



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

October 12, 1976

ATTORNEY GENERAL OPINION NO. 76-319

Mr. Clyde N. Miller
Route #1
Rossville, Kansas 66533

RE: Schools--Boards of Education; Powers--Minutes of
the Meeting

Synopsis: While the superintendent may be given responsibility for personal matters prior to hiring and may even make recommendations as to candidates, such individual is without authority to make binding employment contracts. The board of education must, by affirmative vote, accept or ratify all proposed employment contracts.

It is within the board's discretion as to whether the minutes reflect the actual compensation of each individual staff member.

*

*

*

Dear Mr. Miller:

You have inquired whether it is lawful for the board of education of a unified school district to delegate complete authority and responsibility for the hiring of both faculty and staff to the district superintendent without the board acting or voting to accept the teacher's or staff member's individual contract. Further, you have asked whether the salary of the various personnel must be made part of or included in the minutes of the meeting.

Mr. Clyde H. Miller
October 12, 1976
Page 2

No Kansas statute specifically addresses itself to the issue of whether a superintendent may, upon authority, granted by the board, make binding contractual commitments on behalf of the school district. Several suggest or imply negative support for this position. K.S.A. 72-8202b(c) provides in pertinent part:

"...(c) The superintendent of schools shall have charge and control of the public schools of the school district, subject to the orders, rules and regulations of the board of education."

Applicable uniformly to all school districts, K.S.A. 72-8205 provides in relevant part:

"...Except as otherwise provided in the unification acts the board shall have and may exercise the same powers and authorities as were immediately prior to this act conferred uniformly upon boards of education on cities of the first class, and, in addition thereto, the powers and authority expressly conferred by law. The board shall have authority to prescribe courses of study for each year of the school program and provide rules and regulations for teaching in the unified district and general government thereof, and to approve and adopt suitable textbooks and study material for use therein subject to the plans, methods, rules and regulations formulated and recommended by the state board of education..."

Reference to those powers conferred on the board of education of cities of the first class prior to enactment of K.S.A. 72-8205, the former GS 72-1601, et seq., and former GS 72-701, et seq., reveals no statute of particular significance here. Likewise, research of the Unification Acts has uncovered no statute germane to this issue.

K.S.A. 72-8202b(c) states that the "superintendent shall have charge and control of the public schools of the school district, subject to the orders, rules and regulations of the board of education. No other statute provides further specification as to the exact particular such a grant of authority imports. It has been generally stated that it is the duty of school officers to

Mr. Clyde N. Miller
October 12, 1976
Page 3

administer the affairs of the corporation as directed by statute. Such officers have no powers other than those conferred by legislative act either expressly or by necessary implication and doubtful claims of power are resolved against their existence. 68 Am Jur. 2d Schools §50. The Kansas rule is in accord with this position. State, ex rel. McAnarney v. Rural High School Dist. No. 7, Osage County, 171 Kan. 437, 233 P.2d 727 (1951).

Examination of those statutes bearing upon the hiring of personnel requires an adverse determination as to the authority of a superintendent to make binding employment contractual commitments. First, K.S.A. 72-8202b(c) contains no clear grant of power as to hiring. Further, it has been held that an officer may not enter into contracts of employment where authority to do so is not conferred by statute. 78 C.J.S. Schools and School Districts §184b. Those provisions contained in the Continuing Contract Law, K.S.A. 72-5410, et seq. and the Collective Negotiations Act, K.S.A. 72-5413, et seq. bearing upon the authority to hire personnel, limit their application to the governing body or board of education. In those instances where authority of a superintendent to make binding contracts has been upheld, there existed a statute which expressly conferred the power, 78 Am Jur. 2d Schools and School Districts §184. In my view, the authority of the superintendent to "...have charge and control of the public schools of the school district..." does not import the power to make binding contractual commitments on behalf of the district without a more express authorization. All doubts as to the existence of such power must be resolved against its possession by the district's superintendent. Thus, while the superintendent may be given responsibility for personnel matters occurring prior to hiring and may even make recommendations as to candidates, such individual is without authority to make binding employment contracts. The board of education must, by affirmative vote, accept or ratify all proposed employment contracts.

Further, you have inquired as to whether the amount of compensation paid district employees must be recorded in the minutes of the meeting. On this point, K.S.A. 72-8202c provides:

"...(b) The clerk shall keep an accurate journal of the proceedings of the board of education. The clerk shall have the care and custody of the records, books and documents of the board..."

By virtue of K.S.A. 45-201, the requirement that such minutes be kept renders them subject to public inspection. Thus, competing interests collide--the right of faculty and staff to retain the privacy of their compensation versus the right of the taxpayer to

Mr. Clyde N. Miller
October 12, 1976
Page 4

know the manner in which tax dollars are expended. In my view, it is within the board's discretion as to whether the minutes reflect the actual compensation of each individual staff member.

Several statutes suggest this conclusion. First, the requirement that the clerk maintain an "accurate journal of the proceedings" does not specifically require that all matters be fully and precisely transcribed. The word "proceedings" refers more to the nature of the business transacted. In regards to employment contracts, minutes reflecting consideration of the employment as to whether such contract was approved or disapproved would, in my view, satisfy K.S.A. 72-8202c(b). All contracts, including salary, would nonetheless be a matter of public record pursuant to K.S.A. 1975 Supp. 10-1117.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/HTW/cgm