



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 46

Mr. Robert L. Bates
2108 Forest Avenue
P.O. Box 2026
Great Bend, Kansas 67530-2026

Re: Schools--Organization, Powers and Finances of
Boards of Education--Superintendent of Schools;
Additional Compensation After Resignation

Synopsis: Additional compensation conferred upon a
superintendent of schools after the
superintendent's resignation has been accepted by
the local board of education constitutes a gift if
the payment is made gratuitously and without
additional consideration. Because local boards of
education do not have the authority to permit the
payment of school funds as gifts or gratuities,
such a payment is unlawful. Cited herein: K.S.A.
1989 Supp. 72-5452; K.S.A. 72-8202b.

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Dear Mr. Bates:

As attorney for Unified School District No. 428, Barton
county, you request our opinion regarding whether the local
board of education has the authority to pay \$14,000 to an
individual who had served as superintendent of schools and
whose resignation has been accepted by the board.

School districts and other subdivisions of the state have only
such powers as are conferred upon them by statute,
specifically or by clear implication, and any reasonable doubt

as to the existence of such power should be resolved against its existence. Hobart v. U.S.D. #309, 230 Kan. 375, Syl. ¶ 2 (1981). Under K.S.A. 72-8202b, the board is authorized to appoint a superintendent and to fix the compensation of that superintendent.

"Written notice of a board's intention to not renew the contract of employment of an administrator shall be given to the administrator on or before April 10 of the year in which the term of the administrator's existing contract expires. An administrator shall give written notice to the board on or before May 10 of the administrator's rejection of renewal of the contract of employment. Terms of a contract may be changed at any time by mutual consent of both the administrator and the board." (Emphasis added.) K.S.A. 1989 Supp. 72-5452.

Pursuant to this statute, it is clear that as long as a contract remains in force between the administrator and the board, the administrator and the board may agree at any time to alter the terms of that contract. However, the authority conferred upon the board by K.S.A. 1989 Supp. 72-5452 does not exist once the contractual relationship between the administrator and the board is terminated.

"Resignation" is the "formal renouncement or relinquishment of an office . . . made with [the] intention of relinquishing the office [and] accompanied by act of relinquishment." Black's Law Dictionary 1177 (1979). An acceptance of a resignation has the effect of ending any contractual relationship that had existed between the administrator and the board. No contract that "may be changed at any time by mutual consent" would then exist. Therefore, any additional compensation conferred upon the superintendent after the superintendent's resignation has been accepted by the board would essentially be a gift, "a voluntary transfer of property to another made gratuitously and without consideration." Black's Law Dictionary 619 (1979).

"School funds can be expended by the district board only for purposes authorized by the statute[s] either expressly or by necessary implication. (Citation omitted.) . . . We find nothing in our statute[s] 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." Joint Consolidated School District No. 2 v. Johnson, 163 Kan. 202, 208 (1947).

Because no contract between the administrator and the board existed after acceptance of the superintendent's resignation, and because the board does not have the authority to confer a gift upon an individual, a payment of \$14,000 to a former superintendent would be unlawful.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm