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ATTORNEY GENERAL OPINION NO. 89- 43

The Honorable Don Crumbaker
State Representative, 121st District
Chairman, House Education Committee
State Capitol, Room 182-W
Topeka, Kansas 66612

Re: Schools -- Organization, Powers and Finances of
Boards of Education -- Interlocal Cooperation
Agreements

Synopsis: K.S.A. 1988 Supp. 72-8230 authorizes interlocal
cooperation agreements between two or more school
districts but does not appear to contemplate
non-school districts being parties to such
agreements. However, individual school districts
may independently cooperate with non-school
district entities through agreements entered into
pursuant to alternative authority. Cited herein:
K.S.A. 1988 Supp. 12-2904; K.S.A. 72-8201; K.S.A.
1988 Supp. 72-8230.

* * *

Dear Representative Crumbaker:

You request our opinion on K.S.A. 1988 Supp. 72-8230 and
specifically ask that we address whether an entity other than
a school district may be party to a "school district
interlocal cooperation agreement" as defined in (e) (1) of
K.S.A. 1988 Supp. 72-8230.

The statute in question authorizes the boards of education of two or more school districts to enter into agreements pursuant to the provisions and conditions contained therein:

"(1) In the event the boards of education of any two or more school districts enter into agreements pursuant to the provisions of the interlocal cooperation act 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 of this state. . . ." (Emphasis added).

A school district interlocal cooperation agreement is defined as:

"an agreement which is entered into by the boards of education of two or more school districts pursuant to provisions of this section." (Emphasis added).

Subsection (a)(1) mandates the establishment of a board of directors to administrate the separate legal entity created by the school district interlocal cooperation agreement. The board must contain representatives from each school district that is a party to the agreement:

"(1) A school district interlocal cooperation agreement shall establish a board of directors which shall be responsible for administering the joint cooperative undertaking. The board of directors shall be composed of at least one member from the board of education of each school district which enters into the agreement. Each board of education shall appoint its representative or representatives to the board of directors. The terms of office of the members of the board of directors shall expire concurrently with their terms as board of education members. Vacancies in the membership of the board of directors shall be filled in the same manner as

originally filled within 30 days from the date of vacancy." (Emphasis added).

K.S.A. 1988 Supp. 72-8230 has no provision concerning how non-school district members appoint directors, how such a member is to be selected, how long their term is for, or how a vacancy of their office is to be filled. As non-school district members could have no board of education members, their terms as directors could conceivably never expire. If the legislature had intended to create an interlocal cooperation agreement board comprised of school districts and other entities, it can be presumed that it would have stated or provided for the mechanisms whereby non-school district entities were represented on the board. No mention is made of how such non-school district entities should be represented, rather, K.S.A. 1988 Supp. 72-8230 establishes the board based upon membership in a school district board of education.

K.S.A. 72-8201 et seq. generally discusses only the organization and powers of boards of education and school districts. It does not seek to address the structure and authority possibly enjoyed by other types of private or public entities. K.S.A. 1988 Supp. 72-8230 thus does not appear to encompass entities other than school districts as eligible parties to a school district interlocal cooperation agreement. We look now to legislative history to determine whether these provisions necessarily preclude school districts from entering into interlocal cooperation agreements with other entities.

1975 House Bill No. 2381 amended K.S.A. 12-2904 to include "educational services" and allowed a school board to cooperatively provide educational services pursuant to K.S.A. 12-2904. The bill also enacted what became K.S.A. 72-8230. This new statute allowed two or more school districts to enter into agreements pursuant to K.S.A. 72-8230, something which they presumably could have done merely by using the authority under K.S.A. 12-2904. However, the new enactment provided stricter guidelines when two or more school districts entered into an interlocal agreement. Thus, separate authority was created for situations where two or more school districts entered into a cooperative agreement. If only one school district was a party, K.S.A. 12-2904 was apparently considered sufficient. The title of the 1975 enactment supports the conclusion that the new authority was intended as "an act authorizing school districts to provide certain educational services through interlocal agreements" (emphasis added), and

thus it did not authorize agreements involving non-school districts. 1975 House Journal Reports, pp. 797-799.

