AN ABSTRACT OF THE THESIS OF

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in Educational Administration presented on

Title: SELECTED ASPECTS OF KANSAS SCHOOL LAW AS INTERPRETED BY SUPREME COURT DECISIONS

Abstract approved: Billy H. Scofield

This study was an investigation of Kansas Supreme Court Decisions affecting school law in the areas of pupil conduct and discipline, and teacher contracts and negotiations. In all, sixty-three such cases have been located, analyzed, and presented in summary form, in an attempt to provide a concise but thorough review of judicial interpretations of the law on the given topics under consideration. The cases have been further classified into specific areas of concern including compulsory attendance, suspension and expulsion of pupils, student due process, locker searches, corporal punishment, teacher contract requisites and validity, teacher resignations, dismissals, contract nonrenewal, compensation, continuing contracts, the scope of negotiations, and procedures for impasse resolution.

The study contains decisions up to and including those of January 1980, all of which have been located through the use of the Kansas Digest and the Kansas Reports. Cases in courts of federal jurisdiction have also been examined where especially significant to the topics studied.

An apparent shift in the decision tendencies of the court was revealed in the pupil conduct and discipline area. A swing toward increasing favor of school board stances on questionable issues characterized the rulings in the latter part of this century in these cases. Only one such chronological trend seemed evident in the teacher contract and negotiation realm, as school boards appeared again to be favored in the most recent cases concerning contract requisites and validity. Teacher dismissals have generally been held valid when contested by teachers in Kansas. As a result of the scope of negotiations cases, the courts have stepped directly into the negotiation process by determining which items shall be mandatorily negotiated. Decisions and definitions in this area are of vital concern to teachers' organizations.

The study presents twenty-four summary statements concerning the key points of law established or expounded upon in the Kansas decisions. Five suggestions for further research are provided, along with four general recommendations for school boards, teachers, administrators, and parents.

SELECTED ASPECTS OF KANSAS SCHOOL LAW AS DETERMINED BY SUPREME COURT DECISIONS

A Thesis

Presented to

the Department of Educational Administration

Emporia State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Science in Education

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by

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August 1980

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ACKNOWLEDGMENTS

The writer is indebted to:

Dr. Jack Skillett	For inspiration in the study of school law, guidance in conducting legal research, patience in the rate of progress, and continued support as a member of the writer's committee
Dr. Bill Scofield	For wisdom in suggested revisions, many hours of careful analysis, and constant interest in successful completion of the project while a member of the writer's committee
Dr. Darrell Wood	For countless corrections made to improve the rough drafts, and for many hours spent perusing the study as a member of the writer's committee
Nancy DeBacker	For accepting the challenge of typing a thesis with vigor, and for many unselfish hours spent in the production of quality work
Teresa, my wife	For patience, encouragement, confidence, understanding, and love.

CONTENTS

Chapter 1

INTRODUCTION

This chapter has been devoted to information concerning the general background and the legal framework of public school laws in the areas of pupil conduct and discipline and teacher contracts and negotiations, as interpreted by the courts in past litigation. A statement of the problem, major questions to be answered, and the purpose and significance of the study have been discussed. In addition, the scope and limitations imposed on the study, methodology employed, and terms identified as needing further clarification have been defined and included in this chapter.

Legal Framework

The recent emergence of a vast amount of litigation in the areas of pupil conduct and discipline and teacher contracts and negotiations in Kansas is in vogue, with a trend nationwide to test school board policy in the courts. Though the courts have exercised increasing influence on all school policy over the last two decades, the areas cited above are those which Hazard feels that current judicial review has moved into decisively.[1]

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[1]William R. Hazard, "Courts in the Saddle: School Boards Out," Phi Delta Kappan, 56 (1974), 259.

One law text by Strickland indicated:

> Legal activism has found a home in the public schools. Not only are there more suits against teachers, there are also more types of suits against teachers. Furthermore, the educators are increasingly finding themselves in a position where they are called upon to go into court to protect themselves.[2]

Because the law as interpreted by the courts defines, limits, and prescribes many aspects of the total school program, McDaniel said that schools are in an "age of litigation."[3] As courts are holding both administrators and teachers to higher competency levels, and as the public demands accountability for performance and actions taken, McDaniel noted that the old line "Ignorance of the law is no excuse," is applicable.[4]

Knowledge of school law can be more than a safeguard or protection from litigation, however. It is also a personal defense against excessive state or local government control. The base of this contention has roots in the first ten Constitutional Amendments, the Bill of Rights. The educator or student's shield against unjust acts and regulations is not removed in the school setting. Supreme Court Justice Abe Fortas seemed to concur in a famous written majority opinion when he stated, "It can hardly be argued that either students or teachers shed their constitutional rights at the schoolhouse gate."[5]

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[2]Rennard Strickland et. al., Avoiding Teacher Malpractice (New York: Hawthorn Books, 1976), p. 6.

[3]Thomas R. McDaniel, "The Teacher's Ten Commandments: School Law in the Classroom," Phi Delta Kappan, 60 (1979), 703.

[4]Ibid., p. 707.

[5]Tinker v. Des Moines Indep. Commun. Sch. Dist., 89 S. Ct. 736 (1969).

The areas of pupil conduct and discipline and teacher contracts and negotiations do in some instances involve such rights. School personnel involved in any capacity with these areas are in need of knowledge, not only from a professional but also a personal and perhaps even parental standpoint, of legal principles, precedents, and influencing factors upon current and past judicial interpretations of the statutes.

Purpose of the Study

The impact of court decisions will continue to be felt by Kansas pupils, teachers, and administrators in the future. Though it is imperative that anyone associated with public education become familiar with current Kansas Supreme Court action as well as prior litigation, especially in the two areas under study, McDaniel reminds us that research attempts too often reveal a "mind-boggling" array of complex case law principles which only add to the confusion of the educator.[6] Reduction of this level of confusion through concise but thorough interpretations of court decisions and their practical implications is needed by Kansas educators and is the purpose of this study.

It is hoped that the study will enhance the comprehensiveness of the available literature, especially as it pertains to Kansas law, and also update and carry on the work done by others in similar studies. The foundation established will perhaps serve as a source of inspiration to further legal research in these two areas, as well as others concerning the public schools.

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[6]McDaniel, op. cit., p. 703.

Statement of the Problem

This study will attempt to locate, analyze, and present a summary of Kansas Supreme Court litigation in the areas of pupil conduct and discipline and teacher contracts and negotiations. The principles and rules of law upon which the reasoning of the courts is based will also be examined.

Among the questions to be answered by the study are the following:

What constitutes truancy? What constitutes a valid dress code? Under what conditions and for what reasons may a pupil be expelled or suspended from school? How do the courts view student marriage as a basis for removal from school? What constitutes student due process? What do the courts say about short term suspensions without hearings? Under what conditions and for what reasons may a teacher be dismissed by the school board? When is a board's discharge of a teacher subject to review by the courts? How does the procedure for removal of a tenured teacher differ from that for a non-tenured teacher? What constitutes a contract? On what grounds is a teacher entitled to relief when his contract is rescinded by the board? Under what circumstances is a teacher entitled to salary recovery upon resignation? What constitutes a school year? What constitutes legal notification of termination or dismissal? What items are negotiable? What do the courts say about termination of contracts due to insufficient funds? What do the courts say about non-certified teacher contracts?

Methods and Procedure

This study falls within the realm of historical research. Only primary data sources will be used for case reading, and these will be

perused in an adequately equipped legal library. Kansas Supreme Court cases will be classified by topic, and relevant ones studied.

