



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81-235

Mr. William G. Haynes
Eidson, Lewis, Porter & Haynes
1300 Merchants National Bank Building
Eighth and Jackson Streets
Topeka, Kansas 66612

Re: Schools--Teachers' Contracts--Fact finding; Ap-
plicability of Open Meetings Law

Synopsis: K.S.A. 72-5428(b) specifically empowers a fact-
finding board to hold such hearings on the issues
upon which impasse exists, as the fact-finding board
may deem appropriate. Nothing in K.S.A. 72-5428
prohibits a fact-finding hearing from being open to
the public. K.S.A. 72-5423(b) does not require fact-
find hearings either to be open or closed to the
public. Thus, the determination of a fact-finding
board to conduct a hearing under K.S.A. 72-5428, which
is open to the public, does not violate the law.

Since K.S.A. 72-5430(b)(7) and (c)(4) declare it to be
a prohibited practice willfully to refuse to participate
in good faith in fact-finding efforts as provided in
K.S.A. 72-5428, a refusal, by either party, to partic-
ipate in good faith in a fact-finding hearing, which
is open to the public, might be determined to be a
prohibited practice. Cited herein: K.S.A. 72-5423,
72-5428, 72-5430.

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Dear Mr. Haynes:

As counsel for Unified School District No. 501 (Topeka), you request the opinion of the Attorney General concerning an interpretation and application of K.S.A. 72-5423(b) in regard to the following situation. Professional negotiations between U.S.D. No. 501 and NEA-Topeka are at an impasse. Mediation failed to resolve the impasse. A request for the appointment of a fact-finding board has been made and, pursuant thereto, a fact-finding board has been appointed. The fact-finding board has scheduled a hearing on the issues upon which impasse exists. The fact-finding board has specified that the scheduled hearing will be open to the public.

You state:

"The School Board of U.S.D. 501 believes that K.S.A. 72-5423(b) which provides in part that '. . . meetings, conferences, consultations and discussions held during the course of and in connection with, and the meeting required at the conclusion of, impasse resolution proceedings, as provided for in K.S.A. . . . 72-5428, are specifically made exempt from the provisions of the Kansas open meetings law, and any amendments or supplements thereto' clearly provides that fact-finding hearings are not covered by the Kansas open meetings law and therefore any requirement by the Secretary of Human Resources or . . . a fact-finding board that a school district or a representative of certified employees participate in such fact-finding hearings in an open meeting is contrary to and in violation of K.S.A. 72-5423(b)."

In regard to this matter, you inquire: (1) whether a determination by a fact-finding board to open a fact-finding hearing to the public is contrary to and in violation of K.S.A. 72-5423(b); and (2) does either the Secretary of Human Resources or a fact-finding board possess the authority to require the parties to participate in a fact-finding hearing which is open to the public.

K.S.A. 72-5423(b) provides:

"Except as otherwise expressly provided in this subsection, every meeting, conference, consultation and discussion between a professional employees' organization or its representatives during the course of professional negotiation and every hearing conducted by the

secretary under K.S.A. 72-5426 for determination of the question of the existence of impasse is subject to the provisions of the Kansas open meetings law, and any amendments or supplements thereto. Meetings, conferences, consultations and discussions held by the secretary under K.S.A. 72-5426, for investigation of the question of the existence of impasse, and meetings, conferences, consultations and discussions held during the course of and in connection with, and the meeting required at the conclusion of, impasse resolution proceedings, as provided for in K.S.A. 72-5427 and 72-5428, are specifically made exempt from the provisions of the Kansas open meetings law, and amendments or supplements thereto." (Emphasis added.)

Does the above-emphasized language prohibit a fact-finding hearing from being open to the public? We think not. Those provisions do not prohibit any meeting, conference, consultation, discussion or hearing from being open to the public. Said provisions merely allow the same to be closed. Unfortunately, the statute fails to specify who is to make the determination of whether a meeting, conference, consultation, discussion or hearing is to be open or closed, if there is disagreement on the matter.

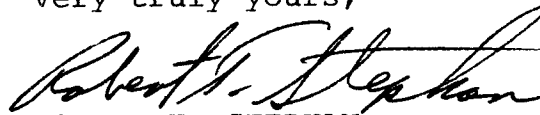
However, K.S.A. 72-5428(b) specifically empowers a fact-finding board to "hold such hearings on the issues upon which the impasse exists, as the fact-finding board may deem appropriate." In this case, it appears the fact-finding board has deemed it appropriate that the fact-finding hearing be open to the public. It is the fact-finding board that is charged with the duty under K.S.A. 72-5428(b) and (c) of holding and conducting fact-finding hearings. In our judgment, it is within the discretion of the board to determine whether fact-finding hearings shall be open to the public. We find no statute which requires such hearings either to be open or closed to the public. Thus, in our judgment, it cannot be said that the determination of a fact-finding board to conduct a hearing under K.S.A. 72-5428, which is open to the public, violates the law.

Can the Secretary of Human Resources or the fact-finding board require the parties to participate in a fact-finding hearing which is open to the public? We think not. We find no provision in K.S.A. 72-5413 et seq. which authorizes the Secretary or a fact-finding board to require a party to participate in a fact-finding hearing. Of course, parties are inclined to participate

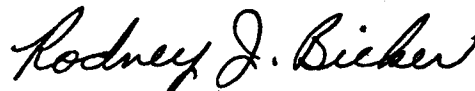
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in such a hearing under the provisions of K.S.A. 72-5430(b)(7) and (c)(4), each of which state it is a prohibited practice "willfully to . . . refuse to participate in good faith in . . . fact-finding efforts as provided in K.S.A. 72-5428." However, a party is free to choose whether to participate in a fact-finding hearing. If a party chooses not to participate in a fact-finding hearing, which is open to the public, the only consequence is that the party might be determined to have committed a prohibited practice. Such fact, however, does not grant the Secretary of Human Resources or the fact-finding board the authority to compel participation in a fact-finding hearing. Failure to participate merely provides the basis for an allegation of having committed a prohibited practice.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

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