

**To: The Honorable Robert Burns
Chairman, Joint Committee on Capital Review**

January 3, 2001

**Re: Building
Renewal Fund**

I01-002 (R00-075)

Questions Presented

You have asked the following questions regarding the statutory authority of the Arizona School Facilities Board ("SFB") in connection with the Building Renewal Fund:

1. Is the SFB required to instruct the State Treasurer to credit a \$2.7 million supplemental distribution from the State's transaction privilege tax revenues for the Building Renewal Fund for fiscal year ("FY") 2000-01 based on the most recent data received by the SFB from school districts?
2. If the SFB is not *required* to instruct the Treasurer to credit a supplemental distribution for FY2000-01, is the SFB *permitted* to do so?

Summary Answer

1. No. The statutes do not require the SFB to amend or supplement its instructions to the State Treasurer regarding funding for the Building Renewal Fund after January 1 of each year based on new data the SFB receives from school districts.
2. No. The SFB does not have statutory authority to change the total amount of funding required for the Building Renewal Fund after it has instructed the State Treasurer on January 1 of each year.

Background

The Students FIRST legislation fundamentally restructured the State's system of school financing for school facilities. It created the SFB to establish minimum adequacy standards for school facilities, to monitor district compliance with the standards, and to distribute funds from different sources to (1) bring existing facilities up to standards (the "Deficiencies Corrections Fund"); (2) construct new facilities for growing districts (the "New School Facilities Fund"); and (3) maintain all facilities at the adequacy level (the "Building Renewal Fund"). See *generally*, *Hull v. Albrecht*, 192 Ariz. 34, 37, 960 P.2d 634, 637 (1998).

Pursuant to Students FIRST, funding for the Building Renewal Fund is determined by a formula based on the square footage, age, and renovation history for certain school buildings in each school district. A.R.S. § 15-2031(D). By September 1 of each year, school districts must report to the SFB the information necessary for the SFB to create a database for purposes of calculating the Building Renewal Fund amounts according to the statutory formula. *Id.* The SFB is required to update the data in its Building Renewal Fund database at least annually to "reflect changes in the ages and value of school buildings." *Id.* Based on the statutory formula and the database, the SFB then advises the Joint Committee on Capital Review by December 1 of each year and the State Treasurer no later than January 1 of each year as to the amounts to be funded from the State's transaction privilege tax revenues for the upcoming fiscal year. See A.R.S. § 15-2002(A) (10).

Based on data submitted to the SFB by school districts by September 1, 1999, the SFB estimated that it would need \$120 million to fund the Building Renewal Fund for FY2000-01. Accordingly, on January 1, 2000, the SFB instructed the State Treasurer to credit \$120 million from the State's Transaction Privilege Tax revenues to the Building Renewal Fund for FY2000-01.

When the SFB updated its database on September 1, 2000, with information from the school districts to determine the Building Renewal Fund funding necessary for FY2001-02, the SFB concluded that the updated figures indicated \$122.7 million would have been an appropriate funding level for the Building Renewal Fund for part of FY2000-01. The difference between the \$120 million that the SFB had on January 1, 2000 instructed the State Treasurer to transfer and the \$122.7 million updated figure is primarily attributable to two increases in a construction index that is used to calculate the building renewal formula.

Analysis

- **The School Facilities Board Is Not Required to Amend or Supplement Its Instructions to the State Treasurer After January 1 of Each Year.**

Where legislative language is plain and unambiguous, the statutory text is applied as written. See *Mid Kansas Fed. Sav. & Loan Ass'n v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991).

Section 15-2002(A)(10), A.R.S., provides, in relevant part:

No later than January 1 of each year, the board shall instruct the State treasurer as to the amounts under the transaction privilege tax to be credited in equal quarterly installments for the following State fiscal year.

(Emphasis added.) Nothing in statute requires the SFB to amend or supplement its instructions to the State Treasurer after January 1 of each year. Under the statutory timetable set forth in Students FIRST, the amount needed to fund the Building Renewal Fund is established before the fiscal year begins. The statutes do not envision, let alone require, the SFB to recalculate the funding amount based on new data that the SFB receives during the fiscal year. Thus, once the SFB has properly calculated the amount of funding that is required under the statutory formula and has advised the State Treasurer to transfer that amount to the Building Renewal Fund, the amount of funding required for the Building Renewal Fund for the upcoming fiscal year is permanently set. Were this not the case, the appropriate amount of funding would constantly change during the year as school districts added to or subtracted from their total square footage and as buildings were renovated or built.

The October 13, 2000 decision in *Roosevelt Elementary Sch. Dist. v. Hull*, No. CV99-19062 (Ariz. Super. Ct.) does not require a different conclusion. That case challenged the level of funding for the Building Renewal Fund only for the first two fiscal years Students FIRST was in effect. For those fiscal years, the Legislature and the SFB estimated the amount of funding required because the SFB did not have the data from school districts necessary to calculate the funding according to the statutory formula by the statutory deadline. The court's decision did not address the issue presented in this Opinion, which is whether the statutes would require or permit the SFB to amend or supplement its instructions to the State Treasurer after January 1 of a year in which the SFB used the school district data reported to it by September 1 to calculate the amount of funding necessary for the Building Renewal Fund. October 13, 2000 Minute Entry

at 3-4, *Roosevelt Elementary Sch. Dist. v. Hull*, No CV99-19062 (Ariz. Super. Ct.).⁽¹⁾

- **The School Facilities Board Does Not Have the Authority to Change the Amount of Building Renewal Fund Funding After January 1 of Each Year.**

The jurisdiction and powers of any State agency are limited by the terms of the statute that creates the agency. See, e.g., *Schwartz v. Superior Court*, 186 Ariz. 617, 619, 925 P.2d 1068, 1070 (App. 1996). The statutory scheme provides that the SFB will instruct the State Treasurer on the amount of necessary funding "[n]o later than January 1" of the proceeding fiscal year. This statutory language does not allow the SFB to subsequently amend the Building Renewal Fund funding level based on changing data submitted by school districts during the fiscal year.⁽²⁾

If the SFB desires to revise the funding level for the Building Renewal Fund during the fiscal year, the Legislature must first grant the SFB statutory authority to do so. Alternatively, the Legislature could, without amending the statutes, specifically appropriate amounts to the Building Renewal Fund if supplemental funding is desirable.

Conclusion

The SFB is not required or permitted to substantively amend or revise its instructions to the State Treasurer after January 1 of each year based on new data later submitted by school districts.

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Attorney General

1. As for the funding level established by the SFB for FY1999-2000, the court noted that the State, in arguing that the statutory timeline for calculating building renewal for FY1999-2000 did not apply, did not explain why the SFB could not have reported late to the State Treasurer or why a supplemental report could not have been made *for that fiscal year only*. See October 13, 2000 Minute Entry at 3, *Roosevelt Elementary Sch. Dist. v. Hull*, No. CV99-19062 (Ariz. Super. Ct.).

2. This Opinion does not address whether the SFB could amend or revise its instructions after January 1 to advise the State Treasurer to transfer a *lesser* amount to any of the three Students FIRST funds because it received the necessary funds from other sources. In that situation, the total amount of State funding for the Building Renewal Fund is not recalculated but rather remains the amount calculated by the SFB pursuant to statute by September 1.

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