Specifically, the procedure intended to maximize the results of legal research pertaining to judicial decisions would be as follows: 1) locate the appropriate cases by use of the Kansas Digests, 2) read the cases by utilizing the Pacific Reporter or Kansas Reports, and 3) determine the current status of the cases through the use of Shephard's Citations to Cases.

Scope and Limitations of the Study

This study is limited to a review of Kansas Supreme Court decisions. Litigation from other states is mentioned but is not within the scope of this project. Relevant U.S. Supreme Court cases are also noted, especially when used as precedents. Decisions of lower courts are referred to but not emphasized, and cases of federal jurisdiction are cited if especially significant or helpful in decision analysis.

Related topics not under study would include pupil eligibility, transportation of pupils, selection and appointment of teachers, certification, pensions, duties and resulting liabilities, and negligence. No specific time frame was established for the study; however, any cases reported after January, 1980 have not been included.

This study attempts to summarize and present decisions of the Kansas Supreme Court in the areas of pupil conduct and discipline and teacher contracts and negotiations. The assumption is made that all such cases have been located and properly classified so as to insure the completeness of the study. This rests upon a second assumption however, namely, that all such cases have been reported and coded, making them

available for location through a cross-referencing procedure. The study includes only those cases listed in the Kansas Reports or Pacific Reporter, and indexed through Shephard's Citations or Kansas Digest.

Finally, it is further assumed that the majority opinions of the decisions, which provide case backgrounds, applicable points of law, and the rulings themselves, are objective and reasonably sound with respect to established precedents.

Significance of the Study

Locating court decisions, seeking their origins, and clarifying their interpretations is a time-consuming process. The sources used are not always accessible or in adequate supply. Even if the source is at hand, an educator or layman may have had little or no training in the use of the indexes or digests of litigation reports. Also, in searching existing literature relating to Kansas decisions, one's knowledge may be incomplete because little has been written within recent years.

This study directly attacks these difficulties by citing and summarizing Kansas Supreme Court decisions in the two major areas of pupil conduct and discipline and teacher contracts and negotiations. At one's fingertips is a complete, concise, and current information on a broad range of topics, with locations for further reference indicated. The study comes at a time when the areas presented are currently filling court dockets with cases nationally.

Definitions of Terms

Frequently, in legal research, terms arise which have specific meanings for the author but convey little meaningful information to the

reader until further clarification is made. In an effort to reduce confusion as to the application of a few key terms, the following definitions are provided:

Appellant

The party who makes an appeal from one court to another.

Certiorari

A writ of a superior court to call up the records of an inferior court.

Collective Negotiations

A process by which employers negotiate with the duly chosen representatives of their employees concerning terms and conditions of employment, and on such other matters as the parties may agree or be required to negotiate.[7]

Defendant

The party against whom relief or recovery is sought in a court action.

Dissenting Opinion

An opinion disagreeing with that of the majority, handed down by one or more members of the court.[8]

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[7]Jack D. Skillett, "An Analysis of Judicial Decisions and Statutory Enactments Pertaining to Collective Negotiations in the Public School," (Doctoral Dissertation, Oklahoma State University, 1971), p. 7.

[8]Ibid.

Due Process

The right of an individual to be governed by fair, reasonable laws enforced through fair, reasonable procedures as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

Injunction

A prohibitive writ issued by a court of equity forbidding the defendant to do some act or restraining him in the continuation of the act.[9]

Litigation

A legal contest by judicial process.

Mandamus

A writ issued by a superior court commanding the performance of a specified act or duty.

Majority Opinion

The statement of reasons for the view of the majority of the members on the bench in a decision in which some of them disagree.

Plaintiff

A person who brings an action, the party who sues in a personal action and is so named in the record.

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[9]John F. Lindquist, "Some Phases of Kansas School Law as Interpreted by the State Supreme Court" (Master's Thesis, University of Kansas, 1935), p. 156.

Precedent

A decision considered as furnishing an example or authority for an identical or similar case; arising from a similar question of law.

Property Right

A legal right or interest in or against specific properties and posessions.

Statute

A law established by the act of legislative power; the written will of the legislature.[10]

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[10]Ibid., p. 157.

Chapter 2

REVIEW OF RELATED LITERATURE

Accompanying the recent increase of court litigation in the areas of pupil conduct and discipline and teacher contracts and negotiations has been a similar growth in the number of studies done and articles written pertaining to these two areas. This chapter is an examination of several such articles associated with the two topics under consideration here. Studies of similar scope, repeated treatment of the topics in periodicals, and a look at articles providing case analysis by subject area have been discussed. A summary of the status of existing related literature has also been provided in this chapter.

Studies of Similar Topics in Kansas

Currently, only seven researchers are known to have studied Kansas school law as determined by decisions of the State Supreme Court. Two of these discussed closely related topics though one only briefly.

The pioneer study of school law through Kansas Supreme Court decisions was undertaken by Hoglund,[1] and included all of the areas under current study. Also mentioned were cases dealing with separation of the races, health, transportation of pupils, certification, property, and

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[1]Roy A. Hoglund, "Some Phases of Kansas School Law as Determined by Supreme Court Decisions" (unpublished Master's Thesis, University of Kansas, 1934).

liabilities, though few cases were available for study at the time in most of these areas.

Similarly, Beninga[2] used Kansas Supreme Court decisions to discuss school law relating to the classroom teacher. His focus was primarily upon curricular restraints imposed on teachers, though teacher contract cases are also treated. In phases of school law not under the scope of this study, works by Steiner,[3] Elliott,[4] Lindquist,[5] and Kennedy[6] also used Kansas decisions for interpretation. Here, as in the two studies previously mentioned, a familiar format begins to emerge, consisting of posing a question, stating the applicable statute, and reporting case law testing or requiring clarification of that statute. Few references are made to cases in other high state courts or the U.S. Supreme Court as related to the areas of powers and duties of State, County, and District Boards, high school admission and tuition, school finance, and the creation, existence, alteration and dissolution of

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[2]Max E. Beninga, "Some Phases of School Law, Concerning the Classroom Teacher, as Interpreted by the Kansas Supreme Court" (unpublished Master's Education Thesis, University of Kansas, 1957).

[3]John P. Steiner, "Some Phases of School Law as Determined by Supreme Court Decisions in Kansas. A Study of State, County, and District Boards, Officers, and Meetings" (unpublished Master's Education Thesis, University of Kansas, 1934).

[4]Rolland R. Elliott, "Some Phases of School Law as Determined by Supreme Court Decisions" (unpublished Master's Thesis, University of Kansas, 1935).

[5]John F. Lindquist, "Some Phases of Kansas School Law as Interpreted by the State Supreme Court. A study of School District Finances in Three Phases: Warrants, Bonds, and Taxation" (unpublished Master's Education Thesis, University of Kansas, 1935).

[6]Thomas Raymond Kennedy, "Some Phases of Kansas School Law as Determined by Supreme Court Decisions" (unpublished Master's Thesis, University of Kansas, 1937).

school districts, studied by the above authors, respectively.

Trends associated with other state courts or the federal courts are also not discussed in the most recent accumulation of Kansas Supreme Court cases affecting education, including those on the topic at hand, by Addis,[7] which compiled all known Kansas education cases up to and including 1957. Here 101 cases were classified and presented under various subject headings, though depth is at times sacrificed for space because of the broad range of topics covered.

A definite void is apparent in the literature regarding law concerning pupil conduct and discipline and teacher contracts and negotiations as interpreted by the Kansas Supreme Court. Similar studies do exist to provide guidance as to sources, format of presentation, and background of the topics, though the information in some cases has been tested and expanded since the most recent inquiries.

