

Approved May 15, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by SENATOR JOSEPH C. HARDER at
Chairperson

1:30 ~~xxx~~/p.m. on Wednesday, February 27, 1991 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Mr. Ben Barrett, Legislative Research Department
Ms. Avis Swartzman, Revisor of Statutes
Mr. Dale Dennis, Assistant Commissioner of Education
Mrs. Millie Randell, Committee Secretary

Conferees appearing before the committee:

SB 121 - School districts, composition of boards of education

Proponents:

Mr. John Koepke, Executive Director, Kansas Association of School Boards
Mr. Charles L. (Chuck) Stuart, Legislative Liaison, United School Adminis-
trators of Kansas

Opponents:

Dr. Beverly E. Eversmeyer, Director of Guidance, Manhattan High School
Mr. Craig Grant, Director of Political Action, Kansas-National Education
Association
Ms. Beth Jantz, retired educator; member, USD 443 Board of Education, Dodge
City (written testimony only)
Steve and Enid Stover, Manhattan (written testimony only)

SB 122 - School districts, bid requirements, exemptions

Proponents:

Mr. John Koepke, Executive Director, Kansas Association of School Boards
Mr. Charles L. (Chuck) Stuart, Legislative Liaison, United School Adminis-
trators of Kansas

SB 121 - School districts, composition of boards of education.

After calling the meeting to order, Chairman Joseph C. Harder recognized Mr. John Koepke, Executive Director, Kansas Association of School Boards. Mr. Koepke explained that SB 121 had been introduced on behalf of his organization to address a long standing concern. (Attachment 1)

Mr. Koepke noted the long list of Attorney General opinions which points out that no statute or common law doctrine exists which would preclude an employee from serving on the board which employs that person. Mr. Koepke said that currently there are persons which this bill would affect and recalls past instances of noncertificated personnel who have been board members.

In reply to a question, Mr. Koepke, noting that similar concerns have been expressed in other areas when no specific problem has occurred, said he believes in avoiding the perception of conflict which, hopefully, would be addressed through this statute.

Mr. Koepke pointed out that conflict occurs when someone is employed by the board of which they are a member; it would not apply to school board members who live in and serve on the school board of a district which does not employ them. Mr. Koepke also responded that the bill would not affect any advisory board member.

Mr. Chuck Stuart, Legislative Liaison, United School Administrators of Kansas, expressed concern that "public policy should be made by persons

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION,

room 123-S, Statehouse, at 1:30 ~~xxx~~ a.m./p.m. on Wednesday, February 27, 1991

who have no personal gain to make from such policy". (Attachment 2)

Dr. Beverly E. Eversmeyer, Vice President of the USD 383 School Board, Manhattan, described herself as one of the four or five persons who would be affected by passage of SB 121. (Attachment 3) "Safeguards," she said, "are elections and recall." Dr. Eversmeyer explained that twice she has been elected to the school board in Manhattan, and twice she was the top vote getter. Dr. Eversmeyer said it appeared that teacher influence at the policy level is not being readily accepted. Dr. Eversmeyer stated she has support from the incoming superintendent of schools (July 1); the current superintendent, Mr. Jack Hobbs; and the principal of her school, Mr. James Rezac. Dr. Eversmeyer explained that she decided to run for the school board because of citizen misconception of what is going on in the schools.

Responding to a question, Dr. Eversmeyer said that the school board members run at-large in her district, and the disadvantaged population still is not represented on the board.

Also opposing passage of SB 121 was Mr. Craig Grant, Director of Political Action, Kansas-National Education Association, who stated he "believed that this is one of those areas where true local control should prevail". (Attachment 4)

In response to Committee inquiry, the Chair informed members that according to information provided to him by the revisor, there is a statute on the books which prevents a superintendent or principal from serving on the school board which employs them.

Following a call for additional conferees, the Chair announced that the hearing on SB 121 is concluded and the bill will be taken under advisement.

Ms. Beth Jantz, retired educator and member of the USD 443 School Board, Dodge City, submitted written testimony only. (Attachment 5)

Steve and Enid Stover, Manhattan, submitted written testimony only. (Attachment 6)

Attorney General Opinion No. 91-15 (Attachment 7) also was submitted as written testimony.

SB 122 - School districts, bid requirements, exemptions.

The Chair reverted Committee attention to SB 122, relating to bid requirements, and recognized Mr. John Koepke, Executive Director, Kansas Association of School Boards. Mr. Koepke explained that SB 122 was introduced at the request of his organization "in order to correct what they believe was an unintended consequence of the passage of HB 2960 during the 1990 session of the Kansas legislature". (Attachment 8) Mr. Koepke said he does not believe that it was the intent of the legislature to make purchase of services subject to mandatory bidding, and SB 122 is a cleanup bill to clarify this language.

The Legislative Liaison for United School Administrators of Kansas, Mr. Chuck Stuart, testified that "SB 122 will eliminate a major question of the current law" and urged the Committee's favorable consideration on SB 122. (Attachment 9)

Following a call for additional conferees, the Chair announced that the hearing on SB 122 is concluded and the bill will be taken under advisement.

SB 27 - Removal of mandate for providing special education services for gifted children

SB 108 - Removal of mandate providing special education services for the gifted and making services for the gifted ineligible for state aid.

The Chair reverted Committee attention to a substitute motion made by

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MINUTES OF THE SENATE COMMITTEE ON EDUCATION,

room 123-S, Statehouse, at 1:30 ~~xxx~~ p.m. on Wednesday, February 27, 1991

Senator Walker at the meeting on February 25 and asked Senator Walker to restate his motion.

Senator Walker restated that his substitute motion would put a two-year sunset on the gifted program and ask for an interim study on the program. Senator Walker requested that his substitute motion be withdrawn, and Senator Anderson requested that his second be withdrawn.

The Committee reviewed the primary motion which had been made by Senator Allen and seconded by Senator Montgomery on February 25 to recommend SB 27 favorably for passage. The Chairman called for Committee discussion.

Committee expressed concern at the overall growth of the gifted program and felt there was a serious problem that needs to be addressed. One suggestion to address the program was through reduced allocation of funds. Committee discussion included a request for an interim study on the entire area of special education.

When the Chair called for a vote on Senator Allen's motion to recommend SB 27 favorably for passage, the Chair ruled that the motion had failed.

The Chair opened the floor for Committee discussion/action on SB 108, relating to revocation of both the gifted program and funding for the program, which is the Governor's proposal.

Senator Walker moved that the Committee table SB 27 and Senate Bill 108. Senator Anderson seconded the motion.

Senator Montgomery made a substitute motion to report SB 108 adversely. Senator Allen seconded the motion.

Following Committee discussion the Chair ruled that should the substitute motion made by Senator Montgomery pass, a new motion would have to be made regarding SB 27 only.

When the Chair called for the question on Senator Montgomery's substitute motion to report SB 108 adversely, the motion carried.

Senator Walker made a motion to table SB 27.

Senator Montgomery moved that the Committee recommend that the entire area of Special Education, including SB 27 and the gifted program, be recommended for an interim study. Senator Kerr seconded the motion, and the motion carried.

Senator Walker moved that SB 27 be tabled, and Senator Parrish seconded the motion. The Chairman ruled that the motion was out of order.

SB 107 - Educational excellence grant program, cooperative and interlocal cooperation agreements.

The chair directed Committee attention to SB 107, relating to the educational excellence grant program and reminded members of Committee discussion and concern expressed yesterday relating to language in the amendment on page 3 of SB 107 which states that "the state board shall give priority consideration to plans developed and maintained by school districts pursuant to cooperative or interlocal cooperation agreements". He informed members that a new amendment (Attachment 10) had been worked out between the revisor and himself for Committee consideration.

When the Chair asked the Committee's pleasure, Senator Montgomery moved, and Senator Langworthy seconded the motion to adopt the proposed amendment (PAS107j1). The amendment was adopted.

Senator Frahm moved that SB 107, as amended, be recommended favorably for

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room 123-S, Statehouse, at 1:30 ~~xxx~~/p.m. on Wednesday, February 27, 1991

passage. Senator Langworthy seconded the motion, and the motion carried.

Senator Allen moved, and Senator Montgomery seconded the motion to approve minutes of the meeting of February 11. The minutes were approved.

The Chair announced that the Committee will commence discussion on school finance at tomorrow's meeting and possibly act upon bills previously heard.

The Chair adjourned the meeting.

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 123-S DATE: Wednesday, February 27, 1991

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Christine Connolly	1351 Engel Rd. Lawrence, KS.	(Page)
Dena Williams	01913 Beck Manhattan, KS	(Page)
Trudy Fryer	1515 Leavenworth Manhattan, KS	(Page)
Kay Cates	Topeka	KNEA
Jacquie Dakes	Topeka	SQE
Mark Tallman	Topeka	KASB
Mark & Eversmer	328 Fordham Manhattan KS	
Beverly E. Ebersmeyer	328 Fordham Rd Manhattan	
Dupe Roberts	2041 Arthur Drive Manhattan, KS 66502	
Nancy Lindberg	Topeka	Att. Gen. Office
Rick Smith	"	"
Maryna Dander	Moundridge	
Harold Dander	Lawrence	
Mike Harder	"	
Nerise apt	Topeka	- U.S.D # 500
Jennifer Sims	Lawrence	-
Paul Wagner	Topeka	Gov. Legis Affairs
Cheryl Burnett	Topeka	USD 501 #
Craig Grant	Topeka	K-NEA
Dan Hermes	TOPEKA	DAB
Connie Hurdell	Topeka	St. Bd. Fed.
Chuck Stewart	Topeka	U.S.A.
Stacy Stephens	Topeka	USD #229
John Hoyle	Topeka	KASB



Testimony on S.B. 121
before the
Senate Committee on Education

by

John W. Koepke, Executive Director
Kansas Association of School Boards
and
Schools for Quality Education

February 27, 1991

Mr. Chairman and members of the Committee, we appreciate the opportunity to appear before you on behalf of the member boards of education of the Kansas Association of School Boards in support of S.B. 121. Senate Bill 121 was introduced by this Committee at our request to address a concern of long standing of our organization.

As the legislature addresses issues of conflict of interest and ethics this year, we believe it is appropriate for you to end one of the most obvious conflict of interest situations which exists in local government, the service of employees of a school district serving on the board of education which employs them.

As far as we have been able to determine, explicit statutes exist which prohibit employees from serving on the governing body of every governmental entity which employs them, with the exception of local boards of education. We believe it is time to end this inconsistency by enacting S.B. 121. This would also end the confusion which exists due

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to a line of Attorney General's opinions and pronouncements of the Public Disclosure Commission. In our mind, the conflict is clear when an employee sits on the governing body which determines the wages and working conditions of the employee. We are also concerned about the position in which supervisors are placed when they must evaluate a person who is also a member of their governing body.

We would ask that you give favorable consideration to S.B. 121 and thank you for the opportunity to express our views. I would also be happy to attempt to answer any questions.

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SB 121

February 27, 1991

Testimony presented before the Senate Committee on Education
by Charles L. "Chuck" Stuart, Legislative Liaison
United School Administrators of Kansas

Mr. Chairman and members of the committee, I appreciate the opportunity to explain the views of United School Administrators of Kansas in support of SB 121, which makes school district employees ineligible for election to the board of education.

We believe public policy should be made by persons who have no personal gain to make from such policy. Board members serve without pay and must provide information that they have no business conflict of interest. Under certain circumstances board members absent themselves from voting on issues because of possible conflict as it relates to the employment of personnel.

When discussing personnel policy, is there not a conflict of interest if an employee covered by such policy is involved in the final decision making process?

How logical is it to assume that many administrators will recommend, or fellow board members will take action to discipline or dismiss an employee who is a member of the board?

Current laws make it very difficult for a board of education and administration to plan strategy in dealing with employees in the negotiation process if member(s) of the board are also member(s) of the bargaining unit. How logical is it to assume that a board member who is also a member of the bargaining unit will retain in confidence the strategic positions the board had developed in the bargaining process?

Are we to assume board members with such interests will absent themselves from the discussion and decision making process in the same manner as would be required of a member who desired to sell merchandise to the district in quantities which did not require a bid? I doubt if that would be a very logical assumption.

Although there are many teachers, administrators and other school employees who have good ideas about the improvement of the district, we believe those suggestions should be made through other channels of communication. We believe it is not in the best interest of children to have persons making public school policy who are directly responsible to such policy.

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Kansas Senate Education Committee

Testimony Opposing SB 121

February 27, 1991

Dr. Beverly E. Eversmeyer
Director of Guidance, Manhattan High School
Vice President, USD #383 School Board

Thank you for allowing me to speak in opposition to SB 121. I would be affected by this legislation because I am one of the handful of teachers across the state who have been elected to their own school boards.

The major question here is whether or not the public needs to be protected from having employees on their own school boards by preventing them from running or whether the existing safeguards are adequate. Those safeguards are elections and recall.

Voters are capable of choosing candidates who represent their views. When they are aware that a possible conflict of interest exists, voters are able to watch the performance of that elected official for unethical behavior.

When I ran for the board, the local newspaper explored the conflict of interest issue thoroughly. I think it's safe to say that everyone in town knew that I was a teacher. I ran against a male, college professor, incumbent and I won every precinct in town. That was a clear mandate from the people. They knew who I was and what I did, and they still wanted me for the job. The second time that I won, all 3 incumbents ran for re-election plus two challengers. I was the only one of the incumbents re-elected and, once again, I was the top vote getter.

I contend that there are other elected officials who have far more potential conflicts of interest than I. During my four years on the board, our lawyer board member has had to exempt himself from voting far more than I have, and yet if an issue arose which involved my working conditions or my specific salary, I, too, would not participate. Hidden conflicts are even more dangerous. Consider a not uncommon situation where a City Commissioner has many rental properties. That may not be common knowledge, yet Commissioners vote on zoning, apartment inspection, and property tax increases, all of which affect them personally. My potential conflicts are public and above board for all to watch, judge, and evaluate.

There seems to be confusion about how a teacher functions on a School Board. Take negotiations, for example. I no longer belong to KNEA because I believe that to sit on both sides of the table could be considered a conflict of interest. Therefore, I have no input into what is to be negotiated. Teachers do not talk with me about it nor do I talk with them. The teachers' organization

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decides what to negotiate. The process occurs, and when it reaches the board level for a vote it has always been 7-0 in my memory in our district. That means that I would have to have the cooperation of at least 3 other non-teachers on the board in order to swing anything that would favor me. Plus, operating in the goldfish bowl which we do, it would become readily apparent to the public and be front page news if there was the slightest hint that I was trying to further my own special interests! The protection is the public scrutiny to which our work is subjected.

Note the legislature's own situation. As a body, legislators can vote themselves raises in salary, pensions and benefits. Yet all of you are legislators voting to your own advantage. You don't have to convince any non-legislators to vote with you as I would on the School Board. Judgment on your behavior comes at the polls. I presume negative public opinion has caused you to rethink your position on the pension increase. Why does there need to be a stricter standard applied to school employees than to you? Ethical people come from all walks of life, including teachers, and the public spotlight exposes ethical as well as unethical behavior and allows voters to keep the ethical and remove the unethical.

So what advantages do I (and other teachers) offer on the Board? The issues which I have fought for include: child care for teen parents, protection of vocational offerings for non-college bound students, innovative programming to reach at-risk students, computer literacy for all students, lower student-teacher ratios in grades K-3, greater citizen participation in educational decision making, planning time for elementary teachers that is equal to that for secondary teachers, public information both pro and con on issues before the board, elementary counselors, etc. None of these benefit me personally. They come from what I have learned in the past 32 years in education--what works and what doesn't. Lay people on the school board can learn a great deal from me, and I am grateful that my community recognizes that.

I can speak about and for all kinds of kids because I am with them every day. Historically, our board has been dominated by doctors and college professors and/or their wives. They are white, affluent, upper middle class and tend to think that "kids" are like their kids and their friends. Since it is so expensive to run for the Board, representatives for those other populations don't get elected, but I can speak for them, and I do. I may not be one of them, but I come close.

Have I improved my own salary? No. Have I improved my own working conditions? No. Would I step aside if either issue arose? Of course, without question.

Therefore, I urge you to reject this proposal as unnecessary. Teachers have much of value to offer on the Board, and the danger of abuse is remote. Please reject SB 121 and trust the voters to find the best board members, including school employees.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

January 23, 1987

Beverly Eversmeyer
328 Fordham Road
Manhattan, Kansas 66502

Dear Ms. Eversmeyer:

You have asked whether a high school counselor may serve as a member of a board of education of a unified school district. This office has not issued an opinion on this question.

The rule in Kansas is that one person may hold two offices at the same time unless the offices are incompatible. All dual office holding is not prohibited, only the holding of incompatible offices. It should be noted that the prohibition against dual office holding should not be confused with the concept of conflict of interest. The purpose of the conflict of interest law, K.S.A. 75-4301 et seq., applies to require a disclosure of interests which may place pecuniary or business interests in conflict with the public interest and to prohibit an officer or employee from making or participating in contracts with any person or business by which he or she is employed or in which business he or she has a substantial interest.

In Attorney General Opinion No. 75-52 it was the opinion of the previous Attorney General that "the positions of board member and teacher employed by the same district are incompatible." However, we have stated that a school bus driver may hold office as a school board member. In such a case the doctrine of incompatibility of offices is inapplicable and there is no conflict of interest. Attorney General Opinion No. 79-108. Enclosed are copies of these two opinions. In 1985 this office sent a letter stating that the Attorney General would not challenge the authority of a teacher to hold the office of school board member.

