



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>October 5, 2010</p>	<p>No. I10-006 R10-010</p> <p>Re: Applicability of Soft Capital Budget Reductions in Fiscal Years 2008-2009 and 2009-2010 to Joint Technology Education Districts</p>
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To: The Honorable Tom Horne
Superintendent of Public Instruction

Questions Presented

1. Should the Arizona Department of Education (“Department”) apply soft capital budget reductions from fiscal year 2008-2009 and 2009-2010 state budgets to joint technical education districts (“JTEDs”)?¹
2. Should the reductions apply prospectively only, or should the Department deduct from future payments the amount of soft capital that was paid to JTEDs in the past that should have been reduced?

¹ In 2010, the Legislature changed the term “joint technological education district” to “joint technical education district.” 2010 Ariz. Sess. Laws, ch. 17.

Summary Answers

1. Soft capital allocation reductions passed by the Legislature for fiscal year 2008-2009 (2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 6) and for fiscal year 2009-2010 (2009 Ariz. Sess. Laws, 4th Spec. Sess., ch. 2, § 2) apply to JTEDs.
2. The Department should reduce the soft capital allocations made to JTEDs for fiscal years 2008-2009 and 2009-2010 pursuant to A.R.S. § 15-962. The session laws administering the budget reductions state that the soft capital allocation reductions apply to specific fiscal years to address budget shortfalls. Thus, prospective application of the reductions would give no effect to the soft capital allocation reductions for fiscal years 2008-2009 and 2009-2010.

Background

In 1990, the Arizona Legislature authorized the creation of JTEDs to allow existing school districts to form a regional district for the provision of vocational and technical education programs in order to avoid duplicating expensive courses and programs. 1990 Ariz. Sess. Laws, ch. 248, § 1. JTEDs were created to serve a special purpose and are therefore limited to those powers expressly or impliedly granted. *Flowing Wells Sch. Dist. v. Vail Sch. Dist.*, 145 Ariz. 278, 280, 700 P.2d 1378, 1380 (App. 1985) (citing *Olmstead & Gillelen v. Hesla*, 24 Ariz. 546, 551, 211 P. 589, 590 (1922)). JTEDs are subject to various different education statutes, including the general provisions for school district budgets; the Legislature also established specific budget limitations for JTEDs. *See, e.g.*, A.R.S. §§ 15-393(C), -947.01.

In early 2009, the Legislature enacted Senate Bill (“S.B.”) 1006, a K-12 and higher education budget reconciliation bill. Among other things, this bill reduced the amount of base support level funding for K-12 education:

A. For fiscal year 2008-2009, the department of education shall reduce by \$98,198,000 the amount of base support level funding that otherwise would be apportioned to school districts statewide for fiscal year 2008-2009 and shall reduce school district budget limits accordingly. The funding reductions required under this subsection shall be made on a proportional basis based on the base support level of each school district for fiscal year 2008-2009, as prescribed in section 15-943, Arizona Revised Statutes, relative to the base support level for school districts for the state as a whole for fiscal year 2008-2009.

B. For fiscal year 2008-2009, the department of education shall reduce the base support level, as prescribed in section 15-943, Arizona Revised Statutes, for a school district that is not eligible to receive basic state aid funding for fiscal year 2008-2009 by the amount that that school district's basic state aid funding would be reduced pursuant to subsection A of this section if the school district was eligible to receive basic state aid funding for fiscal year 2008-2009.

C. The funding reductions required in subsections A and B of this section apply to funding for students in school district technology assisted project-based instruction programs authorized in section 15-808, Arizona Revised Statutes, and to funding for pupils in joint technological education districts authorized by title 15, chapter 3, article 6, Arizona Revised Statutes and are in addition to the reductions prescribed by Laws 2008, chapter 287, section 47.

D. The reductions prescribed in subsections A and B of this section do not apply to base support level funding for kindergarten programs and grades one through eight for a school district that has a student count of fewer than six hundred students in kindergarten and grades one through eight.

E. The reductions prescribed in subsections A and B of this section do not apply to base support level funding for grades nine through twelve for a school district that has a student count of fewer than six hundred students in grades nine through twelve.

2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 5. The law also reduced soft capital allocations:

A. For fiscal year 2008-2009, the department of education shall reduce by \$21,000,000 the amount of basic state aid that otherwise would be apportioned to school districts statewide for fiscal year 2008-2009 for the soft capital allocation prescribed in section 15-962, Arizona Revised Statutes, and shall reduce school district budget limits accordingly.²

² Soft capital allocation monies are used for "short-term capital items that are required to meet academic adequacy standards such as technology, textbooks, library resources, instructional aids, pupil transportation vehicles, furniture, and equipment" and may be used "to meet administrative soft capital purposes after complying with the adequacy standards prescribed in A.R.S. § 15-2001." A.R.S. § 15-962(D).

