

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 105

Thomas Powell
Counsel for Unified School
District No. 259
2000 Epic Center
301 North Main Street
Wichita, Kansas 67202-4820

Re: Schools--Teachers' Contracts; Professional
Negotiations--Agreements; Ratification; Election;
Amendment

Synopsis: An attempt by a board of education and a
professional employees' organization to ratify
amendments to the contracts of employment of
professional employees without submitting the
amendments to a vote of the professional employees
pursuant to K.S.A. 72-5421 would conflict with the
purposes of professional negotiation recognized by
the legislature. Any provisions of an agreement
conferring such authority upon a board of education
and a professional employees' organization would be
void and unenforceable. Cited herein: K.S.A.
72-5411, as amended by L. 1992, ch. 20, § 1;
K.S.A. 1991 Supp. 72-5412; 72-5413; K.S.A. 72-5414;
72-5421; K.S.A. 1991 Supp. 72-5423; K.S.A. 72-5424;
72-5437, as amended by L. 1992, ch. 20, § 2.

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Dear Mr. Powell:

As attorney for unified school district no. 259, you request
our opinion regarding whether a board of education and a

professional employees' organization may ratify amendments to contracts of employment of professional employees without submitting the amendments to a vote of the professional employees. You also ask whether a clause of a contract of employment permitting a board of education and a professional employees' organization to ratify amendments to the contracts would be enforceable.

A school district is an arm of the state existing only as a creature of the legislature to operate as a political subdivision of the state. NEA-Wichita v. U.S.D. No. 259, 234 Kan. 512, 517 (1983). A school district has only such power and authority as is granted by the legislature and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication. Id. Provisions of a negotiated agreement which conflict with the purposes of the statutory scheme are void and unenforceable. Ottawa Education Association v. U.S.D. No. 290, 233 Kan. 865, 869 (1983); U.S.D. No. 241 v. Swanson, 11 Kan.App.2d 171, 173 (1986); Miller v. U.S.D. No. 470, 12 Kan.App.2d 368, 372 (1987), aff'd 242 Kan. 817 (1988).

In order to determine whether a provision of an agreement permitting ratification by a board of education and a professional employees' organization of amendments to the contracts of employment of professional employees is enforceable, it is necessary to consider state statutes regarding professional negotiations, located at K.S.A. 72-5413 et seq.

K.S.A. 72-5414 authorizes professional employees "to form, join or assist professional employees' organizations, to participate in professional negotiations with boards of education through representatives of their own choosing for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service." The professional negotiations are conducted with the goal of "reach[ing] agreement with respect to the terms and conditions of professional service." K.S.A. 1991 Supp. 72-5413(g); see Riley County Education Association v. U.S.D. No. 378, 225 Kan. 385, 390 (1979).

K.S.A. 72-5421 provides in part:

"A board of education and an exclusive representative selected or designated under the provisions of this act . . . may

enter into an agreement covering terms and conditions of professional service. The agreement becomes binding when ratified by a majority of the members of the board of education and a majority of the professional employees in the applicable negotiating unit who vote on the question of ratification of the agreement at an election conducted by the exclusive representative if at least a majority of the professional employees in the negotiating unit vote. If less than a majority of the professional employees vote on the question of ratification the election is void." (Emphasis added.)

K.S.A. 1991 Supp. 72-5423 provides that once the professional employees' organization is recognized, the board of education and the organization are obligated to "enter into professional negotiations on request of either party at any time during the school year prior to issuance or renewal of the annual teachers' contracts. Notices to negotiate on new items or to amend an existing contract must be filed on or before February 1 in any school year by either party. . . ." (Emphasis added.) Any agreement achieved may be adopted by reference and made a part of the employment contracts between the professional employees and the board of education for a period not to exceed three years.

K.S.A. 72-5424 permits a board of education and a professional employees' organization to include in the agreement "procedures for final and binding arbitration of such disputes as may arise involving the interpretation, application or violation of such agreement."


It is clear after review of the above statutes that the legislature intended for professional negotiations to be conducted after the proper notices have been filed prior to February 1 by the board of education and the professional employees' organization. The board and the organization are to negotiate to reach an agreement which will be submitted to the members of the board and the professional employees for approval.

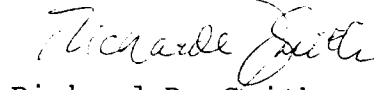
"[A]greement by the negotiating teams is not enough. Board ratification is required on the one hand, which presumably will be recommended in good faith by the

Board's team and considered in good faith by the Board. On the other, ratification is required by a majority of the entire negotiating unit, not just of the negotiating organization. Again, a good faith recommendation of ratification by the organization's negotiating team is to be expected. Only when so ratified does an agreement become binding." National Education Association v. Board of Education, 212 Kan. 741, 749 (1973) (emphasis added).

Pursuant to K.S.A. 1991 Supp. 72-5423, this procedure is to be followed in the negotiation of new items or to amend existing contracts. Upon ratification by the members of the board of education and the negotiating unit, the new items or amendments become part of the contracts of employment of professional employees. "All contracts shall be binding on both the teacher and board of education of the school district until the teacher has been legally discharged from such teacher's teaching position or until released by the board of education from such contract." K.S.A. 1991 Supp. 72-5412. While K.S.A. 72-5411, as amended by L. 1992, ch. 20, § 1, and K.S.A. 72-5437, as amended by L. 1992, ch. 20, § 2, provide that "[t]erms of a contract may be changed at any time by mutual consent of both a teacher and the board of education of a school district," no authority to bind professional employees to amendment of their contracts of employment is conferred upon the professional employees' organization. Therefore, an attempt by a board of education and a professional employees' organization to ratify amendments to the contracts of employment of professional employees without submitting the amendments to a vote of the professional employees pursuant to K.S.A. 72-5421 would conflict with the purposes of professional negotiation recognized by the legislature. Any provisions of an agreement conferring such authority upon a board of education and a professional employees' organization would be void and unenforceable.

Very truly yours,


ROBERT T. STEPHAN
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Richard D. Smith
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