1978 House Bill No. 2932, L. 1978, ch. 302, § 1, amended subsection (f), which is no longer in the statute. The language of the amendment gave the board of directors of the interlocal agreement's separate legal entity the powers and duties of a unified school district and the school board of such a district (with the exception of the power to levy and collect taxes). This amendment did not confer an additional authority upon school districts, but rather allowed the districts to cooperatively exercise already existing authority.

In order to cooperatively exercise a power or privilege, a public agency must independently possess that power or privilege. See Attorney General Opinions No. 83-19 and 87-85. Powers and duties cooperatively exercised pursuant to K.S.A. 72-8230 are to be used for the purpose of performing "any obligation or responsibility imposed upon a unified school district or a board of education by any law relating to the educational services designated in subsection (b)." L. 1978, ch. 302, § 1. If a private or public agency does not independently have the authority to exercise a particular power or privilege enjoyed by a school district, the interlocal cooperation act does not allow the school district to confer such authority upon that private or public agency. Here again the statute appears to exclude non-school district entities from its provisions.

1985 Senate Bill No. 53 substantially altered K.S.A. 72-8230. Subsection (a) expanded the types of services which were covered by school district interlocal cooperation agreements entered into pursuant to K.S.A. 72-8230 and subsection (b) was entirely rewritten:

"K.S.A. 72-8230 is hereby amended to read as follows: 72-8230. (a) In the event the boards of education of any two or more school districts enter into agreements pursuant to ~~resolutions adopted by each such board of education under the provisions of K.S.A. 1979 Supp. 12-2904,~~ the interlocal cooperation act for the purpose of providing educational services 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 of this state, . . .

(b) Any power or powers, privileges or authority exercised by the separate legal entity established under any such agreement which relate to educational services shall be limited to special education, vocational education, career education, bilingual education, media services, curriculum development, and in-service training for staff programs.

(b) Except as otherwise specifically provided in this subsection, any power or powers, privileges or authority exercised or capable of exercise by any school district of this state, or by any board of education thereof, may be jointly exercised pursuant to the provisions of a school district interlocal cooperation agreement. No power or powers, privileges or authority with respect to the levy and collection of taxes, the issuance of bonds, or the purpose and provisions of the school district equalization act or title I of public law 874 shall be created or effectuated for joint exercise pursuant to the provisions of a school district interlocal cooperation agreement." L. 1985, ch. 247, § 1. (Emphasis indicates new language).

March 18, 1985 testimony before the Senate Educational Committee on Senate Bill No. 53 indicates that proponents generally believed that the amendments would allow smaller school districts to expand their curriculum at reduced cost. Allowing non-school district entities to be party to school district interlocal cooperation agreements may further reduce costs. However, the amended language and accompanying legislative history does not indicate that the statute extended school district powers or privileges to non-school district entities, nor does it evidence that school districts were to be prohibited from entering into agreements with those entities pursuant to other authority.

The last amendment to K.S.A. 72-8230 occurred in 1987 pursuant to House Bill No. 2482, L. 1987, ch. 276, § 1. The primary changes affected the permissible duration of school district interlocal cooperation agreements. This amendment also replaced "any such agreement" with "a school district interlocal cooperation agreement", thus making it clear that this a special type of cooperation agreement.

In examining the statutory language of each version of K.S.A. 72-8230 and the respective legislative history accompanying each amendment, we do not find any specific discussion or consideration of whether K.S.A. 72-8230 is or has ever been intended to preclude interlocal cooperative agreements with non-school district entities. It is our opinion that the legislature has not prohibited such agreements. However, K.S.A. 1988 Supp. 72-8280 does not appear to be the appropriate vehicle for such agreements. Article 82 of Chapter 72 of the Kansas Statutes discuss only the organization, powers and finances of board of educations and school districts. K.S.A. 1988 Supp. 72-8230(a) specifically dictates that "in the event that two or more school districts enter into agreements pursuant to the provisions of the interlocal act" the conditions of K.S.A. 72-8230 apply. It is our opinion that if an interlocal cooperation agreement is between a school district and some other entity, the terms of K.S.A. 1988 Supp. 72-8230 would not be applicable.

Very truly yours,



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