

Legal Update: Attorney General Opinions, Lawsuits and Other Areas of Concern

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What We Will Cover

- Legal Issues Left Over From 2009 Legislative Session(s)
- New and Old Litigation
- Recent and Future Attorney General Opinions
- Other Legal Issues of Concern

Legal Issues Left Over from 2009 Legislative Session

- Firearms in School Parking Lots (SB1168)
- Public/private employers must allow persons authorized to use parking lot to store firearm in vehicle if firearm is out of sight and vehicle is locked.
- Exception: Mandate does not apply if firearm possession is contrary to state or federal law.

Legal Issues Left Over from 2009 Legislative Session

- Special Education and Behavior Management (SB1197)
 - Task Force created to draft best practices – schools have option to adopt (liability issues for not doing it)
 - Use of seclusion/restraint only in an emergency to protect persons from imminent, serious physical harm.
 - Meant to only apply in special education context – regulations written without regard to student status as special education student (no authority for this)

Legal Issues Left Over from 2009 Legislative Session

- **Student Religious Liberties (Hb2357)**
 - Forbids discrimination against students or parents on the basis of a religious viewpoint or religious expression.
 - Forbids punishing or rewarding student on basis of religious content or viewpoint in assignment if the assignment required student to express viewpoint in the assignment.
 - Allows students to engage in religious activities or expression before, during, and after the school day in the same manner and to the same extent as students may engage in nonreligious activities or expression.
 - Allows students to wear clothing, accessories, and jewelry that display religious messages or symbols in the same manner and to the same extent that other types of clothing, accessories, and jewelry that display messages or symbols are permitted.

Legal Issues Left Over from 2009 Legislative Session

- **Student Religious Liberties (HB2357)**
 - No permission is given for the school district to:
 - ◆ Require any person to participate in prayer or in any other religious activity.
 - ◆ Violate the constitutional rights of any person.
 - No limitation of the authority of school district to:
 - Maintain order and discipline in a content and viewpoint neutral manner.

Legal Issues Left Over from 2009 Legislative Session

- **Student Religious Liberties (HB2357)**
- No limitation of the authority of school district to:
 - ◆ Protect the safety of students, employees, and visitors of the public school.
- No limitation of the authority of school district to:
 - ◆ Enforce policies regarding student speech at school that do not violate students' constitutional rights.
- No limitation of the authority of school district to:
 - Enforce policies that prohibit students from wearing clothing, accessories, and jewelry that indicates affiliation with a criminal street gang.

Legal Issues Left Over from 2009 Legislative Session

- **Student Religious Liberties (HB2357)**
 - Mandatory Dispute Resolution Procedure
 - ◆ Written complaint to school principal
 - ◆ Written response within 15 days
 - ◆ Written appeal to Superintendent
 - ◆ Written response within 25 days
 - ◆ Legal claim in court

Legal Issues Left Over from 2009 Legislative Session

- **Fingerprint Clearance Cards for Independent Contractors (HB2031)**
 - Contractor who is likely to have unsupervised contact with students must have valid fingerprint clearance card.
 - No criminal history check by district required.
 - GB/superintendent may determine which classes of contractors not required to have cards.

Legal Issues Left Over from 2009 Legislative Session

- Prohibition on Funding of “Early K” Repeaters (HB2011)
 - Provision that prohibited funding of a student that was enrolled at age of 4 (turning 5 by end of Dec.) who repeated Kindergarten the following year
 - Questions:
 - What about transfers from other districts/charters?
 - What about “provisional” enrollees?
 - How long does funding prohibition continue?

Legal Issues Left Over from 2009 Legislative Session

- HB2011 and AEA Lawsuit
- Special action to AZ Supreme Court
- Challenges policy-related provisions contained in the state budget
 - Not related to Gov's call for special session
 - Contained in a bill that covers multiple subjects not covered by title of act
 - Modifies general legislation in an appropriations measure
 - Violates protections that prohibit contractual obligations
 - Certain sections are unconstitutionally vague

Legal Issues Left Over from 2009 Legislative Session

- Overrides (HB2122)
 - Allows a school district to either go out for a 15% override or a 10% and 5% (which can either center on K-3 or not) override
 - For FY10, a one-time March election option is provided to districts for any one of the following scenarios:
 - 1) if a district has no override -- up to a 15% override;
 - 2) if a district has a 10% override approved in November 2009, the option to go out for up to 5%; or
 - 3) if a district currently has a combined 15% override in place (10% M&O and 5% K-3), the ability to go out to voters for a 17% override, which will replace the current 15% approved and, upon expiration, would go back to the 15% cap that is in effect for all districts

Legal Issues Left Over from 2009 Legislative Session

- Overrides (HB2122 continued)
 - Several Questions (including):
 - Can school districts that failed an override during the November election go back out in the March special override election for an override for the same fiscal year?
 - If a district has an override in place and fails to pass the special 15% override, could they lose the overrides that they currently have in place?
 - Arizona Attorney General has two legal opinions on both questions and should weigh-in soon

Legal Issues Left Over from 2009 Legislative Session

- Prop. 301 Litigation
 - Last December began legal research for potential law suit to enforce Prop. 301 inflation funding req's
 - 2% or rate of inflation to base level PLUS other components of the revenue control limit
 - March letter to Legislature warning about Prop. 301 inflation funding requirements
 - Knew some cuts would occur – said there would be no suit as long as done in the proper way to preserve Prop. 301
 - Coalition created in case necessary to sue
 - Governor championed ASBA position; inflation funding was in budget in manner we requested
 - Still potential for future challenge

Legal Issues Left Over from 2009 Legislative Session

- Trust Lands Management Fund (HB2014)
 - Allows up to 10% of annual proceeds from each beneficiary's trust lands
 - Subject to legislative appropriation (\$9.7M in 09-10)
 - Arizona Center for Law in the Public Interest will file a lawsuit challenging:
 - constitutionality under Voter Protection Act provisions
 - Violation of Enabling Act

Legal Issues Left Over from 2009 Legislative Session

- Brewer v. Burns

- June 2009: State Senate passes 2010 budget bill (after House had also passed bill) but does not transmit bill to Governor for action
 - Attempt to give time to negotiate signing of bill OR to use prospect of government shutdown to increase leverage over Governor?
- Governor takes Senate President, House Speaker and both houses to court using Arizona Constitutional provision:
 - Art. IV, Pt. 2, Sec. 12: “[e]very measure when finally passed shall be presented to the governor for [her] approval or disapproval”
 - Question is when?
 - Potential to upset balance of power in co-equal branches

Legislative Process/Separation of Powers

- Brewer v. Burns (2009)
 - AZSC: Legislature cannot pass bills and then withhold them to prevent the Governor from exercising her power to approve or veto legislation.
 - However, given the unusual circumstances of this case, AZSC declined to order the Legislature to immediately present the Governor the budget bills
 - Must transmit upon final passage
 - Will the gamesmanship continue? (Could stop the bill before final passage)



Old & New Litigation: An Update

- Flores v. Horne

- USSC reversed and remanded case back to 9th Circuit; said 9th Circuit did not properly weigh factors for change of circumstances
- EEOA does not require funding from a particular source; overall education funding should be considered in determining whether Nogales has enough resources; questionable whether it is still a “statewide case”
- Next steps: legal sufficiency of programs
 - Could unfunded mandate be coming our way?
 - Could another General and Uniform state lawsuit be coming our way?



Old & New Litigation: An Update

- Winn v. Garriott
 - As-applied challenge of Individual Tuition Tax Credit under First Amendment Establishment Clause; long procedural history; two big wins at 9th Circuit Court of Appeals; USSC appeal pending
- EV Tribune & AZ Republic Reporting on Abuses
 - Two legislative task force committees looking at reform



Old & New Litigation: An Update

- General and Uniform: Does It mean “The Same?”
 - AZ Constitution (Art. 11, Sec. 1): “The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system...”
 - Roosevelt v. Bishop (1994): ...Units in "general and uniform" state systems need not be exactly the same, identical, or equal. Funding mechanisms that provide sufficient funds to educate children on substantially equal terms tend to satisfy the general and uniform requirement. School financing systems which themselves create gross disparities are not general and uniform.”



Old & New Litigation: An Update

- Career Ladder: Gilbert USD v. Arizona

- Program to reward teacher professional development began, as a pilot program, in late-80's
- Supposed to be state-local partnership; allows district to exceed RCL by 5.5% (this year reduced to 5%)
- In 1994, participation closed to only 28 districts that belonged at the time
- 2006, resulted in \$74 million in funding for those districts for teacher pay
- Does this disparity result in a violation of General and Uniform?
 - Answer could be coming out of Maricopa County Superior Court next month (appeal almost certain)

Old & New Litigation: An Update -- Charter Schools and District Schools

Craven, et. al v. Horne, et. al

- The manner in which charter schools are funded vs. regular school district schools
- No capital funding, no transportation funding, inability to pass overrides or bonds (charters do get “additional assistance” funding)

Hobday, et. al. v. Horne, et. al.

- The ability of some school districts to pass overrides or bonds results in inequity with those districts that do not have that ability



2009 Attorney General Opinions

- Admissibility And Tuition Payment of A Child Who Resides With A Legal Guardian Within A School District (109-001)
 - As long as it's not to avoid payment of tuition, student may reside with legal guardian and attend school in that school district without payment of tuition
- Daily Attendance Requirements and Reporting of Absences by Public Schools (109-006)
 - Funding statutes, when read together, give schools flexibility in reporting absences of full time students
 - ADE not entitled to deference in interpretation of “instructional day” because it's definition conflicts with statutes



2009 Attorney General Opinions

- Prop. 301 & 180 Day Requirement (109-007)
 - Allowing counting of equivalent minutes instead of 180 day requirement is not a violation of Prop. 301 180 day mandate and Voter Protection Act
- Future AGO?
 - Meaning of supplanting under Proposition 301/Classroom Site Fund
 - Need to direct Auditor General on findings for Dollars in the Classroom report



Other Legal Issues

- Open Meeting Law & Employee Access to Discussions about them in Exec. Session
- Board policy prohibiting board members from participating in meetings by phone
- Authority for school district to collect info on students not providing documentation of citizenship
- Gay-Straight Alliance Clubs

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Questions?