

**To: The Honorable Mary Hartley
Arizona State Senate**

July 20, 2001

**Re: Impact of legislation regarding
military airports on schools
I01-016 (R01-025)**

Questions Presented

You have asked whether Senate Bill 1525 (2001 Ariz. Sess. Laws ch. 23): (i) precludes the construction of new schools near, but not in, high noise or accident potential zones by military airports; (ii) precludes operation, improvement, or expansion of existing schools either within, or near, high noise or accident potential zones; or (iii) extends new civil liability for operating or expanding an existing school within or near a high noise or accident potential zone.⁽¹⁾

Summary Answer

SB 1525 does not preclude the construction of new schools near a high noise or accident potential zone or the operation, improvement, or expansion of existing schools either in, or near, a high noise or accident potential zone. The legislation also does not, by its terms, impose any new civil liability for the operation or expansion of an existing school in or near high noise or accident potential zones. Whether the statutes might otherwise affect liability in any particular situation requires the analysis of specific facts and is not addressed in this formal legal Opinion.

Background

The Arizona Legislature has enacted legislation to help ensure that development near a military airport is consistent with the airport's continued existence. *See generally*, Arizona Revised Statutes ("A.R.S.") §§ 28-8481, -8482.⁽²⁾ To that end, political subdivisions must adopt plans and enforce zoning regulations to "assure development compatible with the high noise and accident potential generated by military airport operations." A.R.S. § 28-8481(A). Political subdivisions must also incorporate sound attenuation standards into their building codes and adopt ordinances requiring noise level reductions for certain construction within the vicinity of

military airports. A.R.S. § 28-8482. For the purposes of A.R.S. §§ 28-8481 and 8482, a "political subdivision" is "a city, town, or county." A.R.S. § 28-8461(12). The Attorney General is charged with determining whether the political subdivisions are in compliance with A.R.S. §§ 28-8481 and 8482 based on annual reports submitted by political subdivisions concerning planning and zoning activities in specified areas. A.R.S. § 28-8481(H), (K), (S).

During the 2001 legislative session, the statutes affecting development near military airports were amended in SB 1525. Political subdivisions are now required to assure that development within certain newly-defined zones is compatible with military airports in the vicinity. A.R.S. § 28-8481. Those zones are referred to as "high noise and accident potential zones" and are defined in A.R.S. § 28-8461(8). The legislation incorporates a chart of uses that are compatible with certain areas within the zones. A.R.S. § 28-8481(K). The chart is to be used to determine compliance with the statute. *Id.*

The 2001 legislation also requires the School Facilities Board (SFB) to give notice to military airports of proposals involving the construction of new school facilities in the vicinity of the airport. The military airport may then submit comments concerning compatibility of the proposed facility with the high noise or accident potential of the airport "that may have an adverse effect on public health and safety." A.R.S. § 15-2041(J). The SFB must analyze and consider these concerns before making a decision on the project. *Id.*

Analysis

A. SB 1525 Does Not Preclude the Construction of New Schools or the Expansion of Existing Schools in Certain Areas Near Military Airports.

The planning, zoning, and reporting requirements in A.R.S. § 28-8481 apply to "political subdivisions." Although school districts are generally regarded as political subdivisions of the State, *Amphitheater Unified Sch. Dist. v. Harte*, 128 Ariz. 233, 235, 624 P.2d 1281, 1283 (1981), a school district is not a "political subdivision" for the purposes of A.R.S. § 28-8481. For that statute, the Legislature has specifically defined "political subdivision" as a "city, town or county." A.R.S. § 28-8461(12). Therefore, its requirements do not apply to school districts. *See Pima County v. Sch. Dist. No. One*, 78 Ariz. 250, 252, 278 P.2d 430, 431 (1954) ("[w]here a statute expressly defines certain words and terms used in the statute the court is bound by the legislative definition"). Because the statute is targeted at planning and zoning

activities, the definition is confined to those political subdivisions that typically engage in such activities and excludes others, like school districts, that do not.

School districts are also generally not subject to the planning and zoning directives of political subdivisions subject to 28-8481. As political subdivisions of the State with the authority and responsibility to perform a governmental function, school districts are not subject to local zoning requirements. *See City of Scottsdale v. Municipal Court*, 90 Ariz. 393, 368 P.2d 637 (1962) (municipal government not subject to zoning requirements of other local government); Ariz. Att'y Gen. Op. 190-018 (local road surfacing ordinances not applicable on school district property). Any planning or zoning decisions made pursuant to A.R.S. § 28-8481, therefore, do not apply to school districts.

Although school districts are not affected by the zoning and planning decisions under A.R.S. § 28-8481, they are affected by the sound attenuation standards or noise level reductions required by the building code of the local jurisdiction pursuant to A.R.S. § 28-8482. State law requires that public buildings be built in compliance with the relevant local jurisdiction's building code. A.R.S. § 34-461. "Public buildings" for purposes of that statute, include "new construction of school district buildings." Ariz. Att'y Gen. Op. 186-033.

SB 1525's notice requirements for certain new school construction facilities also do not preclude school construction near military airports. *See* A.R.S. §§ 15-2002(C)(9) -2041(J). The SFB must give notice of any application for funds for new school facilities to any military airport that might be affected by the project. A.R.S. § 15-2002(C)(9). This notice and comment procedure applies only to the applications to the SFB for monies from the New School Facilities Fund. A.R.S. §§ 15-2002(C)(9), -2041(J). These projects may include the construction of new facilities or additions to existing facilities, based on the parameters applicable to that Fund. The notice and comment procedure does not apply to other funds administered by the SFB, such as the Deficiencies Correction Fund. A.R.S. § 15-2021. It also does not apply to school construction projects that may be funded with local revenues. If the military airport provides comments concerning the project's compatibility with the airport operations, the SFB must consider and analyze the issues raised by the military airport before making a final determination regarding the application for funds. A.R.S. § 15-2041(J). The statute does not, however, mandate that the SFB deny the application if a military airport has concerns about the

project; the SFB retains discretion to make the final decision.

B. SB 1525 Does Not Address Liability for Operating or Expanding Schools in or Near High Noise or Accident Potential Zones.

Nothing in SB 1525 addresses civil liability for operating or expanding a school in or near high noise or accident potential zones. As described earlier, the legislation does not prohibit a school from operating or expanding in those areas. The bill also does not assign any new responsibilities to school district governing boards. The new responsibilities relating to school construction are assigned only to the SFB, which must give notice to and consider input from military airports before approving certain new school construction.

An analysis of potential liability requires a review of immunities that may apply. Absent gross negligence or intentional misconduct, school board members are immune from civil liability "for the consequences of adoption and implementation of policies and procedures." A.R.S. 15-341(E). In addition, public entities, which include school districts and the SFB, are not liable for "[t]he exercise of an administrative function involving the determination of fundamental governmental policy." A.R.S. § 12-820.01. *See also* A.R.S. § 12-820(6) (definition of "public entity"). This includes "the exercise of discretion" and "[a] determination of whether to seek or whether to provide the resources necessary for . . . [t]he construction or maintenance of facilities, [and a] determination of whether and how to spend existing resources, including those allocated for equipment, facilities and personnel." A.R.S. § 12-820.01(B).

Although, by its terms, the legislation does not create civil liability for operating or expanding schools in certain areas near military airports, questions of civil liability generally cannot be analyzed in the abstract. These issues require an analysis of specific facts to determine whether the schools have fulfilled their statutory and common law duties and whether certain immunities apply under the circumstances. *Cf., e.g., Schabel v. Deer Valley Unified Sch. Dist.*, 186 Ariz. 161, 920 P.2d 41 (App. 1996) (general discussion of school district duty of care and immunity).

Conclusion

Nothing in SB 1525 precludes the construction of new schools near high noise or accident potential zones nor the operation, improvement or expansion of existing schools either within a high noise or accident

potential zone or near such a zone. By its terms, the statute does not create civil liability for operating or expanding schools in certain areas by military airports. In addition, the statutes do not by their terms create civil liability for operating or expanding schools near to military airports. Whether the statutes might otherwise affect liability in any particular situation requires the analysis of specific facts and is not addressed in this formal legal Opinion.

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1. This Opinion analyzes the impact of SB 1525 on school districts. It does not analyze the legislation's impact on other types of schools, such as private schools, that may be subject to different legal requirements.
2. All statutes cited herein include the amendments in 2001 Ariz. Sess. Laws ch. 23 (SB 1525).

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