



**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>July 2, 2024</p>	<p>No. I24-010 (R24-008)</p> <p>Re: Use of Lease Proceeds from Ground Lease Pursuant to A.R.S. § 15-1102</p>
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To: Jordan T. Ellel, Tempe Tri-District Legal Counsel, on behalf of Kyrene School District

Pursuant to A.R.S. § 15-253(B), this opinion affirms in part and revises in part the opinion that you prepared for the Kyrene School District (the “District”) regarding the use of lease proceeds from ground leases pursuant to A.R.S. § 15-1102. That opinion is attached hereto as Appendix A.

**Background**

In February 2021, the District’s Governing Board approved a 77-year ground lease with a private entity to develop District-owned property near Chandler Boulevard and the I-10 freeway. The District wishes “to utilize the proceeds from the lease in the most advantageous manner possible for the maintenance and operations of the District.” App. A at 1.

A.R.S. § 15-1102 regulates how lease proceeds may be used by districts. The requirements for use of lease proceeds differ based on a district’s level of bonded indebtedness. *Compare* A.R.S. § 15-1102(B) (applying to the sale and lease proceeds of a “common school district or high school district that has an outstanding bonded indebtedness of seven percent ... or less” and to “a unified school district that has an outstanding bonded indebtedness of fourteen percent ... or less”) *with* §

15-1102(C) (applying to the sale and lease proceeds of a “common school district or a high school district that has an outstanding bonded indebtedness of greater than seven percent” and “a unified school district that has an outstanding bonded indebtedness of greater than fourteen percent”).

### Analysis

#### *Use of lease proceeds*

The first question presented in your opinion asks how the District’s lease proceeds should “be classified under A.R.S. § 15-1102(B) and (C)?”

This Office agrees with your conclusion that, under A.R.S. § 15-1102(B)(1)(a), a common school district or high school district “that has an outstanding bonded indebtedness of seven percent ... or less” may expend lease proceeds “for maintenance and operations in an amount that does not exceed fifteen percent of the revenue control limit for that year.” This Office also agrees with your conclusion that A.R.S. §§ 15-1102(B)(2) and (C)(2) do not apply to lease proceeds.

Although your opinion focuses on the District’s particular circumstances, it could be read to suggest that any district, regardless of its level of bonded indebtedness, may use lease proceeds for maintenance and operations. That is not accurate. This Office therefore revises your opinion to clarify that common school districts and high school districts with bonded indebtedness that is greater than seven percent and unified districts with bonded indebtedness greater than 14% *may not* use lease proceeds for maintenance and operations. *Compare* A.R.S. § 15-1102(B)(1)(a) (for school districts at or below the bonded indebtedness threshold, “the total sum of the proceeds [from certain sales of school property or] from the *lease* of school property ... [m]ay be expended for maintenance and operations”) *with* A.R.S. § 15-1102(C)(1)(a) (for school districts above the bonded indebtedness threshold, allowing only “sales proceeds” to “be expended for maintenance

and operation”) (emphases added); *see also* § 15-1102(C)(1)(b) (“The sale *or lease* proceeds may be expended for *capital outlay* in any amount.”) (emphasis added).

*Calculation of Bonded Indebtedness*

The second question addressed in your opinion asks when “the District’s bonded indebtedness [is] calculated for purposes of determining the District’s level of indebtedness to determine restrictions on use of lease proceeds?”

This Office agrees with your opinion’s analysis on this issue, and therefore affirms it.

**Conclusion**

We agree with your opinion as to its interpretation of A.R.S. § 15-1102(B)(1)(a) and its conclusion that A.R.S. § 15-1102(B)(2) and (C)(2) do not apply to lease proceeds. We revise your opinion to clarify that common districts and high school districts with greater than seven percent bonded indebtedness and unified districts with greater than 14% bonded indebtedness may not use lease proceeds for maintenance and operations. A.R.S. § 15-1102(C)(1)(a)-(b). We affirm the portion of your opinion addressing the calculation of a district’s bonded indebtedness.

\* \* \*

Kris Mayes  
Attorney General

# APPENDIX A

# Tempe Tri-District Legal Services

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Sent Via: Email

May 2, 2024

Ms. Laura Toenjes  
Superintendent  
Kyrene School District  
8700 S. Kyrene Rd.  
Tempe, AZ 85284

**RE: Use of Lease Proceeds from Ground Lease Pursuant to A.R.S. § 15-1102**

Dear Ms. Toenjes:

You have asked me to provide an opinion regarding requirements related to the use of proceeds from a ground lease of District property pursuant to A.R.S. § 15-1102. There are two questions that need to be addressed. First, how are lease proceeds classified under the statute? Second, when must the District's bonded indebtedness be calculated to determine whether the District is above or below the seven percent threshold set in statute? As detailed below, it is my opinion that so long as the District chooses to expend funds when its bonded indebtedness is less than seven percent, pursuant to A.R.S. § 15-1102(B)(1), the lease proceeds may be used as follows:

- For maintenance and operation purposes in an amount that does not exceed fifteen percent of the revenue control limit; or
- For capital outlay in any amount.