Given Attorney General Opinion No. 79-108 and our letter opinion in 1985, it would appear that a high school counselor could serve as a school board member. If you have further

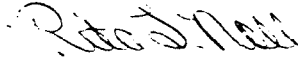
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Beverly Eversmeyer
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questions about this matter, please feel free to contact this office.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN



Rita L. Noll
Assistant Attorney General

RLN:jm

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KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH
TOPEKA, KANSAS 66612
PHONE: (913) 296-4219

August 15, 1990

Opinion No. 90-14

Beverly E. Eversmeyer, Ph.D.
328 Fordham Road
Manhattan, Kansas 66502

Dear Ms. Eversmeyer:

This opinion is in response to your letter of July 13, 1990 in which you request an opinion from the Kansas Public Disclosure Commission.

We understand you are a member of a local school board and also a school counselor at a school under the board's jurisdiction.

You ask whether it is appropriate for you to participate on behalf of the school board on the negotiated package for school employees which would include your own contract.

K.S.A. 75-4304 prohibits a local official from participating in the making of contracts between the public entity and "businesses" or "persons" by which the official is employed or in which the elected official holds a substantial interest. This Commission has consistently held under the local conflicts law that a school board is not a "business" and since the term "person" is undefined, a school board is not a "person" either. Thus, under the local conflicts law, it is permissible for a member of a school board to vote on his or her own contract.

We note that the outcome would be different under the law applicable to state employees, since there "person" is a defined term which includes governmental entities.

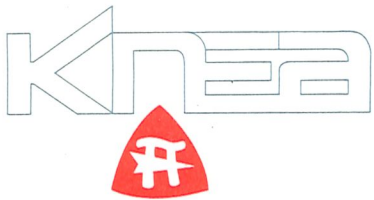
Sincerely,

A handwritten signature in cursive script that reads "Lowell K. Abeldt".
Lowell K. Abeldt, Chairman

By Direction of the Commission

LKA:DDP:dlw

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Craig Grant Testimony Before The
Senate Education Committee
Wednesday, February 27, 1991

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to visit with the committee about SB 121.

Kansas-NEA opposes SB121 which would prohibit employees from serving on a board of education in the district where they are employed. Instead of a state law dealing with this topic, we believe that this is one of those areas where true local control should prevail. The voters of any district will know if a candidate is an employee of the district. If the candidate does not reveal that, certainly the opponent will. Once that fact is known, and the patrons of the community still feel they want to vote for and elect that person who is an employee, then they should have that right.

Just as we believe boards of education should not dictate, through their leave policies, that certain people should not serve as legislators, we also believe that the state should not dictate who can serve as school board members.

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TESTIMONY FOR SB 121 HEARING - February 27, 1991

Proposed SB 121 needs to be given consideration from all possible aspects of the bill. As a Board of Education member of our local school district, its representative on our 16-district Special Education Cooperative and the Cooperative Board's representative on a 9-member Board of Directors of the one and one-half year old Regional Service Center at Sublette, I am regularly associated with Board of Education members who are teachers, both those now teaching and some who have taken time out and intend to return to teaching. In my interaction on these three boards I find, without exception that the teacher representatives are among the most active, enthusiastic, contributing members of these boards. Their preparation and dedication to the students represented by these boards constantly evidence themselves. Of course, they bring to their respective boards knowledge, information and background not provided by other community representatives. To deprive a district of the services of a well qualified teacher member would be a disservice to the community and its children.

I am sure you are already aware of the conflicting opinions of the current state Attorney General and that of his predecessor, in interpreting the current statute relating to membership on boards of education. Therefore, I will not include copies of such material. I do call attention, however, to a recent opinion from the Kansas Public Disclosure Commission which states, "...it is permissible for a teacher member of a school board to vote on his/her own (negotiated) contract." (Copy of letter attached.)

Since conflict of interest is the concern reflected by those who favor this bill -- and if such truly exists -- they should also be concerned about handling other relationships on Boards of Education. Example: The spouse of one of our Board members is a teacher in our district. Or how about the local business person from whom the Board makes purchases? Then there are the bus drivers, secretaries, etc. whose salary and benefit schedules require annual Board approval. Where are we going to draw the line if we begin eliminating groups of people who cannot serve on school boards? Experience of our Board has shown that our teacher members have had no more reason than have several other members to decline to vote on an occasional business item.

