

FILE

Subject

*Schools - Officers
Board of Education*



Copy to

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

March 8, 1974

Opinion No. 74-82

John V. Black
Attorney at Law
306 South Oak
Pratt, Kansas 67124

Dear Mr. Black:

You advise that in June, 1973, a board of education in your jurisdiction extended the contract of the superintendent of schools, then to expire on July 1, 1974, for one additional year, until July 1, 1975. This action was taken immediately prior to the taking office of members newly elected to the board. You request our opinion concerning the validity of this extension, and particularly whether the board acted unlawfully to bind its successor.

K.S.A. 72-8202b(a) enacted in 1973, states in part thus:

"The board of education of each school district shall appoint a superintendent of schools for a term of not more than three (3) years."

K.S.A. 72-5411, part of the continuing contract law, provides that

"[t]erms of a contract may be changed at any time by mutual consent of both the teacher and the governing body of the school district."

The term "teacher" is defined by K.S.A. 72-5410 to "mean and include teachers, supervisors, principals, [and] superintendents" This power to alter the terms of contracts exists, of course, subject to any other express statutory limitations.

K.S.A. 72-8202b(a) does not prohibit the renewal of a contract at the expiration of its term. It is reasonably to be implied from this power to contract for a specified term, in our view,

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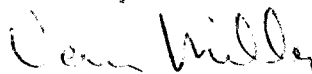
that the board has the power to extend the contract, during the term thereof, for not longer than an additional period which is within the three-year term.

It may be objected that the extension thus ties the hands of the successor board, and that the extension is prohibited on that ground. In Verdigris River Drainage District No. 1 v. State Highway Commission, 155 Kan. 323, 125 P.2d 387 (1942), the court quoted with approval from 7 R.C.L., § 21, at p. 945:

"[I]t is clear that if a board . . . has express power to make a particular contract at any time during its term of office, a contract made by such board, in accordance with the law, a short time before the expiration of its term of office is not contrary to public policy, and in the absence of fraud, is valid and binding upon an incoming board of commissioners, although it extends far into their term of office. The ground upon which this rule is based is that a board of county commissioners is a continuously existing corporation, and, consequently, while the personnel of its membership changes, the corporation continues unchanged. Its contracts being the contracts of the board and not of its members, it follows that those contracts extending beyond the term of service of its then members are not invalid for that reason. It has been said that to hold contracts invalid because part or all of a board cease to exercise public functions would be to put these corporations at an enormous disadvantage in making the contracts which are essential to the safe, prudent, and economical management of the affairs of a county."

In our opinion, the contract extension in question is within the lawful authority of the board of education.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm