



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 20, 1977

ATTORNEY GENERAL OPINION NO. 77- 203

Dr. Arzell L. Ball
Superintendent of Schools
Shawnee Mission Public Schools
Administration Building
7235 Antioch
Shawnee Mission, Kansas 66204

Re: Schools - Teacher Contracts - Hearing Committee
Members, Expenses

Synopsis: K.S.A. 1976 Supp. 72-5440, which provides that hearing committee members be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 1976 Supp. 75-3223, does not authorize payment of the compensation also provided for in K.S.A. 75-3223.

* * *

Dear Dr. Ball:

You have inquired whether school districts are authorized under K.S.A. 1976 Supp. 72-5440, or any other statute, to pay compensation to hearing committee members, or whether, in the absence of specific authority, compensation may be paid to hearing committee members by mutual agreement of the teacher and the Board of Education.

K.S.A. 1976 Supp. 72-5440(d) provides that hearing committee members "shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 1976 Supp. 75-3223, and amendments thereto". The latter statute provides, in subsections (a) through (d) respectively, for compensation, subsistence allowances, mileage, and expenses to be paid to board members.

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Since K.S.A. 1976 Supp. 75-3223 provides amount to be paid for compensation (subsection c), subsistence (subsection b), mileage (subsection c), and expenses (subsection d), there is no reason to believe that the reference in K.S.A. 1976 Supp. 75-5440(d) to only three of those topics is in any way intended to refer to the fourth topic, compensation. Had the legislature wished to provide for payment of compensation, K.S.A. 1976 Supp. 72-5440(d) could easily have been drafted to provide for payments of compensation as provided in K.S.A. 1976 Supp. 75-3223; yet that term is conspicuous by its absence from K.S.A. 72-5440(d).

Furthermore, K.S.A. 1975 Supp. 72-5440 provided that each member of the hearing committee be paid "compensation for such member's services in an amount agreed upon by the parties, but in no event shall such amount exceed seventy-five dollars (\$75.00) per day". That language was stricken from the Act in the 1976 amendment thereto. (See 1976 Session Laws of Kansas, Chapter 315, Section 5.) Thus, it appears to be the clear intent of the legislature that the hearing committee members not be paid any compensation.

It is the general rule, as exemplified by the holding in Wichita Public Schools Employees Union v. Smith, 194 Kan. 2, 397 P.2d 357 (1964), that "school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence". (Smith, Supra, at p. 4.) "A school district has only such power and authority as is granted by the legislature and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication". (Smith, Supra, at p.4.) There is no statutory authority for payment of compensation to hearing committee members. Absent such statutory authority, or clear statutory implication, the school districts have no power to make such compensation, either on their own or by agreement with the teachers.

Therefore, I conclude that there is no statutory provision for payment of compensation to members of teacher contract hearing committees; nor is there any statutory implication in support of such payments by school districts. In fact, the legislative history of the relevant statute clearly indicates a legislative intent that these hearing committee members not be paid compensation.

Very truly yours,



CURT T. SCHNEIDER
ATTORNEY GENERAL