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ATTORNEY GENERAL OPINION NO. 87- 119

Fred W. Rausch, Jr.
Suite 201, Ambassador Building
220 Southwest 33rd Street
Topeka, Kansas 66611

Re: Schools -- Organization, Powers and Finances of
Boards of Education -- Interlocal Agreements;
Duration of Agreements; Constitutionality of 1987
House Bill No. 2482, amending K.S.A. 72-8230 (L.
1987, ch. 276, § 1).

Synopsis: 1987 House Bill No. 2482 amends K.S.A. 72-8230 (L.
1987, ch. 276, § 1) to nullify the duration
provisions in existing school district interlocal
cooperation agreements concerning special education
services. In our opinion, this provision is not
unconstitutional. For a retrospective law to be
invalid, it must either be proscribed by state
constitution, which is not the case in Kansas, or
it must violate a constitutionally vested right.
School districts have no vested rights in
interlocal agreements as both school districts
and interlocal agreements are creatures of the
legislature. Therefore, the legislature has
authority to alter the provisions of existing
interlocal agreements. Cited herein: K.S.A.
72-8230, as amended by L. 1987, ch. 276, § 1;
Kan. Const. Art. 6, § 5; U.S. Const., Art. I,
§ 10; Amend. XIV.

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Dear Mr. Rausch:

As attorney for the High Plains Educational Cooperative No. 611, the Atchison-Jefferson Educational Cooperative, and the Three Lakes Educational Cooperative, you request our opinion on the constitutionality of 1987 House Bill No. 2482 (L. 1987, ch. 276, § 1), amending K.S.A. 72-8230.

K.S.A. 72-8230(a) authorizes the boards of education of two or more school districts to enter into interlocal cooperative agreements "for the purpose of jointly and cooperatively performing any of the services, duties, functions, activities, obligations or responsibilities which are authorized or required by law to be performed by school districts in this state. . . ." Recent amendments to this statute, which are retroactive in nature, provide that the duration of an interlocal agreement for special education services is perpetual:

"The duration of a school district interlocal cooperation agreement for joint or cooperative action in providing special education services shall be perpetual unless the agreement is partially or completely terminated in accordance with this provision. This provision applies to every school district interlocal cooperation agreement for the provision of special education services entered into under authority of this section after the effective date of this act and to every such agreement entered into under this section prior to the effective date of this act, and extant on the effective date of this act, regardless of any provisions in such an agreement to the contrary."
K.S.A. 72-8230(a)(5)(A), as amended by L. 1987, ch. 276, § 1. (Emphasis added).

Prior to this amendment interlocal cooperative agreements for special education services were limited to a term of at least three years but no more than five years. The amendments added by the 1987 legislature include procedures for partial or complete termination by which approval by the State Board of Education is required. (L. 1987, ch. 276, §1). Several school districts have raised questions whether the

legislature's amendments nullifying the duration provisions in existing agreements are constitutional.

Neither the Federal Constitution nor the Kansas Constitution expressly prohibits retrospective legislation. "In the absence of such an express constitutional inhibition, retrospective laws are not prohibited as such." 16A Am. Jur. 2d Constitutional Law, § 662; See Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1948). In fact, the Kansas Constitution specifically authorizes the legislature to alter or abolish interlocal agreements:

"Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature. Kan. Const., Art. 6, § 5. (Emphasis added).

The legislature has reserved this authority in K.S.A. 72-8230. At the time the cooperatives you represent were organized, the statute read as follows:

"Any such agreement shall be subject to change or termination by the legislature." K.S.A. 72-8230.

A similar provision is contained in the law as amended:

"A school district interlocal cooperation agreement shall be subject to change or termination by the legislature." K.S.A. 72-8230, as amended by L. 1987, ch. 276, §1.

Thus, the legislature has clearly declared its intent in enacting K.S.A. 72-8230 and the 1987 amendment that it retains the right to change or terminate agreements creating special education interlocal cooperatives.

The question remains, however, whether the reservation of these rights by the legislature is itself unconstitutional. Though retrospective laws are not per se unconstitutional, they are invalid when they violate another constitutional provision. When a law impairs a constitutionally vested right, such as the right to the obligation of contracts (U.S. Const., Art. 1, § 10), or the right to due process of law (U.S. Const., Amend. XIV), the law is invalid. 16A Am. Jur. 2d Constitutional Law §§ 663, 664, 666, 668. K.S.A. 72-8230 (a), as amended by L. 1987, ch. 276, § 1, does not violate any vested right.

In Schumacher v. Rausch, 190 Kan. 239, 244 (1962), the Kansas Supreme Court stated:

"[T]hat which is purely a creature of the legislature is subject not only to the legislative power to create, but also to the legislative power to modify, dissolve or abolish."

See Leek v. Theis, 217 Kan. 784, 802 (1975). Numerous Kansas cases have held that school districts have no vested rights and are therefore subject to modification by the legislature.

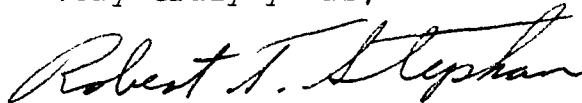
"School districts are purely creatures of the legislature and subject not only to its power to create but its power to modify or dissolve.

"There are no vested rights in the existence of a school district." State, ex rel. v. School District, 163 Kan. 650, Syl. ¶¶ 2,3 (1947).

See Board of Riley County Comm'rs v. City of Junction City, 233 Kan. 947, 957 (1983). School districts have only those powers expressly given by statute. See Attorney General Opinion No. 81-216. Interlocal cooperatives formed by school districts pursuant to statutory authority are also creatures of the legislature. Since interlocal agreements are subject to modification by the legislature, school districts have no vested rights to the duration of these agreements.

In summary, 1987 House Bill No. 2482 amends K.S.A. 72-8230 (L. 1987, ch. 276, §1) to nullify the duration provisions in existing school district interlocal cooperation agreements concerning special education services. In our opinion, this provision is not unconstitutional. For a retrospective law to be invalid, it must either be proscribed by state constitution, which is not the case in Kansas, or it must violate a constitutionally vested right. School districts have no vested rights in interlocal agreements as both are creatures of the legislature. Therefore, the legislature has authority to alter the provisions of existing interlocal agreements.

Very truly yours,



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