



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 16, 1975

ATTORNEY GENERAL OPINION NO. 75-295

Mr. Fred W. Rausch, Jr.
Senior Legal Counsel
Kansas Association of School Boards
Suite 600
First National Bank Tower
Topeka, Kansas 66603

Re: Interlocal Agreements--Schools--Educational Services

Synopsis: Interlocal agreements between boards of education relating to educational services pursuant to K.S.A. 1974 Supp. 12-2904 as amended by 1975 House Bill No. 2381 are subject to approval by both the State Board of Education and the Attorney General.

* * *

Dear Mr. Rausch:

You inquire concerning 1975 House Bill No. 2381, enacted to amend K.S.A. 1974 Supp. 12-2904, so as to authorize interlocal agreements relating to educational services.

K.S.A. 12-2901 through -2907 comprise the Interlocal Cooperation Act. K.S.A. 12-2902. Section 1 of House Bill No. 2381 amends K.S.A. 1974 Supp. 12-2904, a part of that act, so as to authorize interlocal agreements relating to education services. Section 2(d) of the bill specifies that "[a]ny such agreement shall be effective only after approval by the state board of education." You inquire whether the agreement is further subject to approval by this office. Section 1 of the bill amending K.S.A. 1974 Supp. 12-2904, reenacted the language found in subsection (f) thereof, requiring that

"Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general who

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shall determine whether the agreement is in proper form and compatible with the laws of this state"

Section 2 commences thus:

"In the event the boards of education of any two or more school districts enter into agreements pursuant to resolutions adopted by each such board of education *under the provisions of K.S.A. 1974 Supp. 12-2904, as amended*, for the purpose of providing educational services, the following conditions shall apply"
[Emphasis supplied.]

Thus, interlocal agreements relating to educational services entered into by the boards of education of two or more school districts are authorized by, and are entered into under the authority of, K.S.A. 1974 Supp. 12-2904 as amended, which retains the requirement of approval by this office.

Although section 2(d) makes approval by the state board of education a condition precedent to the effectiveness of any agreement between board of education relating to educational services, that approval is not specified to be of form and compatibility with the laws of the State of Kansas. The approval of the Board is likely required because of its expertise and judgment in matters of educational policy. The general requirement of Board approval does not warrant an inference that such agreements are relieved from the reenacted specific requirement that agreements entered into under the authority of the Interlocal Cooperation Act be approved by this office as to form and legal compatibility with applicable state laws.

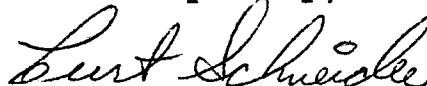
Accordingly, in my opinion, such interlocal agreements must be approved by this office, as well as by the State Board of Education, prior to their becoming effective.

The question arises as to which office such agreements should be submitted first. Review of such agreements by this office is

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generally limited to determination that the formal requirements of the Act are met. At the outset, at least, it may be desirable that agreements be submitted to this office initially. If a proposed agreement is deemed legally inadequate for any reason, those defects may be corrected before the agreement is forwarded to the State Board. We will be happy to cooperate with the staff of the State Board to handle these agreements in the most expeditious manner. I believe, however, that at the outset, at least, it may be more convenient for the Board if agreements are first approved by this office, and then placed on its agenda for review. Board review of an agreement which we concluded, for whatever reason, was formally lacking in some respect, might only result in a second review of the agreement by the Board after necessary corrections had been made. Board meetings are held periodically, of course, and we are able to review submitted proposed agreements on a daily basis. Given the more flexible schedule of our staff, it may be less cumbersome for the Board if agreements are finally approved here before being submitted for Board approval. If, of course, experience suggests an alternative arrangement would be more convenient for the Board, we will be happy to accommodate.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Merle Bolton, Commissioner
State Department of Education
120 East Tenth Street
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