



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 21, 1978

ATTORNEY GENERAL OPINION NO. 78- 143

Mr. Robert W. Plummer
Box 87
Johnson, Kansas 67855

Re: Schools--Board Meetings and Employees--Liability

Synopsis: An abstaining vote by a member of a school board cannot be counted to constitute a majority for the purpose of contracting with a teacher. K.S.A. 72-8202(c) and (d) require that a school board employ a clerk and a treasurer and members who do not comply with these requirements are subject to an action in mandamus, ouster from office and personal liability for damages.

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Dear Mr. Plummer:

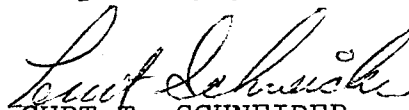
As a school board member of USD No. 452, you inquire concerning the effect of an abstaining vote in school board meetings, the statutory requirements with respect to the employment of school board clerk and treasurer and the liability of school board members should they not comply with the statutory requirements regarding a clerk and a treasurer.

The act of contracting with teachers is an affirmative act of the school board. Therefore, a clear majority of the board members is necessary to enter such contracts. This would require four affirmative votes on a seven member board. Therefore, a vote of three members in favor, three members against and one member abstaining is insufficient to bind the board.

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K.S.A. 72-8202(c) and K.S.A. 72-8202(d) require that a school board employ a clerk, who shall not be the same person as the superintendent of schools or the treasurer and a treasurer who shall not be the same person as a superintendent of schools or the clerk. In our view, the purpose of these statutes is to separate the functions of supervision and control of the school district, the keeping of minutes and records of the school board and the keeping of accounts and having charge and control of school board funds. Thus, if school board members violate these provisions they would be subject to an action in mandamus to force compliance. Further, members could be subject to ouster from office for willfully refusing to comply with provisions of Kansas law. Finally, in the event that damage to the school district resulted from the board members' failure to comply with these statutes, such members could be personally liable for such damage.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

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