



STATE OF KANSAS

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June 28, 1977

ATTORNEY GENERAL OPINION NO. 77-213

Mr. Jerry L. Griffith
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101 North Baltimore
Derby, Kansas 67037

Re: Schools--Teachers--Professional Negotiations

Synopsis: Substitute for House Bill No. 2325, effective July 1, 1977, substantially enlarges the scope of matters which may be included in agreements entered into between boards of education and teachers under the Kansas professional negotiation act, K.S.A. 72-5413 et seq. After the effective date of that bill, boards and teachers may agree that teachers may be paid their teaching salaries for time spent during teaching hours in professional negotiations, because those negotiations are directly and factually related to professional services rendered by the board's teaching employees. Similarly, after July 1, 1977, the parties may agree that teachers shall be paid full-time salaries for time absent from teaching duties while attending conventions, meetings, workshops and the like which the parties determine are "properly related to professional service."

* * *

Dear Mr. Griffith:

You inquire whether Substitute for House Bill No. 2325, which becomes effective July 1, 1977, operates to enlarge the scope of agreements which may be entered into between boards of education and their professional employees under the Kansas professional negotiation law, K.S.A. 72-5413 et seq.

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As enacted in 1970, section 9 of that law, now found at K.S.A. 72-5421, states thus, in pertinent part:

"A board of education and a representative selected or designated pursuant to the provisions of sections 3 to 8 of this act may enter into an agreement covering terms and conditions of professional service."

The critical phrase of this act, "terms and conditions of professional service," was not defined, however. "That the power of a school district to contract is only such as is conferred, either expressly or by necessary implication, by statute is well-established law in this and other jurisdictions." Rose v. School District No. 94, 162 Kan. 720, 179 P.2d 181 (1947). Because the powers of school boards are restricted to those granted by statute, the "terms and conditions" concerning which the board was by law authorized to enter into agreements were viewed conservatively, for no powers are to be implied except those which are necessarily implied from those expressly granted. Thus, in my recent opinion to you, no. 77-183, I advised that under existing law, the board had no authority to pay, or to agree to pay, the full salaries of teachers who are members of the teachers' team for professional negotiations, for days when they were not engaged in teaching duties, but were engaged in professional negotiations with the board on behalf of its professional employees. There is no express statutory authority for such agreement, and no provision from which such authority can be necessarily implied.

However, the 1977 Legislature enacted Substitute for House Bill No. 2325, which becomes effective July 1, 1977. For the first time since enactment of the professional negotiations law in 1970, we now have a statutory definition of the "terms and conditions of professional service" concerning which the board may enter into agreements. Section 1(1) of the bill states thus:

"'Terms and conditions of professional service' means 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

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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. [Emphasis supplied.]

With this statutory definition of the phrase "terms and conditions of professional service," there now exists substantive authority for agreements concerning a number of matters for which authority has been either nonexistent or highly questionable.

Moreover, as to the scope of matters to be included in an agreement, the underscored language above reflects a clear legislative intent to defer in great measure to the judgment and discretion of local boards and to the negotiating process. If a proposed item is mutually agreed upon between the parties as "properly related to professional service," the board now enjoys substantive authority to enter into an agreement concerning that time, unless it can be said as a matter of law that it is not related to professional service.

Under the new bill, if the parties mutually agree that the board shall pay teaching employees their salaries for time spent in professional negotiations during teaching hours, the board is legally authorized to do so, unless it can be said as a matter of law that professional negotiations are not "properly related to professional service." The central purpose of negotiations, of course, is to determine the terms and conditions of that professional service, and in a very obvious sense, then negotiations are directly related to professional service. It may be argued, of course, that teachers are employed only to render professional teaching services, and that negotiations are not a part of those teaching services. Section 1(1) requires only that the subject matter of the agreement be "properly related to" professional services. If the parties mutually agree that teaching employees shall be granted paid leave from teaching duties during their duty hours to participate in negotiations, I cannot justifiably conclude as a matter of law that the board is acting arbitrarily or unreasonably in doing so, or that it has exceeded its legal authority in doing so, in the face of the clear factual relationship between negotiations and professional services. Negotiations are obviously and intimately related to the terms and conditions of professional service, even though negotiations are not a part of those services. If the board chooses to authorize payment


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of salaries to teaching employees for the time spent during duty hours in negotiations, the board likewise has the authority to employ substitutes to serve for those teachers who are thus occupied in negotiations.

Secondly, you inquired whether the board might agree to pay the full daily salary of teachers for days when they are absent from duty on teacher association business. Once again, if the parties agree that teachers' attendance at particular conventions, meetings, workshops and seminars is "properly related to professional service," the board is authorized to enter into agreements to pay its teaching employees their full daily salary for days when they are absent attending such functions. It is for the parties to determine through the negotiating process which kinds and classes of such functions are "properly related to professional service," and then, for attendance at which, if any, of such functions, compensation shall be paid. Heretofore, there was no express authority and no necessarily implied authority for such agreements. After July 1, 1977, the professional negotiation law, as amended by Substitute for House Bill 2325, will provide the authority heretofore absent. If, of course, the board is authorized to pay its teachers their full daily salary for days when they are absent attending such functions as are agreed upon between the parties as "properly related to professional services," the board certainly has the authority to employ substitute teachers to act in the stead of those who are absent.

I hope this discussion will be helpful to you and your district as to all negotiations occurring after July 1, 1977, under the cited bill.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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