



STATE OF KANSAS

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Attorney General

July 29, 1975

ATTORNEY GENERAL OPINION NO. 75-309

The Honorable James Francisco  
State Senator  
604 North First Street  
Mulvane, Kansas 67110

Re: Schools--Superintendent--Contracts

A board of education may enter into a contract of three years with a school superintendent, and such contract does not unlawfully bind the successors of said board members who entered into such a contract. Members-elect have no legal entitlement to attend executive sessions of the board prior to being seated thereon.

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Dear Senator Francisco:

You advise that three new members were elected to the board of education of U.S.D. 261, and that the question has since arisen whether the school board as constituted prior to July 1, 1975, when the new members took office, have the authority to employ a new superintendent of schools whose contract term lies totally "within the term of the newly elected School Board."

You enumerate a number of facts which are stated to justify a finding that the school board acted in bad faith in entering into a contract for three years with a new superintendent, and you question whether the contract is therefor void. Obviously, a finding of bad faith is a factual determination, which could be made only by a court of competent jurisdiction after hearing and receiving all competent and relevant factual evidence which was offered to bear on the point. We certainly have no basis upon which to conclude as a matter of law that the board of education entered into this particular contract in bad faith.

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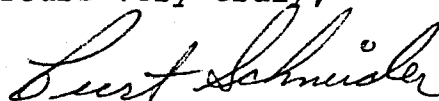
On the contrary, so far as concerns the legal authority of the board, such a contract is fully within its authority. K.S.A. 1974 Supp. 72-8202b(a) commences thus:

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

The basic legal question is whether the board as then constituted may bind its successor board by entering into this contract. In view of the express legal authority of boards of education to appoint school superintendents to terms of not more than three years, there is no basis upon which to conclude that the board as constituted prior to July 1, 1975, acted in any manner so as unlawfully to bind the successor members of the board.

Secondly, you advise that the members of the school board prior to July 1 refused to admit the newly elected members to executive sessions on the basis that one of the three newly-elected members was prosecuting a lawsuit against the present board. You ask whether the board was privileged to discriminate against the remaining two members-elect by refusing them admission to such executive sessions. The board as then constituted had no statutory duty to permit members-elect to attend executive session. Obviously, it may be a common practice, as a courtesy extended to the members-elect to enable them to become familiar with the business of the board. However, the prosecution of a lawsuit against the board or some of its members by one of the members-elect is a fact which likely discourages courtesies, as such, whether extended to the plaintiff and member-elect, or to other members-elect. The board is under no statutory duty to permit members-elect to attend its meetings, and the exclusion of the two persons in question is within the authority of the board.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj