



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 14, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 92- 119

Thomas Powell
Counsel for Unified School
District No. 259
2000 Epic Center
301 North Main Street
Wichita, Kansas 67202-4820

Re: Schools--Boards of Education--Change of Method of Election--Right to Change Voting Plan or Method of Election; Plan of Change When District Method Proposed; Time When Change May be Made

Synopsis: The legislature has effectively placed a moratorium during that period running from the first Wednesday following the first Tuesday in December of even-numbered years to the Tuesday immediately preceding the first Wednesday in April of odd-numbered years on elections regarding a change in the method of election or voting plan for members of a board of education. Because Tuesday, April 6, 1993, falls within that period of time subject to the moratorium, no election regarding a change in the method of election or voting plan for members of a board of education may be conducted on April 6, 1992. The provisions of K.S.A. 72-8004 are mandatory. If, in order to meet federal requirements, proposed member districts cannot be drawn so as to comply with the conditions set forth in K.S.A. 72-8004, a change in the method of election or voting plan may not be made. Cited herein: K.S.A. 72-8001; 72-8004; 72-8005; 72-8008; 72-8009; 42 U.S.C. § 1971.

*

*

*

Dear Mr. Powell:

As attorney for unified school district no. 259, you request our opinion regarding the procedure to be followed in changing the method of electing members of a board of education. Specifically, you ask whether the board of education for U.S.D. No. 259 may, on April 6, 1993, submit to the electors of the school district a question regarding whether the method of election or voting plan should be changed. You also ask whether the new board member districts proposed in the plan for change in the method of election or voting plan must be drawn so that no member district includes more than one holdover member of the board.

A unified school district is an arm of the state existing only as a creature of the legislature to operate as a political subdivision of the state, and has only such power and authority as is granted by the legislature. NEA-Wichita v. U.S.D. No. 259, 234 Kan. 512, 517 (1983). Pursuant to K.S.A. 72-8001, "[a]ny board may change the method of election or voting plan in its school district from that which it now or hereafter has to any combination of method of election and voting plan provided for by this act, unless prohibited by the conditions provided in this act." It is clear that a board of education may change the method of election or voting plan for members of the board provided the conditions set forth in K.S.A. 72-8001 et seq. are met.

A fundamental rule of statutory construction is that the intent of the legislature governs when the intent can be ascertained from the statute. Steele v. City of Wichita, 250 Kan. 524, 529 (1992). In construing statutes, legislative intent is to be determined from a general consideration of the entire act. Id. It is the duty of the court, as far as practicable, to reconcile the different provisions to make them consistent, harmonious and sensible. Id. Construction that makes part of a legislative act surplusage should be avoided if reasonably possible. State ex rel. Stephan v. Kansas Racing Commission, 246 Kan. 708, 719 (1990).

With these rules of statutory construction in mind, we review the provisions of K.S.A. 72-8008. K.S.A. 72-8008 provides in part:

"Change of method of election or voting plan or both in any school district may be made in the manner provided in this act at any time during the period beginning with

the first Wednesday in April of each odd-numbered year and ending on the first Tuesday in December of each even-numbered year, if such change is also approved in a manner authorized in this act before the end of such period." (Emphasis added.)

This statute must be read in conjunction with K.S.A. 72-8001 and 72-8005. K.S.A. 72-8001 provides in part that no change in the method of election or voting plan "shall be made unless and until approved by a majority of the electors of the school district voting on the question at an election. . . ." Likewise, K.S.A. 72-8005 provides that if the change in the method of election or voting plan is proposed through a resolution adopted by a board of education, the resolution "shall specify that the proposed change will be made only after the plan of change is first approved by a majority of the electors of the school district voting on the question at an election. . . ." Therefore, it is clear that the legislature intended that any change in the method of election or voting plan be made only after approval by the electorate. K.S.A. 72-8008 states that such approval must occur before the end of the period designated in the statute -- that period of time running from the first Wednesday in April of odd-numbered years through the first Tuesday in December of even-numbered years. The legislature has effectively placed a moratorium during the period running from the first Wednesday following the first Tuesday in December of even-numbered years to the Tuesday immediately preceding the first Wednesday in April of odd-numbered years on elections regarding a change in the method of election or voting plan. Because Tuesday, April 6, 1993, falls within that period subject to the moratorium, no election regarding a change in the method of election or voting plan for members of a board of education may be conducted on April 6, 1993.

Because you indicated that the board of education for U.S.D. No. 259 may pursue a change in the method of election or voting plan after April 6, 1993, we do not consider the remaining issue you raise as moot. You raise the issue because a number of the members of the board of education live in close proximity to each other. You feel, therefore, that any proposed member districts drawn so as to meet the requirements of K.S.A. 72-8004 would result in a violation of the voters' rights act set forth in 42 U.S.C. § 1971.

K.S.A. 72-8004 sets forth conditions that must be met by every plan of change in which the proposed method of election is a district method.

"(a) The proposed member districts shall (1) each be comprised of one contiguous compact area, (2) have equal population as nearly as is practicable, and (3) exclude no territory of the school district in the proposed change, and (4) no territory shall be included in more than one member district.

"(b) The proposed member districts shall be so planned that no holdover member will be displaced by establishment, renumbering or rearrangement of member districts by inclusion of more holdover members in a single proposed member district than is authorized by this act." K.S.A. 72-8004.

(See K.S.A. 72-8009 for the number of holdover members that may be included in a single proposed member district.)

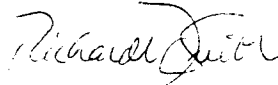
Also, K.S.A. 72-8008 provides in part that a "[c]hange of method of election or voting plan shall not shorten the term of any member serving on the board at the time the change is made, and the county election officer shall not submit to election any plan of change which violates this prohibition." Likewise, K.S.A. 72-8001 provides that a change in the method of election or voting plan may be made "unless prohibited by the conditions provided in this act." Therefore, K.S.A. 72-8004 sets forth conditions that must be met by a plan regarding a change in the method of election or voting plan, and the inability to meet such conditions affects the right of a school district to make such a change. The provisions of K.S.A. 72-8004 are mandatory. See Griffin v. Rogers, 232 Kan. 168, 174 (1982); White v. VinZant, 13 Kan.App.2d 467, 473-74 (1989). If, in order to meet federal requirements, proposed member districts cannot be drawn so as to comply with

the conditions set forth in K.S.A. 72-8004, a change in the method of election or voting plan may not be made.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm