

The Honorable Lisa Graham Keegan
Superintendent of Public Instruction

September 16, 1999
N^o. I99-018 (R99-031)

Questions Presented

You have asked (1) whether Arizona Revised Statutes ("A.R.S.") § 15-352 exempts public school district governing boards from "reconstituting previously formed school councils"⁽¹⁾ if the school council includes representation by more than one teacher and more than one parent; and (2) whether school district governing board decisions must be reevaluated if the decisions were based upon recommendations made by a school council whose membership is inconsistent with A.R.S. § 15-351.

Summary Answer

1. Pursuant to A.R.S. § 15-352(A), school councils formed before September 16, 1994, the effective date of the legislation requiring school councils, do not need to be reconstituted if those school councils include representation by more than one teacher and more than one parent or guardian of a pupil enrolled at the school. However, school councils formed on or after September 16, 1994, and school councils formed before that date that have not complied with the membership requirements in A.R.S. § 15-352(A) must comply with A.R.S. § 15-351.

2. Because school councils make recommendations that school district governing boards may accept or reject, governing boards are not required to reevaluate decisions based on school council recommendations, despite the fact that the school council membership is inconsistent with A.R.S. § 15-351. The governing board should, however, take into account the composition of the school council when it considers and weighs the recommendations made.

Background

In 1994, the Legislature mandated that each public school establish a school council. 1994 Ariz. Sess. Laws, 9th Spec.Sess., ch.2, § 3 (codified as A.R.S. § 15-351; effective September 16, 1994). The Legislature required each public school to have a school council by December 31, 1995. *Id.* at § 23. The purpose of school councils is to provide individuals who are affected by the outcome of decisions made at the school site with an opportunity to be a part of the decision-making process. A.R.S. § 15-351(A). The statute allows a local school district governing board to delegate to the school council the responsibility of developing a curriculum or any other responsibilities "reasonably necessary to accomplish decentralization." A.R.S. § 15-351(B).

The school council membership requirements in A.R.S. § 15-351(B) provide for a diverse cross-section of educators, parents, community members, and pupils. Additionally, the membership of a school council must reflect the ethnic composition of the local community. A.R.S. § 15-351(B).

Prior to the enactment of A.R.S. § 15-351, several school districts formed school councils. *Minutes of Joint House and Senate Committees on Education*, 41st Legis., 1st Reg. Sess., 3-12 (Ariz. 1993). Those councils, while consisting of individuals interested in education issues, did not necessarily comply with the membership requirements of Section 15-351.

Analysis

A. A.R.S. § 15-352 Exempts Governing Boards from Reconstituting Previously Formed School Councils If Those School Councils Include Representation by More Than One Teacher and More Than One Parent or Guardian of a Pupil Enrolled at the School.

Section 15-351(B), A.R.S., requires that school councils be comprised of the following members: (1) parents of pupils enrolled in the school district who are not employed by the school district, (2) teachers, (3) noncertified employees, (4) community members, and (5) pupils (if the school is a high school). However, the statutory mandate in A.R.S. § 15-351(B) is qualified, providing that a school council shall consist of the enumerated members "except as provided in section 13-352." A.R.S. § 15-351(B) (emphasis added). That section, entitled "Exemptions," provides that school district governing boards are "not obligated to reconstitute previously formed school councils . . . if the existing school councils include representation by more than one teacher and more than one parent or guardian of a pupil enrolled at the school."⁽²⁾ A.R.S. § 15-352(A).

The cardinal rule of statutory interpretation is to determine and give effect to legislative intent. *Phoenix Newspapers, Inc. v. Superior Ct.*, 180 Ariz. 159, 161, 882 P.2d 1285, 1287 (App. 1993). If the plain language of the statute is unambiguous, then the statute should be enforced according to its clear language. *McPeak v. Industrial Comm'n*, 154 Ariz. 232, 234, 741 P.2d 699, 701 (App. 1987).

Section 15-352(A) exempts school councils formed before school councils were legislatively mandated from the membership requirements in A.R.S. § 15-351 as long as the council membership includes more than one teacher and more than one parent. However, if membership on a school council subject to A.R.S. § 15-352(A) changes, and the council no longer includes more than one teacher and more than one parent, the council must comply with the requirements of A.R.S. § 15-351(B). New members cannot be appointed to the council to bring a school council into compliance with A.R.S. § 15-352(A). Instead, the council must be reconfigured to comply with the more extensive requirements of A.R.S. § 15-351. For example, if a school established a school council in May 1994, and that council's membership included two teachers and two parents, that council could continue to operate after the effective date of the legislation mandating school councils without modifying its membership because it complied with A.R.S. § 15-352(A). However, if at some later date one of the teachers or parents resigned from the council, the council membership would then need to comply with A.R.S. § 15-351. This interpretation is consistent with the law's purpose of ensuring that people affected by decisions about public schools

have the opportunity to provide input into the decision-making process, while recognizing the legislative intent not to disrupt the operation of school councils that existed before state law required school councils. Moreover, although a school board is not obligated to reconstitute a previously formed school council that complies with A.R.S. § 15-352, nothing in the statutes prohibits a board from doing so.

B. Governing Boards May Consider School Council Recommendations Even If the School Council Membership Was Improper.

As a general rule, school districts may delegate to subordinate boards or officers only those powers that are administrative or ministerial in nature. *Godbey v. Roosevelt School Dist. No. 66*, 131 Ariz. 13, 19, 638 P.2d 235, 241 (App. 1981). Decisions involving judgment or discretion on the part of the school district may *not* be delegated unless such right to delegate has been expressly authorized by the Legislature. *Id.* School district governing boards have the exclusive right to manage and control the affairs of the school district, unless that authority has been granted to another entity by specific legislation. *Board of Ed. v. Scottsdale Ed. Ass'n*, 17 Ariz. App. 504, 511, 498 P.2d 578, 585 (1972). When decisions involving judgment or discretion are made, "[t]he school board alone makes the rules and it alone enforces them." *Tucson Unified Sch. Dist. No. 1 v. Tucson Educ. Ass'n*, 155 Ariz. 441, 443, 747 P.2d 602 (App. 1987).

Although A.R.S. § 15-351(B) allows governing boards to delegate certain responsibilities to school councils, the governing board retains the authority to make final, binding decisions regarding school district business.⁽³⁾ The board is free to accept or reject the recommendations of a school council, regardless of whether the school council's membership complies with Section 15-351. All final decisions rest with the governing board and cannot be delegated to or exercised by the school council. Moreover, nothing in the statutes bars a governing board from considering recommendations of a school council that does not meet the requirements of A.R.S. § 15-351(B), and the statutes do not permit any legal challenges to a board's decision based on the composition of school councils offering input on those decisions. Consequently, although recommendations made by a school council whose membership does not comply with A.R.S. § 15-351 should be accorded less weight by the governing board, the board may still consider those school council recommendations. Therefore, governing boards are not required to revisit decisions made in accordance with recommendations from a school council whose membership does not comply with A.R.S. § 15-351, but nothing prevents a governing board from revisiting such a decision if the governing board deems it appropriate.

Although the legislation does not identify any penalties if a school council is improperly constituted such that statutorily mandated constituencies are unrepresented, governing boards would be well advised to review the membership of all school councils on a regular basis to verify they comply with the membership requirements in the law. This is necessary to ensure that the school boards receive the input contemplated by the school council legislation.

Conclusion

Section 15-352, A.R.S., exempts school district governing boards from "reconstituting previously formed school councils," provided that the school councils include more than one teacher and more than one parent. Accordingly, school councils formed prior to the effective date of A.R.S. § 15-351, though not in strict compliance with the membership requirements set forth in that statute, need not be reconfigured if they comply with A.R.S. § 15-352. A governing board does not need to revisit decisions it made based on recommendations by a school council whose membership does not comply with A.R.S. § 15-351, although the governing board should consider the makeup of the school council when weighing and considering the recommendation.

- 1.** Although they are sometimes referred to as "site councils," this Opinion uses the term "school councils" to reflect the statutory language.

- 2.** Sections 15-351 and 15-352, A.R.S., have different language regarding parent members of school councils. Section 15-351 expressly prohibits a parent representative from being employed by the school district, but Section 15-352 does not include the same restriction. Thus, on a council subject to the membership requirements in A.R.S. § 15-351, if a parent member at any time becomes employed by the school district, that member can no longer serve as a parent representative on the council because the statute expressly requires representation on the council by parents who are not employed by the school district. A.R.S. § 15-351(B)(1). However, because A.R.S. § 15-352 does not include the same restriction, a parent member who is subsequently hired by the district may remain as the parent representative on a council whose membership is governed by A.R.S. § 15-352. *See Banks v. Arizona State Bd. of Pardons and Paroles*, 129 Ariz. 199, 203, 629 P.2d 1035, 1039 (App. 1981) (where Legislature has included a term in certain places and excluded it elsewhere, court will not read excluded term into the statutes).

- 3.** The delegable responsibilities include the development of a curriculum and "any additional powers that are reasonably necessary to accomplish decentralization." A.R.S. § 15-351(B). On these issues, governing boards may delegate to school councils only the authority to consider issues and make recommendations to the board; governing boards cannot delegate their decision-making authority. *See* A.R.S. § 15-341(A)(1) (governing boards shall "[p]rescribe and enforce policies and procedures for the governance of the schools . . ."); A.R.S. § 15-341(A)(6) (governing boards shall "[p]rescribe the curricula and criteria for the promotion and graduation of pupils. . ."); *Godbey v. Roosevelt School Dist.*, 131 Ariz. at 19, 638 P.2d at 241. This interpretation is consistent with the legislative intent - that school councils provide *input* into board decisions. A.R.S. § 15-351(A).



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