In addition, I opine that the bonded indebtedness must be calculated at the point when the District expends the funds.

## Questions Presented

1. How should lease proceeds be classified under A.R.S. § 15-1102(B) and (C)?
2. When is the District's bonded indebtedness calculated for purposes of determining the District's level of indebtedness to determine restrictions on use of lease proceeds?

## Background

On February 9, 2021, the Kyrene School District ("District") Governing Board approved a 77-year ground lease with a private entity to develop property that the District owns near the I-10 and Chandler Boulevards. The lease provides an annual revenue stream to the District. The District's goal is to utilize the proceeds from the lease in the most advantageous manner possible for the maintenance and operations of the District.

The use of proceeds from the sale and lease of property is governed by A.R.S. § 15-1102. That statute was amended significantly in 2016 to rewrite the requirements related to proceeds from property sales and leases by districts after

June 30, 2016. Ariz. Sess. Laws 2016, 52d Legislature, 2d Reg. Sess., ch. 242. The prohibitions related to use of land sale proceeds for maintenance and operations purposes has been consistent since the 1990s; i.e., a district cannot use any sale proceeds for maintenance and operations funding, and, as discussed below, lease proceeds have different requirements.

Furthermore, the statute has consistently divided the requirements for usage of sale and lease proceeds based on a district's bonded indebtedness. Specifically, for a non-unified district like Kyrene, the threshold amount set forth in statute is seven percent. If the District's bonded indebtedness ratio is seven percent or less, the provisions of A.R.S. § 15-1102(B) control; if the bonded indebtedness ratio is greater than seven percent, the provisions of A.R.S. § 15-1102(C) control.

The relevant language of the statute provides as follows:

B. A common school district or a high school district that has an outstanding bonded indebtedness of seven percent of the current year's assessed valuation or less or a unified school district that has an outstanding bonded indebtedness of fourteen percent of the current year's assessed valuation or less may expend the proceeds from the sale or lease of school property as follows:

1. The total sum of the proceeds from the sale of school property executed before July 1, 2016, for the total sum of the proceeds from the sale of property to a school or the total sum of the proceeds from the lease of school property to persons or entities other than schools for more than one year:

(a) May be expended for maintenance and operation in an amount that does not exceed fifteen percent of the revenue control limit for that year as provided in section 15-947, subsection A in any year.

(b) May be expended for capital outlay in any amount.

2. From and after June 30, 2016, proceeds from the sale of school property that exceed one hundred thousand dollars per sales transaction to persons or entities other than schools may not be expended for maintenance and operation and may be expended for capital outlay in any amount.

C. A common school district or a high school district that has an outstanding bonded indebtedness of greater than seven percent of the current year's assessed valuation or a unified school district that has an outstanding bonded indebtedness of greater than fourteen percent of the current year's assessed valuation may expend the proceeds from the lease or sale of school property as follows:

1. For the total sum of the proceeds from the sale of school property executed before July 1, 2016, for the total sum of the proceeds from the sale of property to a school or for the total sum of the proceeds from the lease of school property to persons or entities other than schools for more than one year:

(a) Up to twenty-five percent of the sales proceeds may be expended for maintenance and operation in an amount that does not exceed fifteen percent of the revenue control limit for that year as provided in section 15-947, subsection A in any year.

(b) The sales or lease proceeds may be expended for capital outlay in any amount.



2. From and after June 30, 2016, for proceeds from the sale of school property that exceed one hundred thousand dollars per sales transaction to persons or entities other than schools:

(a) The sales proceeds may not be expended for maintenance and operation.

(b) At least thirty-eight percent of the sales proceeds shall be used for the payment of any outstanding bonded indebtedness of the school district or for the reduction of school district taxes.

(c) The remainder of the sales proceeds that are not obligated pursuant to subdivision (b) of this paragraph may be expended for capital outlay in any amount.

### Legal Analysis

#### *Use of Lease Proceeds*

The first question is whether lease proceeds are restricted from being used for anything but capital outlays. Based on the language of the statute, it is my opinion that lease proceeds are not subject to the same restrictions as sale proceeds.