B. For fiscal year 2008-2009, the department of education shall reduce the soft capital allocation for a school district that is not eligible to receive basic state aid funding for fiscal year 2008-2009 by the amount that its soft capital allocation would be reduced pursuant to subsection A of this section if the district was eligible to receive basic state aid funding for fiscal year 2008-2009 and shall reduce the school district's budget limits accordingly.

C. The reductions prescribed in subsections A and B of this section do not apply to the soft capital allocation for kindergarten programs and grades one through eight for a school district that has a student count of fewer than six hundred students in kindergarten programs and grades one through eight.

D. The reductions prescribed in subsections A and B of this section do not apply to the soft capital allocation for grades nine through twelve for a school district that has a student count of fewer than six hundred students in grades nine through twelve.

Id. § 6.

The Legislature specifically included JTEDs in the base support level reductions required by section 5(A) of S.B. 1006. *Id.* § 5(C) (“The funding reductions required in subsections A and B of this section apply to funding . . . for pupils in joint technological education districts. . . .”). The Legislature did not, however, include language specifying the inclusion of JTEDs in the soft capital allocation reduction; it did specifically exempt small school districts with fewer than 600 students in kindergarten programs, grades one through eight and nine through twelve. *Compare id.* § 5(C) with *id.* § 6(C).

In November 2009, the Legislature enacted S.B. 1002, a K-12 budget reconciliation bill. This bill made another reduction to the soft capital allocations for K-12 education. For fiscal year 2009-2010, it reduced the soft capital allocation provided for in A.R.S. § 15-962 by \$144,000,000 that would have otherwise been apportioned to school districts statewide.³ 2009 Ariz. Sess. Laws, 4th Spec. Sess., ch. 2, § 2(1). Again, the Legislature did not include language stating that the reductions applied to JTEDs, but did specifically reduce to fifty percent the soft

³ S.B. 1002 did not reduce the base support level for school districts for fiscal year 2009-2010.

capital reduction for small school districts with fewer than 600 students in kindergarten programs, grades one through eight and nine through twelve. *Id.* § 2(4), (5).

On August 25, 2009, Senators Russell Pearce and John Huppenthal, and Representatives John Kavanagh and Rich Crandall (the Appropriations and Education committee chairs of each house, respectively) sent a letter to you indicating that the soft capital budget reductions for fiscal year 2009-2010 were not intended to apply to JTEDs. The Department complied with that interpretation and did not apply the soft capital reductions to JTEDs. In the spring of 2010, Senate President Robert Burns informed you that JTEDs were intended to be part of the soft capital budget cuts. You subsequently requested an opinion from this Office regarding whether the Legislature's recent soft capital reductions apply to JTEDs.⁴

Analysis

The primary rule of statutory construction is to find and give effect to legislative intent. *Mail Boxes, Etc., U.S.A. v. Indus. Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The best and most reliable indicator of legislative intent is a statute's own words. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). Where the language of the statute is plain and unambiguous, the text must generally be followed as written. When the statute's language is not clear, legislative intent is determined by "reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose." *Id.*

⁴ The opinion request specifically asks whether the soft capital allocation reductions apply to JTEDs for fiscal year 2008-2009. The letter from the legislators specifically addresses the soft capital allocation reductions for fiscal year 2009-2010. The soft capital allocation reductions in S.B. 1006, for fiscal year 2008-2009, and S.B. 1002, for fiscal year 2009-2010, contain the same language. Thus, this opinion addresses whether the soft capital allocation reductions apply to JTEDs for both fiscal years 2008-2009 and 2009-2010.

The budget shortfalls in fiscal years 2008-2009 and 2009-2010 resulted in extensive budget reductions, including cuts to funding for K-12 education. For both fiscal years 2008-2009 and 2009-2010, the Legislature reduced the soft capital allocations prescribed by A.R.S. § 15-962. The soft capital allocation formula contained in A.R.S. § 15-962 details how school districts must calculate the funding and how the funds are spent and maintained. A.R.S. § 15-962(C)-(F).

Section 15-962.01 applies the soft capital allocation formula in A.R.S. § 15-962 to JTEDs. A.R.S. § 15-962.01(B) (The soft capital allocation for JTEDs “shall be the amount for students in grades nine through twelve for districts with a student count of six hundred or more *as prescribed in section 15-962.*”) (emphasis added). JTEDs are also required to “establish a district soft capital allocation fund and shall use the monies only for the purposes prescribed in section 15-962, subsection D.” *Id.* § 15-962.01(C).

