

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 15, 1976

ATTORNEY GENERAL OPINION NO. 76- 92

Mrs. Shelley D. G. Bloomer
County Attorney
Osborne County Courthouse
Osborne, Kansas 67473

Re: Schools--Teacher's Contracts--Due Process Procedure--
Contract Termination

Synopsis: In light of the factual background of this district, none of those teachers formerly employed by U.S.D. #391 and currently employed by U.S.D. #399 have been employed for the minimum two consecutive years, the minimum requisite for coverage under the due process procedure law. Those teachers who prior to July 1, 1974, were employed by former U.S.D. #399 and are still employed by that district are subject to the provisions of this law.

* * *

Dear Mrs. Bloomer:

As Osborne County Attorney, you have requested an opinion concerning whether teachers employed by Unified School District #399 are entitled to the procedural safeguards of K.S.A. 1975 Supp. 72-5438 et seq. prior to termination of their employment. You have stated that the facts prompting this request are as follows: In 1974 the schools of Paradise-Waldo, District #399, unified with Natoma, School District #391. When this was done, the new school district took the old Paradise-Waldo number of #399. At the time of the unification, the school board asked

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that all teachers who wished to be hired by the new unified district file their applications. All teachers filed applications and all were hired at their then current salary. The board is now dissatisfied with some of the teachers and wish to terminate their employment.

Regarding the application of the due process procedure law, K.S.A. 1975 Supp. 72-5445 provides:

"The provisions of K.S.A. 1975 Supp. 72-5438 to 72-5443, 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 non-renewal is the result of his or her having exercised a constitutional right: Provided, however, That any board may waive such two (2) year requirement for any teacher employed by it who, prior to such employment, were teachers who had completed not less than two (2) consecutive years of employment in any school district, or community junior college in this state."

Thus, the question becomes whether any teachers presently employed by U.S.D. #399 satisfy the requirement of this provision.

Prior to the enactment of K.S.A. 1975 Supp. 72-5436 et seq., at Chapter 301 of the 1974 Session Laws, only those teachers in school districts with a city with a population in excess of 120,000 were accorded rights comparable to those presently embodied in K.S.A. 1975 Supp. 72-5436 et seq. See, former K.S.A. 72-5401 through 5409. Thus, no substantive argument can be validly asserted that the present board of education of U.S.D. #399 is seeking to curtail a statutory right that had, prior to enactment of K.S.A. 1975 Supp. 72-5436 et seq., vested in the teachers of both former U.S.D. #391 and former U.S.D. #399. In truth, these teachers had no statutory due process rights until enactment of this statute. With this type of consideration precluded, the issue becomes solely whether the provision of K.S.A. 1975 Supp. 72-5445 render those teachers presently employed by the new U.S.D. #399 subject to the protection of the due process law.

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Although the due process procedure law is prospective in operation insofar as it confers rights on a majority of teachers which prior to 1974 did not exist, it is retroaction to the extent that by its own express terms it applies to those teachers who, at the time K.S.A. 1975 Supp. 72-5436 et seq. first became effective, had been employed by the same district for two consecutive years. In this particular instance, I am constrained to conclude for the several reasons discussed below that in light of the factual background of this district, none of those teachers formerly employed by U.S.D. #391 and currently employed by U.S.D. #399 have been employed for the minimum two consecutive years. Those teachers who prior to July 1, 1974, were employed by former U.S.D. #399 and are still employed by that district are subject to the provisions of the due process law.

K.S.A. 1975 Supp. 72-5445 specifically limits its application to the following:

"The provisions of K.S.A. 1975 Supp. 72-5438 to 72-5443, 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 non-renewal is the result of his or her having exercised a constitutional right: Provided, however, That any board may waive such two (2) year requirement for any teachers employed by it who, prior to such employment, were teachers who had completed not less than two (2) consecutive years of employment in any school district, or community junior college in this state."

My research into the statutory authority under which these two district unified school districts combined reveals that in actuality former U.S.D. #391 disorganized pursuant to K.S.A. 72-7301 et seq. and was subsequently attached to the then existing U.S.D. #399. A thorough examination of the provisions contained in these statutes leads me to conclude that U.S.D. #399 has at all times material hereto continued to exist as a separate and distinct, legally constituted unified school district.

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The sole difference is that after the disorganization of U.S.D. #391, U.S.D. #399 included a larger geographical area, consisted of more real and personal property, acquired a higher assessed valuation and was composed of larger student populace. Thus, it was only former U.S.D. #391 that ceased to exist.

Applied to the question involved here, it is clear that those teachers employed by U.S.D. #399 before the attachment of the territory of former U.S.D. #391 and are still employed by U.S.D. #399 have satisfied the requirement of employment for two consecutive years by the school district currently employing them. The fact that there have been changes in the size and population of the district in the interim period does not in and of itself present sufficient justification to abrogate a right the Legislature sought to confer.

The provisio to K.S.A. 1975 Supp. 72-5445 states:

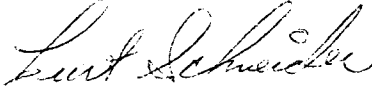
" . . . Provided, however, That any board may waive such two (2) year requirement for any teachers employed by it who, prior to such employment, were teachers who had completed not less than two (2) consecutive years of employment in any school district, or community junior college in this state."

Prior to disorganization, former U.S.D. #391 represented a separate unified school district. Assuming that the disorganization and attachment had not occurred, teachers employed by former U.S.D. #391, who thereafter transferred to U.S.D. #399 would not be entitled to the protection of the due process law unless and until the board of education exercised the waiver authority contained in the above provisio. The fact that the teachers of former U.S.D. #391 who sought employment in U.S.D. #399 were hired does not provide sufficient statutory justification to ignore the express and clear mandate of K.S.A. 1975 Supp. 72-5445. In my view, there is no question that those teachers formerly employed by U.S.D. #391 and now employed by U.S.D. #399 have not completed two consecutive years of employment with the same school district currently employing them. Unless the board

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exercises its discretion and grants these teachers a waiver of the requirement, none of those teachers formerly employed by U.S.D. #391 are now entitled to the right to claim the due process procedure prior to the termination of their employment.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv