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ATTORNEY GENERAL OPINION NO. 92-109

The Honorable Doug Walker
State Senator, Twelfth District
212 First
Osawatomie, Kansas 66064

Re: Schools--Teachers' Contracts; Supplemental
Contracts--Supplemental Contracts of Employment
Authorized; Continuation of Teachers' Contracts;
Primary Contracts; Part-Time Employment

Synopsis: The hiring practices of Allen county community college acknowledge that once a teacher has been employed for the time established in K.S.A. 72-5445, as amended by L. 1992, ch. 185, § 7, the primary contract for 12 hours of teaching is subject to the teachers' continuing contract law, K.S.A. 72-5410 et seq., and the teachers' due process, K.S.A. 72-5436 et seq. Termination of a supplemental contract regarding coaching duties does not affect the primary contract of employment of the teacher as the teacher is permitted to continue the part-time employment as a teacher. Under such circumstances, the hiring practices of Allen county community college do not violate the teachers' continuing contract law or the teachers' due process. Cited herein: K.S.A. 1991 Supp. 71-201; K.S.A. 72-5410; 72-5411, as amended by L. 1992, ch. 20, § 1; 72-5412a; K.S.A. 1991 Supp. 72-5413; K.S.A. 72-5436; 72-5437, as amended by L. 1992, ch. 20, § 2; 72-5445, as amended by L. 1992, ch. 185, § 7.

Dear Senator Walker:

As senator for the twelfth district, you request our opinion regarding the legality of certain hiring practices of Allen county community college. Specifically, you ask whether such hiring practices violate the teachers' continuing contract law, K.S.A. 72-5410 et seq.

According to information provided by you, Allen county community college has instituted a new policy regarding employment of persons who are to be employed as both a teacher and a coach. Such persons are offered a primary contract for 12 hours of teaching (15 hours is considered full-time) and a supplemental contract for coaching duties. If, after achieving tenure, the person resigns from the coaching duties, the person is permitted to continue teaching 12 hours, but is not offered a full-time position. The person is no longer paid the compensation designated in the supplemental contract. However, the person does receive compensation based on 12 hours of teaching.

The board of trustees of a community college is authorized under K.S.A. 1991 Supp. 71-201 to appoint the appropriate staff for the community college and to fix and determine the duties and compensation of the individuals employed. A board of trustees is able to enter into both principal or primary contracts of employment and supplemental contracts of employment with professional employees. A professional employee is "any person . . . employed by [the board of trustees of any community college] in a professional, educational or instructional capacity, but shall not mean any such person who is an administrative employee." K.S.A. 1991 Supp. 72-5413.

The principal or primary contract of employment of a teacher is subject to the continuing contract law, K.S.A. 72-5410 et seq., and the due process procedure set forth in K.S.A. 72-5436 et seq. Under K.S.A. 72-5411, as amended by L. 1992, ch. 20, § 1, and 72-5437, as amended by L. 1992, ch. 20, § 2, the primary contract is deemed to continue in full force and effect during good behavior and efficient and competent service rendered by the teacher, and is deemed to continue for the next succeeding school year unless the proper notice is provided. Once the teacher has been employed for the period of time established in K.S.A. 72-5445, as amended by L. 1992, ch. 185, § 7, the teacher is entitled to a due process hearing regarding termination or nonrenewal of the

primary contract of employment. The Supreme Court of Kansas has stated that the purpose of such safeguards "is to protect competent and worthy instructors . . . against unjust dismissal of any kind -- political, religious or personal, and secure for them teaching conditions which will encourage their growth in the full practice of their profession, unharried by constant pressure and fear. . . ." Million v. Board of Education, 181 Kan. 230, 234 (1957). See Ottawa Education Association v. U.S.D. No. 290, 233 Kan. 865, 869 (1983); Butler v. U.S.D. No. 440, 244 Kan. 458, 468 (1989). The safeguards of K.S.A. 72-5436 et seq. are available to a teacher who is employed on a part-time basis as well as one employed full-time. Schmidt v. U.S.D. No. 497, 231 Kan. 267, 269 (1982).

However, the safeguards offered by K.S.A. 72-5436 et seq. are not applicable to those duties covered by a supplemental contract. A supplemental contract is defined as a contract for employment duties "other than those services covered in the principal or primary contract of employment of the professional employee and shall include, but not be limited to, such services as coaching, supervising, directing and assisting extracurricular activities, chaperoning, ticket-taking, lunchroom supervision, and other similar and related activities." K.S.A. 72-5412a; K.S.A. 1991 Supp. 72-5413(o). Supplemental contracts are expressly exempt under K.S.A. 72-5412a from "[t]he provisions of article 54 of chapter 72 of Kansas Statutes Annotated which relate to the continuation of teacher contracts and to the due process procedure upon termination or nonrenewal of a teacher's contract. . . ." In Hachiya v. U.S.D. No. 307, 242 Kan. 572 (1988) the Supreme Court of Kansas determined that the provisions of K.S.A. 72-5412a are mandatory and, therefore, coaching duties cannot be covered by a primary contract of employment. Id. at 576-77. As a school district cannot require a teacher to perform supplemental duties as part of his primary contract, nor can a teacher demand that he be assigned supplemental duties as part of his primary contract. Butler, 244 Kan. at 468-69. A teacher has no enforceable interest in the yearly continuation of a supplemental contract of employment regarding coaching duties.

Two cases are cited as authority that the hiring practices of Allen county community college are illegal. These cases are Hachiya, supra and Swager v. Board of Education, U.S.D. No. 412, 9 Kan.App.2d 648 (1984). However, these cases are distinguishable from the situation at hand.

In Swager, a board of education and a tenured teacher entered into an agreement which provided the teacher would teach high school math and perform the duties of head coach for basketball and assistant coach for football. The teacher received additional remuneration for the coaching duties. Upon receipt of the teacher's resignation from the coaching duties, the board of education deemed the resignation to be a resignation from all duties with the school district. The Kansas Court of Appeals determined that the provisions of K.S.A. 72-5412a are mandatory and that duties which must be the subject of a supplemental contract cannot be included in the primary contract of employment. Therefore, despite the fact that the teacher had executed but a single instrument, the single written contract memorialized a primary contract to act as a math teacher, a supplement contract to act as head basketball coach, and a supplemental contract to act as assistant football coach. Resignation from either or both of the supplemental contracts cannot affect the continuation of the primary contract.

In Hachiya, two tenured teachers were offered reduced primary contracts after the teachers resigned from seventh and eighth grade coaching duties. The duties were performed during the school day rather than after school. It is unclear as to whether the teachers received additional compensation for the supplemental duties. Acknowledging the analysis of the court of appeals in Swager and U.S.D. No. 241 v. Swanson, 11 Kan.App.2d 171 (1986), the Kansas Supreme Court determined that the provisions of K.S.A. 72-5412a are mandatory, and coaching duties may not be included within the primary contract of employment. Therefore, teachers may resign a supplemental contract without imperiling their primary contracts of employment. The court determined that the mandatory language of K.S.A. 72-5412a does not contain an exception for coaching activities which occur during the school day. As the two teachers in Hachiya were full-time teachers pursuant to their primary contracts of employment, those contracts could not be reduced upon resignation by the teachers of supplemental duties previously performed by them.

The facts in Swager and Hachiya differ from the facts regarding the hiring practices of Allen county community college. In both cases, the tenured teachers had entered into full-time positions pursuant to their primary contracts of employment, and also performed supplemental duties. Upon resignation from the supplemental duties, the primary contracts as well as the supplemental contracts were reduced or terminated, resulting in violation of the teachers'

continuing contract law, K.S.A. 72-5410 et seq., and the teachers' due process, K.S.A. 72-5436 et seq.

However, under the hiring practices of Allen county community college, a teacher who is expected to perform coaching duties is offered a primary contract for 12 hours of teaching. A supplemental contract regarding the coaching duties is also extended. Allen county community college acknowledges that once the teacher has been employed for that time established in K.S.A. 72-5445, as amended by L. 1992, ch. 185, § 7, the primary contract for 12 hours of teaching is subject to the teachers' continuing contract law and the teachers' due process. The supplemental contract may be terminated by either the board of trustees or the teacher. Termination of the supplemental contract does not affect the primary contract of employment of the teacher as the teacher is permitted to continue the part-time employment as a teacher. Under such circumstances, the hiring practices of Allen county community college do not violate the teachers' continuing contract law or the teachers' due process.

Very truly yours,



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