

STATE OF KANSAS

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Attorney General

June 22, 1977

ATTORNEY GENERAL OPINION NO. 77-209

The Honorable Anthony Hensley
State Representative
2226 Virginia Avenue
Topeka, Kansas 66605

Re: Schools--Teachers--Contracts

Synopsis: Supplemental contracts entered into under K.S.A. 72-5412a remain exempt from the professional negotiation law, in article 54, K.S.A., as amended by 1977 Substitute for House Bill 2325.

* * *

Dear Representative Hensley:

You inquire whether the provisions of supplemental contracts of employment which are authorized by K.S.A. 72-5412a will be subject to the professional negotiation act found at K.S.A. 72-5413, as amended by 1977 Substitute for House Bill No. 2325, effective July 1, 1977.

K.S.A. 72-5412a provides thus:

"The board of any school district may enter into a supplemental contract of employment with any employee of the district. As used in this section 'supplemental contract' means a contract for services other than those services covered in the principal or primary contract of employment of such employee, and shall include but not be limited to such services as coaching, supervising, directing and assisting extra curricular activities,

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chaperoning, ticket taking, lunch room supervision and other similar and related activities. *None of the provisions of article 54 of chapter 72 of Kansas Statutes Annotated, including the sections thereof in the 1971 cumulative pocket-part supplement, shall be applicable to any employee's supplemental contract.* [Emphasis supplied.]

This section was enacted in 1972.

Section 1 of 1977 Substitute for House Bill 2325 provides, for the first time, a definition of the "terms and conditions of professional service" which are subject to negotiation under K.S.A. 72-5414. The phrase is defined to mean

"salaries and wages, hours and amounts of work, vacation allowance, holiday, sick and other leave, number of holidays, retirement, insurance benefits, wearing apparel, pay for overtime, jury duty, grievance procedure, disciplinary procedure, resignations, termination of contracts, matters which have a greater direct impact on the well-being of the individual professional employee than on the operation of the school system in the school district or of the community junior college and such other matters as the parties mutually agree upon as properly related to professional service."

You question whether this expansive definition of "terms and conditions of professional service" includes those services which are included in supplemental contracts of employment under K.S.A. 72-5412a, and thus operates to repeal the exemption of supplemental contracts from the professional negotiation process. The statutory definition of "terms and conditions of professional service" enacted by the 1977 legislature is purposefully broad and general, to accommodate any and all conditions of professional employment which the parties might agree on, and thus subject those matters to the negotiation process. Absent the last sentence of K.S.A. 72-5412a, the definition, standing alone, is sufficiently broad and general to include those supplemental services. At the same time, however, the statutory definition is

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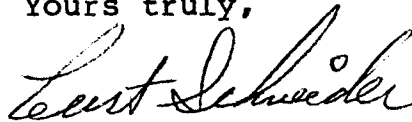
also so general that it does not belie a legislative intent specifically to repeal by necessary implication the 1972 exemption of supplemental contracts from the professional negotiation process.

The Kansas Supreme Court has held that "where a later act of the legislature is irreconcilably repugnant to an earlier act on the same subject, the statute last enacted repealed the earlier act." *Lawton v. Hand*, 183 Kan. 694, 331 P.2d 886 (1958). There is no necessary irreconcilable repugnance here. The generality of the 1977 statutory definition permits a construction of that definition to exclude the provisions included in supplemental contracts under K.S.A. 72-5412a. The guiding rule of statutory construction was reiterated thus in *Harrah v. Harrah*, 196 Kan. 142, 409 P.2d 1007 (1966) thus:

"To determine whether the statutes under consideration can be reconciled, it is necessary to first arrive at the real intention of the legislature. . . . In so doing, the statutes are to be read together and harmonized, if at all possible, to the end that both may be given force and effect." 196 Kan. at 145.

The 1977 definition may readily be construed so to give the 1972 exemption continued vitality, and the applicable rules of construction require that it be so construed, absent compelling language requiring a contrary view. There is none in this instance, and as a result, the 1972 exemption must be regarded as in continued force and effect.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj