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March 11, 1980

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ATTORNEY GENERAL OPINION NO. 80- 67

P. Stephen Martin
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Prairie Village, Kansas 66208

Re: Schools--School Attendance--Effect of School
Closings Due to Hazardous Driving Conditions
on the Duration of the School Year

Synopsis: Pursuant to K.S.A. 1979 Supp. 72-1106(b), a board of education may schedule school days in excess of the statutory minimum number of days comprising a school year to compensate for those school days for which it can be anticipated that schools will be closed due to hazardous driving conditions.

If a board schedules days in excess of the one hundred eighty school days minimum to compensate for those days on which schools will remain closed due to hazardous driving conditions, but schools remain closed for a greater number of days than anticipated, the excess days, up to the number authorized by statute, are to be counted as school days.

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Dear Mr. Martin:

As attorney for Unified School District No. 512, you question the following conclusion expressed by this office in Attorney General Opinion No. 79-133:

"[I]f the days on which schools are closed due to hazardous driving conditions exceed the number of days allotted by a board in excess of the one hundred eighty (180) school days minimum, the days on which school are closed due to hazardous driving conditions cannot be considered as school days."

Having reconsidered the provisions of subsection (b) of K.S.A. 1979 Supp. 72-1106, upon which our opinion was predicated, we agree with your observation that our conclusion was overly broad, and we hereby issue this supplement to Attorney General Opinion No. 79-133 in clarification thereof.

Subsection (b) of K.S.A. 1979 Supp. 72-1106, in pertinent part, provides:

"A board may schedule any number of days in excess of the regularly scheduled school days which the board determines will be necessary to compensate for those school days that schools of the district will remain closed during the school year due to hazardous driving conditions. If the number of days schools remain closed due to hazardous driving conditions exceeds the number of days scheduled by the board to compensate for such school days, the excess number of days, not to exceed the number of compensatory days scheduled by the board and not to exceed five days, that schools remained closed due to such conditions shall be considered school days." (Emphasis added.)

In our judgment, this language provides that if a board schedules days in excess of the 180 days minimum to compensate for school days on which schools will remain closed due to hazardous driving conditions, but the number of days schools actually remain closed due to such conditions exceeds the number of days anticipated by the board, the excess days, subject to the restrictions of the statute, are to be counted as school days.

Because of the confusing nature of the statutory language, we offer the following examples:

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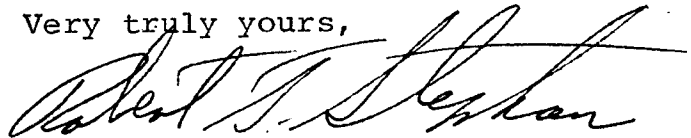
(1) Assume a board schedules 183 school days and designates three days to compensate for those days during which schools will remain closed due to hazardous driving conditions. However, assume that schools actually remain closed for five days. The "excess" number of days which count as school days is two, i.e., the number of days actually closed, less the number of compensatory days scheduled, equal two. The number of "excess" days is less than the number of compensatory days scheduled, so all "excess" days count as school days.

(2) Assume, however, that a board schedules only one day for closure due to hazardous driving conditions. If schools actually remain closed for three or more days, only one of such "excess" days can be counted as a school day, due to the statutory restriction that the "excess" days to be counted cannot "exceed the number of compensatory days scheduled by the board." In this instance, the number of "excess" days is greater than the number of compensatory days, so the number of excess days to be considered as school days is limited to the one compensatory day scheduled by the board.

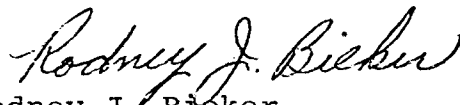
Of course, the provisions of subsection (b) of K.S.A. 1979 Supp. 72-1106 relative to "excess" days become operative only when the board schedules compensatory days and the number of days schools actually remain closed exceeds the number of compensatory days scheduled by the school board. Otherwise, there are no "excess" days to be considered.

Thus, in light of the foregoing, Attorney General Opinion No. 79-133 is affirmed in part, and modified in part to reflect the views expressed herein.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm
cc: Dr. Merle R. Bolton
Commissioner of Education