



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 21, 1989

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 89- 18

David G. Shriver
Attorney for U.S.D. #418
100 South Main
P.O. Box 1313
McPherson, Kansas 67460

Re: Schools--Miscellaneous Provisions--Early Retirement
Incentive Programs; Incentive Payments Exceeding
One Year

Synopsis: The statutes authorizing early retirement incentive
program do not limit an agreement for such benefits
to a one-year period. If the program is part of a
negotiated contract between a board of education
and a professional employees' organization the
terms of which exceed a one-year period, then the
program is not in conflict with the continuing
contract law for teachers. Cited herein: Cited
herein: K.S.A. 72-5395; 72-5396; 72-5411; K.S.A.
1988 Supp. 72-5423(d).

* * *

Dear Mr. Shriver:

As attorney for the Board of Education of U.S.D. No. 418, you
have requested our opinion regarding teachers' contracts.
Specifically, you ask whether an early retirement incentive
program for teachers which extends payments of benefits over a
period of greater than one year may be included in a
negotiated agreement between a board of education of a unified
school district and the teachers' professional organization.

Early retirement incentive programs are authorized by K.S.A. 72-5395. These programs lessen the penalty under the federal insurance contributions act or under the Kansas public employees retirement system for early retirement by allowing either a lump sum payment or regular payments during the fiscal year. Boards of education are given broad discretion to budget and expend funds necessary for early retirement programs. K.S.A. 72-5396.

The question you raise involves a proposed provision in the negotiated agreement which allows teachers to announce their early retirement plan prior to the year of their intended early retirement date. The incentive payments would begin at the time the early retirement is announced, even though the teacher continues his or her duties. You state that a similar program is already in effect for school administrators.

Even though a teacher's employment contract technically is for a one-year period, contracts of employment are deemed to continue for the following school year unless terminated by either party to the agreement through the applicable procedure. K.S.A. 72-5411. The continuing contract law is to be construed as consistent with the professional negotiations statutes, K.S.A. 72-5413 et seq. NEA-Wichita v. U.S.D. No. 259, 225 Kan. 395, 400 (1979). Pursuant to K.S.A. 1988 Supp. 72-5423(d), the agreement between a board of education and a professional employees' organization may be adopted for a period of up to three years. The provisions of a negotiated contract are binding on the board of education and the individual teacher in relation to the contract between those parties. Boatright v. Board of Trustees of Butler County Junior College, 225 Kan. 327, 330 (1979). If the proposed agreement for an early retirement incentive program is part of a negotiated agreement between the board of education and the professional employees' organization, that program would be part of the agreement between the board of education and the individual teacher. The negotiated contract may be for up to a three-year period, therefore the benefits to an individual teacher may be extended for the period of time the negotiated contract is in effect.

In conclusion, it is our opinion that statutes authorizing an early retirement incentive program do not limit an agreement for such benefits to a one-year period. If the program is part of a negotiated contract between a board of education and a professional employees' organization the terms of which

exceed a one-year period, then the program is not in conflict with the continuing contract law for teachers.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Mark W. Stafford
Assistant Attorney General

RTS:JLM:MWS:jm