Approved 2-2-89
Date

MINUTES OF THE House COMMITTEE ON Elections.

The meeting was called to order by Representativ e Kenneth R. King at
Chairperson

9:10 a.m./p.m. on Tuesday, January 31, 1989 in room 521-S of the Capitol.

All members were present except: Representative Herman Dillon, excused
Representative Ben Foster, excused
Representative Alex Scott, excused

Committee staff present: Myrta Anderson, Legislative Research Department
Fred Carman, Revisor of Statues Office
Ron Thornburgh, Secretary of State's Office
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:
Robert Stephan, Attorney General for State of Kansas
Proponents for HB 2056: Frank Randel, Secretary-Treasurer, Schools for Quality Education
Sue Gamble, Shawnee Mission Board of Education
Bill Curtis, Kansas Association of School Boards
Onan Burnett, USD 501
Representative Bill Reardon
Representative Don Crumbaker

Proponents for HB 2025: Representative Delbert Gross

The meeting of the House Elections Committee was called to order at 9:10 a.m. by Chairman Kenneth King.

The order of the business for the day was to hear debate on HB 2025 and HB 2056. HB 2025 states it is unlawful for school districts to employ lobbyists and HB 2056 authorizes the Board of Education of any school district may employ lobbyists.

The first conferee on the agenda was Attorney General Robert Stephan. He presented a prepared statement in regard to school lobbying and asked that it be made a part of the record. (Attachment I) He stated he was not speaking for either House Bill, rather presenting his opinion of the current statute which now states that school districts do not have the authority to lobby but school districts do have the authority to send "full time employees" to lobby. He asked that the committee clarify the lobbying question for school districts and to make the record clear as to what should be allowed.

Representative Bill Reardon, who introduced HB 2056, was the next conferee to speak. He presented testimony as to the purpose of the bill, stating that it was to clarify the law. He also stated that due to school finance becoming such a complex issue in the past few years it is necessary to have people with expertise to study and to understand the complexities and how they apply to each school district and that this knowledge is beneficial to the school districts and to the legislators. Therefore, he feels that HB 2056 should be passed.

Frank Randal, Secretary-Treasurer of School for Quality Education, spoke a few words in support of HB 2056 and passed out written testimony stating the views of the Schools for Quality Education. (Attachment II)

The next conferee to appear before the committee was Bill Curtis, Kansas Association of School Boards. He stated that KASB tries to represent the interest of all its members but that is not always possible because of the diverse interests. In those instances where a minority of the members wish to make their views known to the Legislature through a lobbyist they should have the authority to do so. He presented written testimony in support of HB 2056. (Attachment III)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,

room 521-S, Statehouse, at 9:00 a.m./p.m. on Tuesday, January 31, 1989.

Representative Don Crumbaker appeared before the committee. He states as a past member, and now Chairman of the Education Committee, the lobbyists have been a big help to the Education Committee in supplying information to them. He supports school districts having the same right to use tax money to lobby as does the cities and counties. He lends his support to HB 2056.

Onan Burnett, USD 501, next appeared and stated he supports wholeheartedly HB 2056 and hopes the committee passes this bill out of committee favorably.

The Chairman acknowledged Sue Gamble who represented the Shawnee Mission Board of Education, of which she is a member. She read testimony in support of HB 2056 and requested that the local boards be given explicit authority to hire or not hire lobbyists as is the case with other constituency groups. (Attachment IV)

The testimony of Stuart Berger, Superintendent of Schools for Wichita Public Schools, was introduced in his absence as a proponent of HB 2056. (Attachment V)

The Chair next called on Representative Delbert Gross who is the author of HB 2025. He presented his testimony to the committee (Attachment VI) and made a brief statement as to why this legislation was introduced.

Discussion was held on the content and the wording of the bill. No other proponents appeared before the committee on HB 2025.

The minutes of the meeting on January 24th were presented to the Committee members. Representative Tim Shallenburger moved that the minutes be approved as presented. Representative Elizabeth Baker seconded. The motion carried.

The meeting adjourned at 9:55 a.m.

The next meeting of the Elections Committee will be Thursday, February 2, 1989 at 9:00 a.m. in Room 521-S.

GUEST LIST

COMMITTEE: Election DATE: 1-31-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Don Moler	112 W. 7th Topeka	League of Municipalities
Ken Rose	SQE	Paola
Orvin C. Rumsey	Topeka	USD 501
Frank Randel	Bison, Ks	USD 403 & SQE.
W.R. Walz	Salina, KS 30	USD # 307 & SQE
Kathryn Dysart	Wichita, Ks	USD 259
Jon Bahr	Topeka	Peterson & Assoc.
Helen Stephens	Topeka	no one
Sue Gamble	Shawnee, Ks	Shawnee Mission Bd
Jim Yonally	Overland Park	USD #512
Chuck Stuart	Topeka	USA.
Harriet Lange	Ks Assn Topeka	Ks Assn Broadcasters
Bill Curtis	Topeka	KASB
Regina Robertson	Topeka	Ks Assn of AVT Schools
Jon Brax	Topeka	Life at its Best
Don E. Crumbaker	Topeka	Ks. Leg
Don Thorne	Topeka	SRS
Paul Wilbanks	Topeka	KPDC
Jana Atchison	Topeka	KPDC
Bev Bradley	Topeka	KS Assoc. of Counties
Nancy Lindberg	Topeka	AG.
Connie Hubbell	Topeka	St Bd of Ed.

1-31-89

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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Testimony of Attorney General
Robert T. Stephan
Before the House Elections Committee
January 31, 1989
RE: House Bill 2025 and House Bill 2056 (School Lobbying)

In 1981, the Satanta school district requested my opinion regarding the legality of contributing to a lobbying effort on the proposed severance tax. After reviewing the applicable statutes and case law, I concluded that school districts have no authority to expend funds for lobbying. My conclusion rested on the well-settled principle that school districts and other governmental subdivisions have only those powers which are expressly conferred by statute or those which are necessarily implied for the effective exercise and discharge of their duties. (See Attachment A: Attorney General Opinion No. 81-216.)

Less than three weeks after I issued that opinion, the Kansas Supreme Court decided the Hobart case, which not only recognized the limited powers of school districts but also stated that "any reasonable doubt as to the existence of such power should be resolved against its existence." (See Attachment B: Hobart v. U.S.D. No. 309, 230 Kan. 375 (1981).) This language is consistent with the reasoning I had employed in my prior opinion.

In 1983, the Court once again recognized the limitation on the authority of school districts by holding that a management rights clause

Attachment I

contained in a negotiated agreement could not enlarge the authority or power granted to school boards by the legislature. (See Attachment C: NEA-Wichita v. U.S.D. No. 259, 234 Kan. 512 (1983).)

Finally, in 1987, the Kansas Court of Appeals held that certain terms in an employment contract between a board of education and a teacher were ultra vires and void because the board had no specific statutory authority to bind itself to those particular terms. (See Attachment D: Miller v. U.S.D. No. 470, 12 Kan.App. 2d 368 (1987).) Cases such as these reinforced my conviction that I should take immediate action to stop the growing practice among school districts of employing lobbyists or lobbying firms. Indeed, as the person responsible for enforcing the laws of this state, I felt obligated to take such action.

Although I am prepared to proceed with litigation to prevent such expenditures, I would far prefer that the legislature clarify this matter by adopting one of the two bills presently before this committee. Personally, I do not favor one bill over the other. You, as legislators, are in a far better position to determine the value of lobbying by school districts and whether it should be permitted as a matter of policy.

I am aware that some school districts, particularly the larger ones, employ full-time staff whose job descriptions include lobbying. I have taken the position that this is permissible if lobbying does not constitute the primary purpose for which the person has been employed. Yet, for obvious reasons, smaller schools do not have this option available to them. Passage of either of these two bills would not only clarify the law but would also eliminate or reduce this inequity.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 5, 1981

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751
ANTITRUST 296-5299

ATTORNEY GENERAL OPINION NO. 81- 216

Garry Anthony, President
Unified School District No. 507
P. O. Box 279
Satanta, Kansas 67870

Re: Schools -- Boards of Education; Organization, Powers, Finances -- Expending Public Funds for Lobbying on Proposed Severance Tax

Synopsis: Unlike Kansas cities and counties which exercise constitutional or statutory "home rule" powers, school districts are creatures of statute and, as such, enjoy only those powers expressly conferred, by law, together with those implied powers which are necessary for the effective exercise and discharge of the powers and duties expressly conferred. No statutory authority exists, either expressly conferred or necessarily implied, authorizing the expenditure of school districts funds to contribute to a lobbying effort on a proposed state-wide severance tax. Cited herein: K.S.A. 1980 Supp. 19-101a, K.S.A. 19-101c, 72-1612, 72-1623, 72-5326, 72-8205, Kan. Const., Art. 12, §5.

* * *

Dear Mr. Anthony:

On behalf of Unified School District No. 507 you request our opinion regarding "a school district's right to contribute to the lobbying effort on the severance tax." Upon review of the statutes which authorize the spending of school district funds for specific activities, we find no specific authority for, nor specific prohibition against, such expenditure.

In considering the powers granted local school boards, it has long been the established rule in Kansas that such bodies are creatures of statute and, as such, have only powers which

EXHIBIT A

are expressly authorized or necessarily implied. Blankenship v. School District No. 28, 136 Kan. 313 (1932); Morton Salt Co. v. School Dt. No. 136, 31 F.2d 155 (D.C. Kan. 1929); Stewart v. Gish, 109 Kan. 206 (1921); State v. Board of Education, 59 Kan. 501 (1898); School District Re: Brown, 2 Kan. App. 309 (1896). Specifically, school funds may be expended only for purposes authorized by statute, either expressly or necessarily implied. Joint Consolidated School District No. 2 v. Johnson, 163 Kan. 202 (1947); Rose v. School District 94, 162 Kan. 720 (1947). This limitation on a school district's powers also has been recognized consistently by this office. See, e.g., Kansas Attorney General Opinion Nos. 73-317, 74-93, 77-129, 79-82, 80-1 and 80-3.

As previously noted, a survey of the statutes authorizing the expenditure of funds for school district purposes reveals no specific statutory authority for expenditure of funds for general lobbying purposes. Hence, we must turn to the general statutory authority of boards of education. K.S.A. 72-8205 states, in pertinent part, as follows:

> "Except as otherwise provided . . . the board shall have and may exercise the same powers and authorities as were immediately prior to this act conferred upon boards of education in cities of the first class, and, in addition thereto, the powers and authority expressly conferred by law."

Formerly, K.S.A. 72-1612 set forth those general powers as follows:

> "The public schools of each city school district shall be governed by a board of education, and shall constitute a body corporate and politic, possessing the usual powers of a corporation for public purposes, under the name and style of 'the board of education of the city of _____ of the State of Kansas', and in such name may contract, sue and be sued and acquire, hold and convey real and personal property in accordance with the law."

Again, by way of a general grant of power, former K.S.A. 72-1623 provided:

> "The board shall establish and maintain a system of free public schools for all children residing in the . . . school district and make all necessary rules and regulations for the government and conduct of such schools, consistent with the laws of the state . . . ."

This provision remains incorporated in K.S.A. 72-1623.

Even under these general statutory grants of power above, a unified school district lacks the necessarily implied powers to contribute public funds to hire a professional lobbyist to lobby for or against a proposed state-wide severance tax. In our judgment, such expenditure cannot be necessarily implied in order to effect the express statutory powers noted above. The expenditure of public funds to hire a lobbyist to lobby the Kansas legislature regarding a proposed severance tax on mineral production is not a necessary exercise of the district's corporate powers nor essential to establishing a "free public school system." When in doubt as to whether a particular power is to be implied, the Kansas courts resolve the issue against any grant of power. In State ex rel., McAnarney v. Rural High School District No. 7, 171 Kan. 437 (1951), the court stated:

> "In this state, it has long been the rule that 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 that any reasonable doubt as to the existence of such power should be resolved against its existence." 171 Kan. at 444.

Accord: Byer v. Rural High School Dt. No. 4, 169 Kan. 351 (1950); Township Board of Ash Creek v. Robb, 166 Kan. 138 (1948); School District v. Robb, 150 Kan. 402 (1939).

Your request is no doubt prompted by the well-publicized opinion of this office which concluded that Kansas law permits counties to expend public funds for lobbying the legislature when such is for a "public purpose." Kan. Att'y Gen. Op. No. 81-208. Admittedly, the legislature's determinations regarding the levy of a mineral tax and the resulting distribution of revenues may favorably or adversely affect the interests of a school district. The enactment of such a tax may increase or decrease the availability of revenues for school district purposes. The district, its board and patrons, thus, have a keen interest in the outcome of the current debate. However, unlike cities and counties which have "home rule" powers [Kan. Const., Art. 12, §5 and K.S.A. 1980 Supp. 19-101a], school districts are strictly limited to those powers bestowed upon them by the legislature. The extensive "home rule" powers granted Kansas counties are not to be confused with the limited statutory powers granted Kansas school boards. "Home rule" powers were bestowed upon county government "for the purpose of giving to counties the largest measure of self-government." K.S.A. 19-101c. It is upon these broad powers

that Kansas Attorney General Opinion No. 81-208 is based, and it is this crucial fact which distinguishes the conclusion reached here from the prior opinion regarding counties. Thus, due to the lack of express or necessarily implied statutory authority, a school district has no right to expend public funds for professional lobbying services related to the proposed severance tax on Kansas mineral production.

In reaching this conclusion we call your attention to the analogous result reached in Kansas Attorney General Opinion No. 75-33, where a previous Attorney General considered whether a school district could lawfully expend public funds to support or oppose constitutional amendments or candidates to public office. In finding that school districts lacked such power, Attorney General Schneider said:

> "The board may expend funds of the district only in the discharge of its statutory duties, and in the promotion of the public duties committed to it by law. A school board 'is created to conduct and foster the education of the children of the community.' Whitlow v. Board of Education, 108 Kan. 604 (1921). The board has no authority, whatever, to expend funds of the district for any purpose other than those entrusted to it by law. The board has no authority to contract for advertising, or otherwise to spend funds of the district, to support or oppose questions of public policy submitted to the electorate, proposed constitutional amendments, or candidacies for public office. It makes no difference that a proposed constitutional amendment e.g., may be deemed by the board to have some bearing to the interests of education, as it perceives them, for the board in its corporate capacity has no authority to expend public funds to promote or oppose a particular political viewpoint, or for the purpose of seeking to influence the views of the electorate upon a question submitted to them for their decision according to law." Id. at 3.

For your information, we note the Kansas Association of School Boards (KASB) operates as a state-wide organization for the benefit of member districts and retains in its employ a registered lobbyist. The KASB is funded pursuant to the very specific statutory authority of K.S.A. 72-5326. This section states:

> "The board of education of any school district or board of trustees of any community junior college is hereby authorized to appropriate money out of its general fund to pay the annual dues in the Kansas association of school boards."

The funding of KASB, therefore, is allowed by this express grant of statutory authority and thus satisfies the legal test previously described herein. The Kansas legislature has specifically described the permissible expenditure of public funds for membership in this organization; it has not so provided for an expenditure of funds to the Legislative Policy Group or other special interest organization.

In addition, we note Attorney General Opinion No. 75-226, wherein the Attorney General stated that, not only does this statutory section permit funds to be expended for this organization, it also impliedly prohibits school district funds being spent for similar organizations. This legal conclusion is supported by the case of LeSueur v. LeSueur, 197 Kan. 495 (1966), wherein the Court said:

> "The direct mention of this discretionary authority [to grant or refuse a divorce] implies exclusion of any other implied authority. The general rule is thus stated in 82 C.J.S., Statutes, §333a, p. 668:
>
> "'Under the general rule of express mention and implied exclusion, the express mention of one matter excludes other similar matters not mentioned; every positive direction in a statute contains an implication against everything contrary to it; the specification of one particular class excludes all other classes; and an affirmative description of powers granted implies a denial of all non-described powers.'" 197 Kan. at 500.

This doctrine of "expressio unius est exclusio alterius" -- that is, the granting of an express authority to fund one organization excludes the implication of authority to join like organizations -- adds weight to our conclusion that the lobbying effort proposed here would be unlawful. The legislature could have provided for expenditures to other organizations or particular lobbying efforts. It has not done so.

Therefore, it is our opinion that Kansas school districts may not expend funds to contribute to lobbying efforts of the Legislative Policy Group regarding the proposed severance

tax. It has long been the rule in Kansas that school districts are creatures of statute and enjoy only those powers expressly conferred and those powers clearly implied therefrom which are necessary for the effective exercise and discharge of those powers and duties expressly conferred. Such express or implied authority to expend funds to contribute to the lobbying effort on the severance tax is not evident through a survey of the applicable statutory sections. Further, the express permission to support Kansas Association of School Boards given by the legislature in K.S.A. 72-5326 impliedly excludes school district contributions to other similar organizations. It is of no consequence that the school district officers believe that the severance tax will affect the interests of education; the board in its corporate capacity has no authority to expend public funds to contribute to this lobbying effort.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle

No. 53,367

NELSON HOBART, *Appellant*, v. BOARD OF EDUCATION OF UNIFIED SCHOOL DISTRICT # 309; RANDY BALL; MYRON G. HERMES; CLIFF LAMBERT; RAE LUGINSLAND; FARRELL SAXTON; EARLE SMITH; and HAROLD STAUFFER, each individually and as members of the Board of Education of Unified School District # 309; and WILLIAM E. WHITE, individually and as Superintendent of Unified School District # 309; and GLENIS L. HELDENBRAND, Reno County Clerk/Election Officer, *Appellees*.

(634 P.2d 1088)

SYLLABUS BY THE COURT

1. SCHOOLS—*Closing Schools or Reducing Grade Usage—When Consent of Electors Required.* Under K.S.A. 72-8213(*e*) no consent or affirmative vote of electors is required to reduce grade usage so long as the board offers at least three (3) high school grades, or three (3) junior high school grades, or six (6) elementary school grades in the attendance facilities of the disorganized and merged districts. However, before a board may close such an attendance facility and before a board may reduce the grade usage to less than the number of grades specified in subsection (*e*) it must have the affirmative vote or consent of a majority of the resident electors in the territory located in the disorganized district.

2. SAME—*Statutory Powers Conferred on School Districts.* 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.

3. SAME—*Closing Schools or Reducing Grade Usage—Consent of Electors Required to Reduce Grade Usage to Less Than Six Elementary Grades.* When the legislature authorizes a school board to hold an election under K.S.A. 72-8213 and on an affirmative vote of a majority of electors to reduce the grade usage at an attendance facility to zero, thus closing the facility, there appears a clear implication of authority to call an election to obtain from the electors consent to reduce grade usage to be offered at the facility to less than six elementary grades without closing the facility completely.

Appeal from Reno district court, division No. 1, PORTER K. BROWN, judge. Opinion filed October 23, 1981. Affirmed.

H. Newlin Reynolds, of Hodge, Reynolds, Smith, Peirce & Forker, of Hutchinson, argued the cause and was on the brief for the appellant.

Michael E. Chalfant, of Branine, Chalfant & Hyter, of Hutchinson, argued the cause and was on the brief for the appellees.

The opinion of the court was delivered by

FROMME, J.: This action was brought in the court below to enjoin the Board of Unified School District No. 309, Reno County, from holding an election. The election had been called to

EXHIBIT B

determine whether the Board should have the authority to reduce the grade usage at an attendance facility from six elementary grades to just two elementary grades. The term "attendance facility" is defined in K.S.A. 72-8213 to mean a school building which has been the property of a school district disorganized and made a part of a unified district.

The parties stipulated to the following facts at the trial level:

"1. That Unified School District #309 was organized under the Kansas School Unification Act on or before July 1, 1965.

"2. That prior to the unification, Mitchell Grade School was operated by Grade School District #2C.

"3. That Grade School District #2C was disorganized after Unified School District #309 was organized, and the entire territory of former Grade School District #2C was incorporated in and became a part of Unified School District #309, all pursuant to Kansas School Unification Act, Chapter 393, of the Session Laws of Kansas, 1963, as amended and supplemented by House Bill #539 of the 1965 session of the legislature.

"4. That after such unification of Mitchell Grade School into Unified School District #309, it was thereafter known as Disorganized School District #2C. Said Disorganized School District #2C continued to be operated as a grade school. That during the school year of 1980-1981, Mitchell Grade School had grades of kindergarten and one, two, three, four and five. That grade six attended North Reno School located in Unified School District #309.

"5. On May 11, 1981, the Board of Education of Unified School District #309 consisted of the following board members:

"Randy Ball, Myron Hermes, Cliff Lambert, Rae Luginsland, Farrell Saxton, Earle Smith, and Harold Stauffer.

"6. That on May 11, 1981, at an official Board of Education meeting of Unified School District #309, all of said board members unanimously voted in favor of the following resolution:

"BE IT RESOLVED by the Board of Education of United School District #309, Reno County, State of Kansas, that the Reno County election officer is authorized to conduct an election of the resident electors of Disorganized School District 2C who reside in Unified School District #309, on the 16th day of June, 1981, from 7:00 A.M. to 7:00 P.M., for the purpose of voting to determine if the Board of Education of Unified School District #309 shall be granted the authority to change the use of the attendance facility (school building) of Disorganized School District #2C, commonly known as Mitchell Grade School, Reno County, State of Kansas, to permit its use by less than six (6) elementary school grades in compliance with the provisions of K.S.A. 72-8213.

"7. That pursuant to said resolution, the Reno County election officer, who is Glenis L. Heldenbrand, is making preparations to conduct an election of the resident electors of Disorganized School District #2C who reside in School District #309 on June 16, 1981, from 7:00 A.M. to 7:00 P.M., for the purpose of voting on the above resolution.

"8. That according to the official minutes of the meeting of the Board of Education of Unified School District #309 held on May 11, 1981, it was proposed

that if the class reorganization election passes, there will be three classes of Grade One and two classes of grade Two offered at Mitchell School.

"9. That Nelson Hobart, plaintiff herein, is a resident elector of Disorganized School District #2C."

The trial court considered this stipulation of facts, together with the briefs of counsel, and denied the request for an injunction. It held that an election in such case was not only permissible but mandatory under the provisions of K.S.A. 72-8213, which statute relates to the closing and changing of the grade usage of schools. Plaintiff's appeal was filed in the Court of Appeals and then transferred to this court for decision.

The issue presented is whether the School Board of the unified district under the stipulated facts of this case has the authority to call an election to change and reduce the grade usage at the attendance facility known as Mitchell Grade School. The Board proposes to reduce the grade usage at the facility from six elementary grades to two elementary grades. The answer to this question depends upon a construction of K.S.A. 72-8213 which in pertinent part provides:

"(*a*) The board shall not close any attendance facility that was being operated at the time the unified district was organized if at least three-fourths (¾) of the territory and at least three-fourths (¾) of the taxable tangible valuation of the district which formerly owned such building is included in such unified district unless and until a majority of the resident electors within the attendance center of such attendance facility shall give their consent thereto. Such consent may be given in writing in the form of a petition, or the board may submit the question to a vote of such resident electors in the attendance center at an election which shall be conducted in the same manner as for approval of bonds of the unified district. If a majority of those voting on the question vote in favor thereof, the same shall constitute consent for the purpose of this section. *The board may close any attendance facility at any time except as is otherwise provided in this act.* For the purpose of this section the following terms shall have the following meanings: The term 'attendance facility' means a school building which has been property of [a] school district disorganized pursuant to this act, but which, at the time under consideration, is owned by the unified district. The term 'attendance center' means the area around an attendance facility consisting of the territory in such unified district of the disorganized district which formerly owned such attendance facility.

"Notwithstanding the other provisions of this act, the board of education of any unified school district *may close any attendance facility which has failed to receive accreditation* by the state superintendent of public instruction until that office is abolished or the state board of education thereafter, and in any such case no petition, election or other procedures shall be necessary as a condition to such closing.

EXHIBIT B-2

"(*b*) *The board of any city unified school* district which such city has a population in excess of 20,000 *may close any of its attendance facilities* at any time such board finds the same should be closed to improve the school system of such school district. The limitations of subsection (*a*) of this section shall not apply to any closing under this subsection (*b*).

"(*c*) [Not pertinent.]

"(*d*) In the event any *territory has been or is hereafter attached or transferred* to any unified school district by attachment or transfer proceedings other than a signed agreement under K.S.A. 72-7108 or upon petition therefor of such a unified school district under said statute, *any attendance facility* in the territory *so attached or transferred may be closed by the board and no limitations of subsection (a) shall apply* to any such closing.

"(*e*) *Nothing in this section shall be deemed to restrict or limit the authority of any board to change the use of any attendance facility, so long* as at least three (3) high-school grades, three (3) junior high-school grades, or six (6) elementary school grades are offered in such attendance facility.

"(*f*) [Not pertinent.]" Emphasis supplied.

Subsections (*g*) and (*h*) of this statute need not be quoted. They relate to attendance facilities ordered unsafe by the State Fire Marshal. After such an order is issued the board may close the attendance facility if the board finds that the cost of the restoration, repair or remodeling necessary to meet the requirements of the fire marshal is unwarranted or excessive. On such a finding the facility may be closed without consent or a vote of the resident electors of the area around the facility. Provision, however, is made in subsections (*g*) and (*h*) for an appeal from the fire marshal's order. If the order is affirmed on appeal any twenty-five electors of the district may then petition and require the board to call an election to issue bonds to finance the necessary repairs or modifications.

This statute indicates an intent to retain some further vestige of local control in the resident electors of the districts disorganized and merged with unified districts.

It is argued by plaintiff-appellant that the Board has no express or implied authority under K.S.A. 72-8213 to call an election for the purpose of reducing the number of grades to two. It is further argued that subsection (*e*) of K.S.A. 72-8213 establishes the number of grades necessary to be offered to keep open any attendance facility, and that a school board has no legal authority to reduce the number of grades being offered below those specified.

On the other hand the Board contends that boards of education are endowed with general authority to organize and maintain

schools, and this necessarily includes the authority to control and change the grade usage at attendance facilities. The Board further contends K.S.A. 72-8213(*e*) merely sets minimum grade usage requirements for facilities of disorganized districts that were being operated at the time the unified district was organized. The Board says if it desires to reduce the grade usage below the grade usage specified in subsection (*e*), a vote of the electors resident in the area of the disorganized district is then required.

To construe the statute and resolve the issue it may be helpful to review some of the history leading up to the present statute.

Prior to the Unified School District Act of 1963 (L. 1963, ch. 393), Kansas had a hodge-podge of school districts charged with educating the elementary and high school students of the state. The territory of the state was divided into separate grade or common school districts, high school districts, and districts which maintained both a high school and a grade school. Surprising as it may seem, certain territory in the state was not in any school district and paid no school taxes.

A 1961 Unified School District Act was held unconstitutional by this court. *School District, Joint No. 71 v. Throckmorton,* 189 Kan. 259, 368 P.2d 367; 189 Kan. 590, 370 P.2d 89 (1962). A subsequent act was enacted in 1963 and furnished the authority for consolidating and unifying the school districts in the state. The purpose of the act as stated was:

"[T]o establish a thorough and uniform system of free public schools throughout the state whereby all areas of the state are included in school districts which maintain grades one (1) through twelve (12), and kindergarten where desired." L. 1963, ch. 393, § 1.

To accomplish this purpose common school districts maintaining only a grade school were combined in some cases with rural school districts maintaining both a high school and a grade school. In such cases, although only one unified school district emerged, the patrons of the two disorganized districts usually insisted on continuing the same grade usage in their own separate school buildings. The legislators listened to the electors of the local districts and they provided in the unified school district act "[t]he board shall not close any attendance facility that was being operated at the time the unified district was organized." L. 1963, ch. 393, § 23. An escape hatch was provided, however, and in order to close any such attendance facility the board of the

unified district was authorized to do so if it obtained the consent of a majority of the resident electors in the area. The area referred to was that which formerly was a part of the disorganized district. This consent could be either by petition in writing or by an election. The amount of grade usage necessary in any school building to constitute the maintenance of an attendance facility was not designated in the original 1963 act.

In *Hand v. Board of Education,* 198 Kan. 460, Syl. ¶ 2, 426 P.2d 124 (1967), it was held an attendance facility, as that term was used in the law, was closed if the board discontinued any high school, junior high school, or any elementary grade school which had previously been operated by the disorganized school district. If the board desired to close down any school previously maintained at an attendance facility, consent or an election was required.

Hand was handed down on April 8, 1967, and on July 1, 1967, the L. 1967, ch. 399, § 1 became effective and a subsection (*e*) had been added. Subsection (*e*) provided:

"(*e*) Nothing in this section shall be deemed to restrict or limit the authority of any board to change the use of any attendance facility, so long as at least three (3) high school grades, three (3) junior high school grades, or six (6) elementary school grades are offered in such attendance facility."

Thereafter this court decided *Hensley v. Board of Education of Unified School District,* 210 Kan. 858, 504 P.2d 184 (1972). In *Hensley* this court construed subsection (*e*) and decided that a change in grade usage at the school attendance facility at Ford, Kansas from eight primary and four secondary grades to grades seven, eight, and nine was authorized by the provisions of the statute which is now K.S.A. 72-8213(*e*). Classes for grades one through six and grades ten, eleven, and twelve had been discontinued. The court held no consent or affirmative vote was required if classes for either of the three categories of grades specified in the statute were maintained. Grades seven, eight, and nine were the "three (3) junior high school grades" referred to in subsection (*e*) of the statute.

In *Welch v. Board of Education,* 212 Kan. 697, 512 P.2d 358 (1973), this court again examined the provisions of K.S.A. 72-8213. There a rural high school district and a common school district had united to construct a school building which had been jointly used by the two districts. The rural high school district

had maintained a high school, grades nine through twelve, and the common school district had maintained an elementary school, grades one through eight. A unified district was formed under the act and the territory of these disorganized districts was merged in the new unified district. The unified board desired to discontinue grades nine through twelve in the building which had previously been used by both school districts. It was held the one building had served as two separate attendance facilities and neither could be closed without consent or an affirmative vote.

The last time this court considered this closing statute was in *Meinhardt v. Board of Education,* 216 Kan. 57, 531 P.2d 438 (1975). In *Meinhardt* we held that a board of education may change the use of an attendance facility of a disorganized district without the consent of the electors so long as the proposed grade usage consists of at least three high school grades, three junior high school grades, or six elementary school grades. It was further held under K.S.A. 72-8213 (*e*) kindergarten may be considered as one of the six elementary grades necessary to fulfill the requirements of grade usage without obtaining the consent of the electors.

K.S.A. 72-8213(*a*) begins with a prohibition against closing any attendance facility that was being operated at the time the unified district was organized provided three fourths (¾) of the territory of the disorganized district became a part of the unified district. Later on in this subsection the board is granted the general authority to close all attendance facilities other than those of such disorganized districts. In addition to this latter authority, specific authority is given in later subsections of the statute to close certain other attendance facilities without consent and without an election. These include any attendance facility which has failed to receive accreditation, attendance facilities in any city which has a population in excess of 20,000, attendance facilities in territory attached or transferred to ay unified district after July 1, 1967, newly constructed attendance facilities which were built to meet the needs of a unified school district, and finally, those attendance facilities ordered closed by the State Fire Marshal.

We find no statutory provision in the school laws other than subsection (*e*) of K.S.A. 72-8213, which sets a minimum grade usage in any attendance facility. We note that K.S.A. 72-8212 directs that every unified district shall maintain, offer and teach

EXHIBIT B-6

grades one (1) through twelve (12), with kindergarten being optional. This statute also requires that thirty (30) units of instruction be offered in grades nine (9) through twelve (12). This section gives the board broad general authority to divide the territory of the district into subdistricts for purposes of attendance by pupils. The board may govern the use of all school buildings in the district or may open any building for community purposes. The board may make "all necessary rules and regulations for the government and conduct of such schools, consistent with the laws of the state."

Since the legislature apparently has not set requirements in the statutes for a minimum number of grades to be offered in a facility, other than those attendance facilities of the special disorganized districts, we must look to the regulations adopted by the Kansas Department of Education. This department is given the authority to adopt standards or regulations for the accreditation of schools, including both elementary and secondary schools. K.S.A. 72-7513(*a*)(3). The department oversees the supervision of the public schools. K.S.A. 72-7513(*b*). The department is specifically authorized to adopt rules and regulations for these purposes. K.S.A. 72-7514.

In exercising this power of supervision the Department of Education has adopted some regulations. We can find no provision in these regulations setting a minimum number of grades to be maintained in an attendance facility. The department regulations do, however, include standards and procedures for accrediting schools, but again, none of these regulations establish a minimum number of grades required to be offered at any attendance facility. K.A.R. 1981 Supp. 91-30-14a on accreditation provides:

"(a) *Administration.* Elementary schools shall conform to the provisions of K.S.A. 72-1107, regarding age of entrance.

"(b) *Organization.* (1) An accredited elementary school shall be organized to include any combination of grades kindergarten through nine (9).

"(2) The middle school concept of organization shall be recognized as a consecutive combination of any grades five (5) through nine (9).

"(3) Kindergarten classes shall be organized separately from other grades and shall be organized on a basis of not less than two and one-half (2 ½) clock hours each day when in session.

"(4) Any organization or reorganization of a school shall be done in compliance with the provisions of K.S.A. 72-8213 or K.S.A. 72-8213a."

EXHIBIT B-7

As we understand subsection (b)(1) of this regulation, any combination of grade usage, kindergarten through nine, may receive approval by the State Department of Education. When a person considers this regulation along with K.S.A. 72-8213(*e*) which restricts the authority of the board to reduce grade usage in attendance facilities of disorganized districts, it seems clear the statutory limitation in K.S.A. 72-8213(*e*) merely draws the line where consent or an election is required if a unified board wishes to close schools or reduce grade usage below required levels at an attendance facility of a disorganized district.

Generally, it would appear the State Board of Education in its accreditation process is in a better position to determine and enforce minimum grade usages in attendance facilities than the legislature. Subsection (*e*) does not appear to be intended by the legislature to set an inflexible minimum grade usage in the schools of the state.

Under K.S.A. 72-8213(*e*) no consent or affirmative vote of electors is required to reduce grade usage so long as the board offers at least three (3) high school grades, or three (3) junior high school grades, or six (6) elementary school grades in the attendance facilities of the disorganized and merged districts. However, before a board may close such an attendance facility and before a board may reduce the grade usage to less than the number of grades specified in subsection (*e*) it must have the affirmative vote or consent of a majority of the resident electors in the territory located in the disorganized district.

Plaintiff-appellant argues that a board of education has neither express nor implied authority to conduct such an election in the present case. In support thereof he cites specific statutes which have granted authority to the boards to call elections to issue bonds, to disorganize districts, and to approve a change in method of voting on board members. No implied authority was found in those statutes. Appellant relies on *State, ex rel., v. Rural High School District No. 7*, 171 Kan. 437, Syl. ¶ 1, 233 P.2d 727 (1951), for the following rule:

"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."

EXHIBIT B-8

We agree with the rule of law cited but come to a different conclusion as to application of the rule in this case.

There can be little doubt that the legislature has restricted the authority of boards of education to close attendance facilities and to reduce grade usage of the particular attendance facilities described in K.S.A. 72-8213(*a*), *i.e.*, those previously serving a disorganized district which had three-fourths (¾) of its territory included in the unified district. The legislature did, however, specifically authorize the unified school district board to call an election and submit the question of closing such an attendance facility to a vote of the resident electors.

Also under subsection (*e*) of this statute, no election is required to reduce grade usage to the minimum levels specified. We note a board is granted broad authority in K.S.A. 72-8212 to divide the district in subdistricts for the purpose of directing the attendance of pupils, and the board is given title to, and the care and keeping of all school buildings. After considering the entire statutory framework, we hold that when the legislature authorizes a school board to hold an election under K.S.A. 72-8213 and on an affirmative vote of a majority of electors reduce the grade usage at an attendance facility to zero, thus closing the facility, there appears a clear implication of authority to call an election to obtain from the electors consent to reduce grade usage to be offered at the facility to less than six elementary grades without closing the facility completely.

The election proposed by the Board of Education was not only proper but was required under the provisions of K.S.A. 72-8213.

Judgment affirmed.

No. 55,721

NATIONAL EDUCATION ASSOCIATION - WICHITA, *Appellee*, v. UNIFIED SCHOOL DISTRICT NO. 259, SEDGWICK COUNTY, KANSAS, *Appellant*.

(674 P.2d 478)

SYLLABUS BY THE COURT

1. APPEAL AND ERROR—*Standard of Review of Trial Court's Findings of Fact and Conclusions of Law.* The standard of review by an appellate court is well established. Where the trial court has made findings of fact and conclusions of law, the function of this court on appeal is to determine whether the findings are supported by substantial competent evidence and whether the findings are sufficient to support the trial court's conclusions of law. *City of Council Grove v. Ossmann*, 219 Kan. 120, 546 P.2d 1399 (1976); *Sunflower Electric Coop., Inc. v. Tomlinson Oil Co.*, 7 Kan. App. 2d 131, 638 P.2d 963 (1981), *rev. denied* 231 Kan. 802 (1982).

2. SCHOOLS—*Teachers' Contracts—Power and Authority of School Board to Contract.* A 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. A school district has only such power and authority as is granted by the legislature and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication. *Gragg v. U.S.D. No. 287*, 6 Kan. App. 2d 152, Syl. ¶ 3, 627 P.2d 335 (1981).

3. LABOR—*Closure Clause in Employment Contract—Waiver of Union's Right to Bargain.* A closure clause is nothing but a diluted form of waiver. The general rule is that a waiver of a union's right to bargain must be clear and unmistakable. *N.L.R.B. v. R. L. Sweet Lumber Company*, 515 F.2d 785, 795 (10th Cir. 1975).

4. SCHOOLS—*Teachers' Contracts—Board Cannot Make Unilateral Changes in Items Which Are Mandatorily Negotiable.* After a negotiated agreement has been reached between the exclusive representative of professional employees and a board of education pursuant to K.S.A. 72-5413 *et seq.*, then during the time that agreement is in force, the board, acting unilaterally, may not make changes in items which are mandatorily negotiable, but which were not noticed for negotiation by either party and which were neither discussed during negotiations nor included within the resulting agreement. *Dodge City Nat'l Education Ass'n v. U.S.D. No. 443*, 6 Kan. App. 2d 810, Syl., 635 P.2d 1263, *rev. denied* 230 Kan. 817 (1981).

5. SAME—*Teachers' Contracts—Topics Made Mandatorily Negotiable by Statute.* The appellate courts of Kansas have held that if a topic is by statute made a part of terms and conditions of professional service, then a topic is by statute made mandatorily negotiable. *Tri-County Educators' Ass'n v. Tri-County Special Ed.*, 225 Kan. 781, 594 P.2d 207 (1979); *NEA-Topeka, Inc. v. U.S.D. No. 501*, 225 Kan. 445, 592 P.2d 93 (1979).

Appeal from Sedgwick district court, PAUL W. CLARK, judge. Opinion filed December 2, 1983. Affirmed.

William H. Dye, of Foulston, Siefkin, Powers & Eberhardt, of Wichita, argued

EXHIBIT C

the cause, and *Wyatt M. Wright*, of the same firm, was with him on the briefs for the appellant.

David M. Schauner, of Topeka, argued the cause and was on the briefs for the appellee.

The opinion of the court was delivered by

LOCKETT, J.: This is an appeal by the defendant, Unified School District No. 259, from an order of the District Court of Sedgwick County, Kansas, in favor of the plaintiff, National Education Association - Wichita. The district court enjoined defendant from unilaterally implementing a schedule change by eliminating a "coordination" work period and replacing that period with an additional period of classroom instruction.

The National Education Association - Wichita (NEA-Wichita) is the exclusive bargaining representative for all teachers in U.S.D. No. 259. Unified School District No. 259, Wichita, Kansas (the Board) is the owner of the Roosevelt Junior High School facility. Between February and October of 1981, NEA-Wichita and the Board participated in negotiations concerning the terms and conditions of professional service. During the negotiation process and the school year preceding negotiations, six of the Board's fifteen junior high schools operated on a six-period day, while the other nine operated on a seven-period day. The length of the school day was from 8:00 a.m. until 3:00 p.m. at all fifteen of the junior high schools. The negotiated contract had an effective date of August 1, 1981, and extended through July 31, 1983.

The schedule at Roosevelt Junior High School consisted of six periods for the 1978-79 school year. The teachers at Roosevelt each taught five classes and each teacher had a planning period in which to prepare for classes. The class schedule for Roosevelt was unilaterally changed for the 1979-80 school year by the school's administration. Without altering the school hours, the number of periods was increased from six to seven with the length of each period being shortened.

A new team teaching concept was instituted by the school's administration for the 1979-80 school year at Roosevelt and implemented by the creation of the seventh period. The concept was designed to improve communication between students and teachers, and between parents of the students and teachers. Under the new program, teachers were formed into multi-teacher teams for each grade. A team leader was appointed for

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each team and was required to plan activities for the team. The only member of the team that received extra pay for the seventh hour was the team leader. The seventh period of the day was used by the team to meet and discuss progress of students taught by the team, or a teacher could meet with a student, or teachers could meet in a group to discuss a student or students, or a teacher could meet with a parent of a student. Teachers taught for five periods, had one planning period, and met with the team or carried out team activities for one period. During these periods reserved for the team, students would be assigned to elective courses, such as music or art. The unilateral implementation of the team teaching process by the school's administration was enthusiastically accepted by the teachers of Roosevelt.

The seven-period team teaching concept was in effect at Roosevelt when the August 1, 1981, agreement took effect. In February, 1982, the Board issued to Roosevelt Junior High's principal a bulletin requiring the seventh period no longer be used for team teaching; instead the extra hour would be used by the teachers to teach the regular subjects. The Board directed this change to facilitate the scheduling of remedial reading classes pursuant to a curriculum recommendation made by a community task force previously appointed by the Board. The principal of Roosevelt, James E. Haught, abandoned the team teaching approach. The team period was converted to a teaching period, to enable remedial reading to be added to the schedule. The principal impact of this change upon the teachers at Roosevelt was that it required them to prepare and to teach one additional class each day, although each teacher would teach only a few additional minutes a day. NEA-Wichita claims that the Board was attempting to unilaterally change, without negotiation, the teachers' "hours and amount of work," a mandatorily negotiable topic set forth in K.S.A. 72-5413(l), and seeks to enjoin the Board from changing the seventh period to an additional teaching period.

On March 30, 1983, the district court granted NEA-Wichita's motion to permanently enjoin the Board from unilaterally changing a term and condition of the teachers' employment without first negotiating the topic with NEA-Wichita. The district court, relying on *Chee-Craw Teachers Ass'n v. U.S.D. No. 247*, 225 Kan. 561, 593 P.2d 406 (1979), and *Dodge City Nat'l*

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Education Ass'n v. U.S.D. No. 443, 6 Kan. App. 2d 810, 635 P.2d 1263, *rev. denied* 230 Kan. 817 (1981), found that the number of class periods per day is a topic that is, by statute, mandatorily negotiable. Additionally, the district court found that the number of class periods to be taught in the normal school day by a classroom teacher in U.S.D. No. 259 during the years 1981, 1982 and 1983 was not a subject of negotiation leading to the agreement now in force covering those years. The Board appealed from the March 30, 1983, decision of the district court. This case was transferred from the Court of Appeals to the Supreme Court.

The standard of review by an appellate court is well established. Where the trial court has made findings of fact and conclusions of law, the function of this court on appeal is to determine whether the findings are supported by substantial competent evidence and whether the findings are sufficient to support the trial court's conclusions of law. *City of Council Grove v. Ossmann*, 219 Kan. 120, 546 P.2d 1399 (1976); *Sunflower Electric Coop., Inc. v. Tomlinson Oil Co.*, 7 Kan. App. 2d 131, 638 P.2d 963 (1981), *rev. denied* 231 Kan. 802 (1982).

The Board contends that the trial court erred in finding that it failed to negotiate with NEA-Wichita any increase in the number of class periods to be taught by a teacher. The contention that negotiations on this topic did occur is based largely on the fact that the 1981-83 contract and Art. V, Sec. D, Para. 7 deleted all reference to the word "hours" and substituted "periods" pursuant to a proposal made by the Board. This language change occurred in a paragraph that dealt solely with the activities and hours of a departmental coordinator, a teacher appointed to coordinate the activities of a subject matter area having three or more teachers.

The 1980-81 contract in pertinent part stated in Art. V, Sec. D, Para. 7:

"(a) Junior High and Senior High Department Coordinators with 9-17 teachers in the department shall be assigned one (1) coordination work hour per day.

"(b) Junior High and Senior High Department Coordinators with 18 or more teachers in the department shall be assigned two (2) coordination work hours per day.

"(c) In each case cited in this paragraph, the coordination work hour(s) is in lieu of a teaching work hour(s); and the number of teaching hours plus the number of coordination work hours shall equal no more than five (5) hours per day.

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"(d) The coordination work hour(s) is for the purpose of coordinating the activities of the department.

"(e) With approval of the building principal, a department coordinator may be provided with a substitute teacher to release the department coordinator from teaching responsibility in order that the department coordinator may fulfill responsibilities not possible to accomplish during coordination work hours."

The 1981-83 contract contained this identical language regarding coordination work periods, except the word "periods" was substituted for the word "hours," and (c) was changed to state:

"In each case cited in this paragraph, the coordination work period(s) is in lieu of a teaching work period(s)."

The trial court found that the change in wording was intended by the parties to more accurately reflect the actual time spent by departmental coordinators in schools already on a seven-period day where the coordination work period was less than 60 minutes. The paragraph heading itself evidences the fact that the change in the wording applied only to teachers who were departmental coordinators and not to all teachers. The trial court found that the change was not intended by the parties to affect anyone other than the departmental coordinators. Findings by the trial court indicate that the change in wording was solely an attempt at semantic clarification concerning departmental coordinators and not the result of full negotiations concerning the number of class periods to be taught by all classified personnel.

There is sufficient evidence to support the trial court's finding that the topic of the number of class periods to be taught per day was not negotiated.

The Board urges a contractual distinction between *Dodge City Nat'l Education Ass'n v. U.S.D. No. 443*, 6 Kan. App. 2d 810, and this case. The Board contends that the contract at issue in *Dodge City* contained neither a "management rights clause" nor a "closure clause," unlike NEA-Wichita and the Board's 1981-83 contract which included both such clauses. The management rights clause language appeared in the 1980-81 contract between NEA-Wichita and the Board but was not titled as such until the 1981-83 contract. This clause, as included in the 1981-83 contract, states:

"SECTION B: MANAGEMENT RIGHTS

"Paragraph 1: The Association acknowledges that the Board and the Superintendent have certain exclusive statutory rights and responsibilities which they may not surrender and that except as expressly provided otherwise by this agreement or by law, the final adoption of school policy, the administration and

operation of the schools, and the direction of the employees are vested exclusively in the Board and the administrative staff. Nothing herein shall be construed to limit the statutory power and duty of the Board to make, amend, or execute decisions and policies that are necessary to operate and maintain the teaching program and schools and to otherwise carry out its lawful rights and responsibilities. Neither shall anything in this agreement be construed to limit the statutory power and duty of the Superintendent."

The language of the closure clause had not appeared in previous contracts between the parties. This new clause, as included in the 1981-83 contract, states:

"SECTION E: CLOSURE CLAUSE

"**Paragraph 1:** Both the Board and the Association acknowledge that all mandatory subjects of negotiations have been negotiated and neither party has any right to negotiate further on these or any other subjects during the term of this agreement except by mutual consent.

"**Paragraph 2:** This agreement may be amended at any time by mutual consent. However, no amendment to this agreement shall be binding unless executed in writing and ratified by both the Board and the Association."

The Board contends that its inclusion in the 1981-83 contract of the management rights and closure clause justifies its unilateral change in the number of class periods per day and distinguishes this case from *Chee-Craw Teachers Ass'n v. U.S.D. No. 247*, 225 Kan. 561, and *Dodge City*, 6 Kan. App. 2d 810.

School districts in Kansas have only the power and authority that has been delegated to them:

"A 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. A school district has only such power and authority as is granted by the legislature and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication." *Gragg v. U.S.D. No. 287*, 6 Kan. App. 2d 152, Syl. ¶ 3, 627 P.2d 335 (1981).

The inclusion of the management rights clause in the 1981-83 contract cannot enlarge the authority or power granted to the Board by the legislature. The language of the clause expressly recognizes that the Board and superintendent possess "statutory rights and responsibilities," and "statutory power and duty," which shall not be surrendered or limited except as expressly provided otherwise by this agreement or by law. The essential function of this clause is to preserve in the Board the authority which has been granted to it by statute.

The general grant of statutory power to its school board is found in K.S.A. 1982 Supp. 72-8205(*c*), which states:

EXHIBIT C-5

"The board shall have authority to prescribe courses of study for each year of the school program and provide rules and regulations for teaching in the school district and general government thereof, and to approve and adopt suitable textbooks and study material for use therein subject to the plans, methods, rules and regulations formulated and recommended by the state board of education."

The general authority is limited by K.S.A. 72-5413(l), which provides that certain topics shall be mandatorily negotiable. Among these topics is "hours and amounts of work," an item interpreted to include the number of class periods per day. In light of this statutory limitation of the Board's general power, the existence in the 1981-83 contract of the management rights clause does not sufficiently distinguish this case from *Dodge City.*

The Board also contends that there is a contractual distinction in its claim that the closure clause functions as a type of waiver which precludes NEA-Wichita from complaining and/or litigating each time a principal makes a decision impacting upon a "term and condition of professional service." Additionally, the Board contends that the closure clause allows it to act unilaterally on any item not included in the agreement. In certain cases, narrowly drafted closure clauses exercised in good faith have been found to constitute a waiver of a union's right to require an employer to respond to a bargaining demand. See, *e.g., GTE Automatic Electric Incorporated,* 261 N.L.R.B. 1491, 110 L.R.R.M. (BNA) 1193 (1982). By permitting the employer to invoke the closure clause as a shield against the union in the mid-term demand for bargaining about a new subject matter not specifically covered by the terms of the agreement, the court promotes contract stability and fosters industrial peace. However, the Board has not cited to this court cases which support its contention that a closure clause, coupled with a management rights clause, grants the Board a right to unilaterally change conditions of employment not included in the agreement.

A closure clause is nothing but a diluted form of waiver. The general rule is that a waiver of a union's right to bargain must be clear and unmistakable. *N.L.R.B. v. R. L. Sweet Lumber Company,* 515 F.2d 785, 795 (10th Cir. 1975). The trial court found that NEA-Wichita had not waived any of its rights to bargain.

The management rights clause and the closure clause, when viewed separately or read together, fail to justify the Board's unilateral change in the number of class periods per day in

Roosevelt Junior High. The existence in the 1981-83 contract of these two clauses does not provide a sufficient basis for distinguishing the case from *Chee-Craw* and *Dodge City*.

The Board contends that the trial court erred in its reliance upon *Chee-Craw* and *Dodge City*, which established that the number of class periods per day is a mandatorily negotiable topic.

Chee-Craw involved a dispute between a teachers association and U.S.D. No. 247 arising from their professional negotiations. In that case, this court defined the scope of mandatorily negotiable topics, and listed nineteen different topics which it declared to be mandatorily or nonmandatorily negotiable. One of the included topics was:

"12. WORKDAY (length of day, arrival and departure time, number of teaching periods, duty-free lunch period, and no custodial work)—Negotiable." 225 Kan. at 570.

Chee-Craw established that the number of teaching periods per day is mandatorily negotiable under K.S.A. 72-5413(l), since it is included in the statutory term hours and amount of work.

The Court of Appeals in *Dodge City*, 6 Kan. App. 2d 810, Syl., held:

"After a negotiated agreement has been reached between the exclusive representative of professional employees and a board of education pursuant to K.S.A. 72-5413 *et seq.*, then during the time that agreement is in force, the board, acting unilaterally, may not make changes in items which are 'mandatorily negotiable,' but which were not noticed for negotiation by either party and which were neither discussed during negotiations nor included within the resulting agreement."

In *Dodge City*, Justice Miller, sitting with the Court of Appeals, agreed with the trial court's finding and stated:

"[S]ince the number of teaching periods is a mandatorily negotiable item, the Board has no authority to unilaterally change the number of teaching periods without first submitting the proposed change to negotiations pursuant to K.S.A. 72-5423." 6 Kan. App. 2d at 811.

The Professional Negotiations Act, K.S.A. 72-5413 *et seq.*, was adopted in 1970. Among the topics included in the category "[t]erms and conditions of professional service" is "hours and amounts of work . . . regardless of its impact on the employee or on the operation of the educational system." K.S.A. 72-5413(l). The appellate courts of Kansas have held that if a

EXHIBIT C-7

topic is by statute made a part of terms and conditions of professional service, then a topic is by statute made mandatorily negotiable. *Tri-County Educators' Ass'n v. Tri-County Special Ed.*, 225 Kan. 781, 594 P.2d 207 (1979); *NEA-Topeka, Inc. v. U.S.D. No. 501*, 225 Kan. 445, 592 P.2d 93 (1979). The term "hours and amount of work" has been interpreted to include the following:

1. The number of in-service days required in excess of 180. *NEA-Parsons v. U.S.D. No. 503*, 225 Kan. 581, 593 P.2d 414 (1979);

2. One half-day at the end of each grade period for grade card preparation and planning. *NEA-Kansas City v. U.S.D. No. 500*, 227 Kan. 541, 608 P.2d 415 (1980);

3. Seven and one-half hour teacher workday with a 30-minute daily preparation time without assigned duties. *NEA-Kansas City;*

4. The number of required, without pay, after-hours faculty meetings. *NEA-Kansas City;*

5. Workday (length of day, arrival and departure time, number of teaching periods, duty-free lunch period, and no custodial work). *Chee-Craw;* and

6. The number of teaching periods per day. *Dodge City.*

These items were held to be mandatorily negotiable. Conversely, the term "hours and amount of work" has been held not to include class size, which is therefore not a mandatorily negotiable item. *NEA-Topeka, Inc. v. U.S.D. No. 501*, 225 Kan. at 452. Since the number of class periods per day is a mandatorily negotiable topic as *Chee-Craw* and *Dodge City* indicate, the Board may not act unilaterally on that topic, but must enter into professional negotiation with the plaintiff before taking action.

The Board claims that the *Chee-Craw* decision is inapplicable to this fact situation because the teachers in U.S.D. No. 259 performed their activities on the basis of "duties" and not upon the basis of "hours." The Board urges a distinction between "one who performs only duties and one who performs duties only during certain hours." *Chee-Craw* was silent as to what the past practice in the school district had been concerning whether teachers performed their services on the basis of hours or duties. *Chee-Craw* determined the question of negotiability by using a definitional approach that looks beyond the particular phraseol-

gy of a proposal to the topic to which the label has been applied. The Board's contention that the teachers in U.S.D. No. 259 performed their activities on the basis of duties instead of hours fails to demonstrate the inapplicability of the *Chee-Craw* holding to this case.

The Board believes that a school board's statutory duty to negotiate changes arises only when the Board desires to change its established practice in a mandatorily negotiable area. The holding in *Dodge City* precludes the Board from unilaterally making changes in any item which is mandatorily negotiable, without reference to whether or not an "established practice" exists in a mandatorily negotiable area.

The trial court is affirmed.

EXHIBIT C-9

No. 60,273

DORIS MILLER, *Appellant*, v. BOARD OF EDUCATION, UNIFIED SCHOOL DISTRICT NO. 470, COWLEY COUNTY, KANSAS, *Appellee*.

SYLLABUS BY THE COURT

1. STATUTES—*Construction of Two Statutes in Pari Materia.* Two statutes *in pari materia* should be read together and harmonized, if possible, so that they both may have effect.

2. SCHOOLS—*Teachers' Contracts—Nonrenewal—Show Cause Requirements for Nonrenewal.* K.S.A. 72-9004(f) is narrowly construed to mean that, while school districts must evaluate all teachers, they must show cause for nonrenewal only of tenured teachers.

3. SAME—*School District's Power to Contract—Statutory Authority.* A school district has only such power and authority as is granted by the legislature, and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication.

4. SAME—*Teachers' Contracts—Breach of Contract Action for Nonrenewal of Nontenured Teacher—School District Cannot Defeat by Contract Statutory Tenure Requirements.* In a breach of contract case, it is *held*: The trial court did not err in holding the legislature did not intend to authorize school districts to enter into contracts that would have the effect of defeating the two consecutive years of employment necessary for tenure under K.S.A. 72-5445.

Appeal from Cowley District Court; ROBERT L. BISHOP, judge. Opinion filed October 22, 1987. Affirmed.

David M. Schauner and *Sally H. Rogers*, of Topeka, for the appellant.

Donald Hickman, of Hickman & Mills, of Arkansas City, for the appellee.

Before ABBOTT, C.J., DAVIS and SIX, JJ.

ABBOTT, C.J.: Doris Miller, a nontenured teacher, appeals from summary judgment entered in favor of the Board of Education, Unified School District No. 470, (U.S.D. 470) in a breach of contract action for nonrenewal of her teaching contract.

The decision of the trial judge in this case is thorough and well reasoned, and reflects a great deal of thought. Basically, he holds that statutes providing for the termination without reason of a nontenured teacher prevents the enforcement of a negotiated agreement which clearly provides a different scheme.

The question presented on appeal is one of law: Whether a school board may, by a collectively negotiated contract, restrict its right to terminate a nontenured teacher.

EXHIBIT D

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RT L. BISHOP, judge. Opinion filed

of Topeka, for the appellant.

f Arkansas City, for the appellee.

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nured teacher, appeals from of the Board of Education, U.S.D. 470) in a breach of er teaching contract.

is case is thorough and well thought. Basically, he holds ination without reason of a nforcement of a negotiated different scheme.

l is one of law: Whether a negotiated contract, restrict teacher.

Statutory Rights

At the heart of this question is the legislative intent reflected in the applicable statutes. Four acts control the formation, continuation, and termination or nonrenewal of teacher contracts: the Continuing Contract Law, K.S.A. 72-5410 *et seq.*; the Professional Negotiations Act, 72-5413 *et seq.*; the Due Process Procedure and Contract Termination Act, 72-5436 *et seq.*; and the Evaluation of Certificated Personnel Act, 72-9001 *et seq.*

The purpose of the Continuing Contract Law is to eliminate uncertainty and possible controversy regarding the future status of a teacher and a school concerning the teacher's continued employment. *Krahl v. Unified School District*, 212 Kan. 146, Syl. ¶ 2, 509 P.2d 1146 (1973).

The Evaluation of Certificated Personnel Act mandates specific evaluation procedure for all teachers. The legislative intent for the act "is to provide for a systematic method for improvement of school personnel in their jobs and to improve the educational system of this state." K.S.A. 72-9001.

The act, in pertinent part, requires:

"Every board shall adopt a written policy of personnel evaluation procedure in accordance with this act and file the same with the state board. Every policy so adopted shall:

. . . .

"(b) Include evaluation procedures applicable to all employees.

"(c) Provide that all evaluations are to be made in writing . . . .

"(d) (1) *Provide that every employee in the first two consecutive school years of employment shall be evaluated at least one time per semester by not later than the 60th school day of the semester . . .*" K.S.A. 72-9003. (Emphasis added.)

The act also provides:

"(f) The contract of any person subject to evaluation shall not be nonrenewed *on the basis of incompetence* unless an evaluation of such person has been made prior to notice of nonrenewal of the contract and unless the evaluation is in substantial compliance with the board's policy of personnel evaluation procedure as filed with the state board in accordance with the provisions of K.S.A. 72-9003, and the amendments thereof." K.S.A. 72-9004. (Emphasis added.)

Two statutes *in pari materia* should be read together and harmonized, if possible, so that they both may have effect. *City of Overland Park v. Nikias*, 209 Kan. 643, 646, 498 P.2d 56 (1972). Thus, courts read 72-9004(f) narrowly to mean that, while

school districts must evaluate *all* teachers, they must show cause for nonrenewal only of *tenured* teachers. *Burk v. Unified School Dist. No. 329, Wabaunsee Cty.*, 646 F. Supp. 1557, 1563 (D. Kan. 1986). To do otherwise "would totally obliterate the distinctions carefully drawn by the Kansas Legislature in providing for different procedures for renewal of tenured versus nontenured teachers and principals." *Burk*, 646 F. Supp. at 1561.

In *Burk*, the court held that the purpose of the Evaluation of Certificated Personnel Act—to improve school personnel in their jobs—does not extend to nontenured, nonrenewed teachers, because they will not remain in the school district's system. 646 F. Supp. at 1563.

In a case involving a nontenured teacher and a simple decision not to renew, we held that no property right was involved and no hearing was required. *Gragg v. U.S.D. No. 287*, 6 Kan. App. 2d 152, 156, 627 P.2d 335 (1981). Our Supreme Court has held that "[t]enured teachers cannot be dismissed for arbitrary reasons . . . ." *Gillett v. U.S.D. No. 276*, 227 Kan. 71, 77-78, 605 P.2d 105 (1980). Nontenured teachers do not enjoy that protection. "As to a simple decision not to renew a nontenured teacher's contract, made at the end of the school year, the courts have held that no hearing need be provided, neither before the decision not to renew, nor after it." *Crane v. Mitchell County U.S.D. No. 273*, 7 Kan. App. 2d 430, 433-34, 643 P.2d 1125, *reversed on other grounds* 232 Kan. 51, 652 P.2d 205 (1982). See *Arneson v. Board of Education, U.S.D. 236*, 8 Kan. App. 2d 178, 179, 652 P.2d 1157 (1982), *rev. denied* 232 Kan. 875 (1983).

In the present case, plaintiff was a nontenured teacher employed by U.S.D. 470 for only two consecutive years. U.S.D. 470 gave her notice of intent to nonrenew on April 4, 1986, within the notice requirements of K.S.A. 72-5411 and K.S.A. 72-5437. Unless plaintiff's statutory rights were expanded by a valid contract, she has no cause of action.

Contractual Rights

Plaintiff contends that Article XI of the negotiated Master Agreement and, by incorporation, the evaluation procedure for certified personnel provide her with a shield against arbitrary nonrenewal. Defendant responds that if U.S.D. 470 increased the rights of nontenured teachers beyond statutory require-

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ments, it acted *ultra vires*, and the contractual provision is void.

Article XI of the negotiated Master Agreement reads as follows:

"All Faculty members will be evaluated each school year. Teachers in their first and second years of employment in USD 470 will be evaluated twice each year; the first evaluation to be completed by the 60th day of instruction of first semester and the second to be completed by the 60th day of instruction of the second semester. Teachers in subsequent years of employment with the district (third year or more) will be evaluated at least once, not later than February 15th of each year.

"An evaluation shall be based upon *at least* one formal visitation of the teacher's classroom by his or her building principal or designated evaluator. A formal visitation of each year will be with prior notice. The specific day of the formal visitation will be designated and pre-conference shall be held between the evaluator and evaluatee to allow for the discussion of class plans and objectives. At the pre-conference, a Form 1 shall be completed. Subsequent formal or informal visitations may be at the discreation *[sic]* of the evaluator on an announced or unannounced basis. A pre-conference is not required after the first formal visitation.

"A post-visitation conference must be held between the evaluator and evaluatee within three (3) working days after each formal visitation. During a post-visitation and *[sic]* conference, the evaluator will discuss the data collected during the visitation and the evaluatee will be presented with a copy of the observation data sheet, form 2, or Form 4. *Any evaluation area in which the performance of the evaluatee was considered by the evaluator to be unsatisfactory will be noted on a Form 3. Such notice will place the evaluatee on a Plan of Assistance. Any information gathered during informal visitations that has a bearing on an unsatisfactory judgement [sic] must be documented and presented to the evaluatee at the next observation conference or sooner.* The formal evaluation instrument, Form 4, will be completed by the evaluator in time to comply with the deadlines designated in paragraph one. Prior to a conference being held to discuss the results of the formal evaluation, the evaluatee will be given the opportunity for self-evaluation, by judging their own performance on a Form 4. The evaluatee has the right to make written response to any comments made by the evaluator during the conference. Any response must be turned in to the evaluator within two weeks after the conference so that it can be attached to the evaluation. All evaluations will be retained in the Personnel Office for three years."

The plan of assistance program is also set out in detail in the agreement.

Plaintiff had five evaluations during her employment with U.S.D. 470. The evaluation form has four boxes for each evaluation area. The boxes are labeled "Meets or Exceeds Acceptable Standards," "Needs Improvement," "Unsatisfactory," and "Not

Applicable." Plaintiff did not receive an "Unsatisfactory" rating on any evaluation area on any of the evaluation reports. She did receive comments as to how she might improve in certain areas, but certainly nothing that would give any indication that her work was unsatisfactory, or that her job was in jeopardy.

Although the trial judge specifically declined to decide the case on whether an "Unsatisfactory" rating is necessary to trigger the negotiated contract provision in question, we believe we would be justified in affirming the trial court on that basis. In any event, the trial court did not err for the following reasons.

School districts are creations of the state legislature. " 'A school district has only such power and authority as is granted by the legislature and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication.' (Citations omitted.)" *Gragg v. U.S.D. No. 287*, 6 Kan. App. 2d at 155.

A municipal corporation cannot bind itself by any contract beyond the scope of its powers, and anyone contracting with the corporation is deemed to know the corporate limitations in this respect. Thus, any attempt by a board of education to contract for terms violating specific statutory terms would be *ultra vires* and void. *Gragg*, 6 Kan. App. 2d at 155.

Burk v. Unified School Dist. No. 329, Wabaunsee Cty., 646 F. Supp. 1557, was decided prior to the last session of the legislature and, although Burk was an administrator, we believe the reasoning is also applicable to a classroom teacher. In *Burk*, the court reasoned:

"This interpretation, however, would clearly conflict with the Due Process and Administrators' Acts, which by negative implication, provide that nontenured personnel may be dismissed for any reason or no reason at law.

"All statutes *in pari materia (i.e.*, those enacted by the same legislature concerning the same subject matter) must be read and construed together. *City of Overland Park v. Nikias*, 209 Kan. 643, 646, 498 P.2d 56, 59 (1972). Such statutes must be construed in harmony if possible to the end that all may be given full force and effect. *Id.*

"The only way in which the Evaluation Act can be read in harmony with the Due Process and Administrators' Acts is to read K.S.A. 72-9004(f) very narrowly. Construed in this manner, we read subsection (f) as merely requiring that the Board evaluate the employee at some time before nonrenewal and that the Board follow its own procedures. It does not require the Board to renew if the employee possesses certain qualities or nonrenew if the employee lacks certain qualities.

EXHIBIT D-4

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That would clearly contradict the Kansas Legislature's intent in enacting the Due Process and Administrator's Acts.

"Furthermore, although the stated purpose of the Evaluation Act is 'to provide for a systematic method of improvement of school personnel,' K.S.A. 72-9001, there is no requirement that the employee, particularly a nontenured employee about to be nonrenewed, be given an opportunity to improve before notice of nonrenewal may be given. To imply such a requirement would put the Evaluation Act at odds with the fact that only tenured employees are entitled to special protection as provided in the Due Process and Administrators' Acts. The only consistent interpretation of the Evaluation Act is that its purpose is to provide for the improvement of employees who *remain* in the school district's employ." 646 F. Supp. at 1563.

As to a contract right, the *Burk* court said:

"In the case at bar, the school board's evaluation policy and other items relied upon by plaintiff, requiring that the employee be given the opportunity to correct his deficiencies, amount to de facto tenure for teachers and principals employed for less than two years. As we discussed above, this is in direct conflict with the Due Process and Administrators' Acts, which provide nontenured employees no expectation of continued employment.

"A 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.' *Wichita Public Schools Employees Union v. Smith*, 194 Kan. 2, 4, 397 P.2d 357, 359 (1964). A school district or Board of Education has only limited authority to promulgate policies and enter into contracts. Any attempt by a district or board to enter into a contract or formulate a policy that violates state law is ultra vires and void. *Gragg v. U.S.D. No.* 287, 6 Kan. App. 2d 152, 155, 627 P.2d 335, 339 (1981). As the court of appeals stated in *Gragg*:

" 'A school district has only such power and authority as is granted by the legislature and its power to contract, including contracts for employment, is only such as is conferred either expressly or by necessary implication. *Wichita Public Schools Employees Union v. Smith*, 194 Kan. 2, 4, 397 P.2d 357 (1964).

" 'One who makes a contract with a municipal corporation is bound to take notice of limitations on its power to contract and also of the power of the particular officer or agency to make the contract. The municipal corporation cannot in any manner bind itself by any contract which is beyond the scope of its powers, and all persons contracting with the corporation are deemed to know its limitations in this respect. *Weill & Associates v. Urban Renewal Agency*, 206 Kan. 405, Syl. ¶ 8, 479 P.2d 875 (1971).' 6 Kan. App. 2d at 155, 627 P.2d at 338-39.

"Any attempt by the Board to enter into a contract or promulgate an evaluation policy giving an employee rights in conflict with the Due Process and Administrators' Acts would be ultra vires and void. We must therefore hold that plaintiff had no contractual right to continued employment. Consequently, we will grant defendants' motion for directed verdict on plaintiff's claim that he was deprived of a property interest in continued employment as principal of Wabaunsee High School." 646 F. Supp. at 1564-65.

The legislature did not change the statutes, as it could have done if it desired a different result in future similar factual situations, thus adding credence to the *Burk* holding regarding the legislative intent. We thus conclude the legislature did not intend to authorize school districts to enter into contracts that would have the effect of defeating the two consecutive years of employment provision in K.S.A. 72-5445.

Affirmed.

TO: Kenneth King, Chairman
Election Committee
House of Representatives
State House
Topeka, Kansas

FROM: Frank Randel, Secretary
Kansas School Boards Association
Schools for Quality Education

SUBJECT: House Bills # 2025 and # 2056

The leadership of the Kansas School Boards Association, Schools for Quality Education, known as S.Q.E. have directed that it be made known to the House of Representative Election Committee the position of S.Q.E. on the subject of lobbying and lobbyist.

S.Q.E. is a group of small schools in the State of Kansas that can neither individually or collectively hire a staff of full time employees to conduct the business of S.Q.E., however there are times that the interest of these schools, members of S.Q.E., have such common interest that they need to help and support each other. One area of such common concern is the annual multitude of bills in the state legislature that effect schools.

Since this group is basically small schools with small staffs, it has been found that we could keep our group informed on issues of common concerns by having a legislative representative, who would keep the leadership of S.Q.E. informed on vital issues. In this way school administrators and board members could be kept informed.

Kenneth Rogg, a former school administrator, has been and is the legislative representative for S.Q.E. He is not paid a salary or even an honorarium. S.Q.E. has paid his expenses while he has helped S.Q.E. in conducting its business.

Information of concern about S.Q.E.:

Year	No. of Member Schools	Dues Per Year	Audited Expenditures on Legislation	Expenditure Per School
1986-87	88	$150.00	$7,151.45	$81.27
1987-88	95	150.00	8,387.88	88.29
1988-89	96	150.00	?	?

Gentlemen as you can see this is less per school per year than it cost me to appear here today. It is felt that we need some way of keeping

Attachment II

the legislature mindful of the interest of the small school districts in this state.

We would ask that the question of House Bills # 2025 and # 2056 be settled and that Boards of Education be allowed to use their own good judgement in dealing with the legislature and legislators. We ask for the passage of House Bill # 2056.

KANSAS ASSOCIATION OF SCHOOL BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony before the House Elections Committee

by

Bill Curtis, Assistant Executive Director

Kansas Association of School Boards

January 31, 1989

Mr. Chairman and members of the committee, we appreciate the opportunity to testify on HB 2056. Even though our association has no official position on this measure, KASB supports HB 2056. Our support is consistent with a long standing policy advocating local control by boards of education. The members of the boards of education are elected locally and in an excellent position to determine the wishes of their constituents. If board members incorrectly assess those wishes, they suffer the same fate at the ballot box as do any elected officials. We support permitting local boards of education to hire lobbyists, if they so desire.

KASB tries to represent the interests of all of its members. Currently, 301 of the 304 school districts are members. At times that representation is not possible because of the diverse interests of the 304 districts. In those instances where a minority of our members wish to make their views known to the Legislature through a lobbyist, we believe they should have the authority to do so.

Attachment III

As many of you know, Kansas has a large number of small school districts. Generally, the larger the district, the more administrators that are on staff. In a number of the small districts, the superintendent is also a building principal. The point is, small districts do not have the personnel to assign someone to come to Topeka, even for a few days. Also, important legislative issues are rarely resolved in a few days. From a perspective of fairness, the ability to lobby the Legislature should not be a function of size.

Mr. Chairman and members of the committee, we appreciate your attention and listening to our views. We urge your support of HB 2056.

Mr. Chairman, Members of the Committee, my name is Sue Gamble and I am a member of the Shawnee Mission Board of Education. I am speaking in favor of HB 2056 and against HB 2025.

It is necessary and important for school boards to have the ability to directly lobby the legislature in order to present the unique needs of a particular district. Please note that other public and appointed and elected bodies have the authority to hire lobbyists. If districts do not have lobbying authority, it is likely patron pressure groups will be coming in greater numbers to Topeka on such potentially volatile subjects as sex education, Special Education, appropriateness of different types of curricula, what sports programs to provide, etc. This would greatly harm, if not destroy, the concept of local control, not to mention, burdening the legislative body with unnecessary pressures. It is difficult enough to find answers to some of these issues at the local level without trying to do so at the state level.

School boards exist by the action of the legislature. Their major responsibility is to access local needs and spend taxpayer money to meet those needs in an efficient and economical manner. Under present law, school administrators are authorized to lobby the legislature. It seems to us that asking already over-extended administrators to leave their duties to come to Topeka to lobby may be a less than efficient use of school district funds. This requirement also does not take into consideration the complexity of school fi-

Attachment IV

nance or the complexity of the legislative process. In fact, school finance has become so complex that it requires the attention of a specialist able to study the issues in depth. Therefore, the services of a professional lobbyist who is intimately familiar with school finance and is only paid during times the lobbyist services are utilized is a far superior arrangement and also the most economical for taxpayers. This frees administrators to do what they do best--administer school districts.

School board members are eligible to lobby under the present law. We respectfully submit, that as a volunteer school board member with a full constituency to respond to at the local level, it is extremely difficult to find the time needed to undertake effective lobbying efforts. Also, it should be remembered that many members hold full-time jobs in addition to school board responsibilities, making the available time to be effective even more difficult. Finally, please keep in mind that during the time the legislature is in session, most districts are negotiating with local teacher bargaining units, compiling budgets and reviewing curricula. All these things require time--frequently 20 to 30 hours a week.

In closing, it has been stated that the school boards lobbying voice is the Kansas Association of School Boards. The Shawnee Mission District is an active participant in and a strong supporter of KASB. However, there are 304 school districts in this state, KASB can, at best, represent only an average of the needs of these diverse districts. Therefore, it is necessary and proper for individual districts both large and small, urban and rural, to lobby for their unique needs at any given time. The presence of a lobbyist

from various school districts enables the legislators to have a much more comprehensive picture of the total situation in developing their own conclusions and rationale for them before casting their votes. in this case, it serves the interests of both legislators and school boards.

We take very seriously the responsibility placed in our hands to represent our local patrons. Please do not weaken our ability to carry out this responsibility by depriving us of the right to effectively lobby the body that grants us existence. I respectfully submit that the local boards be given the explicit authority to hire or not hire lobbyists as is the case with other constituency groups.

WICHITA
PUBLIC SCHOOLS

Office of the Superintendent

January 31, 1989

Mr. Chairman & Members of the House Elections Committee:

I apologize for not being able to speak to you in person. School business detains me in Wichita. However, I ask that you accept my written testimony as follows and include it as part of the committee's recorded hearings.

I write in opposition to HB 2025, and in support of HB 2056. The employee in our school district, delegated the responsibility for working with the Kansas Legislature, provides a valuable service not only to this school district, but also to members of our legislative delegation who desire information or analysis of how prospective legislation might affect their constituents.

While the Attorney General's interpretation of current statutes allows our full-time employee to include lobbying among her district duties, HB 2025 would prohibit the district from paying her for the performance of these duties. Curiously, this proposal, as drafted, would allow me --a district employee-- to draw salary I might spend lobbying but not permit me to delegate that responsibility or duty to another employee. I would contend that this violates the concept of local control of education.

The other proposal before you, HB 2056, would extend the protections of current law to a broader number of school districts. In a district the size of ours, serving 47,107 students, the employment of an intergovernmental liaison has a negligible per pupil cost. The same is not true for a small district. Failure to pass HB 2056 will effectively prevent all but the largest districts from hiring agents. As Superintendent of the Wichita Public Schools, I have no desire for inequitable benefit.

Lobbyists for public school districts are not like agents for special interest groups. While no legislator represents a district comprised wholly of manufacturers or Realtors or hunters, every single constituent of each legislator is a patron of a public school district. Whether they have children in school or not, your constituents will be affected by laws you pass relating to school districts. I believe it is in the best interests of those taxpayers, for whom we all work, to facilitate communications throughout the legislative process. I believe that privilege should be extended to the constituents of all school districts, regardless of their enrollment. I urge you to report favorably HB 2056.

Respectfully submitted,

Stuart Berger

Stuart Berger
Superintendent of Schools

Attachment V

TESTIMONY

I would like to thank the Election Committee for giving me the opportunity to testify in favor of House Bill 2025. My testimony revolves around four basic premises.

First, school issues, specifically, school finance and the school finance formula, are traditionally some of the more important issues we face as legislators every year. A legislative confrontation, rural vs. urban, large vs. small ensues, and every Representative and Senator tries to represent the people in whose district he comes from.

This is part of the legislataive process, and is part of the democratic way of government. However, this process seems to have become more and more distroted with the advent of lobbyist hired by certain large Unified School Districts. These districts in the past have hired full-time lobbyists which are very effective in solely protecting and presenting to the legislature their special interest, rather than what is best for all the children of Kansas. I believe that Representatives and Senators, who were elected by the people are the individuals who are responsible for writing public policy and not lobbyists.

Second, House Bill 2025 prohibits paid lobbyists, both contractual and the use of Unified School Districts personnel from being paid to lobby. This bill would put all three hundred and five school districts on the same footing regardless of size. As it now stands, more populated or wealthier school districts have been able to afford lobbyists. I believe this to be unfair to small districts and also to districts which cannot afford to hire and pay for lobbyists. Again, we as legislators were elected to make public policy by representing our own individual constituents. When wealthy and large districts hire lobbyists, the scales of fairness tip in

Attachment VI

favor of those districts who can afford the cost. I believe this is unfair to children and the citizens living in the districts who cannot afford to hire and pay for the costs of lobbyists.

Third, in 1981, Attorney General Bob Stephan issued an opinion clearly stating that hiring lobbyists for school districts was illegal. However, certain districts continued this practice and the Attorney General seemed to ignore this until 1988 when 12 class 4 enrollment districts, upon my suggestion, hired a lobbyist and attempted to confront the situation. The Class 4 enrollment category has serious problems and I advised my districts to enter the process by doing what the large districts have been doing i.e., hire a lobbyist. Now, the Attorney General is threatening to file suit against these 12 districts for hiring a lobbyist. My premise is, if it is illegal for the 12 districts to hire a lobbyist, it should have been illegal for all districts for the last seven years.

Why did it take seven years to correct this situation and bring it to the attention of the legislature?

Why was it legal for the large districts to hire lobbyists for all these years and in desperation to compete, other districts attempted to do the same, a law suit is threatened?

House Bill 2025 will correct this situation by putting both large and small districts on the same legislative footing and permitting policy to be debated in the legislative arena without undue influence from any special interest.

Four, this bill is not attempting to threaten other public entities from hiring lobbyists, specifically, county and cities for several reasons. School districts do not have home-rule authority. Cities and counties have home-rule authority, cities and counties can hire lobbyists. School districts

use specific state tax dollars which are intended to give equal education to all children wherever they live in Kansas, however, when individual districts use these state tax dollars to hire lobbyists, they in turn influence policy and obtain more state aid directed only for their individual interests and districts, then the entire system is jeopardized. The entire school aid formula becomes unfair and ultimately recreates an unfair educational system, which gives more money and better education to those districts that have the most effective lobbyists.

Sincerely,

Delbert Gross

Representative

111th District