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ATTORNEY GENERAL OPINION NO. 88- 124

The Honorable Rick Bowden  
State Representative, Ninety-Third District  
433 Walnut  
Goddard, Kansas 67052

Re: Schools -- School Unification Acts -- Board Member  
District Boundaries; Adjustments

Synopsis: It is our opinion that school districts using the member district system may make amendments to member district boundaries to correct errors or to make the boundaries more practicable. School boards are required to make changes in member district boundaries by adopting a resolution at the October meeting preceding the general election if such changes are appropriate. Appropriateness of redistricting is to be determined on the basis of an equal protection analysis, so that an elector's vote is not diluted in comparison to other electors. Cited herein: K.S.A. 19-204, 72-6769, 72-8127; L. 1965, ch. 420, sec. 6.

\* \* \*

Dear Representative Bowden:

As State Representative for the Ninety-Third District, you have requested our opinion regarding reapportionment of member district boundaries of unified school districts. Specifically, you ask whether the reapportionment provisions of K.S.A. 72-6769 are mandatory or discretionary.

The statute in question states in relevant part:

"The board of education of any school district may change the boundaries of board member districts, if any, within its school district, including any territory added thereto. The board is directed to make any appropriate changes in the member districts of the school district by resolution duly adopted at a meeting of the board in the month of October next preceding every regular election of board members of the school district. . . ."

"Amendments to member district boundaries may be made to correct errors therein or to make the territory thereof more practicable. . . ." K.S.A. 72-6769.

We do not believe the use of both permissive and mandatory language creates any ambiguity in the statute.

The permissive language which appears in K.S.A. 72-6769 authorizes school boards to change member district boundaries at times other than in October preceding the general election to accomplish the purposes set forth in the second paragraph of the statute. School districts are creations of the legislature, and have only those powers which are conferred by statute, specifically or clearly implied. Hobart v. U.S.D. No. 309, 230 Kan. 375, 383 (1981). Without the grant of authority contained in K.S.A. 72-6769, a school district would not be empowered to alter district member boundaries to correct errors or to make them more practicable. C.f., L. 1965, ch. 420, sec. 6 (original version of statute, used phrase "is authorized to. . . .").

In contrast to discretionary redistricting, school boards are directed to make appropriate changes in the October meeting immediately preceding the general election. We have previously considered a similar statute which requires reapportionment of county commissioner districts at least once every three years. See Kansas Attorney General Opinion No. 86-70 (construing K.S.A. 19-204). Based on Hayes v. Rogers, 24 Kan. 143 (1880) and The State, ex rel. v. Labette County, 114 Kan. 726 (1923), we opined that the statute does not require automatic redistricting every three years, but rather it mandates that districts should be examined in light of the statutory criteria, and redrawn if necessary. We believe that the principles in our previous opinion apply to the language of K.S.A. 72-6769. If changes are appropriate,

then the school board is directed to make those changes at the stated time.

The statute does not give guidelines for determining what changes are appropriate. We are guided, however, by the equal protection standard of one-person, one-vote. In Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506 (1964), this principle was extended to elections for state legislators. One-person, one-vote also applies to political subdivisions of the state. In Hadley v. Junior College District, 397 U.S. 50, 25 L.Ed.2d 45 (1970), the Court stated:

"If one person's vote is given less weight through unequal apportionment, his right to equal participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process." 397 U.S. at 55, 25 L.Ed.2d at 50.

As we have recently noted, the Court

"has been more flexible in variations from ideal apportionment in state representation than in federal representation. Compare Kirkpatrick v. Preisler, 394 U.S. 526, 531, 22 L.Ed.2d 519, 525 (1969) (Congressional districts must be drawn to give one person one vote, only limited and unavoidable variances tolerated) with Mahan v. Howell, 410 U.S. 315, 324, 35 L.Ed.2d 320, 330 (1973) (state redistricting plan to be judged by equal protection test, not by Kirkpatrick standard)." Attorney General Opinion No. 88-111, at page 3.

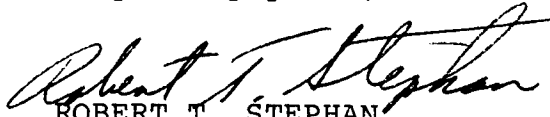
In comparison, K.S.A. 72-8127 contains similar redistricting language applicable to a school district in which there is located at least two first-class cities. That section gives guidelines for that type of district, stating:

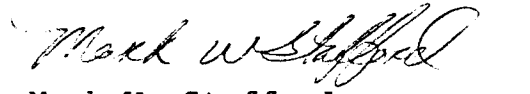
"Such board of education shall maintain such member district boundaries along

"Such board of education shall maintain such member district boundaries along precinct lines insofar as practicable, and the territory of each member district shall, giving due regard to the population of each member district, correspond as nearly as may be to attendance areas of the senior high schools of the unified school district for the succeeding year."  
K.S.A. 72-8127.

In conclusion, it is our opinion that school districts using the member district system may make amendments to member district boundaries to correct errors or to make the boundaries more practicable. School boards are required to make changes in member district boundaries by adopting a resolution at the October meeting preceding the general election if such changes are appropriate. Appropriateness of redistricting is to be determined on the basis of equal protection analysis, so that an elector's vote is not diluted in comparison to other electors.

Very truly yours,

  
ROBERT T. STEPHAN  
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