

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Ralph Tanner at 9:00 a.m. on February 22, 1999 in Room 313-S of the Capitol.

All members were present except:

Committee staff present:

Ben Barrett, Legislative Research Department
 Carolyn Rampey, Legislative Research Department
 Avis Swartzman, Revisor of Statutes
 Connie Burns, Committee Secretary

Conferees appearing before the committee:

Joyce Allegrucci, Commissioner of Children & Family Services
 Mark Tallman, KASB
 Denise Maus, Kansas Dental Hygienists Association
 Kevin Robertson, Executive Director, Kansas Dental Association
 Ted White, Associate Dean Johnson County Community College
 Representative Melany Barnes
 Representative Doug Johnston
 Representative Kenny Wilk
 Dale Bohannon, Director Building and Grounds Lansing School District
 Representative Candy Ruff
 Lenny Ewell, Director of Administration Kansas Correctional Industries
 Representative Bill McCreary
 Vic Braden, United School Administrators
 Craig Grant, KNEA

Others attending: See attached list

Hearings on **HB 2236 - Transfer of school records of pupils in the custody of the Secretary of Social and Rehabilitation Services** were opened.

Joyce Allegrucci, SRS, appeared before the committee as a proponent of the bill. She stated that historically problems have been encountered with school records when children come into the custody of the Secretary and are placed in foster care. SRS is responsible for notifying both the school the child is leaving and the one the child is entering. Historically there have been problems in getting school records transferred to the new school, resulting in delays in education services to the pupil. (Attachment 1)

Mark Tallman, KASB, appeared before the committee as a proponent of the bill. KASB believes this change is in the right direction but it needs to cover all transferring students, not just the students in custody of SRS. KASB would support an amendment to assist in the process. (Attachment 2)

Sherry Diel, provided written testimony in support of the bill. (Attachment 3)

Hearings on **HB 2236** were closed.

Hearings on **HB 2444 - Funding of dental hygienists education programs and HB 2479 - Dental hygienists student loan act** were opened.

Denise Maus, appeared before the committee as a proponent of the bill. She stated that if a suggested funding mechanism of "85/15" were implemented, the dental hygiene schools could cover their losses, as the programs are very expensive to maintain as well as to expand. Increasing the number of dental hygienists being trained in existing schools is the initial step and quickest way to educate more dental hygienists in Kansas. (Attachment 4 and 5)

Kevin Robertson, Kansas Dental Association, appeared before the committee as a proponent of the bill. He stated the **HB 2444** would fund all dental hygiene programs in Kansas using the same 85 - 15 funding formula used by area technical schools/colleges, and reported that during the 1998 Legislative session, funding was the major roadblock in both expanding and/or establishing dental hygiene training programs. **HB 2479** would establish a loan repayment program for graduating dental hygienists who choose to practice dental hygiene in a "service commitment area," and recommended that Wyandotte County should be considered a "service commitment area." (Attachment 6)

Ted White, Johnson County Community College, appeared before the committee as a proponent of the bill. He stated that **HB 2444** requests that funding for dental hygiene programs in Kansas be changed to a formula similar to

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MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 313-S Statehouse, at 9:00 a.m. on February 22, 1999.

that currently used to fund programs in Kansas area technical schools and colleges. He also stated that **HB 2479** tuition reimbursement program is based on the same principle as the Kansas Medical Student Loan Program, that monetary incentives will induce graduates to practice in undeserved areas. (Attachment 7 and 8)

Hearings on **HB 2444** and **HB 2479** were closed.

HB 2236 - Transfer of school records of pupils in the custody of the Secretary of Social and Rehabilitation Services

Representative Flaharty made a motion to remove subsection (b) after the first sentence and amend section (c) upon request and expanding to include the general public and would not relieve the family of financial responsibility. Representative Peterson seconded the motion. The motion carried.

Representative Crow made a motion to amend section (c). Representative Lightner seconded the motion. The motion carried.

Representative Crow made a motion to report HB 2236 favorably for passage, as amended. Representative Helgeson seconded the motion. The motion carried.

The meeting was recessed at 11:00 a.m. to be continued at noon in room 514-S.

The meeting was called to order by Chairman Tanner at 12:05 p.m. in room 514-S.

Hearings on **HB 2327- Use of prison or jail inmates at schools, prohibited** were opened.

Representative Melany Barnes appeared as a sponsor of the bill. She observed the development of conflicts and relationships that would be inappropriate in the school setting and believes schools should be a place of safety, second only to the home. (Attachment 9)

Representative Doug Johnston appeared before the committee as a sponsor of the bill. He stated the bill prohibits the use of prison labor on school property during hours when students are present. His goal is to prevent inappropriate interaction between public school students and individuals in the custody of the Department of Corrections or sheriff. (Attachment 10)

Representative Kenny Wilk appeared before the committee as a opponent of the bill. He stated that speaking for a community that many call the "prison capital of the country," assured the committee that we do not need this bill. (Attachment 11)

Representative Candy Ruff appeared before the committee as a opponent of the bill. She stated to have trust in the system that is in place. The Lansing School District has depended on inmates from the Lansing Correctional Facility to perform a myriad of tasks. (Attachment 12)

Dale Bohannon, Director Building and Grounds Lansing School district, appeared before the committee as a opponent of the bill. He provided the committee with the rules and guidelines for Lansing Correction Facility Inmates working at Lansing Unified School District. (Attachment 13)

Lenny Ewell, Director of Administration Kansas Correctional Industries, representing Secretary Chuck Simmons before the committee as an opponent of the bill. He stated the inmates who have been convicted of a sex offense or an offense committed against a child are not, by departmental policy, assigned to work details in or around schools. (Attachment 14)

Hearings on **HB 2327** were closed.

Hearings on **HB 2447 - Boards of education, membership by professional or administrative employees prohibited** were opened.

