



STATE OF KANSAS

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October 18, 1991

ATTORNEY GENERAL OPINION NO. 91- 131

Fred W. Rausch, Jr.
Attorney for Unified School District
No. 380
Suite 201, Ambassador Building
220 S.W. 33rd Street
Topeka, Kansas 66611

Re: Schools--Teachers' Contracts; Due Process
Procedure; Contract Termination--Opinion of Hearing
Committee; Findings of Fact and Recommendation;
Effect; Applicability of L. 1991 ch. 224, § 3.

Synopsis: K.S.A. 72-5443, as amended by L. 1991, ch. 224, §
3, is applicable to the due process procedure for
teachers in those situations in which the hearing
committee was formed prior to July 1, 1991, but did
not issue its written opinion until after July 1,
1991. Cited herein: K.S.A. 79-5436; K.S.A. 1990
Supp. 72-5438; K.S.A. 72-5443, as amended by L.
1991, ch. 224, § 3.

* * *

Dear Mr. Rausch:

As attorney for unified school district no. 380, you request
our opinion regarding whether a board of education is bound by
the nonunanimous written opinion of the hearing committee
formed pursuant to K.S.A. 1990 Supp. 72-5438 (before
amendment) when the due process hearing was initiated prior to
July 1, 1991.

On or before April 10, 1991, the board of education of unified school district no. 380 provided written notice to a teacher of its intention to nonrenew the teacher's contract. The teacher timely filed a written request for a due process hearing. The three-member hearing committee was formed prior to July 1, 1991. The hearing was conducted in August, 1991. The written opinion of the hearing committee is expected to be rendered sometime on or before November 1, 1991.

In order to terminate or nonrenew the employment contract of a tenured teacher, a board of education must follow the procedures set forth in K.S.A. 72-5436 et seq. Bauer v. U.S.D. No. 452, 244 Kan. 6, 9 (1988). The right of a teacher to a due process hearing accrues when the teacher is notified by the board of education of its intention to terminate or nonrenew the teacher's contract. Keller v. Board of Trustees of Coffeyville Community College, 12 Kan.App.2d 14, 16 (1987), review denied.

As part of the due process procedure, the hearing committee formed pursuant to K.S.A. 1990 Supp. 72-5438 (before amendment) is obligated to render a written opinion setting forth its findings of fact and determination of the issues. K.S.A. 72-5443, as amended by L. 1991, ch. 224, § 3. Amendments effective July 1, 1991, regarding the effect of the written opinion of the hearing committee, are set forth in subsections (b) and (c) of L. 1991, ch. 224, § 3.

"(b) If the members Upon receiving the written opinion of the hearing committee are unanimous in their opinion, the board shall adopt the opinion as its decision in the matter and such decision shall be final, subject to appeal to the district court as provided in K.S.A. 60-2101, and amendments thereto.

"(c) If the members of the hearing committee are not unanimous in their opinion, the board shall consider the opinion, hear oral arguments or receive written briefs from the teacher and a representative of the board, and decide whether the contract of the teacher shall be renewed or terminated. The decision of the board under this subsection shall be submitted to the teacher not later than 30

days after the close of oral argument or submission of written briefs and such decision shall be final, subject to appeal to the district court as provided by K.S.A. 60-2101, and amendments thereto." K.S.A. 72-5443, as amended.

The effect of the amendment is to render as final all written opinions of the hearing committee. After July 1, 1991, boards of education no longer have the authority to review the written opinion of a nonunanimous hearing committee in determining whether to terminate or nonrenew a teacher's contract.

While generally statutes will not be construed to give them retrospective application unless it appears that such was the legislative intent, nevertheless when a change of law merely affects the remedy or law of procedure, all rights of action will be enforced under the new procedure without regard to whether or not the suit has been instituted, unless there is a savings clause as to existing litigation. Jackson v. American Best Freight System, Inc., 238 Kan. 322, 324-25 (1985), Keller, 12 Kan.App.2d at 16. As stated in Keller:

"[A] teacher has a constitutional right to a due process hearing to review the administrative decision of the board to terminate his contract. However, the teacher has no substantive right to a particular procedure so long as due process is satisfied. [Citation omitted.] Thus, a change in the statute specifying a certain procedure to be followed in order to administer the right to due process is merely a procedural change insofar as the [teacher] is concerned. Furthermore, the board has no substantive right to be the body to review the decision to terminate. . . ."
Keller, 12 Kan.App.2d at 18.

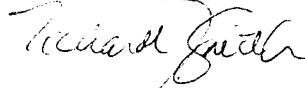
The amendment set forth in L. 1991, ch. 224, § 3 is analogous to the amendment in 1980 of K.S.A. 72-5443, which was at issue in Keller. The amendment is applicable to the due process procedure for teachers in those situations in

which the hearing committee was formed prior to July 1, 1991,
but did not issue its written opinion until after July 1, 1991.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm