

FILE

Subject

*Schools - Teachers
Salaries
State Commission
Legislature 1974*

Copy to



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

June 5, 1974

Opinion No. 74- 177

Honorable Bert Chaney
State Senator, 34th District
915 East 13th Street
Hutchinson, Kansas 67501

. Dear Senator Chaney:

You inquire whether a school board may use its discretion in allowing or disallowing a lump sum payment to teachers as provided in 1974 House Bill 1977. To answer your question, it is necessary to determine the statutory construction of the word "may" as used in House Bill 1977(b). Prior to its amendment by the bill, K.S.A. 74-4940 provided thus:

"All persons towhom the continuing contract law applies . . . shall be paid their contractual compensation in not less than twelve (12) substantially equal installments, paid once (or more often) each month commencing in September of each school year."

House Bill 1977(a), as enacted, has this identical language and the further provision concerning "lump sum" payments. The Kansas Supreme Court has noted that when the legislature revises prior existing law it will be presumed that the legislature intended to make some change in law as it existed prior to amendment. Courts also assume that such a change was necessary to supply some want or deficiency existing in the prior law. Curless v. Board of County Commissioners of Johnson County, 197 Kan 580, 419 P.2d 876 (1966).

The prior law provided for salary payments in monthly increments. The want which was cured by House Bill 1977 was a provision for a lump sum payment for those persons whose employment terminated at the end of the school term. The provisions are:

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"(b) Notwithstanding the provisions of subsection (a) of this section, any person to whom the continuing contract law applies, after completion of all his contractual obligations, may be paid the balance of his contractual compensation in one payment upon his request therefor . . ."

The request is to be in writing and submitted prior to April 1 of each school year. It is evident from the initial wording of section (b) that it is designed to provide an alternative to monthly payments under certain circumstances. Those circumstances require a person (1) to be under the continuing contract law, (2) to have fulfilled his contractual obligations, and (3) to have submitted a written request for his salary balance not later than April 1. If these are met, the board must make provision for payment. It may be argued that the use of "may" in section (b) gives the board a choice. However, in State ex rel. Jackson v. School District No. 1 of Edwards County, 80 Kan. 667 (1909), we find:

"Primarily and as ordinarily used in a statute the word 'may' is permissive rather than peremptory. It may be given the imperative meaning if that was the obvious intention of the legislature, but the sense in which the word is used must always be determined by the context of the act." Syl. 1

The court went on thus:

"Primarily and as ordinarily used in a statute the word 'may' is permissive rather than peremptory. It is sometimes regarded as synonymous with must, as for instance, 'where public authorities are authorized to perform an act for the benefit of the public, or for an individual who has a right to its performance.'" 80 Kan. 669.

This bill was obviously passed for the benefit of teachers subject to the continuing contract law. Its manifest purpose was to alter the existing requirement of not less than twelve substantially equal payments, in order that teachers might receive in a lump sum payment the balance of his contractual compensation. The Legislature did not provide that the board of education "may" make such a payment, but that the teacher "may be [so] paid . . . upon request therefor." There is created in the employee the right to request, and receive, a lump sum payment. The operation of the bill is to amend the reciprocal contractual rights and responsibilities of the board and teacher as to payment of compensation, so as to vest in the teacher the

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right to lump sum payment of the unpaid balance of his contractual compensation upon his request therefor.

The purpose of the bill would obviously be frustrated in its entirety were a board of education free, in the exercise of its unfettered discretion, to ignore a request for a lump sum payment. Assuming as we must, as pointed out above, that "a revision of a prior law was intended to supply some want and to fill some deficiency in existing legislation," Curless, supra, the amendment must be deemed, in accordance with the fair purport of its language, to vest in those teachers to whom it applies some right which they did not previously enjoy. That right is that they "may be paid . . . upon . . . request therefor" the unpaid balance of their contractual compensation upon completion of the contractual obligations of the year.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:DMH:jsm