



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 12

The Honorable Leroy A. Hayden
State Senator, Thirty-Ninth District
Capitol Building, Room 458-E
Topeka, Kansas 66612

Re: Schools -- Teachers' Contracts -- Supplemental
Salary Plan; Waiver of Certain Due Process Rights

Synopsis: Session of 1984 Senate Bill 695 is constitutional.
A teacher may voluntarily and knowingly waive his
due process rights pursuant to K.S.A. 72-5438
through K.S.A. 72-5443 and K.S.A. 72-5446 by
entering into an agreement with the board of
education to participate in a supplemental salary
plan. Cited herein: K.S.A. 60-2101; 72-5437;
72-5438; 72-5443; 72-5446.

* * *

Dear Senator Hayden:

As State Senator for the Thirty-Ninth District, you request our opinion regarding the constitutionality of 1984 Senate Bill No. 695. If this bill was re-introduced and enacted into law, boards of education would be authorized to adopt supplemental salary plans. According to the bill, an agreement entered into by the board and a teacher would provide that supplemental compensation be paid to the teacher for the waiver of the teacher's due process rights under the provisions of K.S.A. 72-5438 through K.S.A. 72-5443 and K.S.A. 72-5446. Teacher participation in such a plan would be voluntary.

Known as the Teacher Tenure Law, K.S.A. 72-5436 et seq. establishes the due process procedure for terminating teacher contracts. K.S.A. 72-5438 provides that whenever a teacher is given written notice of the board's intention not to renew the teacher's contract, or whenever a teacher is terminated before the end of his contract term, the teacher shall be provided a statement of reasons for the board's action. Upon request, the teacher is entitled to a full due process hearing to be held before a special three-member hearing committee. The committee's findings of fact and recommendations are then submitted to the board which makes a final decision. K.S.A. 72-5443. An aggrieved teacher may appeal the decision to the district court. K.S.A. 60-2101. The right to this due process procedure is limited to teachers with two years' tenure, except where termination or non-renewal is the result of alleged abridgement of a constitutional right. K.S.A. 72-5445. The purpose of this act was stated in Coats v. U.S.D. No. 353, 233 Kan. 394, Syl. ¶2 (1983):

"The evident purpose of the Teacher Tenure Law, K.S.A. 72-5410 et seq., is to protect competent and worthy instructors and other members of the teaching profession against unjust dismissal of any kind and secure for them teaching conditions which will encourage their growth in the full practice of their profession."

In addition to the above statutory provisions, a tenured teacher is guaranteed due process of law upon contract non-renewal or termination by the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment provides that a person cannot be deprived of his property except by due process of law. In Kelly v. Kansas City Kansas Community College, 231 Kan. 751, 760 (1982), the Kansas Supreme Court ruled that "a tenured teacher has an expectation of continued employment which qualifies for constitutional protection as a species of property." When a property right protected by the Fourteenth Amendment is involved, the essential elements of due process of law are notice and an opportunity to be heard. Carson v. Division of Vehicles, 237 Kan. 166, 169 (1985); State v. Durst, 235 Kan. 62, Syl. ¶6 (1984); Stoldt v. City of Toronto, 234 Kan. 957, 964 (1984). It has also been held that a nontenured teacher has a property interest in his continued employment sufficient to require a hearing prior to a mid-year termination of his contract. Wertz v. Southern Cloud Unified School District, 218 Kan. 25, 31-33

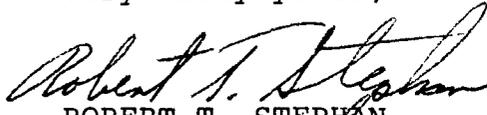
(1975). In summary, a tenured teacher has a constitutional right to due process if his contract is not renewed or terminated, and a nontenured teacher has a constitutional right to due process if his contract is terminated at mid-year.

Constitutional rights, however, are not absolute, but may be waived. The Kansas Supreme Court has ruled that a person may knowingly and voluntarily waive his due process rights. State v. Clevenger, 235 Kan. 864, 868 (1984); Crane v. Mitchell County U.S.D. No. 273, 232 Kan. 51, 64 (1982); Gorham v. City of Kansas City, 225 Kan. 369, Syl. ¶6 (1979).

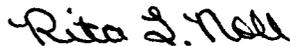
According to 1984 Senate Bill No. 695, a board of education and a teacher may enter into an agreement whereby the teacher would receive compensation supplemental to his regular pay in exchange for waiving statutory due process rights. The teacher would retain the right to written notice pursuant to K.S.A. 1984 Supp. 72-5437 before contract termination or nonrenewal, but would forego his rights to a statement of the board's reasons for the nonrenewal or termination and to have the matter heard by a hearing committee.

Since constitutional rights may be waived, it is our opinion that Session of 1984 Senate Bill 695 is constitutional. A teacher may voluntarily and knowingly waive his due process rights pursuant to K.S.A. 72-5438 through K.S.A. 72-5443 and K.S.A. 72-5446 by entering into an agreement with the board of education to participate in a supplemental salary plan.

Very truly yours,



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