



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 8, 1976

ATTORNEY GENERAL OPINION NO. 76- 82

Honorable John D. Bower
Representative Forty-First District
Route 1
McLouth, Kansas 66054

Re: Schools and School Districts--Special Education
Cooperatives--Teachers--Continuing Contract Law

Synopsis: Special education teachers employed by a cooperative formed pursuant to K.S.A. 12-2904 and K.S.A. 1975 Supp. 72-8230 are covered by the provisions of the continuing contract law.

* * *

Dear Representative Bower:

K.S.A. 12-2904 provides:

"(a) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state relating to public improvements, public utilities, police protection, libraries, data processing services, educational services, building and related inspection services, flood control and storm water drainage, weather modification, sewage disposal, refuse disposal, park and recreational programs and facilities, ambulance service, or fire protection, may be exercised and enjoyed jointly with any other public agency of this state or with any private agency, and jointly with any public

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agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public or private agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

(e) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility."

In amplifying upon this power, K.S.A. 1975 Supp. 72-8230 states:

"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. 12-2904, for the purpose of providing educational services, the following conditions shall apply;"

A question has arisen as to whether the special education teachers employed by cooperatives formed pursuant to these two statutes are subject to the protections provided by the continuing contract law, K.S.A. 72-5410.

The above-quoted subsection (e) affirmatively prohibits any agreement from abrogating any responsibility or obligation imposed by law on any public agency a party to the agreement. All school districts in this state are required by K.S.A. 1975 Supp. 72-966 to:

" . . . provide special education services for all exceptional children in the school

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district and said special education services shall meet standards and criteria set by the state board. Said special education services shall be planned and operative not later than July 1, 1979."

Towards this mandate, K.S.A. 1975 Supp. 72-967(a) provides school districts with specified alternatives to employ in order to meet this requirement. Of particular import here are the following:

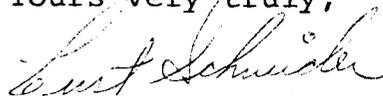
"(1) Establish and organize approvable special education services for exceptional children within its schools.

(4) Enter into cooperative agreements with one or more other school districts for special education services, if such agreements are approved as provided by this act."

The creation of a "cooperative" through use of K.S.A. 12-2904 and K.S.A. 1975 Supp. 72-8230 merely relieves the school district from the alleged financial burden of providing the same services within its own school. Were it incumbent upon each school to individually support these services, there would be little dispute that special education instructors were, in that case, subject to the provisions of the continuing contract law. The creation of a separate legal entity by cooperating districts to facilitate the provision of special education services is in and of itself insufficient justification to abrogate the obligation that, absent the agreement and cooperative, would be incumbent upon the school district to meet.

Accordingly, it is my opinion that special education teachers employed by a cooperative formed pursuant to K.S.A. 12-2904 and K.S.A. 1975 Supp. 72-8230 are covered by the provisions of the continuing contract law.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv