

Subject Schools - Officers  
Board of Education

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FILE



STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

July 30, 1974

Opinion No. 74- 252

Erle W. Francis, Attorney  
State Board of Education  
Suite 719  
Capitol Federal Building  
700 Kansas Avenue  
Topeka, Kansas 66603

Dear Mr. Francis:

You advise that more than ten electors have filed a plan for change of method of selection or voting plan in U.S.D. No. 501, in Topeka, Kansas, as provided by K.S.A. 72-8006, which commences thus:

"(a) Ten or more electors of any school district may prepare a plan of change showing the information required by K.S.A. 1970 Supp. 72-8002. Copies of such plan shall be submitted to the state board and to the clerk of the board of education of the school district. If any such plan of change is so submitted and filed, the state board may consider the same, and if it finds such plan of change is complete, sufficient and timely, it shall promptly so certify to the county election officer . . . , to the board of education of the school district and to the first person listed as having submitted such plan . . . ."

The section continues on to provide an elaborate procedure whereby, once the plan is approved by the state board and certified to the county election officer, petitions may be circulated and filed in its support. If the requisite number of signatures thereon is obtained, an election shall be called upon the question whether the proposed method of election or voting plan shall be approved.

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This section was enacted as section 18 of ch. 59, L. 1968, known under section 1 thereof as the School Election Act. Section 13 thereof, now K.S.A. 72-8001, states thus:

"Any board may change the method of election or voting plan in its school district from that which it now or hereafter has to any combination of method of election and voting plan provided for by this act, unless prohibited by the conditions provided in this act."

In 1972, the Legislature enacted House Bill No. 1679, ch. 138, L. 1972. Section 3 thereof, now K.S.A. 72-8118a, provides thus in pertinent part:

"The board of education of any school district in which there is located more than one-half (1/2) of the territory of a city having a population of more than one hundred twenty thousand (120,000) and less than one hundred sixty thousand (160,000) shall be composed of seven (7) members. The three (3) members whose terms expire on July 1, 1973, shall have position numbers 1, 2 and 3 . . . . The four (4) members whose terms expire on July 1, 1975, shall have position numbers 4, 5, 6 and 7 . . . ."

The question which you pose is whether the voting plan and/or method of election for U.S.D. 501 as set forth by K.S.A. 72-8118a is the only voting plan or method of election which may be used in that district, or whether it is subject to change by electors of the district pursuant to the 1968 School Election Act.

K.S.A. 72-8118a applies, very likely, to not more than one or two unified school districts in the entire state. Although it is a law of a general nature within the meaning of Article 2, § 17 of the Kansas Constitution, it is in reality legislation with but the most narrow and limited application. Legislation of equally restricted application was included in the 1968 School Election Act. Section 40, amending then K.S.A. 1967 Supp. 72-67,101, provided specially for the election of members of the "board of any city unified district having a population of more than two hundred twenty-five thousand (225,000) . . . ." Notwithstanding the limited application of that section, it contained no language which inhibited the application of section 13 of the act to that district, thus subjecting that legislatively prescribed plan to change by the electors of the district, should they so desire, in the same fashion that the plans in other districts of the state were subject to change by their electors.

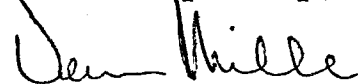
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When the 1972 Legislature undertook to prescribe a voting plan or method of election applicable only to "[t]he board of education of any school district in which there is located more than one-half (1/2) of the territory of a city having a population of more than one hundred twenty-thousand (120,000) and less than one hundred sixty thousand (160,000)," it did so in the light of all then-existing laws, including those provisions of the 1968 School Election Act which empowers the board of education or the electors of the district to propose a change in the voting plan or method of election, and to permit the electors of the district to vote thereon.

School districts are, of course, instrumentalities of the state, and the legislature has broad powers to prescribe the composition of the governing bodies thereof and the method of their election. In the provisions of the 1968 School Election Act cited above which are of uniform and general application to all districts throughout the state, the legislature granted to the board or electors of each district the power to propose changes in their method of election, and permitted the voters to pass upon such proposed changes. When the legislature in a subsequent year undertakes to prescribe the method of election or voting plan for a particular district, it should not be deemed to strip the electors of that district of the powers granted them by the 1968 School Election Act unless it has explicitly so stated. In the 1972 act here in question, it did not do so. It did provide that "[e]lection laws applicable to school districts shall apply to elections hereunder to the extent that the same are not in conflict herewith." This language was designed to assure that election of members of the board as prescribed by the 1972 act would be governed by existing school election laws, to the extent possible. This language does not require, in our opinion, the inference that either the board or the electors of a district are to be thereby stripped of their lawful authority under existing state laws to propose changes in the voting plan or method of election, within the alternatives prescribed by state law, and to vote thereon.

It is accordingly our opinion that K.S.A. 72-8006 remains applicable to the method of election and voting plan of members of the board of education of U.S.D. 501.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm