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April 7, 1981

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ATTORNEY GENERAL OPINION NO. 81-77

Mr. David W. Kester, Director
Legal Services Section
Kansas Department of Education
120 East Tenth Street
Topeka, Kansas

Re: Schools--Boards of Education--School District
Employees; Compensation for Unused Sick Leave

Synopsis: The Board of Education of Unified School District
No. 510 lacks the authority to "compensate" its
employees for unused sick leave.

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Dear Mr. Kester:

In response to an inquiry made of you by the Board of Education of Unified School District No. 510, you seek our opinion concerning whether the Board may pay its employees for unused sick leave. The question arises because the electors of Unified School District No. 510, last year, voted to disorganize the district, and, the district will be disorganized effective July 1, 1981. Under the existing employment contract between the Board and its employees, and under previous employment contracts, the employees are granted 10 days of sick leave each year, and may accumulate a maximum of 50 days of such leave. When the district is disorganized on July 1, 1981, many of the employees will have unused sick leave. The Board desires to compensate the employees for the amount of accumulated sick leave. However, the question has arisen whether the Board possesses the authority to grant such "compensation."

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In responding to your inquiry, it is our understanding that, while the employment contracts between the Board and its various employees provide the employee will be granted leave of absence, with pay, if the employee's absence is due to sickness, the contract does not provide the employee will be paid for accumulated sick leave, upon termination of his or her employment with the Board. Thus, when the employees of the school district accepted employment with the school district, they were not induced to accept such employment based, even in part, upon the assumption that they would be compensated for unused sick leave, when their employment with the school district terminated. Thus, such compensation cannot be regarded as a contractual term of the employment, and is not required to be paid by the Board in order to fulfill its contractual obligations to the employees. Therefore, if this "compensation" was granted to said employees, it would be a mere gratuity.

That such a gratuity may not be made by a board of education was clearly expressed in Joint Consolidated School District No. 2 v. Johnson, 163 Kan. 202 (1947). In that case, the school board voted to pay its teachers "bonuses" for their services. The board was under no contractual obligation to pay such bonuses.

In the course of the opinion, the Court said:

"That a public officer entrusted with public funds has no right to give them away is a statement so obviously true and correct as to preclude the necessity for citation of many authorities. (See 43 Am.Jur. 112, §308.) Equally well established is the proposition that school funds can be expended by the district board only for purposes authorized by the statute either expressly or by necessary implication (47 Am.Jur. 363, §92). This court has so held as recently as Rose v. School District No. 94, 162 Kan. 720, 179 P.2d 181. We find nothing in our statute pertaining to schools which permits the payment of gifts or gratuities by school district boards. In fact, if funds of the district are so expended they are paid out for purposes other than that for which they were raised and their payment is unlawful. Under our decisions, well supported by other authorities, the drawing of money from the public treasury on a warrant based on an illegal and unauthorized allowance by a board of officials constitutes a

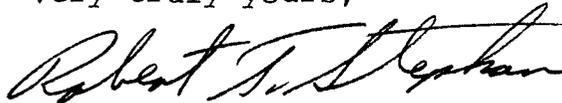
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breach of an official bond providing such officers shall faithfully perform their duties and renders their sureties liable for the amount so drawn (City of Anthony v. Corbin, 133 Kan. 337, 299 Pac. 603; Superior Grade School District No. 110 v. Rhodes, 147 Kan. 29, 75 P.2d 251; 43 Am.Jur. 193, §422)." (Emphasis added.) Id. at 208.

While the issue in Johnson was merely whether the taxpayer had standing to maintain the action, and the Court did not determine the merits of the case, the above-quoted rules nonetheless express fundamental principles relevant to your inquiry.

Because our research discloses no express provision of law which authorizes the Board of Education of Unified School District No. 510 to expend school district funds for the purpose proposed, and the district is not required to make such expenditure in order to fulfill its contractual obligations with its employees, it is our opinion, based upon the above-quoted statements of the Court, that the Board of Education lacks the authority to "compensate" its employees for unused sick leave.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm