

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>August 10, 2004</p>	<p>No. I04-007 (R04-018)</p> <p>Re: Prorating Compensation of School Employees</p>
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To: John C. Richardson, Esq.
DeConcini McDonald Yetwin & Lacy, P.C.

Question Presented

You have asked whether Arizona Revised Statute (“A.R.S.”) § 23-351(C)(2), which permits school district employees to prorate their “annual salary” over any number of payments, applies to all school district employees, regardless whether their wages are computed by the hour or on a yearly basis.

Summary Answer

All employees of school districts may request that their compensation be paid over the actual months worked or be prorated in any number of payments as set forth in A.R.S. § 23-351(C)(2).

Background

Pursuant to A.R.S. § 15-253(B), you submitted for review an opinion you prepared for the Assistant Superintendent of Marana Unified School District, concluding that A.R.S. § 23-351(C)(2) applies to all school employees.

The relevant section of the statute reads as follows:

In the case of employees of school districts or of the Arizona state school for the deaf and the blind, the annual salary may be prorated in any number of payments, and the employee may select whether to have the salary prorated or paid during the actual months worked. If the employee's salary is prorated, all such payments still due at the close of the school attendance year or fiscal year may at the option of the employee be paid in either a lump sum or paid within a period of two months after the close of the fiscal year.

A.R.S. § 23-351(C)(2).

The predecessor statute to this section, A.R.S. § 23-351(B)(2), was first enacted in 1961, with somewhat different provisions. 1961 Ariz. Sess. Laws ch. 11, § 1. That statute applied only to “certificated employees of school districts.” In 1965, the Legislature amended the statute to add “clerical employees” as other potential recipients of prorated payments. 1965 Ariz. Sess. Laws ch. 29, § 1. In 1988, the Legislature again amended the statute to allow “all school employees,” not only certificated teachers and clerical employees, to select whether to have their “salary” prorated or paid during the actual months worked. 1988 Ariz. Sess. Laws ch. 42, § 1. Another amendment in 1989 enabled the employees of the Arizona State School for the Deaf and the Blind (ASDB) to also prorate their compensation. 1989 Ariz. Sess. Laws ch. 149, § 1. The statute, as amended, remains virtually the same today, except for the numbering change to A.R.S. § 23-351(C)(2).

Analysis

In order to ascertain the appropriate interpretation of the word “salary” in A.R.S. § 23-351(C)(2), legislative intent must be considered. *See Mail Boxes, etc. v. Indus. Comm’n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The intent of the Legislature may be construed through an examination of the legislative history of the amendments to A.R.S. § 23-351(C)(2). *See Weekly v. City of Mesa*, 181 Ariz. 159, 163, 888 P.2d 1346, 1350 (App. 1994).

The January 14, 1988 “Fact Sheet” for SB 1046, which expanded the scope of A.R.S. § 23-351(C)(2) to encompass “all school employees,” states that the purpose of the bill was to “permit all school district employees to have their annual salary pro-rated [sic] which allows them to receive their wages spread out through the entire year.” *Ariz. State Senate, Fact Sheet for S.B. 1046*, 38th Leg., 2d Reg. Sess. (Jan. 14, 1998) (emphasis added). As is often the case in common usage, the staff’s explanation of the bill uses the terms “salary” and “wages” interchangeably.

The legislative history of the 1989 amendment, which permitted ASDB employees to prorate their annual compensation, also supports the interpretation that the statute covers employees who are compensated by the hour. The February 9, 1989 “Fact Sheet” for S.B. 1223, prepared by the Senate staff states:

Current statute provides employees of school districts with the option of having their salaries prorated throughout the summer or paid during the actual months worked. In 1988, S.B. 1046 permitted all employees of school districts rather than just certificated personnel to have the option of having their annual salary prorated.

During 1988-89, ASDB employed approximately 465 full-time employees with nearly 75% of them employed on less than a 12-month basis. The provisions in the bill would provide these ASDB employees with the same prorated salary option as public school employees.

Ariz. State Senate, Fact Sheet for S.B. 1223, 39th Leg., 1st Reg. Sess. (Feb. 9, 1989). The reference in the Fact Sheet to all employees is inconsistent with a narrow interpretation of the term “salary” that would exclude hourly employees.

The minutes of the legislative hearings concerning the 1989 amendments further support the conclusion that A.R.S. § 23-351(C)(2) applies to all employees. During the February 13, 1989, meeting of the Senate Committee on Education, the Senate intern explained SB 1223 as follows:

[I]t would allow employees of the Arizona State School for the Deaf and Blind to choose whether to have their salaries prorated over a 12-month period or to be paid during the actual months worked. . . . [O]ver 75% of the ASDB employees are employed for less than a 12-month basis.

Min. of Ariz. S. Comm. on Educ., 39th Leg., 1st Reg. Sess. 5 (Feb. 13 , 1989). At the same committee meeting, an ASDB teacher stated that “she, and all their teachers and staff, are in support of this bill. . . . She explained that right now they do not get paid in the summer and yet they have to pay their health insurance costs. This bill would enable them to continue receiving their checks and have those costs taken out of their checks.” *Id.*

During a March 22, 1989 House of Representatives Committee on Education meeting, Barry Griffing, Superintendent of ASDB, testified in favor of SB 1223. He stated that ASDB “would like their employees to be able to have their salaries prorated throughout the entire year. This would give the ASDB employees the same option as public school employees. . . . ASDB employees had been polled and 93 percent favor the prorated option.” *Min. of Ariz. H. R. Comm. on Educ., 39th Leg., 1st Reg. Sess. (Mar. 22, 1989).*

The statutory language and this legislative history indicate that A.R.S. § 23-351(C)(2) applies to all school district and ASDB employees.

Conclusion

Under A.R.S. § 23-351(C)(2), all employees of school districts and all employees of Arizona State School for the Deaf and the Blind may elect to have their annual compensation prorated in any number of payments or paid over the actual months worked.

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