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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

May 16, 1974

Opinion No. 74- 152

Mr. R. D. Plummer, President
U.S.D. 345 Board of Education
1124 W. Lyman
Topeka, Kansas 66608

, Dear Mr. Plummer:

We have your request pertaining to K.S.A. 72-8205 with particular emphasis on the waiver provision. The statute provides:

"Special meetings may be called at any time by the president of the board or by joint action of any three (3) members thereof. Written notice, stating the time and place of any special meeting and the purpose for which called, shall, unless waived be given each member of the board at least two (2) days in advance of said meeting and no business other than that stated in the notice shall be transacted at such meeting."

The Kansas Supreme Court in West v. Unified School District, 204 Kan. 29, dealt with waiver in saying:

"Where a special meeting of a board of education of a unified school district is held at which all members of the board are present and participate without objection in matters considered by the board, the requirement of [now] K.S.A. 72-8025 relating to written notice of the meeting is deemed to have been waived, and the validity of the proceedings had at such meeting is not thereby affected." Syl. 3

The Court emphasizes the fact that all members were present which reflects the thrust of statute that the board members should have adequate foreknowledge of the meeting.

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You question whether the president of the board

"may call a special meeting without unanimous written consent in the form of a waiver by each member of the school board or whether, in fact, he may call a special meeting thereby having quorum present and signing the special waiver, to do business."

If all members of the board are present at and participate in the special meeting, and none objects to the lack of prior notice, as the Court indicates above, the lack of written notice is waived, and the validity of the proceeding is not affected. Under these circumstances, prior notice and waiver thereof is not required. If, however, the president calls a special meeting, and a quorum of the board is present and participates in the meeting, and other members of the board are absent who have not received the required notice or who have not waived that notice, the proceedings of that meeting may be subject to challenge for non-compliance with K.S.A. 72-8205. K.S.A. 72-8205 does not prescribe the form of any waiver of notice. Obviously, however, it is good practice that such waivers be executed in writing. If less than all of the members are present at and participate in a specially called meeting, the required notice must have been furnished to all other members, or it must have been waived by such members.

Yours very truly,



VERN MILLER
Attorney General

VM:DMH:jsm

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