Mark Tallman, KASB, appeared before the committee as a proponent of the bill. He stated KASB supports legislation that would prohibit school district employees from serving on the board of the district in which they are employed. He also stated would support amending the bill to prohibit all employee from serving on boards which employ them, not just professional or administrative employees. (Attachment 15)

Vic Braden, United School Administrators of Kansas, appeared before the committee as a proponent of the bill. He stated that when a teacher or administrator serves as a member of the board of education where they are employed, a conflict of interest occurs. (Attachment 16)

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MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 313-S Statehouse, at 9:00 a.m. on February 22, 1999.

Craig Grant, KNEA, appeared before the committee as an opponent on the bill. He stated that the issue of whether or not to allow an employee to serve on a board should be left to the voters and if there is a problem, the voters in the district will deal with it at the ballot box. (Attachment 17)

Representative Bill McCreary appeared before the committee as a sponsor of the bill. He stated that he felt there is a conflict of interest especially in his district and agreed with KASB to expand to all employees.

Hearings on **HB 2447** were closed.

Representative Ballou made a motion to table **HB 2196** until February 23, 1999. Representative O'Connor seconded the motion. The motion carried.

Representative Faber made a motion to report **HCR 5010** favorably for passage and be placed on the consent calendar. Representative Horst seconded the motion. The motion carried.

Representative Benlon made a motion to amend page 12 section (b)(1) line 27 and change school employee to self. Representative Phelps seconded the motion. The motion carried.

Representative Horst made a motion to strike the language in Representative Benlon's motion and return to the original language in the statute. Representative Hermes seconded the motion. The motion was not concluded.

The meeting was adjourned at 1:20.

The next meeting is scheduled for February 23, 1999.

**Kansas Department of Social and Rehabilitation Service
Rochelle Chronister, Secretary**

**House Education
HB 2236**

February 22, 1999

Mr. Chair and members of the committee. I am Joyce Allegrucci, Commissioner of Children and Family Services. I thank you for the opportunity to appear before you today on behalf of Secretary Chronister and in support of House Bill 2236.

This legislation recognizes the difficulties sometime encountered when children come into the custody of the Secretary and are placed in foster care. SRS is responsible for notifying both the school the child is leaving and the one the child is entering of pending moves; however for these children moves are often unexpected and occur without an opportunity to do prior planning.

Historically problems have been encountered in getting school records transferred to the new school resulting in delays in educational services to the pupil. This legislation recognizes the difficulties sometime encountered when moves are abrupt and provides for the immediate transfer of records directly to the receiving school for children in the custody of the Secretary of SRS, regardless of usual school policy.

This legislation will have a positive impact for some of the states most vulnerable children. I urge your favorable consideration.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
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TO: House Education Committee
FROM: Mark Tallman, Assistant Executive Director for Advocacy
DATE: February 22, 1999

RE: Testimony on H.B. 2236

Mr. Chairman, Members of the Committee:

KASB appreciates the opportunity to appear before you today. H.B. 2236 would require school districts to immediately forward the records of a student in the custody of SRS when the student transfers to a new district and the agency makes such a request.

We believe this is a step in the right direction, but the change proposed in this bill should not be limited to students in the custody of SRS. After much consideration, KASB believes the time has come to require the immediate transfer of records for all transferring students. Changes made in the early 1990's have made it very clear that if a child is living in a school district, that district must educate the child. Withholding a student's records because that student has failed to return property to another district simply makes it more difficult for the new district to do its job and has little, if any, disciplinary effect on the student.

KASB has supported efforts to improve the flow of records and information between agencies and school districts. Amending this bill to include all students and passing the bill would assist in that process.

Thank you for your consideration.



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James Germer, Executive Director

Sherry Diel, Deputy Director

Tim Voth, Attorney

Kari Ramos, Advocate

Scott Letts, Deputy Director

Lori A. Davis, Attorney

Michelle Rola', CFO

Michelle Heydon, Advocate

Memo To: Chairman Tanner and Members of the House Education Committee

From: Sherry C. Diel, Deputy Director

RE: HB-2236--Act Concerning Transfer of School Records

Date: February 22, 1999

What is Kansas Advocacy and Protective Services, Inc.?

Kansas Advocacy and Protective Services, Inc. ("KAPS") is a federally funded non-profit corporation. Our agency serves as the designated Protection and Agency for persons with disabilities in the state of Kansas. Each state and territory in the United States has a similar type of organization. Our role is to advocate for legal rights and services for persons with disabilities. Pursuant to federal law, KAPS has authority to pursue resolution of disputes through use of legal, administrative and other appropriate remedies. Because our funding is limited, KAPS utilizes priorities, developed as a result of public input, to advocate for systemic changes in the public and private sector to benefit Kansans with disabilities.

KAPS Supports the Amendments Proposed by HB-2236.

KAPS supports the amendments proposed by HB-2236 We believe the disruption that children in foster care endure is substantial enough without the inherent delay in their education which occurs when their school records are not promptly transferred to their new school for whatever reason. For children with special education needs, the delay oftentimes has a detrimental long-term impact.

Too often the new school must start from "square one" when a foster child with special education needs enters their school district. The transferee school has no information concerning the special education services and related services the child needs to benefit from their special education. Consequently, the transferee school must conduct a comprehensive evaluation to determine those needs--a process that is extremely time consuming and expensive for the transferee school. Had the school records been transferred promptly, the transferee school would know exactly what services were specified on the child's prior Individualized Education Plan ("IEP"), and services could begin immediately.

Any delay in meeting the special education needs of a child is too long. KAPS respectfully requests the Committee recommend HB-2236 favorably for passage. Should you have any questions or concerns, please do not hesitate to reach me at (785) 273-9661.

February 22, 1999

Testimony presented to the House Education Committee regarding HB 2444 by Denise A. Maus.

Good morning. Chairman Tanner and committee members, I thank you for the opportunity to appear before you today in support of HB 2444. My name is Denise Maus, RDH, BS, and I am the Legislative Chair for the Kansas Dental Hygienists' Association. Currently, Kansas has three dental hygiene schools. Johnson County Community College and Colby Community College who both fall under the Board of Education and Wichita State University which falls under the Board of Regents. JCCC can only accept 26 students per year while WSU can only accept 30 new students each year. The reason that these enrollments are restricted is that the clinical facilities can only accommodate this number of students. Colby is a new program, which had three students last year with eight more starting this year. CCC plans to admit 12 in the fall of 1999 and to admit 18 every fall thereafter. These schools have no incentive to expand their facilities, as they are already huge money losers. Currently, the dental hygiene programs have revenues of \$100 per credit hour, per student while the costs exceed \$300 per credit hour, per student. The hygiene schools lose \$200 per credit hour, per student and have no incentive to expand their programs and lose more money. This proposal would allow dental hygiene programs to be funded the same way the technical colleges are, through the "85/15" program. The student tuition would cover 15% of the program's expenses while the state aid would cover the remaining 85% of the expenses. The figures suggest that if the "85/15" funding mechanism was implemented, the dental hygiene schools could cover their losses.

During the 1998 Legislative Session, the issue of the shortage and maldistribution of dental hygienists in rural areas was discussed and acted upon by the Legislature. One of the top priorities of the legislators was to address the issue of educating more dental hygienists. Through legislation, the Dental Hygiene Training Committee (DHTC) was formed to study ways that would increase the number of practicing dental hygienists in Kansas. This committee consisted of representatives from the State Board of Regents, the Department of Education, and the Kansas Dental Board. This bill addresses the first of the DHTC's eight recommendations.

Like most other health care education programs, dental hygiene programs are very expensive to maintain as well as expand. Without additional funding, it would be very difficult for the existing dental hygiene programs to expand their capacity. Increasing the number of dental hygienists being trained in existing schools is the initial step and quickest way to educate more dental hygienists in Kansas.

Your support of this bill is important. It would result in the increase in numbers of dental hygienists being trained in Kansas, thus increasing access to quality preventive dental hygiene care throughout the state. Thank you for your time regarding this issue and for allowing me to come before you today.

Monday, February 22, 1999

Testimony presented to the House Education Committee regarding HB 2479 by Denise A. Maus, KDHA Legislative Chair

Good morning. My name is Denise Maus, RDH, BS and I am here on behalf of the Kansas Dental Hygienists' Association to state our support of House Bill 2479. The passage of this bill would encourage new graduates of Kansas dental hygiene programs to practice in areas that are currently underserved through the establishment of a dental hygienist student loan act.

The problems with location of professionals in dental hygiene and dentistry are no different than any other medical field when you look at underserved areas throughout the state of Kansas. It is difficult to get healthcare workers to practice or live in rural Kansas. This bill is based on the same principle as the Kansas Medical Student Loan Act. What it would do is to create an incentive for dental hygiene graduates to practice in a service commitment area of their choice. The student will receive a loan, covering only tuition, before each semester, which will not have to be repaid if the student receives a license and then goes to serve in the service commitment area. Should the student fail to receive a license or actually practice in the service commitment area, they will be required to repay the loan at an annual interest rate of 15%. Hopefully, this would lead to the continued practice in the commitment area after the dental hygienist has met her/his obligations to the loan. The passage of this bill would be a positive step towards creating greater access to preventive dental hygiene healthcare services in underserved communities and areas across Kansas.

I thank you for your time and for allowing me to come before your committee today. I will be happy to stand for any questions the committee may have.



KANSAS DENTAL ASSOCIATION

February 22, 1999

To: House Committee on Education

From: Kevin J. Robertson, CAE
Executive Director

RE: **HB 2444, funding of dental hygiene programs**
HB 2479, dental hygienist student loan act

Chairman Tanner and members of the Committee, I am Kevin Robertson Executive Director of the Kansas Dental Association, which consists of approximately 1,000 members, or 80% of Kansas' practicing dentists.

I am here today to testify in **support of HB 2444 and HB 2479**

I am sure all of you either remember or have heard about the dental bill that was passed during the 1998 Legislative Session. Above all, the 1998 bill was a result of concern by dentists regarding the number and availability of dental hygienists licensed in Kansas to assist dentists provide care to Kansans. Among other things, the 1998 dental bill called for the Kansas Dental Board, Board of Regents and the Board of Education to get together and report to the 1999 Legislature on plans to increase the number of persons in this state being trained as dental hygienists. That group, the Dental Hygienist Training Committee, presented a report outlining its eight recommendations to the House Committee on Health and Human Services earlier this month. HB 2444 and HB 2479 are two of those recommendations.

Specifically, HB 2444 would fund all dental hygiene programs in Kansas using the same 85-15 funding formula used by area technical schools/colleges. During the Dental Hygienist Training Committee meetings, it was reported that funding was the major roadblock in both expanding and/or establishing dental hygiene training programs. Teacher ratio requirements for accreditation, clinic specifications and, in Colby CC's case, long-distance telephone costs all combine to make dental hygiene programs one of the costliest programs for a school to operate and maintain.

HB 2479 would establish a loan repayment program for graduating dental hygienists who choose to practice dental hygiene in a "service commitment area" (any county other than Douglas, Johnson, Sedgwick, Shawnee, or Wyandotte). Though this bill is broader than the Dental Hygienist Training Committee's simple charge of "determining how to train more dental hygienists" in Kansas, the Committee believed that the broader question of how to lure dental hygienists to rural areas was worthy of consideration. Let me suggest that Wyandotte County should be considered a "service commitment area." Current data from the Kansas Dental Board indicates that there are 63 dentists practicing in Wyandotte County while only 28 dental hygienists practice there.

The Kansas Dental Association believes overall there is a shortage of dental hygienists in Kansas, however, we also agree that the problem is compounded in some areas by a maldistribution of dental hygienists in rural areas. The KDA is hopeful that the establishment of a dental hygiene program at Colby Community College this past year will result in more dental

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hygienists practicing west of Highway 81. We believe that the loan repayment incentive contained in HB 2479 will help to entice dental hygienists into rural areas.

Also, Section 5(d) on page 3 discusses the dental hygienists ability to satisfy the loan repayment provisions of the bill by performing at least 100 hours of service at a facility serving the medically indigent. The dental practice act defines indigent health clinics and "dentally indigent" persons under 65-1466(a) and (b), therefore, I would ask the Committee to consider using that language in section 5(d) in place of the "medically indigent" language contained in the bill.

Let me conclude by urging the Committee to recommend favorably both HB 2444 and HB 2479 with the amendments I have suggested. Let me note that I have seen the balloon amendments offered by the Kansas Dental Hygienists' Association and we support those as well. Thank you for the opportunity to appear before you today, if you have any questions I will be happy to answer them at this time.

Chairman Tanner and members of the House Education Committee, thank you for this opportunity to testify in support of House Bill No. 2444. I am Ted White, Associate Dean of Instruction and Director of the Area Vocational School at Johnson County Community College (JCCC). I was also the co-chairperson, with Margaret LoGiudice of JCCC, of the Dental Hygiene Training Committee (DHTC), a group of dentists and dental hygienists that met throughout the Fall of 1998 and came to unanimous agreement on a series of recommendations related to dental hygiene training for the State of Kansas. HB 2444 represents the implementation of one of those recommendations.

As you know, HB 2444 requests that funding for dental hygiene programs in Kansas be changed to a formula similar to that currently used to fund programs in Kansas area technical schools and colleges. The reason for this change is to take away the strong disincentive that currently exists for the expansion of existing programs or for the establishment of new programs. Let me explain using the dental hygiene program at JCCC as an example. It is currently one of three such programs in the state.

Each year at JCCC, we total the costs for supplies, new equipment, and personnel associated with the program and divide the total cost by the number of credit hours generated in courses with the DHYG (dental hygiene) course designation. We found that for the 1997-98 school year, it cost JCCC \$305 per credit hour to offer the dental hygiene program. This figure is in keeping with estimates from the DH program at Wichita State University and from national average figures. The third program in the state, at Colby Community College, is currently more expensive due to start up costs and reduced numbers of students in the first year of the program. However, we believe the cost estimate will be accurate when the number of admissions is increased to 12 each year.

At JCCC we charge \$46 tuition per credit hour. From the state, the college receives \$64 per credit hour reimbursement. Thus, the total reimbursement is \$110 per credit hour. As you can see, each credit hour offered in the dental hygiene program costs JCCC \$195. At Colby Community College, the situation is even worse.

Both JCCC and CCC have committed to a dental hygiene program to meet the needs of the state. Likewise, the Board of Regents maintains the program at Wichita State. However, the incentive to expand one of these programs or for any other state institution to establish a new program has declined in inverse proportion to the increase in program costs. In other words, there is a strong disincentive for current programs to expand or for new programs to be established.

The solution offered by the committee is to fund dental hygiene programs by the same formula as programs offered at area technical schools and colleges in Kansas. The formula is popularly known as the '85/15 formula' and it allows the state to cover 85 percent of the cost of the program, with the student paying the other 15 percent of the cost through tuition. Based on the current JCCC tuition, a student would pay approximately the same tuition under an 85/15 plan as he or she currently pays.

We estimate that the additional cost to the state per year to graduate 68 dental hygienists would be approximately \$500,000.

In addition to providing the figures you see here, I would also like to call your attention to a needed technical change on Page 1, in lines 16-19. Under the definition of "operating budget", it should be noted that the State Board of Education does not approve the adopted operating budgets for community colleges.

Theodore H White

Theodore H. White, Ph.D.

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Chairman Tanner and members of the House Education Committee, thank you for this opportunity to testify in support of the idea behind House Bill No. 2479. I am Ted White, Associate Dean of Instruction and Director of the Area Vocational School at Johnson County Community College (JCCC). I was also co-chairperson, with Margaret LoGiudice of JCCC, of the Dental Hygiene Training Committee (DHTC), a group of dentists and dental hygienists that met throughout the Fall of 1998 and came to unanimous agreement on a series of recommendations related to dental hygiene training for the State of Kansas. Based upon the recommendations of the committee in its report, we support the idea of providing an incentive to dental hygiene program graduates to practice in underserved areas of Kansas.

In our report to the House Health and Human Services Committee, the committee made clear that rural areas of Kansas are less well-served in the realm of dental care than are urban areas. This maldistribution of dental care practitioners is worst in the Southwest Region of the state, followed closely by the Southeast and the Northwest. To encourage new graduates to practice in underserved areas, the committee recommended the establishment of a tuition reimbursement program. It was to be based on the same *principle* as the Kansas Medical Student Loan Program, that monetary incentives will induce graduates to practice in underserved areas.

The committee specifically recommended a tuition reimbursement program over a loan forgiveness program for two reasons. First, we did not want to exclude anyone who might serve in underserved areas, including those who chose not to take out loans. Second, we thought it would be much easier for the state to pay out to individuals who meet the requirements for reimbursements than for the state to chase down and require reimbursement to the state by anyone who might enroll in the program and not complete the requirements. One way makes the individual responsible for documenting his or her time; the other requires the state to document the time and keep track of the individual.

Under the committee's reimbursement program, graduates would be reimbursed the cost of their tuition (estimated in the community colleges at \$3,000 to 3,500), course fees and supplies (typically about \$2,000), books (\$1,500 average) and board examination fees (\$635 in 1998; to be funded one time, only). Thus, we believe the average reimbursement for a May 1999 community college program graduate in 2001 would be no more than \$8,000. This reimbursement would be offered in exchange for the completion of two-years of continuous full-time (32 hours or more) service in an identified dentally underserved area of Kansas.

A full-time dental hygienist can see up to 8 patients per day. A fair estimate of 4.5 days per week of seeing patients equals 36 patients per week. Assuming 46 work weeks per year, these new graduates could see as many as 3,300 patients in currently dentally underserved areas during their two years of service. The state subsidy for this program would be less than \$2.50 per patient seen.

If such a tuition reimbursement program is not possible, we certainly support the loan forgiveness program as the next best alternative to help remedy the severe problem of the maldistribution of dental care personnel in Kansas.

Theodore H White

Theodore H. White, Ph.D.

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2-22-99

MELANY BARNES
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TOPEKA

HOUSE OF
 REPRESENTATIVES

MEMBER: BUSINESS, COMMERCE
 AND LABOR
 KANSAS 2000 SELECT
 COMMITTEE
 GOVERNMENT ORGANIZATION
 & ELECTIONS
 LOCAL GOVERNMENT
 WORKER'S COMPENSATION FUND
 OVERSIGHT COMMITTEE

TESTIMONY

HB 2327

Thank you for the opportunity to testify today on HB2327. I have served in the Wichita Public Schools as a classified employee for sixteen years. As an employee working with men and women in the construction trades, I have experienced working with prisoners on work release.

I have observed the development of conflicts and relationships that would be inappropriate in the school setting. With the current challenges facing teachers, instructional para-professionals and more and more volunteers in the classroom, I believe schools should be a place of safety, second only to the home.

During the last five years, I have had the privilege of serving as a representative for classified employees as well as municipal employees. I have been involved in the issues of prisoners and remember well the developments in Wichita that led to a relationship developing between a prisoner and a clerical employee. Upon the prisoner's release his kidnapping and rape of this woman and his suicide at a Motel Six in west Wichita, sent shock waves through us all.

School employees should not have to worry about these kinds of issues. School custodians, painters and landscape employees, who are increasingly women, should work free of harassment and fear, as well.

To use the excuse that summer is an appropriate time for prison labor because students are not present is false. Students attend summer classes, receive free lunches, visit libraries and play on the play ground.

I urge your passing of this bill favorably from committee, to keep the schools of Kansas safe havens for children and the valuable employees and teachers who work to shape the future each day.

Thank you, and I will stand for questions.

DOUGLAS JOHNSTON

REPRESENTATIVE NINETY-SECOND DISTRICT

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State of Kansas



TOPEKA

COMMITTEE ASSIGNMENT

MEMBER: TAXATION
TRANSPORTATION
ENVIRONMENT
GOVERNMENTAL ORGANIZATIONS
AND ELECTIONS
ADMINISTRATIVE RULES AND
REGULATIONS

House of Representatives

Testimony to the House Education Committee
By Representative Douglas Johnston, District 92
Monday, February 22, 1999
House Bill 2327

The purpose of House Bill 2327 is simple. Our goal is to prevent inappropriate interaction between public school students and individuals in the custody of the Department of Corrections or sheriff.

House Bill 2327 prohibits the use of prison labor on school property during hours when students are present. The bill would not prohibit local school districts from utilizing prison labor for grounds keeping and other maintenance of facilities at times when students are not present. We realize school districts are continually seeking ways to dedicate more resources to the classroom. They seek ways to cut costs on manual labor. But we should not allow these efforts to put our children at risk.

Our goal in introducing this bill is to prevent criminal events from taking place before they happen. We feel this is a simple and appropriate use of state authority that will not unnecessarily diminish local control.

We feel most parents would agree to a policy prohibiting prison labor on public school property while students are present. Our schools ought to be safe and secure places of learning. We should make all efforts to ensure the safety and security of students and teachers. Your approval of this bill will send a powerful and positive message to the people of Kansas that we will not allow cost savings to put our children at risk.

We ask you to approve House Bill 2327 and send it to the House for consideration.

State of Kansas

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House of Representatives

COMMITTEE ASSIGNMENTS
CHAIRMAN: KANSAS 2000
LEGISLATIVE POST AUDIT
MEMBER: TAXATION

House Education Committee
H.B. 2327
February 22, 1999

Mr. Chairman and members of the committee. Thank you for the opportunity to spea
today in opposition to H.B. 2327. I would urge the committee to not take action on this
bill. I am not sure what motivated this piece of legislation but speaking for a community
that many call the "prison capital of the country," I can assure you we do not need H.B.
2327. If there is a specific situation that has generated this proposal please have the
specific situation addressed.

The Leavenworth / Lansing communities have long utilized prison labor. There are
always risk associated with using inmate labor. But our community leaders working with
the Department of Corrections have learn to productively and efficiently manage the
process. Our local communities do not need additional state policy in this area.

Joining me today is Mr. Dale Bohannon (Director, of Buildings and Grounds for the
Lansing School District). Mr. Bohannon manages inmate labor for the Lansing School
District. He is here to briefly explain how the relationship works and to answer your
questions.

I would again urge the committee to not take action on H.B. 2327. Thank you for your
time and consideration.

STATE OF KANSAS

L. CANDY RUFF
REPRESENTATIVE FORTIETH DISTRICT
LEAVENWORTH COUNTY
321 ARCH
LEAVENWORTH, KANSAS 66048
(913) 682-6390

STATE CAPITOL, ROOM 278—W
TOPEKA, KANSAS 66612-1504
(785) 296-7647



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER
BUSINESS, COMMERCE & LABOR
FEDERAL AND STATE AFFAIRS
JUDICIARY
JOINT COMMITTEE ON ADMINISTRATIVE
RULES AND REGULATIONS
JOINT COMMITTEE ON ARTS AND
CULTURAL RESOURCES

Testimony on HB 2327

Although at first blush, HB 2327 makes sense. Never do we as a state want to put children at risk. This legislation, however, paints with a broad brush. To begin with, it assumes children are somehow in danger. Nothing could be further from the truth.

For some years now, the Lansing School District has depended on inmates from the Lansing Correctional Facility to perform a myriad of tasks. From pushing snow in the winter to mowing grass in the summer, these prisoners saved the Lansing District thousands of dollars. At no time were children in harm's way.

Well chosen by prison officials and intensely supervised by district personnel, the LCF inmates consider these type jobs a privilege to obtain. In the first place, above average behavior inside the walls is a prerequisite for placement in the program.

I ask you to trust the system we have in place. Trust those in the Lansing school district and other districts throughout the state. They value the safety of children as much as we do. Just do not paint with such a broad brush. This bill will dump a whole lot of paint onto the heads of the Lansing school district.

A large, stylized handwritten signature in black ink. The signature is highly cursive and appears to read 'L. Candy Ruff'. The letters are connected and flow together in a fluid, artistic manner.



LANSING UNIFIED SCHOOL DISTRICT NO. 469

613 Holiday Plaza, Lansing, Kansas 66043

(913) 727-1100
FAX: (913) 727-1619

Statement

I come before this committee in opposition of House Bill 2327.

For approximately six years, Lansing U.S.D. #469 has had the opportunity to employ three Kansas Department of Corrections inmates. These inmates work at the school district year round.

Between mid-April and mid-November their primary assignments consist of:

1. Assisting the Grounds Keeper in mowing, weed eating and edging approximately 100 acres of grass.
2. Assisting the grounds keeper in laying out and marking two football fields, one soccer field, one baseball field and one softball field.
3. Assisting the maintenance department in moving equipment and setting up areas for plays and programs.
4. Assisting the maintenance staff in maintaining five schools and one office complex.

Between mid-November and mid-April their primary assignments consist of:

1. Assisting the maintenance staff (Plumbing, electrical, and other routine maintenance).
2. Assisting in the removal of snow.
3. Maintaining the U.S.D. 469 maintenance shop (Cleaning, equipment repair, etc.).

Our buildings and grounds are kept in excellent shape and appearance because we have been fortunate enough to have these inmates. Because of the never-ending concern in spending our tax dollars wisely, we have been able to enhance our maintenance staff while only spending \$3.00 per day per inmate.

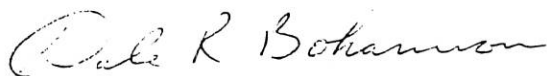
The inmates assigned to U.S.D. 469 do work in and around our schools during periods of time that school is in session. Inmates placed in our district have always displayed good citizenship characteristics. They are also never without supervision by our maintenance staff which is required to have 40 hours per year correctional supervision training.

In turn, our program offers these inmates an opportunity to begin their return to society in a controlled situation. They learn the importance of following instructions, develop responsibility, build a history of positive work experience and refine their abilities to interact with people while in a supervised and structured environment.

Should this bill pass U.S.D. 469, as well as other districts who employ inmates, would feel a great loss that would be difficult to overcome.

Enclosed are the Job Assignment Criteria and the Rules and Guidelines for Lansing Correctional Facility Inmates Working At Lansing Unifed School District.

Thank You



Director of Building & Grounds

*JOB ASSIGNMENT CRITERIA
U.S.D. #469 CREW*

MANDATORY CRITERIA

- All inmates assigned to this work assignment shall meet the following criteria:
 - a) Security classification shall be minimum
 - b) Housing assignment shall be East Unit.
 - c) Criminal behavior resulting in incarceration shall not include any of the following:

NO LIMITED WORKERS

NO MURDER I OR II/ NO DRUG CONVICTIONS

- d) Past criminal behavior shall not include more than three prior incarcerations of any type, or sex offense.
- e) Favorable history of institutional adjustment as follows:

No class I or II disciplinary convictions within one year prior to assignment.
No more than three convictions other than Class I or II offenses within one year of assignment.

- f) Established history of favorable work habits, as documented by the absence of poor/unsatisfactory work reports within six months of assignment.
- g) No more than one year before the next parole hearing, guidelines release of conditional release date.
- h) Favorable interview with Unit Team
- i) Mental Health Level A or B only.
- j) 90 days housed at East Unit in Minimum custody setting.

OPTIONAL CHARACTERISTICS

- The following optional characteristics are desirable for assignment, however, are not mandatory.
 - a) Other experience or training which would enhance the inmate's ability to participate in this venture.

**SUBJECT: Rules and Guidelines for Lansing Correctional Facility
Inmates Working At Lansing Unified School District.**

LCF inmate working for USD 469 must:

1. Observe all rules in the Kansas Department of Corrections Inmate Rule Book and the Memorandum of Understanding between USD 469 and the KDOC.
2. Remain in LCF uniform, with LCF badge visible, at all times.
3. Not walk the school grounds without authorization.
4. Not have any contact with any student.
5. Not enter any school building without USD employee escort.
6. Not make any outgoing telephone calls without authorization.
7. Not drive any vehicles other than tractors or mowers.
8. Not enter any civilian business establishment for any reason.
9. Not ask any USD employees, or anyone else, for any personal favors.
10. Not remove anything from the school district without prior authorization from LCF Team Leader and the USD Buildings and Grounds Supervisor.

Violation of any of these rules could result in the inmates removal from the school district.

Inmates will be treated with appropriate respect by USD employees and students.

Inmates will be paid \$3.00 per day for each day worked, and a school lunch is provided when school is in session. Checks are normally sent to the LCF accountants during the last week of the month.



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: House Education Committee

From: Charles E. Simmons, Secretary

Subject: HB 2327

Date: February 22, 1999

HB 2327 prohibits "...employment of and the performance of work by a person sentenced to the custody of the Secretary of Corrections or to the custody of the sheriff of a county in any school building or on school property during school hours or at school supervised activities".

As authorized by law, the Department of Corrections provides inmate work details to eligible public agencies, including school districts, to assist them in ongoing work activities or special projects that would not otherwise be possible within their available budgetary resources. Assignment of an inmate work detail to a school district is done only at the district's request and under conditions set or approved by the district. Inmate workers are supervised either by KDOC staff or by district employees who have been trained by the department to supervise inmates. Only minimum security inmates are allowed to participate in community work details. Inmates who have been convicted of a sex offense or an offense committed against a child are not, by departmental policy, assigned to work details in or around schools.

Inmate workers also enter school property to assist in the delivery and installation of furniture and office panel systems which have been ordered by the school from Kansas Correctional Industries (KCI). Inmates from various KDOC facilities install KCI office panel systems in schools throughout the state. Each installation crew has from two to five inmates who are supervised by a KCI supervisor.

In calendar year 1998, inmates worked in eight different unified school districts on KCI installations. The total amount of sales for those eight installations was \$104,114. Two of the eight jobs were installed during the summer while six were installed during the school year with students at school.

KCI products are also installed at numerous parochial schools. For example, in 1998 inmates installed \$130,000 worth of KCI furniture in St. Thomas Aquinas High School in Overland Park during the school year. The furniture was installed in classrooms, libraries, offices, and computer labs.

Inmate details have worked for school districts and have installed KCI products in schools for a number of years and, to my knowledge, this practice has been incident-free. The work is scheduled, structured, and supervised so that there is minimal chance of interaction between the inmate workers and the student population.

The bill also raises some questions of interpretation. For example, is the prohibition intended only for inmates or does it also include offenders on parole and postrelease supervision? If the latter are included, some jobs (such as those with delivery routes that include schools) would no longer be options for parolees. The definition of "school property" also is ambiguous in cases such as the USD 501's Capital City High School, located on the grounds of Topeka State Hospital—which is also the location of the Topeka Correctional Facility's West Unit. Finally, the department occasionally is asked to provide inmate speakers at school-sponsored classes or activities. Although the bill does not appear to prohibit inmate presentations, the bill's intent in this regard should probably be explicitly addressed if the bill receives further consideration.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

TO: House Committee on Education
FROM: Mark Tallman, Director of Governmental Relations
DATE: February 22, 1999

RE: Testimony on H.B. 2447

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear before you today. The KASB Delegate Assembly has held the following long-standing position:

“KASB supports legislation that would prohibit school district employees from serving on the board of the district in which they are employed.”

A majority of our members believe that serving on the same school board which employs you is an inherent conflict of interest. We therefore support H.B. 2447, and we would further support amending the bill to prohibit all employees from serving on boards which employ them, not just professional or administrative employees.

Thank you for your consideration.

Ma Highfill Scott
Executive Director
bhsusa02@ink.org

M. Katharine Weickert
Director of
Administrator Services
usak01@ink.org

Victor J. Braden
Legal Counsel
vbraden1@aol.com

Rome Mitchell
Professional Development
Coordinator

HB 2447: Membership on Boards of Education

Testimony presented before the
House Education Committee

by

Victor J. Braden, Legal Counsel
United School Administrators of Kansas

February 22, 1999



Kansas Association of
Elementary
School Principals
(KAESP)

Kansas Association of
Middle School
Administrators
(KAMSA)

Kansas Association of
School Administrators
(KASA)

Kansas Association of
School Business
Officials
(KASBO)

Kansas Association for
Supervision and
Curriculum Development
(KASCD)

Kansas Association of
Special Education
Administrators
(KASEA)

Kansas Association of
Secondary School
Principals
(KASSP)

Kansas Council of
Vocational
Administrators
(KCVA)

Kansas School
Public Relations
Association
(KanSPRA)

Mr. Chairman and Members of the Committee:

United School Administrators of Kansas supports HB 2447 which states that a professional employee or administrative employee of a unified school district cannot be a member of the board of education where s/he is employed.

When a teacher or administrator serves as a member of the board of education where s/he is employed, a conflict of interest occurs. A teacher-board member would have the right to listen to executive sessions involving pre-negotiation strategies; then actually be negotiating his/her contract and the contracts of peers.

Personnel matters are discussed in board of education executive sessions. The board-member teacher would have access to confidential information about fellow teachers as well as supervisors.

An administrator-board member could be in the position of evaluating his/her superintendent when the superintendent is actually the supervisor of the principal. How does a fair evaluation occur from either party in such a situation?

United School Administrators of Kansas asks that you favorably report HB 2447.



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

**Craig Grant Testimony Before
House Education Committee
Monday, February 22, 1999**

Thank you Madame Chair. Members of the Committee, I am Craig Grant and I represent Kansas NEA. I appreciate this opportunity to visit with the committee in opposition to HB 2447.

Kansas NEA looks at this bill as one which could deny education employees the right to hold public office in their community. We do not think this is necessary. We already have some school boards with employees serving on the board. It does not seem to harm the operation of the schools. The board member involved excuses himself or herself when negotiations or his contract is the topic of discussion. I have not observed major problems with the system as it is now.

The key to this situation, we believe, is that the voters of a school district realize who is running for office. The issue of whether or not to allow an employee to serve on a board should be left to the voters. If there is a problem, the voters in the district will deal with it at the ballot box. Kansas NEA believes that the voters are intelligent enough to sort out the situations and vote accordingly. A change in the law will allow, in some cases, fewer choices for voters to have as school board members. It really is not a change needed in our laws.

Attorney General Stephan issued two opinions which indicated that no law, either common or actual, prevented an employee from serving on the school board. Mr. Stephen indicated that a person could even vote on his/her own contract and could definitely be paid for his/her teaching duties. I have enclosed a copy of both opinions. Since these were issued, I am unaware of problems which exist in our school districts.

Kansas NEA would ask that you report HB 2447 unfavorably for passage.
Thank you for listening to our concerns.

HOUSE EDUCATION
Attachment 17
2-22-99

June 7, 1979

ATTORNEY GENERAL OPINION NO. 79-108

Dr. Merle Bolton
Commissioner of Education
Kansas State Department of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Schools--Boards of Education--Employees Serving as
Board Members

Synopsis: An employee of a unified school district may hold office as a school board member for the district by whom he or she is employed. The doctrine of incompatibility of offices is inapplicable.

Dear Dr. Bolton:

You have advised our office that an employee (school bus driver) of Unified School District No. 101 has been duly elected as a member of the board of education of said district, and you have requested our opinion whether he can serve in such dual capacities. You further indicate that this employee requested of, and received from, the Governmental Ethics Commission an opinion, i.e., Opinion No. 79-12 under date of March 21, 1979, in which the Commission opined that governmental entities are not a "person or business" as said terms are employed in K.S.A. 75-4304 and 79-4305. Thus, the Commission concluded:

Dr. Merle Bolton
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June 7, 1979

"K.S.A. 75-4304 and K.S.A. 75-4305 are inapplicable to this situation. In other words, the fact that you are employed by the school district on whose board you would serve as a member does not present any conflict of interest which prohibits you from serving on the board. In addition, based on this factual situation, those sections place no restrictions on your activities as a member of the board in fully performing your duties incident thereto including taking part in decisions dealing with your position of employment."
(Emphasis added) Governmental Ethics Commission Opinion No. 79-12.

Since the Governmental Ethics Commission has concluded that no statutory conflict of interest is presented by a bus driver serving as a member of the board of education by whom he is employed, and as there are no other statutory provisions which would prevent him from being a member of the board, we limit our discussion to consideration of possible common law principles which might prevent such action.

In our judgment, the only common law rule which may prevent such action is the doctrine of incompatibility of offices. However, in discussing this doctrine, it is important to note that the doctrine of incompatibility of offices has been applied by the courts in two different and distinct types of cases, to wit:

- (1) in cases where the issue is whether one person may be paid two salaries from public funds; and
- (2) In cases where the issue is whether a person who holds one public office has forfeited, ipso facto, that office by acceptance of another public office.

Dr. Merle Bolton
Page Three
June 7, 1979

Although the doctrine of incompatibility of offices, as it applies to situations in which a person seeks two salaries from the public treasury, would apply to this case, this issue does not arise because members of boards of education may not, pursuant to K.S.A. 1978 Supp. 72-1202e, receive compensation for their services. Thus, in regard to the person involved herein, the only issue is whether he may hold the office of school board member and retain his position as bus driver.

In applying the doctrine of incompatibility of offices in this type of case, the courts have, traditionally, held that this principle does not apply unless the person holds two, incompatible, public offices. The general rule is stated thusly:

"The prohibition against one person holding more than one office at the same time has reference to offices, as distinguished from position in the public service that do not rise to the dignity of office. It does not extend to a position which is mere agency or employment." (Emphasis added.) 63 Am Jur. 2d Public Officers and Employees §64, pp. 69, 670.

Although some courts have now enlarged this doctrine to include both public offices and public employment (see 70 A.L.R. 3d 1188), the majority of states follow the traditional rule. (See 63 Am Jur. 2d Public Officers and Employees §64, pp. 669, 670.) Unfortunately, the Kansas Supreme Court has not had occasion to address this issue. For that reason, we will not speculate whether our Court would deviate from the traditional common law rule and expand it so as to include positions of public employment, as well, as public offices. Thus, it is our judgment that the traditional common law rule of incompatibility of offices is dispositive of the issue you have raised.

Thus, the determination of what is a "public office" and who is a "public officer," are relevant to your inquiry. These questions were directly in issue in Sowers v. Wells, 150 Kan. 630 (1934). There the Court said:

Dr. Merle Bolton
Page Four
June 7, 1979

"While the authorities are not in complete harmony in defining the term 'public office' or 'public officer,' it universally has been held that the right to exercise some definite portion of sovereign power constitutes an indispensable attribute of public office." (Cites omitted.)" (Emphasis added.) Id. at 633.

Thus, under this definition, little question exists but that an elected school board member is a public officer. However, as important as the job of safely transporting children to and from school is, it in no way can be said that in performing his or her duties, a bus driver is "exercising some definite portion of sovereign power." Thus, one who is employed as a bus driver does not hold public office. Consequently, the common law doctrine of incompatibility of offices, as it applies to the holding of public offices, is inapplicable to the question of whether a bus driver may serve as a member of the board of education of the unified school district by whom he or she is employed. In such a situation, only one public office, that of school board member, is involved. The person holds no other public office.

In light of the foregoing analysis, we are unable, as a matter of law, to conclude that a bus driver may not hold the office of school board member, even though he or she is employed by the school district. The common law doctrine of incompatibility of offices is not applicable. If some other matter of public policy prevents the holding of these two positions, it is for the courts or the legislature to so declare. Such has not been done, and, therefore, in our judgment, a bus driver may serve as a member of the board of education of the district by whom he or she is employed.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:glc

February 28, 1991

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:

Senator Don Montgomery
Representative Carl D. Holmes
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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).

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

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 a]ny 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

Senator Don Montgomery
Representative Carl D. Holmes
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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

RTS:JLM:RDS:jm

17-10