

**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

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<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>September 10, 2004</p>	<p>No. I04-008 (R04-020)</p> <p>Re: School Facilities Board Approval of Proposed Reductions in Square Footage of School Facilities</p>
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To: Linda Good, Deputy County Attorney  
Pinal County

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 15-253(B), the Pinal County Attorney’s Office submitted for review an opinion provided to Coolidge Unified School District. This Office concurs with the opinion of the Pinal County Attorney’s Office that: (1) the School Facilities Board (the “SFB”) may interpret A.R.S. § 15-341(G)’s three-year time period as the three fiscal years immediately following the fiscal year in which the action reducing the pupil square footage below the required minimum square footage actually occurred; and (2) the SFB lacks authority to require school districts to obtain SFB’s approval for actions that would not reduce the pupil square footage below the required minimum square footage. This opinion is issued to provide guidance to the SFB and to school districts concerning these subjects.

### **Questions Presented**

You have asked if:

1. The SFB may interpret A.R.S. § 15-341(G)'s "three year" time period as the three fiscal years immediately following the fiscal year in which the action reducing the pupil square footage below the required minimum in A.R.S. § 15-2011 actually occurred; and
2. The SFB has the authority to require school districts to obtain SFB approval for actions affecting school facilities that do not reduce the pupil square footage below the minimum square footage requirements in A.R.S. § 15-2011.

### **Summary Answer**

1. The SFB may interpret the three-year time period in A.R.S. § 15-341(G) as the three fiscal years immediately following the fiscal year in which the action reducing the pupil square footage below the minimum requirements in A.R.S. § 15-2011 actually occurred.
2. The SFB lacks the authority to require school districts to obtain its approval for actions that do not reduce the pupil square footage below the minimum requirements in A.R.S. § 15-2011.<sup>1</sup>

### **Background**

School district governing boards are responsible for managing and controlling school property and facilities within the district. A.R.S. § 15-341(A). Although a governing board has broad latitude in managing district property and facilities, the Legislature requires that the

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<sup>1</sup> Because of the answer to these questions this Opinion does not address the SFB's ability to require a school district to re-submit a previously approved plan for additional review or approval. In the Pinal County analysis, this issue became relevant if SFB had incorrectly interpreted the statute or if the SFB had the authority to approve school district actions that did not reduce pupil square footage below the statutory requirements.

governing board obtain SFB approval before taking certain actions that reduce the space of the district's educational facilities.

The SFB was created as a result of the enactment of the Students First Act of 1998, in response to the Arizona Supreme Court's declaration that Arizona's former system of financing school facilities violated the Arizona Constitution. *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 240-43, 877 P.2d 806, 813-16 (1994). The Legislature created the SFB and designated it as the state agency charged with the responsibility of administering Students First and overseeing the expenditure of state funds for capital improvements of Arizona's public schools. One of the main components of Students First was the establishment of standards for school facilities, which are based in part, upon pupil square footage.

Specifically, A.R.S. § 15-341(G) mandates that:

a school district governing board shall not take any action that would result in . . . a reduction within three years of pupil square footage that would cause the school district to fall below the minimum adequate gross square footage requirements prescribed in § 15-2011, subsection C, unless the [district's] governing board notifies the school facilities board . . . of the proposed action and receives written approval from the school facilities board to take action.

The statutory language and legislative history of A.R.S. § 15-341(G) provide no direct guidance to the SFB regarding the commencement and calculation of the three-year time period. The SFB, however, has a long-standing interpretation of the three-year time period as the three fiscal years immediately following the fiscal year in which the action reducing the pupil square footage below the required minimum square footage actually occurred.

Coolidge Unified School District has asked whether the SFB's interpretation of A.R.S. § 15-341(G)'s three-year period is correct.

## Analysis

### **A. Three-Year Time Period in A.R.S. § 15-341(G).**

The SFB may interpret the three-year time period in A.R.S. §15-341(G) as the three fiscal years following the fiscal year in which the action reducing the pupil square footage below the required minimum square footage actually occurred. This interpretation is supported by the statutory language and is consistent with the legislative, school district governing board, and other SFB fiscal year budgetary planning procedures. In addition, as an administrative agency, the SFB's long-standing interpretation of a statute that it administers is entitled to deference.

