

The Honorable Mary Hartley
Arizona State Senate

October 19, 1999
Nº 199-021 (R99-026)

Questions Presented

You have asked the following questions:

(1) Whether a school district may require a non-profit corporation that leases school property for extended-day resource programs and other supplemental education programs to provide equipment, furniture, and supplies to the district as a term of the lease, and whether a non-profit corporation may charge students for their programs.

(2) Whether a school district may charge parents a fee for providing a half-day kindergarten program to supplement the half-day program paid for by State aid and deposit the fees with other district funds, and if so, whether the school district is required to set aside funds for parents who cannot afford the fees for the portion of the kindergarten program that is not paid for by State aid.

Summary Answers

1. A school district may charge a non-profit corporation that leases district facilities to provide educational programs a reasonable fee for the use of the facilities, and the fee may be paid in whole or in part with goods or services. The non-profit corporation may charge students for its programs.

2. School districts are authorized to charge parents a fee for extended-day kindergarten programs by Arizona Revised Statutes ("A.R.S.") § 15-342(24), which authorizes fees for optional educational programs and extracurricular activities, and A.R.S. § 15-1142, which authorizes school districts to establish community school programs. However, school districts cannot commingle those fees with other school district funds. State law does not require fee waivers for extended-day kindergarten programs that are offered as community school programs, but if such programs are offered as an extracurricular activity under A.R.S. § 15-342(24), school districts must give school principals discretion to waive all or part of the fee for the program if it would create an economic hardship for a pupil.

Analysis

A. Leases of School Property.

Your first question concerns leases of school property. School districts may lease "school buildings, grounds, buses, equipment and other school property to any person, group or organization" for any civic purpose that is in the interest of the community, including extended-day resource programs. A.R.S. § 15-1105(A). Extended-day resource programs are activities offered on school property before or after normal school hours for kindergarten through eighth grade. The activities may include "physical conditioning, tutoring, supervised homework or arts activities." A.R.S. § 15-1105(E). Therefore, pursuant to A.R.S. § 15-1105, a district may lease district property to a non-

profit corporation for extended-day resource programs.

In leasing school property, the district must charge a "reasonable use fee," which may be waived in limited circumstances in the discretion of the district governing board, or by the superintendent or chief administrative officer with the approval of the governing board. A.R.S. §§ 15-1105(A), (B).⁽¹⁾ This "reasonable use fee" may include "goods contributed or services rendered by the person, group or organization to the school district." *Id.* This statutory language would permit a district to require a non-profit corporation to provide furniture, equipment and supplies as part of the lease, provided that the terms of the lease were "reasonable." Any funds generated from such leases may be used to pay outstanding district bond debt or to reduce school district taxes, or it may be deposited in the district's "civic center school fund." A.R.S. §§ 15-1102(A), -1105(D).

Although statutes establish requirements regarding what a district may charge a group for the use of school property, there are no statutes addressing what a non-profit organization leasing school property may charge the students for participation in the programs it offers. Nothing in state law prohibits these non-profit organizations from charging students for participation in their programs, and nothing in state law prohibits the non-profit organization from passing rent costs along to students.

B. Extended-Day Kindergarten Programs.

Your second question addresses extended-day kindergarten programs. School districts are required only to provide kindergarten students with instruction for one-half of the school day, which corresponds with the funding school districts receive from the State to support kindergarten programs. A.R.S. § 15-901(A)(2)(a)(i); *see also* A.R.S. § 15-703(B) (requiring school districts to establish a kindergarten program unless they file an exemption and can demonstrate that a kindergarten program is not in the best interest of the district). Districts cannot charge students to participate in this state-funded program. *See* Ariz. Op. Att'y Gen. I94-004 (fees prohibited absent specific statutory authorization); *see also* Ariz. Const. art. XI, § 6 (requires free common schools; other state educational institutions must be "as nearly free as possible").

