

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 19, 2003	No. I03- 011 (R03- 041) Re: Use of Building Renewal Fund Balances for Preventative Maintenance
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To: Bill Bell, Executive Director
Arizona School Facilities Board

Questions Presented

You have asked the following questions: (1) may school districts use accrued and unused building renewal fund monies for routine preventative maintenance, and (2) if so, how is the amount available for that purpose calculated?

Summary Answer

School districts may use accrued and unused monies in their BRF accounts to satisfy the legislative mandate of performing routine preventative maintenance. The School Facilities Board should use the formula codified at A.R.S. § 15-2031(J) to calculate the amount that the districts may use from their BRF accounts for this purpose.

Background

Students FIRST, enacted in 1998, was the Arizona Legislature's response to the supreme court's ruling that the state's system for financing capital improvements for public schools was unconstitutional. *See Roosevelt Elementary School District No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994); *Hull v. Albrecht*, 192 Ariz. 34, 960 P.2d 634 (1998); 1998 Ariz. Sess. Laws 5th Spec. Sess., ch. 1. Students FIRST created the School Facilities Board ("SFB") to, among other things, establish minimum adequacy standards for school facilities, monitor district compliance with the standards, and distribute State monies for school facilities from three new funds: the Deficiencies Correction Fund, A.R.S. § 15-2021; the Building Renewal Fund ("BRF"), A.R.S. § 15-2031; and the New School Facilities Fund, A.R.S. § 15-2041. The question you have asked pertains only to BRF monies.

The BRF is intended to provide funds to maintain existing school facilities at minimum adequacy levels consistent with the State's standards. A.R.S. § 15-2031. School districts that receive BRF monies establish their own building renewal fund accounts. A.R.S. § 15-2031(F). The BRF monies that districts do not use remain in those accounts and do not revert to the State. *See* A.R.S. § 15-2031(F).

School districts may use BRF monies only for specified purposes. A.R.S. § 15-2031(B). The Legislature has also specified the purposes for which BRF monies may *not* be used. A.R.S. § 15-2031(C). Before 2002, A.R.S. § 15-2031(C) expressly prohibited school districts from using BRF monies for routine maintenance. 1999 Ariz. Sess. Laws, ch. 299, § 36, and ch. 5, § 5. In the 2002 legislative session, however, the Legislature added a requirement that school districts perform routine preventative maintenance on school facilities. 2002 Ariz. Sess. Laws, ch. 330, §§ 33, 38

("the 2002 Act"). Specifically, the Legislature (1) defined routine preventative maintenance as "services that are performed on a regular schedule [at certain intervals and] that are intended to extend the useful life of a building system and reduce the need for major repairs;" (2) required school districts to develop guidelines for routine preventative maintenance and the SFB to inspect the schools to ensure compliance; (3) required districts to use BRF monies to bring into compliance any school found to be inadequately maintained; (4) permitted districts to use eight per cent of the BRF formula amount for routine preventative maintenance; and (5) provided that building renewal monies are to supplement, not supplant, expenditures for the maintenance of school buildings. *Id.*

Although the Legislature has not funded the BRF according to the statutory formula in A.R.S. § 15-2031 since fiscal year 2002, school districts have accumulated balances in their BRF accounts. The 2002 Act did not specifically address the use of amounts in school district BRF accounts for preventative maintenance. The 2002 Act did, however, suspend the BRF formula for fiscal years 2002-2003 and 2003-2004 and appropriated only \$38 million to the BRF for FY 2002-2003. 2002 Act §§ 45, 61(A), (B). In subsequent legislation, the Legislature did not appropriate any BRF monies for fiscal year 2004.

The SFB has approved routine preventative maintenance guidelines that the districts have adopted. Because there is no BRF money appropriated for the current fiscal year, some districts would like to use their accrued BRF monies for this purpose. Thus, questions arise whether the Legislature intended that districts access their accrued BRF funds for routine preventative maintenance and, if so, how the eight percent cap established in A.R.S. § 15-2031(J) is calculated.

Analysis

The primary goal in interpreting statutes is to ascertain and give effect to the Legislature's intent. *Detention of Wilbur W.*, 203 Ariz. 301, 305, 53 P.3d 1145, 1149 (App. 2002). To determine legislative intent, a court first looks at the language of the legislation and ascribes plain meaning to its terms unless they are ambiguous. *Long v. Napolitano*, 203 Ariz. 247, 258, 53 P.3d 172, 183 (App. 2002). In interpreting an ambiguous statute, it is appropriate to look at the legislative intent and history of the statutory scheme to give purpose to all enacted provisions. *Stulce v. S.R.P. Agric. Improvement & Power Dist.*, 197 Ariz. 87, 90, 3 P.2d 1007, 1010 (App. 1999).

The 2002 Act required districts to develop routine maintenance guidelines and to maintain their schools in compliance with those guidelines. A.R.S. § 15-2002(K). That legislation amended A.R.S. § 15-2031(C)(6) to provide that BRF monies may not be used for routine maintenance “*except as provided in § 15-2002, subsection K and subsection J of this section.*” (Emphasized language added by the 2002 Act.) The 2002 Act also added subsection J to A.R.S. § 15-2031 which, in pertinent part, provides:

Notwithstanding subsections B and C of this section, a school district may use eight per cent of the building renewal amount computed pursuant to [the formula] for routine preventative maintenance.

These 2002 amendments demonstrate that the Legislature intended districts to spend BRF monies for preventative maintenance. Because subsection J of A.R.S. § 15-2031 begins with the language “[n]otwithstanding subsections B and C,” subsection J governs the analysis of the use of building renewal monies for preventative maintenance. The Legislature reduced the BRF allocation in the same legislative session and failed to fund the BRF for fiscal year 2003-04. It is logical to

conclude that the Legislature intended districts to access the only BRF monies available, which are the unspent balances in the school districts' building renewal accounts.

The purposes of the Students FIRST legislation support this interpretation. The Students FIRST statutes were intended to cure the state constitutional infirmities that the court outlined in *Roosevelt v. Bishop* and to ensure that school facilities met State standards. If no new money is appropriated, the only building renewal fund monies that school districts will have available are unused BRF monies that the districts received in previous fiscal years.

The purposes of the 2002 Act also support the conclusion that school districts may use BRF balances to pay for routine preventative maintenance. The 2002 Act requires school districts to develop routine preventative maintenance guidelines (and, impliedly, to maintain their facilities in accordance with the guidelines) and the SFB to inspect the facilities to ensure compliance. To help fund this requirement, the Legislature permitted the districts to use a limited amount of their BRF monies. A.R.S. § 15-2031(J). Any other reading of the statutes would render the legislative mandate inoperative when there are no BRF monies appropriated in a particular fiscal year. A presumption against such a result exists. *State v. Cassius*, 110 Ariz. 485, 487, 520 P.2d 1109, 1111 (1974) ("The presumption is that the legislature did not intend to do a futile thing by including in a statute a provision which is non-operative.").

Finally, this conclusion is consistent with other Students FIRST statutes. Pursuant to A.R.S. § 15-2002(K), if the SFB finds that a facility fails to comply with the district's guidelines, the district must use BRF monies to bring the facility back into compliance. Logically, if a district is required to use BRF monies to return a facility to compliance, the district should also be able to use BRF monies to prevent the facility from falling below acceptable standards in the first place. This

construction is a sensible one that accomplishes the legislative intent, avoids an absurd result, and protects the public fisc. *See Better Homes Const. Inc. v. Goldwater*, 203 Ariz. 295, 300, 53 P.3d 1139, 1144 (App. 2002) (statute's language should be liberally construed to achieve intended public protection purpose). The State has expended millions of dollars to ensure that Arizona's public schools achieve minimum adequacy standards. It is only logical that the Legislature intended to protect this huge investment by providing funds for school districts to maintain the facilities at minimum adequacy standards.

You have also inquired how the eight percent figure is calculated when the Legislature does not appropriate BRF funds according to the formula set forth in A.R.S. § 15-2031(J). That statute refers to "eight per cent of the building renewal fund computed pursuant to [the formula set forth in] subsection G" of that statute. It does not refer to the amount actually appropriated for BRF funds. Thus, in determining the amount of BRF balances that may be used for routine preventative maintenance, the SFB should annually calculate the appropriate amount pursuant to the formula, even if in a particular fiscal year the Legislature has not actually appropriated that amount.

Conclusion

School districts may use their building renewal fund balances for preventative maintenance. Pursuant to A.R.S. § 15-2031(J), the SFB should annually calculate the appropriate amount pursuant to the building renewal formula and inform the districts of the computed number. The districts may use a maximum of eight per cent of that computed number from their BRF monies to perform routine preventative maintenance in that fiscal year.

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