Section 6(A) of S.B. 1006 requires the Department to reduce the soft capital allocation “prescribed in [A.R.S. §] 15-962” for fiscal year 2008-2009. 2009 Ariz. Sess. Laws, ch. 6, § 6(A) (“For fiscal year 2008-2009, the department of education shall reduce by \$21,000,000 the amount of basic state aid that otherwise would be apportioned to school districts statewide for fiscal year 2008-2009 for the soft capital allocation prescribed in section 15-962, Arizona Revised Statutes. . . .”). Because JTEDs are subject to the provisions of A.R.S. § 15-962 through the application of A.R.S. § 15-962.01, as noted above, and because JTEDs are not specifically exempted from the soft capital allocation reductions, as were small school districts with fewer than 600 students, JTEDs are subject to the soft capital allocation reductions in section 6(A) of S.B. 1006. Likewise, because S.B. 1002 contains essentially the same language regarding the

soft capital allocation reduction for fiscal year 2009-2010, JTEDs are subject to that reduction as well.

That the Legislature specified that JTEDs were included in the provisions addressing reductions in the base support level—yet did not do so in the provisions addressing reductions in the soft capital allocations—does not alter the conclusion that JTEDs are subject to the soft capital allocation reduction. As noted above, in fiscal year 2008-2009, the Legislature addressed budget shortfalls through reductions not only to soft capital allocations but also to the base support level, the calculation of which is set forth in A.R.S. § 15-943. Unlike the base support level reduction, the soft capital allocation reduction did not specifically mention JTEDs. However, a review of the school funding statutes demonstrates that a specific reference to JTEDs, while necessary to include these entities in the reductions to the base support level, was not necessary in S.B. 1006, section 6(A) to include them in the soft capital allocation reductions.

The base support level is a part of the school funding formula that affords a weight to the student count for certain populations of students in various sized school districts. A.R.S. §15-943. This weighting takes into account the differences in costs for educating students in small schools, high school, or students with disabilities. *Id.* The base support level for JTEDs is not governed by A.R.S. § 15-943. Instead, the base support level for JTEDs is contained in a different statute, A.R.S. §15-943.02. *Compare* A.R.S. § 15-943(2)(a) *with* § 15-943.02(A). The JTED base support level statute does not reference or otherwise subject JTEDs to A.R.S. § 15-943, which is the statute addressed in S.B. 1006, § 5(A) regarding the base support level reductions. Accordingly, if the Legislature wanted to include JTEDs in the base support level reduction contained in S.B. 1006, section 5, it needed to specifically state that they were included. 2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 5(A).

In contrast, the soft capital allocation reduction did not contain any specific reference to JTEDs. *Compare* 2009 Ariz. Sess. Laws, 1st Spec. Sess., ch. 6, § 5 *with* § 6. The Legislature did not need to specify that JTEDs were subject to the soft capital allocation reduction because the Legislature expressly tied JTED soft capital allocations to the allocations in A.R.S. § 15-962, and JTEDs are subject to A.R.S. § 15-962 through A.R.S. § 15-962.01. Because JTEDs are subject to A.R.S. § 15-962, the soft capital reduction applied to JTEDs.

The August 2009 letter from the chairmen of the House and Senate Appropriations and Education committees indicating that the Legislature intended that JTEDs not be subject to the soft capital cuts does not alter the analysis. *See Golder v. Dep't of Rev.*, 123 Ariz. 260, 265, 599 P.2d 216, 221 (1979) (stating “rule is clearly established in Arizona that one member of a legislature which passes a law is not competent to testify regarding the intent of the legislature passing the law”). Instead, the statutory language determines the scope of the soft capital reductions.

Finally, the application of the reductions cannot be prospective because the legislation requires the Department to apply them to specific fiscal years. As you stated in your opinion request, the Department relied on the legislators' August 2009 letter to hold JTEDs harmless from the soft capital allocation reductions for fiscal year 2009-2010. Prospective application of the soft capital allocation reductions by the Department would have the practical effect of making no soft capital allocation reduction to JTEDs because those fiscal years have passed. The Department should now retroactively reduce the soft capital allocations made to JTEDs for fiscal years 2008-2009 and 2009-2010 pursuant to A.R.S. § 15-962. The Department must apply the soft capital allocation reductions to JTEDs under A.R.S. §15-915, which sets forth the process for correcting errors if the superintendent of public instruction determines that the

calculation of state aid or budget limits within the previous three years did not conform to statutory requirements.

Conclusion

The Legislature's soft capital allocation reductions for fiscal years 2008-2009 and 2009-2010 apply to JTEDs. The Department must apply the soft capital allocation reductions for fiscal years 2008-2009 and 2009-2010 to JTEDs through A.R.S. § 15-915.

Terry Goddard
Attorney General