



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
*Attorney General*

May 2, 1977

ATTORNEY GENERAL OPINION NO. 77- 149

Mr. Merle R. Bolton  
Commissioner of Education  
State Department of Education  
120 East Tenth Street  
Topeka, Kansas

Re: Schools--Teachers--Contracts

Synopsis: Under 1977 Substitute for House Bill 2325, a board of education may enter into an agreement with its professional employees which incorporates provision for tax-sheltered annuities.

\* \* \*

Dear Commissioner Bolton:

The question is raised whether a board of education may provide for tax-sheltered annuities in agreements with its professional employees.

In Opinion No. 70-72-17, Attorney General Kent Frizzell concluded that although there was no express statutory authority therefor, it was within the reasonably implicit powers of a board of education to contract with its teachers and to determine their compensation and conditions of employment under which teachers were to perform their services to agree to payment of remuneration for days of accumulated sick leave which were not taken by the employer at the time of retirement or death. General Frizzell took the view that the time had come for a more flexible and less restrictive view of the powers of boards of education in their contractual dealing with its professional employees, a view which I entirely approve. Nonetheless, there remained little opportunity to apply this broader construction of implied powers because of the number of express statutory provisions.

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Thus, for example, K.S.A. 1976 Supp. 72-8414 specifies in detail a number of collateral benefits which boards of education are authorized to furnish their employees, including certificated personnel. The section specifies that the board may procure contracts insuring its personnel under policies of group life, group health, disability income, accident, accidental death and dismemberment and hospital, surgical and/or medical expense insurance, or may procure contracts with health maintenance organizations to provide health care services with its employees. Applying the maxim *expressio unius est exclusio alterius*, it has been the view of many that the enumeration of these benefits impliedly forbade the board to agree to provisions providing other fringe or collateral benefits. The argument is not necessarily compelling, for this section deals with insurance benefits, and does not in and of itself negative the implicit authority to contract to provide benefits to its professional employees other than insurance of various kinds.

It is no longer necessary to pursue this question, however. The 1977 Legislature amended the professional negotiation law in the enactment of Substitute for House Bill 2325. K.S.A. 72-5421 of that act, a section not amended by the bill, states in pertinent part thus:

"A board of education and a representative selected or designated pursuant to . . . this act may enter into an agreement covering terms and conditions of professional service."

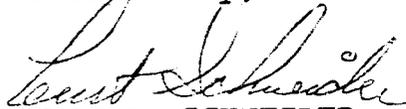
Section 1(1) of the bill provides a definition of the terms and conditions of professional service, to mean

"salaries and wages, hours and amounts of work, vacation allowance, holiday, sick and other leave, number of holidays, retirement, insurance benefits, wearing apparel, pay for overtime, jury duty, grievance procedure, disciplinary procedure, resignations, termination of contracts, matters which have a greater direct impact on the well-being of the individual professional employee than on the operation of the school system in the school district . . . and such other matters as the parties mutually agree upon as properly related to professional service."

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The provision of tax-sheltered annuities is clearly a matter of substantial concern and benefit to individual professional employees, and little or no effect on the operation of the school system itself, and certainly falls within this broad residual description of terms and conditions which the parties may mutually agree upon as properly related to professional services. Thus, in my judgment, it is clearly within the authority of the board of education under this enactment to enter into agreements with its professional employees which include provisions for tax-sheltered annuities.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj

cc: Mr. Dale Dennis  
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