



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 31, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 81-206

Mrs. Beth Fenske
Route 2
Mayetta, Kansas 66509

Re: Schools--Boards of Education; Organization, Powers,
Finances--Special Meetings

Synopsis: Under K.S.A. 72-8205 (as amended by L.1981, ch. 293, §1), a school board member may waive the right to written notice of a special meeting of the board of education. However, no business can be discussed at a special meeting of a board of education, other than that particular business for which the special meeting was called. If action is taken on other business, such action can be invalidated through appropriate judicial proceedings. However, the board, in essence, can validate its prior action by taking the same action at a regular meeting, or at a special meeting called for the purpose of discussing that item of business which was improperly acted upon at the prior special meeting.

Finally, while the provisions of K.S.A. 72-8205 (as amended) do not prohibit one special meeting from being concluded, and another special meeting called and held immediately thereafter, any such meeting must comply with the requirements of the Kansas Open Meetings Act, K.S.A. 75-4317, et seq. Under that act, notice of a special meeting must be given to any person who has requested notice of school board meetings. See Attorney General Opinion No. 81-15. Cited herein: K.S.A. 72-8205 as amended by L.1981, ch. 293, §1, K.S.A. 1980 Supp. 75-4318.

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Dear Mrs. Fenske:

As a member of the Board of Education of Unified School District No. 337, you seek an opinion on numerous questions involving special meetings of a local board of education, pursuant to K.S.A. 72-8205 (as amended by L.1981, ch. 293, §1). In pertinent part, that statute provides:

"Special meetings may be called at any time by the president of the board or by joint action of any three members thereof. Written notice, stating the time and place of any special meeting and the purpose for which called, shall, unless waived, be given each member of the board at least two days in advance of the special meeting and no business other than that stated in the notice shall be transacted at such meeting."

In regard to the above-quoted language, you inquire:

"At a special meeting when a waiver is signed, are you waiving only the time or are you waiving time, place and purpose? (Emphasis in original.)

"After the waiver has been signed, can any business other than for what the meeting was called be discussed and/or acted on?

"If there was action taken at a special unlawfully, [sic] how can it be rectified? And could the board of education be sued for such action?

"Can a special meeting be closed and another called in the same night?"

In our judgment, the above-quoted language of K.S.A. 72-8205 is clear and unambiguous in regard to that which a school board member may "waive." Said member may waive the right to be given written notice of the time, place and purpose of a special meeting. A person may waive only a right. The right granted under the above-quoted statutory language is the right of a school board member to be notified, in writing, of the time, place and purpose of any special meeting of the board. See West v. Unified School District, 204 Kan. 29 (1969).

While the statute is much less clear in regard to the business which may be transacted at a special meeting, the uncertainty

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is minimized if it is borne in mind that the above-quoted provisions of K.S.A. 72-8205 concern "special" meetings. By definition, a "special" meeting is one called for the purpose of discussing one or more particular items of business. See, e.g., Barile v. City Controller of City of Utica, 288 N.Y.S.2d 196, 56 Misc.2d 190 (1968). Thus, when, under the provisions of 72-8205, the president of the board or three members of the board "call" a special meeting, said meeting is called for the purpose of discussing one or more particular items of business. Therefore, even if written notice of the time, place and purpose of the special meeting is not given, such inaction does not alter the fact the meeting was called to discuss one or more particular items of business. In our judgment, the intent of the legislature was that no business shall be transacted at a special meeting of a board of education, other than that particular business for which the meeting was called.

Thus, it is our opinion the above-quoted provisions of K.S.A. 72-8205 (as amended) limit the discussion at special meetings of the board of education to the particular item or items of business for which the special meeting was called. We are of the further opinion that if action is taken on other business, such action could be invalidated through appropriate judicial proceedings. Of course, however, the board, in essence, can validate its prior improper action by taking the same action at a regular meeting or at a special meeting called for the purpose of discussing that item of business which was improperly discussed and acted upon at the prior special meeting.

Finally, in regard to your inquiry concerning whether one special meeting can be concluded and another called and held in the same night, we believe such would be allowed under K.S.A. 72-8205 (as amended). However, such meeting is subject to the notice requirements of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., which act is applicable to school board meetings. While the provisions of that act presently do not require the governing body of a public agency, such as a school district, to give notice to the public generally, subsection (b) of K.S.A. 1980 Supp. 75-4318 does require thusly:

"Notice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such information" (Emphasis added.)

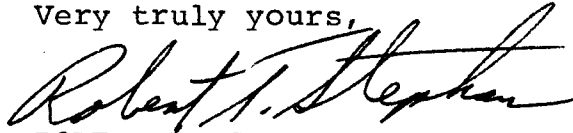
Earlier this year, we had occasion to construe the above-quoted language. In Attorney General Opinion No. 81-15, we said, in part:

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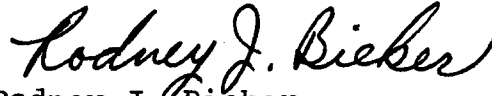
"Notice of special meetings cannot be restricted to those situations where prior notice is 'possible.' If a meeting is prearranged and subject to the Kansas Open Meetings Act, notice must be provided for those who request it." Id. at Synopsis.

Thus, if a person or persons have requested to be notified of the meetings of a board of education, and the board attempts to proceed with a special meeting for which no notice is provided to the person or persons who have requested such notice, such action clearly would violate the provisions of K.S.A. 1980 Supp. 75-4318(b), quoted above. While members of a board of education may waive the notice to be given them under K.S.A. 72-8205, the board of education of a school district cannot eliminate the notice requirement prescribed in K.S.A. 1980 Supp. 75-4318(b).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm