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ATTORNEY GENERAL OPINION NO. 79-305

The Honorable James E. Lowther
State Representative, Sixteenth District
1549 Berkeley Road
Emporia, Kansas 66801

Re: Schools--Teachers' Contracts--Designation of
Hearing Committee Members for Review of Contract
Termination or Non-Renewal

Synopsis: Where the employment of a teacher of a unified school district has been terminated by the board of education thereof, or the board has determined not to renew such teacher's employment contract, such teacher is entitled to a hearing before a three-member hearing committee, one member of which is to be selected by the teacher pursuant to K.S.A. 1979 Supp. 72-5438. The member so selected may be another teacher of the school district, and the board of education may not interfere with such selection.

* * *

Dear Representative Lowther:

We are in receipt of your letter requesting our opinion concerning the selection of members to a committee convened pursuant to K.S.A. 1979 Supp. 72-5438. You indicate that the request was prompted by your having been advised of at least one situation wherein the committee member designated by the teacher whose contract had not been renewed or who was terminated was not allowed to serve on the committee because the designee was, himself, a teacher in the school district. You explain that the board of education of the school district advised the designee and the discharged teacher that the designee's employment as a teacher disqualified him from serving on the hearing committee.

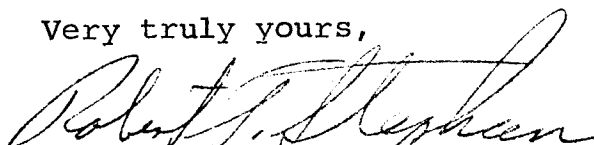
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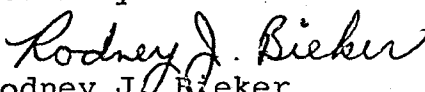
Pursuant to K.S.A. 1979 Supp. 72-5438 a teacher, who the board of education proposes to terminate, or whose employment contract is not to be renewed by said board, must be given written notice of the proposed nonrenewal or termination, including therein a statement of the reasons for the proposed nonrenewal or termination, together with a statement advising the teacher of his or her right to have the matter heard by a hearing committee. The statute further provides that in order for the teacher to be afforded a hearing, he or she must file, with the clerk of the board of education, written notice of the teacher's request for such a hearing, and said notice must be filed within fifteen days from the date of the notice of nonrenewal or termination. The statute also provides that the teacher shall, in the notice filed with the clerk of the board of education, designate one hearing committee member. The statute then provides:

"Upon the filing of any such notice, the board shall, within fifteen (15) days thereafter, designate one hearing committee member. The two hearing committee members shall designate a third hearing committee member who shall be the chairman and who shall in all cases be a resident of the state of Kansas. In the event that the two hearing committee members are unable to agree upon a third hearing committee member within five (5) days after the designation of the second hearing committee member, a district judge of the home county of the school district, area vocational-technical school or community junior college shall appoint the third hearing committee member upon application of the teacher or either of the first two hearing committee members."

A review of this statute discloses an unrestricted right of the teacher, whose contract is not renewed or is terminated, to designate one hearing committee member, and an unrestricted right of the board of education to designate one hearing committee member. The statute, in no way, authorizes the teacher or the board to interfere in the other's designation of a person to serve on the committee. Thus, it is our judgment that a refusal by the board of education to allow another teacher of the school district to serve on a hearing committee as the designee of the teacher whose contract is not renewed or is terminated, is totally unauthorized.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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