Many school districts supplement the half-day kindergarten program paid for by the State by offering optional educational activities to kindergarten students.⁽²⁾ Fees for those supplemental kindergarten programs are authorized as fees for optional extracurricular programs under A.R.S. § 15-342(24), or as fees for participation in community school programs under A.R.S. § 15-1142.⁽³⁾ *See generally* Ariz. Op. Att'y Gen. I98-007 (addressing the availability of tax credit under A.R.S. § 43-1089.01 for fees for extended-day kindergarten programs). The decision to offer programs to supplement the district's required, free educational kindergarten programs, either as an extracurricular activity or as a community school program, is left to each individual school district.⁽⁴⁾

If a district offers extended-day kindergarten as a community school program, any fees the district collects are kept in a community school program fund that is separate from other district funds. A.R.S. § 15-1143. This separation is required because community school monies may be used only for the operation of the community school program. *Id.* Nothing in the community school statutes addresses the issue of waiving fees for participation in community school programs. Therefore, State law does not require fee waivers for extended-day kindergarten programs that are offered as community school programs, although a school board could establish waivers under its authority to "establish tuition and fee charges for community school programs." A.R.S. § 15-1142(4).

If an extended-day kindergarten program is offered as an extracurricular activity under A.R.S. § 15-342(24), different fee provisions apply. As is true of community school programs, any fees charged by the district under A.R.S. § 15-342(24) may be used only to pay for the costs of operating the program. *See* A.R.S. § 15-342(24) (fee limited to actual costs of extra-curricular activities). Moreover, fees for extracurricular programs must be adopted at a public meeting after notice has been provided to all parents of pupils enrolled at schools in the district. A.R.S. § 15-342(24). In addition, school districts must give school principals the discretion to waive all or part of any fee assessed for extracurricular activities and programs if the fee creates an economic hardship for a pupil. *Id.* Thus, for extended-day kindergarten programs that a district offers as an extracurricular activity, rather than as a community school program, some fee waivers may be required.

Conclusion

A school district may lease its facilities to a non-profit corporation to provide extended-day resource programs for students and may require the non-profit organization to provide the district with equipment, furniture and supplies as part of the terms of the lease. The non-profit corporation may also charge students for participation in the extended-day resource programs.

School districts may charge parents a fee for extended-day kindergarten programs under their authority to charge fees for extracurricular activities or under the statutes authorizing community school programs. However, school districts cannot commingle those fees with other district funds. State law does not require fee waivers for extended-day kindergarten programs that are offered as community school programs, but if such programs are offered as an extracurricular activity under A.R.S. § 15-342(24), school districts must give school principals discretion to waive all or part of the fee for the program if it would create an economic hardship for a pupil.

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1. The uncompensated use of school property is allowed by any school related group or by any organization whose membership is open to the public

and whose activities promote the educational function of the school district as determined in good faith by the school district's governing board, or the superintendent or chief administrative officer with the approval of the governing board, including extended-day resource programs, except as provided in § 15-511. A.R.S. § 15-1105(B).

2. School districts are without statutory authority to operate a day-care facility to provide merely custodial, rather than educational, services. Ariz. Op. Att'y Gen. I81-014. Charter schools are established to provide both a learning environment to improve pupil achievement and academic choices for parents and pupils, and similarly they may not provide strictly custodial services. *See* A.R.S. § 15-181(A).

3.A "community school program" is a program that involves people in the development of an educationally oriented community. The community school serves the purposes of academic and skill development for all citizens, furnishes supervised recreational and avocational instruction, supplies remedial and supplemental education, furnishes meeting places for community groups and provides facilities for the dissemination of a variety of community related services, including extended-day resource programs as defined in § 15-1105. A.R.S. § 15-1141(3).

A.R.S. § 15-342(24) authorizes fees for extra-curricular programs for "common and high school pupils." Common school pupils include preschool children with disabilities and children who attend kindergarten and grades one through eight. A.R.S. §15-901(A)(4); *but see Carpio v. Tucson High School Dist. No. 1*, 111 Ariz. 127, 128, 524 P.2d 948, 949 (1974) (for the purposes of Article XI of Arizona's Constitution, common schools are "those grades between kindergarten and high school").

4. Although school districts may charge fees for extended-day kindergarten, they certainly are not required to do so.

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