



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 16, 1976

ATTORNEY GENERAL OPINION NO. 76-54

Merle R. Bolton
Commissioner of Education
Kansas State Department of Education
Kansas State Education Building
120 East 10th Street
Topeka, Kansas 66612

Re: Schools--Due Process Procedure Law--Continuing
Contract Law--Area Vocational School Instructors

Synopsis: The due process procedure law, K.S.A. 1974 Supp.
72-5436, as amended by Chapter 373 of the 1975
Session Laws, does not apply to teachers of an
area vocational-technical school governed by a
board of control, as provided for and defined
by K.S.A. 72-4412(c).

* * *

Dear Commissioner Bolton:

You have requested an opinion from this office concerning
(1) whether the due process procedure law (K.S.A. 1974 Supp.
72-5436 et seq., as amended by 1975 Senate Bill 460) applies
to teachers of an area vocational-technical school governed
by a board of control, as provided for and defined by K.S.A.
72-4412(c), and (2) whether such teachers are also governed
by the continuing contract law, K.S.A. 72-5410 et seq.

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In response to your first inquiry, the due process procedure law, K.S.A. 1974 Supp. 72-5436, et seq., as amended by Chapter 373 of the 1975 Session Laws, defines the term "teacher" for purposes of that Act, to mean:

"Any professional employee who is required to hold a teacher's certificate in any public school, and any teacher or instructor in any community junior college, except that 'teacher' shall not include supervisors, principals, superintendents or any person employed under the authority of K.S.A. 1974 Supp. 72-8202b, or amendments thereto, or any community junior college administrator."

The scope of application for the due process procedure law is established by K.S.A. 1974 Supp. 72-5445, as amended by Chapter 373 of the 1975 Session Laws, which provides:

"The provisions of K.S.A. 1974 Supp. 72-5438 to 73-5443, inclusive, shall apply only to those teachers who have at any time completed two (2) consecutive years of employment in the school district, or community junior college then currently employing such teacher, except where the teacher alleges his or her termination or nonrenewal is the result of his or her having exercised a constitutional right:"

"Area vocational-technical school" is defined by K.S.A. 72-4412(c) to mean:

"Any vocational education school which immediately prior to the effective date of this act was designated as a type II area vocational-technical school under authority of laws repealed by this act. The schools to which this definition applies are the four schools designated as:

- (1) Central Kansas area vocational-technical school
- (2) Southeast Kansas area vocational-technical school

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(3) Northwest Kansas area vocational-
technical school

(4) Northcentral Kansas area vocational-
technical school

The governing body of an area vocational-
technical school shall be called a board
of control and shall be constituted as is
provided by agreement of the districts
participating therein on the effective
date of this act. The state board of
education may adopt special rules and
regulations applicable to the conduct,
operation and administration of area
vocational-technical schools."

Based upon my examination of these three statutes, I am constrained to conclude that the due process procedure law, K.S.A. 1974 Supp. 72-5436 et seq., as amended by Chapter 373 of the 1975 Session Laws, is not applicable to instructors in area vocational schools. The definition of the word "teacher" has specifically failed to include this category of instructors even though the Legislature has enacted and amended the due process procedure law subsequent to the original enactment of K.S.A. 72-4412(c). In my opinion, this suggests an affirmative indication of the Legislature's desire to exclude area vocational school instructors within the ambit of due process protection. Secondly, this conclusion is further supported by the fact that in defining the term "board" at Section 1(b) of Chapter 373 of the 1975 Session Laws for purposes of the due process procedure law, boards of control are deleted.

Secondly, you have inquired whether area vocational school teachers are governed by the provisions of the continuing contract law, K.S.A. 72-5410, et seq. It is my opinion that here again, area vocational instructors are not subject to its provisions. The term "teacher" is defined by K.S.A. 72-5410 to be applicable only to teachers or other professional employees ". . . who are required to hold a teacher's or school administrator's certificate in any public school." The phrase "board of education" is limited by subsection (b) of the above statute to "the board of education of any public school district." Accordingly, those provisions of substance in the continuing contract law are applicable only to those teachers subject to the control of a board of education.

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Accordingly, it is my opinion that the due process procedure law, K.S.A. 1974 Supp. 72-5436, as amended by Chapter 373 of the 1975 Session Laws, does not apply to teachers of an area vocational-technical school governed by a board of control, as provided for and defined by K.S.A. 72-4412(c).

Sincerely yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv