

I am of the opinion that the average daily attendance should be computed on the basis of the average attendance during the period of time the school has been opened.

3. In comparing the average daily attendance of the period in question (four months or otherwise) should it be compared to the average daily attendance for the previous year or for the highest six months of the previous year?

It is my opinion that in comparing the average daily attendance it should be compared to the average daily attendance for the entire previous year.

Trusting that the above fully answers your inquiry, I am,

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

March 3, 1938.

Hon. Cecil J. Harrington,
Justice of the Peace,
Wenden, Arizona.

Dear Sir:

I have your letter of recent date requesting an opinion as to the legality of the present certification requirement concerning principals or superintendents of school districts having an average daily attendance of three hundred or more pupils.

I am of the opinion that under the provisions of Section 989, Subsection 7, Revised Code of Arizona, 1928, that the State Board of Education may make reasonable rules and regulations concerning this subject, and that the power of the Board under said Subsection 7 includes the right to make rules and regulations regarding the certification of superintendents and principals.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

March 3, 1938.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Phoenix, Arizona.

Attention: Mr. Harless.

Dear Sir:

I have your letter of recent date relative to certain questions presented your office by Dr. E. E. Fuller, President of Gila Junior College.

You ask: "Is it within the power of the Board of Education of the Gila Junior College to establish under authority of the State law a trade or vocational school requiring high

school graduation or a minimum age of eighteen for admission?"

Under the provisions of Section 1086, Revised Code of Arizona 1928, it provides for the establishment of a junior college and that the Board of Education of a junior college shall possess the same powers and have the same duties as a high school Board of Education.

Under the provisions of Section 1060, R. C. A., 1928, it provides:

"Any school district in the state may organize schools or classes in accordance with the provisions of said act and in accordance with the rules and regulations of the state board for the control of vocational education."

It is therefore my opinion that the Board of Education of the Gila Junior College may establish a trade or vocational school requiring high school graduation or a minimum age of eighteen years for admission.

In answer to your second question, that is: "If this Board of Education may establish such work, will it be eligible for reimbursement from federal and state funds, as provided in the Smith-Hughes Act, George-Dean Act, and paragraphs 1059 and 1060 of the Revised Code of 1928?"

I am of the opinion that if the Board of Education of the Gila Junior College does establish such a trade vocational school they are entitled to reimbursement under the provisions of the above quoted acts.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

March 17, 1938.

Mr. Lafe Nelson,
President, A. E. A.
Safford, Arizona.

Dear Mr. Nelson:

I have your letter of March 14th in which you request an opinion from this office as to whether or not the Governor might use emergency funds for the purchase of state school text books.

Your attention is directed to Section 2620, R. C. A. 1928, wherein provision is made granting to the Governor the right to incur liabilities and expenses in the event of certain contingencies or emergencies. This section further provides that contingencies or emergencies are invasions, riots or insurrections, epidemics of disease, acts of God resulting in damage or disaster to the works, buildings, or property of the State, or which menace the health, lives or property of any considerable number of persons in any community of the State.

It is our opinion that text books shortage in elementary schools cannot be classed as an emergency under the provisions of the above quoted section, and that the Governor may not declare an emergency for taking care of this matter.

I wish to again apologize to you for the delay in this opinion but assure you that your original letter must have been misplaced in the office.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

March 29, 1938.

Mr. H. E. Hendrix,
Superintendent Public Instruction,
Phoenix, Arizona.

Attention: Mr. Harless.

Dear Mr. Hendrix:

I have your letter of recent date in which you request an opinion upon the hereinafter stated questions with reference to the matter of reimbursing the schools from the George-Deen fund as provided by the Federal Government.

Your questions are as follows:

"1. Does the Arizona State Board of Education have authority to accept the benefits of the George-Deen Act adopted June 8, 1936.

"2. If the State Board of Education may accept the benefits of the George-Deen Act, is it restricted to the '50 percent reimbursement for teachers' salaries' provisions as set forth in paragraph 1060, RCA 1928, or may it reimburse on the basis of 66 2/3 percent of expenditures for teachers' salaries as set forth in the Federal Act of 1936?"

Your attention is first directed to Section 1059, and 1060, of the Revised Code of Arizona, 1928, in which sections the legislature of the State of Arizona expressly assents to the provisions and accepts the benefits of an Act of Congress entitled "An Act to provide for the promotion of vocational education, etc." approved February 23, 1917. Said Section 1059 further provides

"will observe and comply with all the requirements of said act and amendments thereto. The State Board of Education is designated as the state board for the purposes of said act and **has full power to cooperate** with the Federal Board of Vocational Education in the administration of its provisions."

The Congress of the United States adopted the George-Deen Act on June 8, 1936, which apparently is an amendment to the Smith-Hughes Act, which was adopted February 23, 1917, which latter act sets up other conditions including the 66-2/3 percent reimbursement provision, which is different from the original Smith-Hughes Act.

In answer to your first question, it is the opinion of

the Attorney General that the Arizona State Board of Education has the authority to accept the benefits of the George-Dean Act adopted June 8, 1936, for the reason that the said George-Dean Act is an amendment to the original act.

In answer to your second question, it is the opinion of this office that the State Board of Education may reimburse on the basis of 66-2/3 percent of expenditures for teachers' salaries, as set forth in the George-Dean Act of 1936.

I am returning herewith a copy of an opinion furnished by your office from the United States Department of Interior dated September 14, 1937.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

April 6, 1938.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Capitol Bldg.,
Phoenix, Arizona.

Attention: Mr. W. H. Harless.

Dear Sir:

I have your letter of April 5 requesting an opinion concerning the interpretation of the following clause of Paragraph 1011, Subdivision 3 of the Revised Code of Arizona, 1928:

"The Board shall * * * employ under written contract all employees of the district."
in which the following questions are asked by you:

"1. Should this clause be interpreted to mean that the County School Superintendent should have a copy of the contract or other written evidence of the employees of school districts, other than teach-

ers, before issuing salary warrants for such employment?

"2. If such contracts or written evidence of employment are required, may the County School Superintendent withhold salary warrants of such employees until such contracts or written evidences of employment have been submitted?"

Your attention is directed to Section 992 Revised Code of Arizona 1928, wherein the powers and duties of County School Superintendents are set forth. This section provides in part as follows:

"* * * On the order of the board of school trustees of any district, he shall draw his warrant on the county treasurer for all necessary expenses against the school fund of any such district; * * *. No warrant shall be drawn for any teacher's salary unless the voucher shall state the monthly salary of the teacher and the name of the school month for which said salary is due. Upon receipt of such voucher the county superintendent shall draw his warrant upon the county treasurer in favor of the parties, and for the amount stated in such voucher."

This section provides the method and the procedure for the County School Superintendent to issue his warrant, and if all the requirements of this section are satisfied by a board of trustees, the County School Superintendent must issue his warrant.

It is therefore the opinion of the Attorney General that Paragraph 1011, Subdivision 3, supra, should not be interpreted to mean that the County School Superintendent must have a copy of a contract or other written evidence of the employees of a school district before issuing salary warrants for such employment; and that the County School Superintendent would not be justified in withholding salary warrants of such employees until such contracts or written evidence of employment have been submitted.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

April 19, 1938

Mr. Virgil W. Chandler,
County Attorney,
Florence, Arizona.

Dear Mr. Chandler:

I have your letter of April 13, concerning the recent demand of the Florence Union High School District on the county treasurer of your county to repay to the high school district all interest, penalties and costs which have been collected on delinquent taxes owed to the school district during the period from 1918 until June, 1931.

This question has been before the Supreme Court of Arizona in two recent cases wherein a city attempted to collect interest and penalties on city taxes which had been collected by the county treasurer. The matter was also before the Supreme Court in reference to taxes collected for an irrigation district. Both of these cases will be discussed hereafter.

Your attention is first directed to section 1091, Revised Code of Arizona, 1928, as amended, wherein it is provided in substance that the Board of Supervisors shall annually at the time of levying other taxes, levy a school tax of a rate sufficient to raise the minimum amount of money as asked for by the Board of Trustees of said district, and that the portion levied for county school purposes shall be paid into the county treasury to the credit of the county school fund.

We further find, under section 1092, R. C. A. 1928, the duties of the county treasurer relative to school funds, wherein it is provided as follows:

“The county treasurer shall: Receive and hold as a special fund all public school money, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district; notify the county school superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such funds; * * * on or before the first day of August of each year make a report to the state superintendent showing the amount of money received from state school funds, from county and school taxes and from other sources; * * *”

In the case of Maricopa County M. W. Conservation District v Ward, 35 Ariz. 541, the Supreme Court of Arizona laid down the following general rule:

“Unless otherwise directed, interest, penalties, and costs collected on delinquent taxes follow the tax, and go to the state, county, or city, according as the one or the other is entitled to the tax itself; and in such cases where two or more of these are interested in the tax, such interest and penalties should be apportioned among them in the ratio of their respective shares of the tax. But the Legislature may change this rule and dispose otherwise of interest or penalties.”

This same general rule was following in the case of City of Bisbee v. Cochise County, reported in 36 Pac. (2nd) at page 559 and again before the Supreme Court in 1937 and reported in 72 Pac (2nd) at 439.

The Tenth Legislature in Chapter 103, Session Laws of 1931 at Section 33, changed the above quoted rule and provided that interest, penalties, charges or fees in connection with the collection of taxes shall be credited to the general fund of the county. Therefore, it is clear that after 1931, interest, penalties and costs collected on delinquent taxes do not follow the tax.

It is, therefore, the opinion of this office, that under the above cited authorities all interest, penalties and costs collected on delinquent taxes levied according to law for the said Florence Union High School District and collected by the county treasurer of Pinal County, prior to June, 1931, belong to the Florence Union High School District, and that the county treasurer, under the provisions of Section 1092, supra, holds these amounts so collected in trust for said school district.

Trusting that the above fully answers your inquiry, I am

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

May 17, 1938.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
Phoenix, Arizona.

Attention: Mr. Hurley:

Dear Mr. Hurley:

I have your request for an opinion from this office as to whether or not the Sanders District of Apache County, which is part of the county high school district, can form a high school of their own.

As you know, county high schools may be established in fourth class counties under the provisions of Section 1082, Revised Code of Arizona, 1928. This section was originally enacted by the State Legislature as Chapter 155 of the Session Laws of 1921, and when the 1928 Code was adopted, this section was simplified and reduced from five or six pages to approximately a quarter of a page.

In the case of *Hunter v. Northern Arizona Utilities Company*, 74 Pac. (2d) 577, the Arizona Supreme Court had before it the question as to the construction to be given the said Section 1082. The Supreme Court, in construing said section, stated as follows:

“ * * * That by section 1082 it (legislature) adopted an entirely different system of handling the county high schools established by Chapter 155 from that set up in the original chapter. That this is the more reasonable conclusion is indicated by the inconvenience and incongruity of having one class of schools in the State of Arizona governed by a special law when every other one of the many school organizations within the State comes under the general law. We are therefore of the opinion that the legislature in the Code of 1928 deliberately and intentionally changed the provisions of Chapter 155 so as to bring the county high schools in the general educational system of the State by providing that their governing boards should have the same powers and duties as the governing boards of all the other common and high school districts in the State. * * * ”

Under the construction placed upon this section by the Supreme Court of this State it is our opinion that should

the qualified school electors of Sanders desire to form a high school of their own they must first present a petition to the Board of Supervisors signed by 15% of the qualified school electors to determine whether or not said county high school district shall be discontinued, and hold an election, as provided by Section 1081 of the 1928 Revised Code.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

May 24, 1938.

Mr. H. E. Hendrix, Superintendent
Public Instruction,
Phoenix, Arizona.

Attention: Mr. Riggins.

Dear Mr. Hendrix:

I have your letter of May 17th requesting an opinion from this office upon the following question:

“May the State Board of Education order the date of retirement of a teacher to take place at some future date.”

Your attention is directed to Section 1046,

“Any person not less than sixty years of age, who has served for thirty years or more in the aggregate as a teacher in the public schools, fifteen years of which shall be in the public schools of Arizona, or has served as a teacher in the public schools of Arizona for twenty years in the aggregate, and has become incapacitated through physical or mental disability as established by the testimony of three physicians, to perform the duties of a teacher, may, by order of the state board of education, be retired from further service in the schools of Arizona, and from such date the services of such person shall cease, * *”

You will notice from a close reading of this section that the date of service of any teacher shall cease at the date fixed by the State Board of Education in its order retiring any teacher. Such being the case, I am of the opinion that the Board of Education in ordering any teacher to retire may fix the date of retirement to take place at some future date.

I am also of the opinion that the State Board of Education may not direct the date of retirement to be set back to some past date.

Very truly yours,

JOE CONWAY,
Attorney General.

J. M. JOHNSON,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant Attorney General.

May 27, 1938.

Mr. H. E. Hendrix,
Superintendent of Public Instruction,
State House,
Phoenix, Arizona.

Attention: Mr. W. H. Harless:

Dear Sir:

I have your letter of May 17th, enclosing two letters from Mrs. Dorothy E. Sykes, County School Superintendent of Gila County, wherein an opinion is requested upon the following matters:

1. In answer to your inquiry concerning whether or not the treasurer of Gila County has a right to transfer money from the general school fund after it has been apportioned and credited to said fund, I wish to advise you that this matter should be referred to the county attorney of Gila County for the reason that at the time the Board of Supervisors of Gila County ordered the refund to Mr. Horace Sheppard they were no doubt acting under advice of the county attorney.

2. In answer to your second question concerning the lapsing of school district No. 7 in Gila County and the transferring of the balance of the funds remaining to the credit of said district to the general school fund, it is my opinion that it would be legal for the county school superintendent to draw a warrant for the amount of interest payable on outstanding registered warrants on the general school fund payable to the county treasurer.

This opinion is based upon the provisions of section 1096, R. C. A. 1928, in that the total credit balance of a lapsed school district is impressed with a trust for the benefit of outstanding warrants and these funds may be traced by the creditors into the county school funds for the purpose of payment.

Very truly yours,

JOE CONWAY,
Attorney General

J. M. JOHNSON,
Assistant Attorney General

EARL ANDERSON,
Special Assistant Attorney General

INDEX

COUNTY SCHOOL FUND:

Disbursements:

Disbursement of funds of school district in fourth class county39, 46

Expenditures:

Expenditures for athletic activities, uniforms, etc...34, 64

Teacher not physically in district not entitled to salary 71

Textbooks adopted by State may not be purchased with district funds 57

Travel expenses of school principal not legally payable from school funds..... 62

Travel expenses of Deputy County School Superintendent legally payable from County School Superintendent's budget 18

Miscellaneous:

Interest and penalties on delinquent school taxes prior to 1931 belong to school district fund..... 32

Surplus money from bond issue must be placed in trust for benefit of district..... 21

Transfer of funds belonging to lapsed school district86, 87

Reserve Fund:

Trustee may be paid as bus driver from..... 48

Teacher's salary may not be paid from..... 52

Warrants:

Payable in order of registration regardless of year in which expense incurred or tax levied..... 26

Superintendent of Schools act in ministerial capacity in issuing and exercises no discretion...23, 51, 80

COUNTY SCHOOL SUPERINTENDENTS:

County Apportionment:

Credit to pupils under private instruction. Computation of daily attendance.....60, 74

Quarantine on account of illness does not excuse absence 16

II OPINIONS OF THE ATTORNEY GENERAL

Electors:

Persons residing on military reservations..... 66

Teacher's Salaries:

Must reside and be in district at time of drawing salary 71

George-Deen Act—Reimbursement 79

Salary payable in lump sum at end of term if called for in contract 53

County school reserve fund may not be used for..... 52

Entitled to salary if schools close because of epidemic unless otherwise stipulated in contract..... 3

Entitled to preference over other expenses of school district unless no funds available, then in order of registration of warrants..... 14

Entitled to salary computed on nine months basis... 19

Superintendent may not draw warrant unless voucher shows teacher's salary is for school month...32, 37

Union High School District:

Interest, penalties and costs collected on delinquent taxes prior to June 19, 1931 belong to district..... 82

Contract of employees with school district not required to be filed with county school superintendent precedent to issuing warrants..... 80

Travel expense not payable to school principal..... 62

Travel expense payable to deputy superintendent of schools from superintendent's budget..... 18

Superintendent may draw warrants for amount of interest payable outstanding registered school warrants of lapsed school district..... 86

Superintendent exercises no discretion in matter of payment unless purpose for which warrant drawn is one not authorized..... 23

Money raised by taxation may not be used for building a gymnasium 34

Warrants drawn by high schools in fourth class counties must be drawn direct on county treasurer by school board.....39, 46

School trustee may be hired by county school superintendent if paid from reserve fund..... 48

HIGH SCHOOLS AND UNION HIGH SCHOOLS:**Bond Issues:**

Advertisement that bonds to be used for specific purpose—not voided because of subsequent failure to obtain anticipated federal loan..... 73

Classes:

State Board of Education may regulate size of..... 9

Creation of New Districts:

Annexation of common school district does not change identity8, 10

Discontinuance and formation of new district..... 83

Disbursements:

In counties of fourth class trustees to draw warrants direct on county treasurer.....39, 46

Taxes:

Interest, penalties and costs collected on high school district taxation delinquent prior to 1931 belong to district 82

Tuition:

Non-residents—sending district must pay.....42, 70

Student from district outside of county must pay own tuition less amount received from state apportionment 68

SCHOOL DISTRICTS:**Bonds:**

Surplus money from bond issue must be placed in trust for benefit of district..... 21

Advertisement that bonds to be used for specific purpose not voided because of subsequent failure to obtain anticipated federal loan..... 73

Boundaries:

Can be changed only by law and is distinct entity from corporate limits of city or town..... 13

Budget:

Computation of average daily attendance in order to incur liabilities in excess of estimate of district 74

Consolidation of:

Annexation of common school district with high school district does not change identity of.....8, 10

Districts in different counties may not be consolidated	62
Sale of school site of consolidated district must be referred to vote of electors of newly formed district	56
Elections:	
Persons residing on military reservations.....	66
Expenses of:	
Expenditures for athletic uniforms etc., a legal charge of distric	64
Travel expenses of school principal not legally payable	62
Money raised by taxation may not be used for building gymnasium	34
Lapsed	
Transfer of funds belonging to lapsed school district	86
Superintendent may draw warrants for amount of interest payable, outstanding registered school warrants of lapsed school district.....	86
Newly Organized:	
Discontinuance of old district to form new one.....	84
Property of:	
Interest, penalties and costs collected on delinquent taxes priod to 6/19/31 belong to district.....	32
School owned busses may be insured for fire and theft, but not for liability insurance.....	25, 54
Pupils of:	
Students must be residents of district or else pay tuition	68, 70
Sending district must pay school district entitled to credit for attendance of children residing in district if children attend school in other district without consent	42
Child residing permanently in district with other than parents does not have to pay.....	58
School district entitled to credit for attendance of children residing in district if children attend school in other district without consent.....	55

Textbooks:

- Textbooks adopted by state may not be purchased
with district funds 57

School Term:

- Computation of time with reference to teacher's
salary 19

Trustees:

- May be member of school board without jeopardiz-
ing position of daughter-in-law.
- Powers and duties of..... 5
- Must reside in district..... 10
- Hiring of relatives unlawful..... 41

Vouchers:

- When legal and in proper form County School Sup-
erintendent exercises no discretion in drawing
warrant thereon23, 80
- Teacher's salary may be only for school month...32, 37
- Teacher's salary may be paid last three months of
year in lump sum if contract so recites..... 53

Warrants of:

- County warrants in fourth class counties must be
drawn direct on County Treasurer by School
Board 39
- Disbursement of funds of high school district in
fourth class 46
- School trustees may be paid from reserve fund for
services as bus driver..... 48
- Reserve fund may not be used for payment of teach-
er's salaries 52
- Teacher not physically in school district not entitled
to salary warrant 71
- Payable in order of registration regardless of year
in which expense incurred or tax levied..... 26
- Teacher's salary entitled to preference over other
expenses of district unless no funds available,
then in order of registration of warrants..... 14
- Contract of employees with school district not re-
quired to be filed with county school superin-
tendent precedent to issuing warrants..... 80

SCHOOL CHILDREN:**Attendance:**

- Credit to pupils under private instruction..... 60

Computation of daily attendance:

School district entitled to credit for attendance of children residing in district if children attend school in other district without consent.....	55
Quarantine because of sickness does not excuse child's daily attendance	16

Conduct of Pupil:

Teacher has right to control conduct of child to and from school	11
--	----

Tuition:

Child residing permanently in district with other than parents does not have to pay	58
---	----

STATE BOARD OF EDUCATION:**Rules and Regulations:**

May regulate size of classes in schools.....	9
May make rules and regulations regarding the certification of superintendents and principals.....	76

Pensions:

Board may fix date of retirement for teacher.....	85
---	----

Proceeds from sale of school sites or buildings:

Funds must be deposited from where they originally came	20
Receipts from athletic activities must be credited to general fund of school.....	20

Vocational Education:

Board may accept benefits of George-Deen Act adopted 6/8/36. Reimbursement on basis of 66-2/3 per cent	79
--	----

STATE TEACHER'S COLLEGES AND JUNIOR COLLEGES:**Board of Education:**

May establish vocational school and set requirements for admission and may be entitled to reimbursement from George-Deen Act	76
May prescribe qualifications for admission to college	27

Funds:

Teachers' colleges separate legal entities and income from athletic activities must be paid to trustee for bondholders	20
Fund pledged may not be diverted from application agreed to	44

Funds received from fire insurance payable to general fund and may not be expended by school for purpose of replacements	29
Judgments against school payable as judgments against state	43
TEACHERS:	
Duties:	
Teacher has duty to control conduct of child to and from school	11
Employment of:	
Relatives on school board may not employ.....	41
Pensions:	
Board may fix date of retirement for teacher.....	85
Salaries:	
Computation of time with reference to teacher's salary	19
Teacher may draw salary only for school month....	32, 37
Salary may be paid last three months of year in lump sum	53
Reserve fund may not be used for payment of salaries	52
Teacher not physically in district not entitled to salary	71
Salary entitled to preference over other expenses of district unless no funds available, then in order of registration of warrants	14
George-Deen Act—Reimbursement	79
Entitled to salary if schools close because of epidemic unless otherwise stipulated in contract.....	3
UNIVERSITY OF ARIZONA:	
Regulations:	
Speed limit not to exceed 15 miles per hour—Prosecution in Justice Court of Pima County.....	30
Revenues:	
Money derived from fees, rentals, matriculation, athletics etc. must be applied to redemption of bond issue as pledged	20
Students:	
Qualifications for admission, Board of Education may determine	27

