

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL August 19, 2002	No. I02-008 (R02-040) Re: School Facilities Board Funding for District Public Schools Re-designated as Charter Schools
---	--

TO: Ed Boot, Interim Executive Director
Arizona School Facilities Board

Questions Presented

Your predecessor asked the following questions regarding the responsibilities of the School Facilities Board (“SFB”) for providing capital funding for schools:

1. If a district public school is re-designated as a charter school, at what point should SFB remove the schools from its records and cease providing building renewal fund monies for the school?
2. If a district public school is re-designated as a charter school, may the SFB cease funding any current or future deficiency correction work at that school, including funding for projects that have been started but not yet completed?

3. If a district public school is re-designated as a charter school, does the SFB have the authority to require the district to repay the SFB for Deficiencies Correction Fund monies expended at that school?

Summary Answers

1. When a school district re-designates one of its schools as a charter school, that facility is no longer entitled to receive further funding from the Building Renewal Fund. The charter school becomes ineligible for building renewal monies when the charter contract is signed, and the school should be removed from SFB's records as of that date.

2. Similarly, if a district school is re-designated a charter school, that school is no longer eligible to receive funding from the Deficiencies Correction Fund. It is, therefore, not eligible to receive additional monies for projects that have been started and not yet completed as of the date the charter contract is signed.

3. The SFB does not have the authority to require a school district to repay the SFB for Deficiencies Correction Fund monies previously paid to a public school that has since been re-designated as a charter school.

Background

A. The School Facilities Board.

The SFB administers the State's school capital funding program. *See* A.R.S. §§ 15-2001 to -2115. The Legislature created the SFB in 1998 in response to a trio of Supreme Court decisions concerning the requirements of Article XI, Section 1 of the Arizona Constitution, which mandates that the State to provide a general and uniform system of public education. *See Hull v. Albrecht*, 192

Ariz. 34, 960 P.2d 634 (1998); *Hull v. Albrecht*, 190 Ariz. 520, 950 P.2d 1141 (1997); *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994).

The SFB is charged with establishing minimum adequacy standards for school facilities, A.R.S. § 15-2011, and distributing funds so that school facilities meet these standards. The SFB distributes monies from three funds, and each fund serves a different purpose. The Deficiencies Correction Fund brings facilities up to state standards. A.R.S. § 15-2021. The Building Renewal Fund maintains all facilities at the level required by State standards. A.R.S. § 15-2031. The New School Facilities Fund provides new facilities for growing school districts. A.R.S. § 15-2041.

B. Charter Schools.

Charter schools are public schools that are sponsored by a school district, the state board of education, or the state board for charter schools. A.R.S. § 15-183(C). These sponsors may contract with a public body, private person or private organization to establish charter schools. A.R.S. § 15-183(B). Like traditional public schools, charter schools receive state funding based on a formula prescribed by statute. *See* A.R.S. § 15-185. Traditional public schools may become charter schools through the statutory procedure for establishing charter schools. *Cf.* A.R.S. § 15-185(A)(5), (7), (E) (addressing issues related to State financial assistance when district school converts to charter school). When the Legislature created the SFB in 1998, it also amended the statutes governing charter schools to exempt charter schools from the statutes governing the SFB and the three funds it administers. *See* 1998 Ariz. Sess. Laws, 5th Spec. Sess. ch 1, § 5 (codified at A.R.S. § 15-181(A)).

Analysis

An administrative agency has no powers except those expressly conferred or necessarily implied in the statutes governing the agency. *Pressley v. Indus. Comm'n*, 73 Ariz. 22, 31, 236 P.2d 1011, 1017 (1951). Here, the Legislature exempted charter schools from the statutes governing the SFB by adding the following language to the charter school statutes:

Charter schools are public schools that serve as alternatives to traditional public schools and charter schools are not subject to the requirements of article XI, § 1, Constitution of Arizona, or chapter 16 of this title.

A.R.S. § 15-181(A) (as amended by 1998 Ariz. Sess. Laws, 5th Spec. Sess. ch. 1, § 5).

The statutes governing the SFB are in chapter 16 of Title 15. *See* A.R.S. §§ 15-2001 to -2115. By its terms, this exemption from SFB funding applies to all charter schools and to all three funds the SFB administers. *See, e.g. UNUM Life Ins. Co. v. Craig*, 200 Ariz. 327, 330, 26 P.3d 510, 513 (2001) (Clear and unambiguous statutory language is applied "without using other means of construction.").

Accordingly, the answers to your specific questions are as follows. First, a district school that is re-designated as a charter school becomes ineligible for building renewal monies and should be removed from the SFB's records at the point that the school becomes a charter school. This occurs when the charter contract is signed. A.R.S. § 15-183(B) ("The sponsor of a charter school may contract with a public body . . . for the purpose of establishing a charter school . . ."). Therefore, as of the date the charter contract is signed, the SFB should remove the charter school from its records and cease providing it funds.

Second, because charter schools are not eligible to receive monies from the SFB's Deficiencies Correction Fund, the SFB may not provide any additional funds for deficiency correction work at the charter school.

Third, the SFB does not have the authority to require school districts to repay the SFB for Deficiencies Correction Fund monies expended at a district school that is subsequently re-designated as a charter school. No statute establishes the authority to seek repayment of these monies, and no statute creates an obligation on the part of the school district to repay these monies to the SFB.

Conclusion

Because the Legislature specifically excluded charter schools from SFB funding, if a school district re-designates a public school as a charter school, that facility is no longer entitled to receive monies from any of the three funds the SFB administers. The SFB does not, however, have the statutory authority to require school districts to repay the SFB for Deficiencies Correction Fund monies expended at a public school that has since been re-designated as a charter school.

Janet Napolitano
Attorney General