Although A.R.S. § 15-341(G) does not specify whether the three-year time period is calculated on a fiscal year or calendar year basis, SFB makes other projections, reports, and fund distributions on a fiscal year basis. *See, e.g.*, A.R.S. §§ 15-2002(A)(9)(a) – (c) (requiring the SFB is required to annually submit reports to the Legislature and Superintendent of Public Instruction detailing “the amount of monies distributed by the SFB in the previous *fiscal year*,” requiring a list of “each capital project that received monies from the SFB during the previous *fiscal year*,” requiring “a summary of the findings and conclusions of the building maintenance inspections conducted during the previous *fiscal year*”); -2002(10) (13) (requiring SFB to submit a report requesting the amounts necessary for capital improvements and building refurbishment in the coming *fiscal year* and “information regarding demographic assumptions, a proposed construction schedule and new school construction cost estimates for the following *fiscal year*”) (emphasis added). In addition, all school districts within the State of Arizona operate their budgets on a fiscal year basis. All projected district revenue and expenditures are calculated and expended in accordance with a budgetary fiscal year, usually based on the state's fiscal year. In light of the requirements for projections, reports and fund distributions that are based on fiscal

years, it is reasonable for SFB to administer the three-year time period in A.R.S. § 15-341(G) on a fiscal year basis. Administering the statute on any other basis would create an unnecessary anomaly.

In addition, the SFB's long-standing policy of implementing the three-year time period in A.R.S. § 15-341(G) based on fiscal years is entitled to deference. *See, e.g., Better Homes Constr., Inc. v. Goldwater*, 203 Ariz. 295, 299, 53 P.3d 1139, 1143 (App. 2002) (court accords great weight to an agency's interpretation of a statute); *Berry v. State Dep't of Corr.*, 145 Ariz. 12, 13, 699 P.2d 387, 388 (App. 1985) ("historical statutory construction placed upon a statute by an executive body administering the law will not be disturbed unless clearly erroneous."). The SFB's interpretation of the three-year time period in A.R.S. § 14-341(G) may result in a time period calculation that extends longer than three calendar years; however, absent a more specific legislative directive, in this context basing the three-year time period on fiscal years is a sensible interpretation of the statute. *See Foster v. Anable*, 199 Ariz. 489, 491, 19 P.3d 630, 632 (App. 2001) (courts defer to an agency's interpretation of a statute it is charged with enforcing unless the court concludes that the legislature intended a different interpretation).

**B. The SFB Lacks Authority to Require Approval for All District Decisions Regarding School Facilities.**

Section 15-341(G), A.R.S., does not authorize the SFB to require that school districts receive SFB approval for actions that do not reduce the pupil square footage below the minimum requirements in A.R.S. § 15-2011. An administrative agency must exercise its authority within the parameters established by statute. *See Hernandez v. Frohmiller*, 68 Ariz. 242, 255, 204 P.2d 854, 862-63 (1949) (an administrative board that the Legislature has given the power to adopt rules and regulations may act only within the boundaries established by the standards, limitations, and policies of the act); *Grove v. Ariz. Criminal Intelligence Sys. Agency*, 143 Ariz.

166, 169, 692 P.2d 1015, 1018 (Ariz. App. 1984) (a rule adopted by an administrative agency must be in accordance with the statutory authority vested in the agency, must be reasonable, and must be adequately related to the act's purpose and must not be arbitrary or in contravention of any expressed statutory provision); *Kennecott Copper Corp. v. Indus. Comm'n of Arizona*, 115 Ariz. 184, 186, 564 P.2d 407, 409 (App. 1977) (an administrative agency must function within the parameters of its statutory grant and that to do otherwise operate would be an administrative usurpation of the Legislature's constitutional authority). Without a legislative mandate, the SFB may not review the district actions that do not reduce the pupil square footage below the required minimum.

### **Conclusion**

The SFB may interpret the three-year time period in § 15-341(G) as the three fiscal years immediately following the fiscal year in which the action reducing the pupil square footage below the required minimum square footage actually occurred. In addition, the SFB lacks statutory authority to require that school districts obtain SFB's approval for actions that do not reduce a school district's pupil square footage below the minimum requirements in A.R.S. § 15-2011.

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