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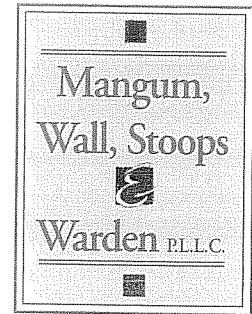
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## Memorandum

**To:** Current and Prospective ASBAIT School Districts and Community College Districts

**Subject:** Authority to Join Without Competitive Bidding

**Date:** October 10, 2006

We have been asked to advise the Arizona School Boards Association Insurance Trust (ASBAIT) and its current and prospective member districts as to whether Arizona school districts and community college districts may join and obtain their employee benefits through ASBAIT without the requirement for competitive sealed bidding or competitive sealed proposals, as is required for most other public procurements carried out by these districts. We are pleased to provide this information for consideration by ASBAIT's Board of Trustees, members and prospective members.

The "charter" in Arizona law for ASBAIT is Arizona Revised Statutes (A.R.S.) Section 15-382, under which ASBAIT was formed and has operated for more than a quarter century, and which provides in pertinent part as follows:

15-382. Authorization to self-insure; pooling agreements; joint agreements; trustees; liability coverage and pool requirements; remedies; definition

A. The school district governing board may determine that self-insurance is necessary or desirable in the best interest of the district and may provide for a self-insurance program or programs for the district including risk management consultation. Any risk management consultant or insurance administrator employed by a school district governing board must be licensed under title 20, chapter 2, article 3 or 9, and such license shall be verified by the school district governing board prior to employment.

**B. The school district governing board may:**

\* \* \* \* \*

**2. Separately contract with a trustee or board of trustees that provides a common self-insurance program or programs with pooled funds and risks to more than one district, a community college district formed pursuant to title 15, chapter 12, article 3 or an association of school districts within this state that is funded by member school districts pursuant to section 15-342, paragraph 8.**

\* \* \* \* \*

Arizona school districts' procurement practices are governed by A.R.S. Section 15-213, which provides in pertinent part as follows:

15-213. Procurement practices of school districts and charter schools; definitions

A. The state board of education shall adopt rules prescribing procurement practices for all school districts in this state as follows:

1. The state board shall submit to the auditor general proposed rules consistent with the procurement practices prescribed in title 41, chapter 23 . . . . **The rules shall include provisions specifying that school districts are not required to engage in competitive bidding in order to make the decision to participate in programs pursuant to section 15-382 and that a program authorized by section 15-382 is not required to engage in competitive bidding for the services necessary to administer the program or for purchase of insurance or reinsurance.**<sup>1</sup>

The "rules" referred to in A.R.S. Section 15-213(A)(1) are those adopted by the State Board of Education and published in the Arizona Administrative Code. The Rules governing school district procurement are found beginning at A.A.C. R7-2-1001, and in pertinent part provide as follows:

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<sup>1</sup> The authority for a trust such as ASBAIT to procure administrative services and its own insurance or reinsurance without doing its own competitive bidding was not in the original statute. Legislative amendments in 1998 and 2002 rewrote this to now read as it appears above, exempting trusts formed under Section 15-382 from competitive bidding for these purchases.

## COMPETITIVE SEALED BIDDING

### R7-2-1021. Method of Source Selection

Unless otherwise authorized by law, **or as specified in A.R.S. §15-213(A)(1) exempting the requirement to competitively bid the decision to participate in programs pursuant to A.R.S. §15-382 for purchase of health and accident insurance and related employee benefits** when such programs comply with bidding requirements for the subsequent purchase of reinsurance or the joint purchase of insurance or reinsurance<sup>2</sup>, all school district contracts shall be awarded by competitive sealed bidding as provided in Sections R7-2-1021 through R7-2-1032, except as provided in Sections R7-2-1041 through R7-2-1068 [providing for selection through competitive sealed proposals instead of bids] and Sections R7-2-1117 through R7-2-1125 [providing for procurement of certain specified professional services].

As noted above in the provision quoted from A.R.S. Section 15-382, community college districts may also participate in trusts formed under the law which provides for the formation of ASBAIT. 2004 legislation separately added this specific grant of authority for community college district governing boards:

### 15-1444. General powers of [community college] district governing boards

#### **B. The district board may:**

\* \* \* \* \*

9. Enter into intergovernmental agreements or contracts pursuant to section 11-952.01 for participation in programs offered by public agency pools **or separately contract with a trustee or board of trustees that provides a common self-insurance program with pooled funds and risks pursuant to section 15-382, subsection B, paragraph 2. The district board is not required to engage in competitive procurement in order to make the decision to participate in these programs.**

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<sup>2</sup> Please see footnote 1 – this Rule has not been updated to reflect the amendments to A.R.S. Section 15-213 exempting trusts such as ASBAIT from participating in their own competitive bidding for administrative services, insurance and reinsurance. Where a statute and an administrative Rule adopted under it are in conflict, the statute will prevail.

### CONCLUSION

It is clear under Arizona law that Arizona school districts and community college districts are permitted to make the decision to obtain their employee benefits authorized to be offered under A.R.S. Section 15-382 from trusts such as ASBAIT without seeking formal competitive sealed bids or proposals. This is expressly provided for in the law governing school district procurement, A.R.S. Section 15-213, and its implementing Rules, specifically A.A.C. R7-2-1021, and in the law granting discretionary powers to community college district governing boards, all as quoted above.

ADP/klo

cc: Mr. Panfilo Contreras  
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