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AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

WILLIAM THOMSON  
DEPUTY AUDITOR GENERAL

January 2, 2007

The Honorable Terry Goddard  
Attorney General  
Office of the Attorney General  
1275 West Washington Street  
Phoenix, AZ 85007

Dear Mr. Goddard:

We are jointly requesting a formal legal opinion regarding Laws 2006, Chapter 353, §27 (HB 2874), which provides:

A. The sum of \$100,000,000 is appropriated from the state general fund in fiscal year 2006-2007 to the department of education to fund the increase in the base level authorized in section 15-901, subsection B, paragraph 2, Arizona Revised Statutes, as amended by this act.

B. The funding appropriated in subsection A of this section shall be used to provide salary and benefit increases for school district and charter school nonadministrative personnel.

A few months ago, you issued opinion No. I06-003 in which you concluded that school districts and charter schools could amend the previously executed contracts of nonadministrative personnel to take advantage of this legislative appropriation to increase salaries and benefits.

In recent weeks we have received complaints from school districts' teachers associations regarding how their districts have used their portion of the \$100 million appropriation. We are specifically aware that one district and its nonadministrative personnel executed contracts for fiscal year 2007 before the Law was enacted. After the Law was enacted, the district used its portion of the \$100 million appropriation to fund part of the raises agreed to in these executed contracts, as well as providing additional raises.

**Question:** May the whole increase over fiscal year 2006 levels be paid from the appropriation, or only the increase over salary and benefit levels contained in contracts for fiscal year 2007 executed prior to the date the Law was enacted?

A few years ago, another district approved a multi-year consensus agreement with its teachers association that included a salary schedule for fiscal year 2007 (the last year of the agreement) and a provision that the district could renegotiate the fiscal year 2007 salary schedule if there was a significant change in funding. The district exercised their option to renegotiate and delayed these negotiations until after the Law was enacted, hinting at the possibility of a pay freeze for all

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employees if the Legislature did not appropriate sufficient funds to cover compensation increases. Accordingly, contracts were not executed between the district and nonadministrative personnel until after the Law was enacted. The district used its portion of the \$100 million appropriation to fund raises that included those the nonadministrative personnel might have received under the original salary schedule in the multi-year agreement.

Your opinion No. I06-003 indicated that the constitutional issues addressed in the opinion were not implicated by contracts executed after the Law's enactment because presumably those contracts incorporated the increases that the Law authorized.

**Question:** If contracts for fiscal year 2007 were not executed prior to the date the Law was enacted, how should school districts and charter schools determine the base salary and benefit levels from which to calculate the increase that may be paid from the appropriation?

If you have questions concerning this matter, please call Magdalene Haggerty or Michael Stelpstra in the Office of the Auditor General, Accounting Services Division, at (602) 553-0333.

Thank you for your attention to this matter.

Sincerely,

  
Tom Horne *by Jeffrey Larson*  
Superintendent of  
Public Instruction

  
Debbie Davenport  
Auditor General

cc: Mary O'Grady, Solicitor General  
Susan Segal, Chief of Public Advocacy Division  
Office of the Attorney General