

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>March 5, 2007</p>	<p>No. I07-003 (R07-002)</p> <p>Re: Interpretation of HB 2874: Salary and Benefit Increases for School District and Charter School Nonadministrative Personnel</p>
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To: The Honorable Tom Horne
Superintendent of Public Instruction

Debbie Davenport
Auditor General

Candyce B. Pardee
Deputy Cochise County Attorney

The Attorney General's Office received a joint request for an opinion from Superintendent of Public Instruction Tom Horne and Auditor General Debbie Davenport regarding the interpretation of House Bill ("HB") 2874, section 27 (the "Legislation"). Deputy Cochise County Attorney Candace Pardee also submitted to the Attorney General's Office for review an opinion that she prepared for the Douglas and Sierra Vista Unified School Districts. The Cochise County Attorney's Office concluded that the districts had properly expended funds that the Legislation had appropriated. Because the subject matter of the request and the opinion is similar, this Opinion addresses them together. This Office concurs with Ms. Pardee's analysis

of the Legislation but declines to review those portions of her opinion that address the specific facts pertaining to the Douglas and Sierra Vista Unified School Districts.

Questions Presented

1. May school districts and charter schools use the funds appropriated in the Legislation to pay for any increase in salaries and benefits for nonadministrative personnel in fiscal year 2006-2007 over fiscal year 2005-2006 levels, or may they use funds appropriated in the Legislation only to pay for increases of salary and benefits levels in contracts for fiscal year 2006-2007 executed after the Legislation was enacted?

2. If school districts and charter schools did not execute contracts for fiscal year 2006-2007 before the Legislation was enacted, how should they determine the base salary and benefit levels from which to calculate the increase that may be paid from the appropriation?

Summary Answer

1. School districts and charter schools may use the funds appropriated in the Legislation for any increases in salaries and benefits for nonadministrative personnel in fiscal year 2006-2007 over fiscal year 2005-2006, including increases that were negotiated before the Legislation was enacted.

2. School districts and charter schools should use fiscal year 2005-2006 salary and benefit levels to determine increases resulting from the Legislation's appropriation.

Background

The Legislature adopted and the Governor signed HB 2874 on June 20 and June 21, 2006, respectively, as part of the fiscal year 2006-2007 budget process. 2006 Ariz. Sess. Laws, ch. 353. House Bill 2874 increased the base level in Arizona's school finance formula from

\$3,001.00 in fiscal year 2005-2006 to \$3,133.53 in fiscal year 2006-2007. 2006 Ariz. Sess.

Laws, ch. 353, § 3 (codified at A.R.S. § 15-901(B)(2)(c)). Section 27 of the Legislation provides as follows:

Sec. 27. Appropriation; basic state aid; base level increase

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.¹

2006 Ariz. Sess. Laws ch. 353, § 27.

This Office previously issued an Opinion regarding the Legislation that addressed whether school districts and charter schools could amend contracts with nonadministrative personnel to increase the employees' salary and benefits without violating Article IX, § 7 (the "Gift Clause") or Article IV, part 2, § 17 (the "Extra Compensation Clause") of the Arizona Constitution. Ariz. Att'y Gen. Op. I06-003. This Office concluded that previously executed employment contracts for fiscal year 2006-2007 could be amended to add current fiscal year salary and benefit increases as a result of HB 2874 without violating the Gift Clause or the Extra Compensation Clause. *Id.* at 9-10. This Office also concluded that the Legislation expressly required districts to use the monies received for funding salary and benefit increases for

¹ The Legislation's use of the term "benefit" is consistent with other statutes under Title 15. *See, e.g.*, A.R.S. § 15-502(A) ("The governing board may . . . fix the salaries and benefits of employees necessary for the succeeding year."). The Uniform System of Financial Records (USFR) defines "employee benefits" as "[a]mounts paid by the district on behalf of employees; these amounts are not included in the gross salary, but are in addition to that amount. Such payments are fringe benefit payments and, while not paid directly to employees, nevertheless are part of the cost of personal services." USFR, Chart of Accounts, Expenditures and Other Financing Uses, Object Codes at III-E-3.1. The USFR also lists a variety of employment benefits. *See id.*

nonadministrative personnel and no other purpose. *Id.* at 7. However, the specific questions raised here were not addressed.

According to the requests submitted, school districts are using the funds appropriated by the Legislation to fund salary and benefit increases in a variety of ways, including funding in whole or in part previously negotiated raises agreed to in contracts executed before the enactment of the Legislation. The first question raised by the Superintendent of Public Instruction and the Auditor General asks whether this is appropriate.

Analysis

The Legislation appropriated \$100 million for use by school districts and charter schools to provide salary and benefit “increases” for nonadministrative personnel. *See* 2006 Ariz. Sess. Laws ch. 353, § 27. The issue here is whether school districts and charter schools may use these monies for any increase in salaries and benefits over fiscal year 2005-2006 levels or only for increases for fiscal year 2006-2007 that exceed any increases that were in contracts executed before the Legislation’s enactment.

The primary rule of statutory construction is to find and give effect to the Legislature’s intent. *See 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 that intent is the statute’s own words. *See Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). “When the statute’s language is not clear, we determine legislative intent 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.* A statute’s individual provisions must be considered in the context of the statute as a whole

to achieve a consistent interpretation. *See State v. Gaynor-Fonte*, 211 Ariz. 516, 518, 123 P.3d 1153, 1155 (App. 2005).

The word “increases” is not defined in the Legislation. *See* 2006 Ariz. Sess. Laws ch. 353, § 27(B). When statutory terms are undefined, courts look to the plain meaning of the terms. *See, e.g., Mail Boxes*, 181 Ariz. at 121, 888 P.2d at 779. Webster’s Dictionary defines “increase” as the “act or instance of increasing” or the “amount or rate by which something is increased.” *Webster’s II New College Dictionary* 562 (1999). The plain meaning of the word “increases” does not clarify whether the Legislature intended the increases to encompass only salary and benefit increases over and above those contained in contracts for fiscal year 2006-2007 executed prior to the Legislation’s enactment or any salary and benefit increases over 2005-2006 levels.

The term “increases,” therefore, must be considered in the context of the Legislation. *See Gaynor-Fonte*, 211 Ariz. at 518, 123 P.3d at 1155. Section 27(A) of the Legislation appropriated \$100 million from the state general fund in fiscal year 2006-2007 to fund the increase in the base level authorized in A.R.S. § 15-901(B)(2) as amended by HB 2874. Section 27(B) of the Legislation requires the appropriation in subsection A to be used to provide salary and benefit increases for school district and charter school nonadministrative personnel. 2006 Ariz. Sess. Laws, ch. 353, § 27. Reading these two subsections together indicates that the Legislation funded an increase in 2006-2007 salaries and benefits over 2005-2006 salaries and benefits. Based on this interpretation, if nonadministrative personnel contracts negotiated for fiscal year 2006-2007 contain salary and benefit increases over fiscal year 2005-2006 levels, then the school districts and charter schools may use the appropriated funds for these increases, regardless of when the contract was negotiated.

The Legislation clearly requires that school districts and charter schools use these monies only for salary and benefit increases for nonadministrative personnel. Nothing in the Legislation, however, prohibits school districts and charter schools from using the appropriated monies for salary and benefit increases in 2006-2007 nonadministrative personnel contracts executed before the Legislation's enactment. State law requires school districts to issue contracts to continuing certificated teachers for the following school year between March 15 and May 15. *See* Ariz. Att'y Gen. Op. I06-003 at 2-3 (citing A.R.S. §§ 15-536 and 15-538.01). Therefore, it is likely that school districts and charter schools executed contracts with nonadministrative, non-certificated personnel and continuing charter school teachers before the Legislature enacted HB 2874 on June 20. *Id.* The Legislature could have required that school districts and charter schools use the monies appropriated in the Legislation only for increases over and above those provided for in contracts previously negotiated for fiscal year 2006-2007, but it did not do so. When construing a statute, one presumes that "what the legislature means, it will say." *Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976).

Moreover, the Legislature has historically expressed its desire to supplement and not supplant existing funds by including such a directive in the legislation. *See, e.g.*, A.R.S. § 15-977(A) (stating that "school districts and charter schools may not supplant existing school site funding with revenues from the fund" and that "teacher compensation increases based on performance or teacher base salary increases distributed pursuant to this subsection shall supplement, and not supplant, teacher compensation monies from any other sources."); 2005 Ariz. Sess. Laws ch. 314, § 1(E) ("Monies in the nursing education demonstration project shall be used . . . [t]o supplement and not supplant monies that are appropriated by the legislature for

fiscal years 2005-2006 through 2009-2010.”). The Legislation did not contain any language prohibiting supplantation.²

Nothing in the Legislation indicates that the timing of the execution of 2006-2007 contracts affects the use of the monies appropriated for salary and benefit increases. If the “increases” in the Legislation referred only to increases negotiated after the effective date of the Legislation, then school districts that issued contracts for continuing certificated employees by May 15, as required by statute, would be required to negotiate additional salary and benefit increases to nonadministrative employees even if they provided increases in the previously negotiated contracts. In contrast, school districts that failed to issue contracts in accordance with the statutory deadline could use the funds in the Legislation for a single increase negotiated after the Legislation was enacted. The language of the statute does not suggest that “increases” are based on the date the contract was executed. Rather, the increases are based on comparing fiscal year 2005-2006 funding with fiscal year 2006-2007 funding.

² On June 1, 2006, during HB 2874’s progress through the Legislature, a legislator did express for the record his intent to prevent funds appropriated under the bill from supplanting existing budgeted funds. *Compact Disc Recording (Part 3) of the Senate Third Reading of HB 2874*, 47th Leg., 2d Reg. Sess. at 28:17-31:10 (June 1, 2006). This legislator, in addition to two others, also expressed the intent that the appropriated funds were to be used for teacher salary increases and increases in retirement contribution costs. *Id.* The Conference Committee promulgated an amendment to HB 2874 on June 16, 2007, that added Section 27 to the bill. *Free Conference Committee Amendments to HB 2874 (Reference to House Engrossed Bill)*, 47th Leg., 2d Reg. Sess., § 27 (June 16, 2007). The amendment limited the use of the appropriated funds to salary and benefit increases, but applied the increases to benefits generally—not just to retirement contributions. It also applied the increases to all nonadministrative personnel—not just teachers. *Id.* The Legislature enacted the bill as amended on June 20, 2006. The Conference Committee amendment did not contain language prohibiting supplantation of funds appropriated under Section 27 of the Legislation. *Id.* Given the fact that language reflecting the statement concerning supplantation was not included in the Conference Committee amendment, it is apparent that the Legislature did not intend to prohibit supplantation of the funds appropriated by Section 27 of the Legislation. See *Hernandez-Gomez v. Leonardo*, 185 Ariz. 509, 513, 917 P.2d 238, 243 (1996) (“We are mindful of the fact that the expressed intent of several congressmen is not necessarily determinative, and that these ‘unenacted approvals, beliefs, and desires are not laws.’”) (quoting *Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 501, 108 S. Ct. 1350, 1354 (1988)).

Although “increases” as used in the Legislation means increases over fiscal year 2005-2006 levels, nothing in this Opinion prohibits school districts or charter schools from providing increases in addition to those contained in contracts executed prior to the Legislation’s enactment. As Opinion I06-003 indicated, school districts and charter schools may amend their contracts as necessary to fund additional increases. *See* Ariz. Att’y Gen. Op. I06-003 at 7. Finally, school districts and charter schools should consider any language in their own employment contracts that may place additional limitations on the use of such funds.³

Because “increases” in the Legislation means increases over fiscal year 2005-2006 levels, school districts and charter schools should use fiscal year 2005-2006 salary and benefit levels to determine increases for their nonadministrative personnel.

Conclusion

School districts and charter schools may use the Legislation to fund any increase in salary and benefits for nonadministrative personnel over fiscal year 2005-2006 levels. The funding, however, may not be used for any other purpose. School districts and charter schools should use fiscal year 2005-2006 salary and benefit levels to determine increases resulting from the Legislation’s appropriation.

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³ Some contracts may contain contingency clauses that allow or require governing boards to increase staff salaries or benefits upon additional monies becoming available for such purpose.