



STATE OF KANSAS

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May 20, 1983

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ATTORNEY GENERAL OPINION NO. 83- 81

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Newton, Kansas 67114

Re: Schools--Teachers' Contracts--Due Process Hearings;
Costs Associated with Hearing

Synopsis: Pursuant to K.S.A. 72-5440(b), members of a due process hearing committee selected in accordance with K.S.A. 72-5438 are entitled to be paid only subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223. Such committee members are not entitled to receive compensation. Cited herein: K.S.A. 72-5438, 72-5440, 75-3223.

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Dear Mr. Burns:

As counsel for the Board of Education of Unified School District No. 440 (hereinafter "school board"), you seek our opinion concerning whether members of a due process hearing committee, selected in accordance with K.S.A. 72-5438, are to be paid compensation. Your question concerns only the issue of compensation since the statutes in question clearly specify payment for subsistence allowances, mileage and expense.

You explain that such a committee was properly selected, met, heard evidence, reached a decision and rendered its written recommendation to the school board. The school board has now

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received a billing from the chairman of the committee, an attorney, requesting that he be paid for 23.1 hours of work at the rate of \$60.00 per hour, and that he be reimbursed for the following itemized expenses: secretarial time; long distance telephone calls; postage expense; and photocopying expenses. The bill submitted totals \$1,461.88. In addition, you also indicate that another member of this committee has submitted a statement for \$20.80, which is to pay for mileage, long distance telephone calls and meals. The third member of the committee has indicated that he will not submit a claim for compensation, expense reimbursement, mileage or other allowances.

Your inquiry, in our judgment, is answered by the clear and unambiguous provisions of subsection (b) of K.S.A. 72-5440. This subsection of the statute provides:

"Each member of the hearing committee shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 1976 Supp. 75-3223, and amendments thereto. The costs for the services of members of the hearing committee shall be borne equally by the parties."

The statute does not provide expressly for committee members to be paid compensation nor, in our judgment, may such be implied. Each member is to receive only "subsistence allowances, mileage and other expenses as provided in K.S.A. 1976 Supp. 75-3223, and amendments thereto (now K.S.A. 75-3223)." The 1976 Kansas Legislature amended the provisions of this subsection of law by deleting therefrom language which provided compensation to hearing committee members. As originally enacted in 1975, the provisions of K.S.A. 72-5440 (b) provided:

"Each member of the hearing committee shall be paid compensation for such member's services in an amount agreed upon by the parties, but in no event, shall such amount exceed seventy-five dollars (\$75) per day; and shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 1974 Supp. 75-3223. The costs for the services of members of the hearing committee shall be borne equally by the parties."
(Emphasis added.)

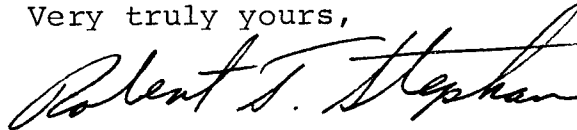
The above-emphasized language was deleted from the statute in 1976. L. 1976, ch. 315, §5.

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In McGowen v. Southwestern Bell Tel. Co., 215 Kan. 887, the Court said: "It is a fundamental rule of law that a change in phraseology or the deleting of a phrase in amending or revising a statute raises a presumption that a change in meaning was also intended by the legislature. [Citations omitted.]" Id. at 891.

Due to the deletion of the language indicated above, there can be no doubt the legislature intended that due process hearing committee members not be paid compensation. Instead, we believe the legislative history of K.S.A. 72-5440, as indicated above, makes it absolutely clear that members of a due process hearing committee are to be paid only subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:jm