I urge you to consider the ramifications of such a bill, should it become a law. It would surely deprive local school districts of competent individuals, people who are taxpayers as surely as is any other member of a community. Other states allow teachers to serve on school boards, obviously recognizing the enormous contributions they can make. At a time in educational history when our educational systems are finally beginning to move toward site based management of individual schools, where teachers have experience with budgets, curriculum and the entire gamut of educational concerns, we are recognizing the contributions they can make. Let's not bar teachers from serving on Boards of Education where their experience and expertise would surely enhance the operation of Boards of Education and the educational programs offered to students.

Thank you for your consideration.

Submitted by: Beth Jantz
2215 Fifth St.
Dodge City, KS 67801
Phone (316) 225-4810

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KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH
TOPEKA, KANSAS 66612
PHONE: (913) 296-4219

August 15, 1990

Opinion No. 90-14

Beverly E. Eversmeyer, Ph.D.
328 Fordham Road
Manhattan, Kansas 66502

Dear Ms. Eversmeyer:

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We understand you are a member of a local school board and also a school counselor at a school under the board's jurisdiction.

You ask whether it is appropriate for you to participate on behalf of the school board on the negotiated package for school employees which would include your own contract.

K.S.A. 75-4304 prohibits a local official from participating in the making of contracts between the public entity and "businesses" or "persons" by which the official is employed or in which the elected official holds a substantial interest. This Commission has consistently held under the local conflicts law that a school board is not a "business" and since the term "person" is undefined, a school board is not a "person" either. Thus, under the local conflicts law, it is permissible for a member of a school board to vote on his or her own contract.

We note that the outcome would be different under the law applicable to state employees, since there "person" is a defined term which includes governmental entities.

Sincerely,

A handwritten signature in cursive script that reads "Lowell K. Abeldt".
Lowell K. Abeldt, Chairman

By Direction of the Commission

LKA:DDP:dlw

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March 3, 1991

Senator Joe Harder
Chairman, Senate Education Committee
State Capitol
Topeka, Kansas 66612

Dear Senator Harder:

Would you consider it a "conflict of interest" if a farmer serves on the Board of Directors of the Farm Bureau? After all, the Farm Bureau is to serve agriculture. And who is more involved with agriculture and who needs the services more than a farmer?

I believe that you would respond that there is no similarity between the Farm Bureau and a board of education. To be sure there are differences in the financing, but there are also some similarities:

The Farm Bureau is to serve the best interests of agriculture in the area it serves.

The school board is to serve the best interests of education in the region it serves.

Is it a conflict of interest for a farmer to serve on the Board of Directors of the Farm Bureau? Of course not. After all, who understands the needs of agriculture better than a farmer?

And who understands the educational situation in a community better than a concerned teacher in the school system? Why should boards of education be deprived of the input of concerned teachers any more than the Farm Bureau should be deprived of the services of informed and concerned farmers? When a superintendent opposes such input, I think the motives of the superintendent become suspect.

I invite you to give serious consideration to these relationships before you make your judgment on Senate Bill 121.

Sincerely,


Steve and Enid Stover

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 28, 1991

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

ATTORNEY GENERAL OPINION NO. 91- 15

The Honorable Don Montgomery
State Senator, Twenty-First District
State Capitol, Room 128-S
Topeka, Kansas 66612

The Honorable Carl D. Holmes
State Representative
One Hundred Twenty-Fifth District
State Capitol, Room 156-E
Topeka, Kansas 66612

Re: Schools--Organization, Powers and Finances of
Boards of Education--School District Officers and
Employees; Board Members to Receive No
Compensation; School Employees as Board Members

Synopsis: As stated in Attorney General Opinion No. 79-108,
no statute or common law doctrine exists which
would preclude an individual employed by a unified
school district as a teacher, substitute teacher,
custodian, school bus driver, counselor, or referee
of an athletic event from serving as a member of
the board of education of the unified school
district which employs the individual. Such
individuals are permitted to vote on their
contracts as a school board does not constitute a
business or person under K.S.A. 1990 Supp. 75-4301a
et seq. K.S.A. 72-8202e prohibits an
individual from receiving compensation for work or
duties performed as a member of the board of
education. The individual, however, may receive
compensation for services performed as an employee
of the unified school district. Cited herein:

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K.S.A. 72-7901; 72-8009; 72-8202e; K.S.A. 1990
Supp. 75-4301a; 75-4303a; 75-4304.

* * *

Dear Senator Montgomery and Representative Holmes:

As state legislators you request our opinion regarding whether certain individuals employed by a unified school district may receive compensation for their services if the individuals also serve as members of the board of education for the unified school district which employs them. The individuals of concern to you are employed as: teacher; substitute teacher; custodian; school bus driver; and referee at an athletic event. You also ask whether a teacher would be required "to abstain from voting on any decisions relating to employment or in any other areas." Because these two requests involve related issues, the requests have been consolidated into this one opinion.

The governing body of a unified school district is a board of education composed of seven members. K.S.A. 72-7901. The members must reside within the unified school district. K.S.A. 72-8009. No statutory prohibition exists which would preclude an employee of a unified school district from serving as a member of the board of education. Therefore, it will be necessary to determine whether the common law doctrine of incompatibility of offices precludes an individual employed by a unified school district from serving as a member of the board of education of the unified school district which employs him.

In applying the doctrine of incompatibility of offices, the courts have traditionally held that this principle does not apply unless the person holds two incompatible public offices.

"The prohibition against one person holding more than one office at the same time has references to offices, as distinguished from positions in the public service that do not rise to the dignity of office. It does not extend to a position which is a mere agency or employment. . . ." (Emphasis added.)
63A Am.Jur.2d Public Officers and Employees § 69 (1984).

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While the Kansas Supreme Court has generally adhered to this rule, in Dyche v. Davis, 92 Kan. 971 (1914), the Court applied the doctrine to a situation where a public officer also held a position of public employment and the compensation for the public office and public employment were both payable from public funds. Id. at 977. As stated in Attorney General Opinion No. 79-108, little question exists but that an elected school board member is a public officer. However, an employee of a unified school district does not exercise some portion of sovereign power. See Sowers v. Wells, 150 Kan. 630, 633 (1934). Thus, the position of employee of a unified school district does not constitute a public office. Pursuant to K.S.A. 72-8202e, a member of a board of education does not receive compensation from the unified school district. Therefore, we are not faced with a situation involving two offices or two salaries payable from public funds. As stated in Attorney General Opinion No. 79-108, the common law doctrine of incompatibility of offices does not preclude an individual employed by a unified school district from serving as a member of the board of education of the unified school district which employs the individual, regardless of whether the individual is employed as a teacher, substitute teacher, custodian, school bus driver, or referee.

A conflict of interest can exist when only one office or position is involved, the conflict being between that office or position and a nongovernmental interest. 63A Am.Jur.2d supra § 79. A conflict of interest of a local governmental employee or local governmental officer is subject to K.S.A. 1990 Supp. 75-4301a et seq. K.S.A. 1990 Supp. 75-4304 states in part:

"(a) No local governmental officer or employee shall, in the capacity of such an officer or employee, make or participate in the making of a contract with any person or business by which the officer or employee is employed or in whose business the officer or employee has a substantial interest.

"(b) No person or business shall enter into any contract where any local governmental officer or employee, acting in that capacity, is a signatory to or a participant in the making of the contract and is employed by or has a substantial

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interest in the person or business."
(Emphasis added.)

Pursuant to K.S.A. 1990 Supp. 75-4303a, the Kansas public disclosure commission has issued Kansas Public Disclosure Commission Opinion No. 90-14. In that opinion, the commission states "that a school board is not a 'business' and since the term 'person' is undefined, a school board is not a 'person' either. Thus, under the local conflicts law, it is permissible for a member of a school board to vote on his or her own contract." The opinion continues to apply the analysis enunciated in Governmental Ethics Commission Opinion No. 79-12. Because "[t]he [] commission shall render advisory opinions on the interpretation and application of K.S.A. 75-4301a, 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306 . . . [and] any person who requests and receives an advisory opinion and who acts in accordance with its provisions shall be presumed to have complied with the provisions of the general conflict of interests law," we must defer to the commission regarding individuals employed as a school bus driver (Governmental Ethics Commission Opinion No. 79-12) and school counselor (Kansas Public Disclosure Commission Opinion No. 90-14). As the controlling factor precluding application of K.S.A. 1990 Supp. 75-4301a et seq. to the activities of such individuals is that a board of education does not constitute a business or person under K.S.A. 1990 Supp. 75-4301a et seq., the same controlling factor would arise in situations involving individuals employed as teachers, substitute teachers, custodians and referees. Therefore, as is the situation regarding school bus drivers and school counselors, those individuals employed as teachers, substitute teachers, custodians and referees, and serving as a member of the board of education, are not precluded from voting on their own contracts.

The interpretation of a statute is a question of law. State ex rel Stephan v. Kansas Racing Commission, 246 Kan. 708, 719 (1990). The function of the court is to interpret the statute, giving it the effect intended by the legislature. Id. In determining legislative intent, we may look at the purpose to be accomplished, the necessity and effect of the statute, and the effect the statute may have under the various constructions suggested. Id. A statute should not be given a construction that leads to uncertainty, injustice, or confusion if possible to construe it otherwise. Id.

With these rules of statutory construction in mind, it must be determined whether K.S.A. 72-8202e prohibits an individual who

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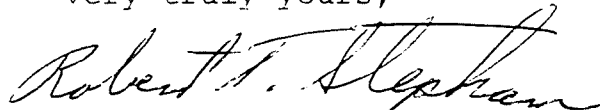
is employed by a unified school district from receiving compensation for services performed as an employee because the individual also serves as a member of the board of education. K.S.A. 72-8202e states:

"[T]he board of education of any school district may appoint other officers and employees to serve at the pleasure of the board. Such officers and employees shall receive compensation fixed by the board. No member of a board of education shall receive compensation from the school district for any work or duties performed by him." (Emphasis added.)

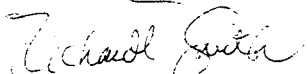
K.S.A. 72-8202e does not preclude an individual employed by a unified school district from receiving compensation for services performed as an employee. Rather, the statute prohibits an individual from receiving compensation for any work or duties performed as a member of the board of education. Any other interpretation of the statute would result in a conflict between the last two sentences of the statute, resulting in a violation of the rules of statutory construction.

In review, no statute or common law doctrine exists which would preclude an individual employed by a unified school district as a teacher, substitute teacher, custodian, school bus driver, counselor, or referee of an athletic event from serving as a member of the board of education of the unified school district which employs the individual. Such individuals are permitted to vote on their contracts as a school board does not constitute a business or person under K.S.A. 1990 Supp. 75-4301a et seq. K.S.A. 72-8202e prohibits an individual from receiving compensation for work or duties performed as a member of the board of education. The individual, however, may receive compensation for services performed as an employee of the unified school district.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



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

Testimony on S.B. 122
before the
Senate Committee on Education

by

John W. Koepke, Executive Director
Kansas Association of School Boards
and
Schools for Quality Education

February 27, 1991

Mr. Chairman and members of the Committee, we appreciate the opportunity to appear before you on behalf of the member boards of education of the Kansas Association of School Boards in support of S.B. 122. Senate Bill 122 was introduced by the Committee at our request in order to correct what we believe was an unintended consequence of the passage of H.B. 2960 during the 1990 session of the Kansas legislature.

A literal reading of the statutes following passage of the bill last year which provided exceptions to the school district bid law in cases of natural disaster would seem to make purchase of services subject to mandatory bidding. We do not believe that it was the intent of the legislature to require school boards to bid such services and architects and attorneys fees. Senate Bill 122 would clarify this circumstance.

We would like to thank the Committee for this opportunity to appear and ask for your favorable consideration of S.B. 122. I would be happy to attempt to answer any questions.

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SB 122

February 27, 1991

Testimony presented before the Senate Committee on Education
by Charles L. "Chuck" Stuart, Legislative Liaison
United School Administrators

Mr. Chairman and members of the committee, thank you for the opportunity to speak in favor of SB 122 which specifically adds services to the list of exemptions to the bid law. Although this is only a one word addition to current law, including "services" in the list of exemptions will provide a major clarification of this statute.

Many administrators and boards of education have struggled with provisions of the current statute on bidding. The current statute says that no bid of more than \$10,000 shall be awarded for certain purchases and construction projects except by sealed bids awarded to the lowest responsible bidder.

SB 122 will eliminate a major question of the current law. It will also eliminate uneasiness felt by many administrators and board members as they deal with contracts for architects or a variety of service contracts on computers, heating systems, etc., needed by larger districts.

United School Administrators urges your favorable action on this bill.

sb122.bsm

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Proposed Amendment to Senate Bill No. 107

On page 3, in line 10, after "plan", by inserting "in order to effect cost savings and efficiency in achieving the purpose of the plan"; in line 28, after "plan", by inserting "in order to effect cost savings and efficiency in achieving the purposes of the plan"; by striking all of lines 29 through 36

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