

To: Dr. Philip E. Geiger

June 27, 2000
Re: Transfer of Students FIRST Funds by
State Treasurer

Executive Director Arizona School Facilities
Board

I00-017
(R00-030)

Questions Presented

You have asked the following questions about the duties of the State Treasurer to transfer funds to the School Facilities Board ("SFB"):

1. Should the references in Arizona Revised Statutes ("A.R.S.") § 42-5030.01(B) to instructions from the SFB to the State Treasurer pursuant to A.R.S. § 15-2002(A)(11) be read to refer to instructions that the SFB provides pursuant to A.R.S. § 15-2002(A)(10)?
2. Is an additional legislative appropriation necessary before the State Treasurer can transfer monies to the three Students FIRST funds as directed in A.R.S. § 42-5030.01(B)?

Summary Answers

1. The references in A.R.S. § 42-5030.01(B) to A.R.S. § 15-2002(A)(11) should be read to refer to A.R.S. § 15-2002(A)(10).
2. Existing law directs the State Treasurer to transfer the amounts calculated by the SFB and no additional legislative appropriation is necessary.

Background

The Adoption of Students FIRST.

Article XI, Section 1 of the Arizona Constitution requires the State to finance a general and uniform system of public education. *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994). The Arizona Supreme Court has held that to meet the constitutional obligation to provide a general and uniform school system: (1) the State must establish minimum adequate facility standards and provide funding to ensure that no district falls below them; and (2) the funding mechanism that the State chooses must not itself cause substantial disparities between school districts. *Hull v. Albrecht*, 192 Ariz. 34, 37, 960 P.2d 634, 637 (1998) ("*Albrecht II*"); *Hull v. Albrecht*, 190 Ariz. 520, 950 P.2d 1141 (1997) ("*Albrecht I*"). In response to the Supreme Court's decisions, the Legislature in 1998 enacted Students FIRST. This legislation created the SFB, which is responsible for administering the State's school capital funding program. After certain amendments were made to Students FIRST in July 1998, the Supreme Court ordered the then pending school finance litigation terminated because there were no further constitutional issues before the court. *Hull v. Albrecht*, No. CV-98-0238-SA (Sup. Ct. Ariz. July 20, 1998).

Under Students FIRST, the SFB is charged with establishing minimum adequacy standards for school facilities and distributing funds from three different sources to: (1) bring existing facilities up to standards (the "Deficiencies Correction Fund"); (2) maintain all facilities at the adequacy level (the "Building Renewal Fund"); and (3) construct new facilities for growing school districts (the "New School Facilities Fund").⁽¹⁾ To determine the amount of funding each school district is eligible to receive, the SFB generally must follow statutorily prescribed formulas. For example, to determine whether a school district has a square footage deficiency that would entitle the district to funds either from the Deficiencies Correction Fund or the New School Facilities Fund, the SFB must follow a formula that considers the amount of existing square footage in the district and the number of students served by the district. A.R.S. §§ 15-2011, -2041. To determine the amount of funding each school district is entitled to receive from the Building Renewal Formula, the SFB follows a statutory formula that considers the age of the school buildings, their square footage, and any completed building renovations. A.R.S. § 15-2031.

Two aspects of the use of the Students FIRST funds are not governed by statutory formulas: distributions from the Deficiencies Corrections Fund for conditions that fall below State standards and distributions from the New School Facilities Fund for the acquisition of land for new school sites. Nonetheless, the Legislature established statutory limits and guidelines concerning the amount of funds that the SFB can distribute for those two purposes. See A.R.S.

§§ 15-2011 (eligibility for Deficiencies Correction Fund monies), -2041 (funding for land for new schools).

Transferring Funds to the Students FIRST Funds.

By December 1 of each even-numbered year, the SFB reports to the Joint Committee on Capital Review ("JCCR") the estimated amounts the SFB determines will be necessary to fulfill the requirements of the three Students FIRST funds for the following two fiscal years.⁽²⁾ A.R.S. § 15-2002(A)(10). Section 15-2002(A)(10), A.R.S., requires the SFB to instruct the State Treasurer by January 1 of each year as to the amounts of the transaction privilege tax to be credited to the three Students FIRST funds in the following fiscal year. Under A.R.S. § 42-5030.01(B), the State Treasurer is required to annually credit to the Students FIRST Funds "the amount that the . . . [SFB] instructs the State Treasurer pursuant to section 15-2002, subsection A, paragraph 11."

Analysis

A. The Requirement in A.R.S. § 42-5030.01 to Transfer Funds Refers to the SFB's Instructions Pursuant to A.R.S. § 15-2002(A)(10), Despite the Mistaken Cross Reference to § 15-2002(A)(11).

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *Phoenix Newspapers, Inc. v. Superior Court*, 180 Ariz. 159, 161, 882 P.2d 1285, 1287 (App. 1993). To determine legislative intent, consideration must be given to the words, context, subject matter, effects and consequences, reason and spirit of the law. In addition, the statutory provisions must be construed in the context of related provisions and in light of their place in the statutory scheme. *City of Phoenix v. Superior Court*, 144 Ariz. 172, 175-76, 696 P.2d 724, 727-28 (App. 1985). Statutory interpretations that lead to absurd results which could not have been contemplated by the Legislature should be avoided. *Id.* at 177, 696 P.2d at 729. In applying these standards here, the references to A.R.S. § 15-2002(A)(11) in A.R.S. § 42-5030.01 should be read to refer to A.R.S. § 15-2002(A)(10) for two reasons.

First, interpreting the cross-reference to refer to paragraph 11 would lead to an absurd result. Section 42-5030.01 states that the State Treasurer is to credit amounts to the Students FIRST funds based on the SFB's instructions pursuant to paragraph 11 of 15-2002(A). However, paragraph 11 does not mandate the SFB to give the State Treasurer any instructions, but rather describes the SFB's obligations to set standards relating to the Arizona School for the Deaf and Blind. Instead, paragraph 10 of A.R.S. §15-2002(A) refers to instructions from the SFB to the State Treasurer about the monies needed for the Students FIRST funds. Thus, the reference in A.R.S. § 42-5030.01 logically refers to paragraph 10, despite the incorrect reference to paragraph 11.

Second, when read in historical context, the cross-reference to paragraph 11 appears to be a simple mistake in drafting amendments to the statutes. When the Legislature added the reference to paragraph 11 in § 42-5030.01, paragraph 11 of A.R.S. § 15-2002(A) contained the language that is now in paragraph 10. See 1999 Ariz. Sess. Laws ch. 3, § 2 (passed with emergency clause and signed by the Governor on March 1, 1999). The error resulted when the Legislature deleted a paragraph from A.R.S. § 15-2002(A) so that former subsection 11 became current subsection 10. Those who drafted that change simply did not make the required corresponding change in the cross-reference in A.R.S. § 42-5030.01(B). See 1999 Ariz. Sess. Laws ch. 299, §32. The failure to later correct the cross reference in A.R.S. § 42-5030.01 to correlate with the renumbering of A.R.S. § 15-2002(A) does not undermine the Legislature's obvious intent to refer to subsection 10 instead of 11. See *Gates v. Arizona Brewing Co.*, 54 Ariz. 266, 271, 95 P.2d 49, 51 (Ariz. 1939) (in interpreting statute, court will use word obviously intended instead of word used by mistake).

B. The Legislature Has Authorized the State Treasurer to Credit Monies to the Students First Funds in the Amounts Calculated by the SFB.

To finance Students FIRST, the Legislature established a system in which the SFB calculates the amount needed for the next two fiscal years based on the formulas and standards the Legislature established for each of the three Students FIRST funds. A.R.S. § 15-2002(A)(10). By January 1 of each year, the SFB is to "instruct the state treasurer as to the amounts under the transaction privilege tax to be credited in equal quarterly installments for the following state fiscal year." *Id.* The SFB is required to provide advance notice to the JCCR, a legislative committee, and must provide the report it submits to the State Treasurer to the Speaker of the House of Representatives, President of the Senate, and the Governor, thereby ensuring continued legislative oversight of the school funding program.

The Legislature has expressly directed that "each fiscal year . . . the state treasurer shall credit" to the three Students FIRST Funds "state general fund revenues collected pursuant to this chapter [transaction privilege taxes] in

the amount that the school facilities board instructs the state treasurer pursuant to § 15-2002, subsection A, paragraph 11." A.R.S. § 42-5030.01(B). This is a clear legislative directive for the State Treasurer to credit to the appropriate Students FIRST funds the amounts specified by the SFB. Thus, additional legislative action is not required for the Students FIRST funds to receive the necessary funding.

Some of the Students FIRST funds include language suggesting annual appropriations. For example, the statute governing the Deficiencies Correction Fund provides that "[t]his state shall annually appropriate monies to the deficiencies correction fund established in this section in order to correct existing deficiencies of all schools in this state by June 30, 2003." A.R.S. § 15-2021(F). In addition, the Building Renewal Fund statutes refer to the SFB's distribution of monies "appropriated by the legislature from the building renewal fund to school districts. . . ." A.R.S. § 15-2031(E). However, each of the Students FIRST funds expressly provide that the funds consist of monies appropriated by the Legislature *and monies credited to the fund pursuant to 42-5030.01*. A.R.S. §§ 15-2021(A), -2031(A), -2041(A) (emphasis added). These statutes, therefore, clearly indicate that, although the Legislature may provide additional monies through specific appropriations, the funds are to receive the monies the Treasurer credits to the funds under A.R.S. § 42-5030.01, without additional legislative action. The Legislature has, in effect, already exercised its appropriation authority by structuring the statutes so that the Treasurer automatically credits monies to the Students FIRST Funds each year. See *Rios v. Symington*, 127 Ariz. 3, 8, 833 P.2d 20, 25 (1992) (specific funds created by Legislature constituted appropriations); *Windes v. Frohmiller*, 38 Ariz. 557, 560, 3 P.2d 275, 276 (1931) ("no specific language is necessary to make an appropriation, for the test is . . . whether or not the people have expressed an intention that the money in question be paid").

Conclusion

The reference in A.R.S. § 42-5030.01(B) to paragraph 11 of A.R.S. § 15-2002(A) should be read to refer to paragraph 10 of that subsection. In addition, the Students FIRST legislation does not require an additional legislative appropriation in order for the State Treasurer to credit the three funds that are administered by the SFB.

Janet Napolitano
Attorney General

1. Collectively, these three funds are referred to as the Students FIRST funds.
2. By December 1 of each odd-numbered year, the SFB updates the JCCR on the estimated amounts the SFB believes will be necessary to fulfill the requirements of the three Students FIRST funds for the following fiscal year. A.R.S. § 15-2002(A)(10). JCCR is a committee of legislators, established by statute, that has responsibilities relating to State capital expenditures. See A.R.S. §§ 41-1251, -1252.

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