The relevant language in A.R.S. § 15-1102(B)(1) and (C)(1) reads as follows:

The total sum of the proceeds from **the sale** of school property executed before July 1, 2016, for the total sum of the proceeds from the sale of property to a school **or the total sum of the proceeds from the lease of school property** to persons or entities other than schools for more than one year . . . (emphasis added)

The wording of the statute separates land sales that occurred before July 1, 2016 from any leases, whether executed before or after July 1, 2016. As noted above, the prohibitions regarding use of sale proceeds for maintenance and operations purposes extends back to fiscal year 1998. But despite the multiple changes to the statute over the years, lease proceeds have always remained outside of the date restriction tied to land sale proceeds. This makes intuitive sense as a land sale generates a one-time influx of funds to the District, whereas a lease is an ongoing revenue stream for the District.

Based on this delineation, lease proceeds should not be subject to the prohibitions included in A.R.S. § 15-1102(B)(2) and (C)(2)(a) which only concern sale proceeds for land sales after July 1, 2016. Therefore, the lease proceeds that the District will receive are only limited as follows:

- If the bonded indebtedness of the District at the time of expenditure is 7% or less, the District may expend lease proceeds for maintenance and operation in an amount up to 15% of the District's revenue control limit; or
- For capital outlay in any amount regardless of the bonded indebtedness.

Thus, the only additional question concerns whether the District's bonded indebtedness exceeds the 7% threshold or not.

### *Calculation of Bonded Indebtedness*

The second question that must be addressed relates to the calculation of the District's bonded indebtedness. The District has more flexibility regarding the use of lease proceeds if its bonded indebtedness seven percent or less than the current year's assessed valuation. *Cf.* A.R.S. § 15-1102(B) and (C). Of note, if the District's bonded indebtedness is greater than seven percent, then the District is required to spend 38% of all proceeds from a sale towards paying down the District's bonded indebtedness (A.R.S. § 15-1102(C)(2)(b)). Additionally, for a highly indebted district, there is cap of 25% on the amount of sales proceeds that might be able to be used for maintenance and operations proceeds. Therefore, it is advantageous for the District to fall into the category of having its bonded indebtedness be seven percent or less.

The District's bonded indebtedness fluctuates over time based on the value of property within the District as well as the amount of bonds outstanding. Therefore, determining when the bonded indebtedness is calculated will alter whether the District's indebtedness is above or below seven percent. There are several possible times when the District's bonded indebtedness can be calculated: (1) at the beginning of the fiscal year; (2) after the annual property valuation by the assessor's office is completed in August; (3) when funds are received by the District; or (4) when funds are disbursed by the District.

For several reasons, it makes the most sense that the bonded indebtedness should be calculated when the funds are disbursed by the District. First, the plain language of A.R.S. § 15-1102(B) and (C) concerns the expending of funds from a land sale or lease. The receipt of funds, by contrast, is discussed in A.R.S. § 15-1102(D) which does not include any mention of the District's indebtedness. The inclusion of clear language related to the District's bonded indebtedness when discussing the expenditure of funds, without similar language included in the subsection discussing the receipt of funds suggests that the Legislature made a deliberate decision to include the language in those sections.

Second, A.R.S. § 15-1102(D) requires monies to be promptly deposited into the District's school plant fund. There is no discussion regarding a need to segregate funds received based on the District's level of indebtedness or for any other purpose meaning that all funds received by the District from a land sale or lease will be commingled into a single account. If the intent was to calculate the bonded indebtedness at the time of the receipt of funds, the Legislature would have included a requirement to separate the money into different funds to ensure that they were expended appropriately based on the requirements of A.R.S. § 15-1102(B) or (C).

Finally, as discussed above, the District's bonded indebtedness fluctuates throughout the year. If the Legislature's intent was to require that the calculation be made at the beginning of each fiscal year or at the time of the most recent property valuation, it could have set those dates in the statute. By contrast, the language related to the bonded indebtedness in A.R.S. § 15-1102(B) and (C) is directly tied to the expenditure of funds which can be done at any time by the District.

For these reasons, it is my opinion that for purposes of A.R.S. § 15-1102(B) and (C), the District's bonded indebtedness must be calculated at the time that the District wishes to expend the sale or lease proceeds.



Conclusion

For the reasons set forth above, it is my opinion that the District may use the lease proceeds from the land lease executed in February 2021 for maintenance and operations purposes as limited by A.R.S. § 15-1102(B)(1) and (C)(1) depending on the District's level of bonded indebtedness; such indebtedness should be calculated at the time that the District will expend the funds.

Sincerely,



Jordan T. Ellel  
Tempe Tri-District Legal Counsel