

The Honorable Lisa Graham Keegan
Superintendent of Public Instruction

July 6, 1999
No. I99-014 (R99-016)

Question Presented

You have asked whether the Arizona Department of Education is required to use the Arizona Department of Administration for its personnel administration or whether it may independently administer personnel functions pursuant to State personnel statutes and rules with the oversight and review of the Department of Administration.

Summary Answer

The Department of Education is subject to the direction and control of the Director of the Department of Administration ("Director") for personnel administration. The Director, however, may delegate that authority to the Superintendent of Public Instruction ("Superintendent").

Background

The Arizona Constitution provides, in part, that the State Board of Education ("Education Board") and the Superintendent are responsible for the "general conduct and supervision of the public school system." Ariz. Const. art. XI, § 2. The constitution further requires that the powers and duties of both the Education Board and the Superintendent be "prescribed by law." *Id.*, art. XI, §§ 3 and 4, and art. V, § 9. The Legislature has charged both the Education Board and the Superintendent with administration of the Department of Education. Arizona Revised Statutes Annotated ("A.R.S.") § 15-231. The Education Board is the policy determining body of the Department of Education while the Superintendent is responsible for all Department administrative, executive, and ministerial functions. A.R.S. § 15-234(B)(1) and (2).

The Director has general responsibility for the direction and control of personnel administration for offices or positions in "State service." A.R.S. § 41-761. The term State service means "all offices and positions of employment in state government except offices and positions exempted by the provisions of this article." A.R.S. § 41-762(2). The duties of the Director include adopting rules for personnel and personnel administration, developing and administering a program of personnel administration for State service that conforms with the personnel rules, establishing offices that are necessary to maintain an effective and economical personnel administration program, and deputizing employees in various State agencies to perform certain functions of personnel administration.⁽¹⁾ A.R.S. § 41-763(2), (3), (4), and (6). Although the term "State service" is broadly defined, the Legislature has codified several exemptions to the Director's authority over personnel administration, including officers and employees of State universities, personnel of the Arizona State Schools for the Deaf and the Blind, and patients and inmates

employed in State institutions. A.R.S. § 41-771(A)(5) and (6). The employees of the Department of Education, however, are not currently exempt from the Director's personnel administration system.

Analysis

The cardinal rule of statutory construction is to ascertain the intent of the Legislature. *McIntyre v. Mohave County*, 127 Ariz. 317, 318, 620 P.2d 696, 697 (1980). Likewise, as a general rule, a State agency's powers and duties are defined by the Legislature. *Arizona Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 229, 232, 928 P.2d 653, 656 (App. 1996); *see also Boyce v. City of Scottsdale*, 157 Ariz. 265, 267, 756 P.2d 934, 936 (App. 1988) ("The powers and duties of administrative agencies . . . are strictly limited by the statute creating them"). Here, because A.R.S. §§ 41-761 and -763 provide that the Director is responsible for the direct control of personnel administration, and employees of the Department of Education are not included in the statutory exemptions to this authority, the Department of Education is subject to the Director's administration of its personnel matters. *See Southwestern Iron & Steel Industries v. State*, 123 Ariz. 78, 79, 597 P.2d 981, 982 (1979) ("the expression of one or more items of a class indicates an intent to exclude all items of the same class that are not expressed").

The Department of Education differs from the Board of Regents with regard to the Director's authority over personnel matters. Article XI, § 2 of the Constitution gives the Board of Regents authority over "the general conduct and supervision" of the State universities. Arizona courts have construed this constitutional provision as precluding the Legislature from giving agencies other than the Board of Regents authority over personnel administration for employees of the Board or the universities. *See Hernandez v. Frohmiller*, 68 Ariz. 242, 204 P.2d 854 (1949) (legislation giving civil service board authority over personnel administration for certain university employees violated Article XI, § 2); *Arizona Board of Regents v. Department of Administration*, 151 Ariz. 450, 728 P.2d 669 (App. 1986) (Article XI, § 2 precludes the Director from exercising powers under A.R.S. § 41-761 over employees of the Board of Regents).

Although Article XI, § 2 gives the Superintendent and the Education Board authority over "the general conduct and supervision" of the public school system, other constitutional provisions indicate that the Legislature may permissibly give the Director authority over personnel administration for the Department of Education. Article XI, §§ 3 and 4 and Article V, § 9, expressly provide that the powers and responsibilities of both the Education Board and the Superintendent shall be "as prescribed by law." Consistent with these constitutional provisions, the Legislature may limit the powers and responsibilities of the Education Board and the Superintendent by including Department of Education employees within the Director's general authority over State personnel administration.

Finally, although the Legislature has generally granted exclusive authority over State personnel administration to the Director, it has also empowered the Director to delegate that power. Specifically, A.R.S. § 41-703(11) provides

that the Director shall "[d]elegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department." Unless the Director, in his discretion, voluntarily delegates personnel administration authority over Department of Education employees to the Superintendent, the authority remains with the Director of the Department of Administration.

Conclusion

The Department of Education is subject to the direction and control of the Director of the Department of Administration for personnel administration. The Director, however, may delegate that authority to the Superintendent of Public Instruction.

1. The Director's functions in the personnel system encompass, in part, preparing registers of candidates to fill vacancies, providing agencies with hiring lists of available candidates, setting probationary periods, establishing, altering, and abolishing employment classifications, and approving salary plans. See Arizona Administrative Code R2-5-204, -205, -213, -301, and -302.

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