Iterative Topical Treatment in Periodicals

Investigation of certain topics often leads one to periodical works which, though not a primary source themselves, often summarize relevant cases on a nationwide basis along with providing excellent bibliographic data for further study. An excellent example is provided by Piele[8] in his presentation of articles by Delon, Jascourt, and Wedlock and Potter on cases dealing with employees, collective bargaining, and

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[7]Fred G. Addis, "A Historical Study of Kansas Supreme Court Decisions from 1861-1957 with Respect to Public School Administration" (unpublished Education Dissertation, University of Colorado, 1960).

[8]Phillip K. Piele, ed., The Yearbook of School Law 1978 (Topeka: National Organization on Legal Problems of Education (NOLPE), 1978).

pupils, respectively. Each section is well presented using case studies from across the country, and is footnoted for verification or investigation. This is one annual review of the previous twelve months' education-related cases on both the state and federal levels, providing a base for year-by-year comparisons of cases dealing specifically with, and related to, pupil conduct and discipline and teacher contracts and negotiations.

A similar format, though on a quarterly basis, is compiled by Knowles and Wedlock.[9] Cases are separated first into three major groups: a Supreme Court review, those dealing with primary and secondary education, and those dealing with universities and higher education. In the last two, the topics of student conduct and discipline, tenured and non-tenured teachers, and labor relations are all filled with significant cases in education from the various state courts. Here again is a source from which to draw cases of a nature similar to those in Kansas or on topics not treated by Kansas decisions.

Coverage of school law cases on a regular monthly basis is done by several periodicals, but the scope is usually related to only one topical area and not always one of the two sought in this study. Examples would include the Phi Delta Kappan, The American School Board Journal, the National Association of Secondary School Principals (NASSP) Bulletin, and Educational Administration Quarterly.

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[9]Lawrence W. Knowles and Eldon Wedlock, "Case Summaries of Recent Education Decisions," Journal of Law and Education, 8:2:237-280, 1979.

Case Analyses by Subject Area

By far the majority of existing literature consists of articles written upon one topic and validated by citing several court cases dealing with the topic. It is in this category that the two areas of pupil conduct and discipline and teacher contracts and negotiations receive excellent coverage.

Pupil Conduct and Discipline Literature

This area appears to contain the fewest articles which may be related to Kansas Supreme Court decisions, because of the fact that in controlling pupil conduct a due process procedure generally must be followed, which categorizes the case differently. Articles of a general nature on student discipline do exist however, as evidenced by Alexander,[10] who compared courts in the United States to those in England with respect to trends in handling discipline cases. Here, few specific cases were cited, however.

Younger,[11] in an article referring mostly to federal cases, outlined general judicial trends on what is and is not acceptable student conduct in the eyes of the court. Here, student dress, assembly, expression, and associations were discussed, along with other civil rights topics.

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[10]Kern Alexander, "Administrative Perogative: Restraints of Natural Justice on Student Discipline," Journal of Law and Education, 3:4:561-613, 1974.

[11]Avelle J. Younger, "The Control of Student Behavior," Current Trends in School Law (Topeka: NOLPE, 1974).

On both the federal and state level, a large number of the sixty decisions compiled and reviewed by Garber and Edwards[12] in their study of laws pertaining to students dealt with conduct and discipline cases.

Literature concerning pupil due process has been increasing as this decade has progressed. An informative article seeking to define procedural due process and its effect upon in loco parentis actions by school teachers and administrators toward students was presented by Brothers.[13] He reviewed sixty-three state and federal court decisions on the subject between 1967 and 1975 in arriving at his guideline recommendations; cases which students of Kansas decisions could consult to draw correlations. The legality of expulsion and suspension in general is seen by Cole[14] as questionable in his examination of both federal and state cases. The legality of removal from the classroom is also questioned by McClung,[15] especially as it pertains to the physically and behaviorally handicapped in court litigation.

Three U.S. Supreme Court landmark decisions in the area of pupil

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[12]Lee O. Garber and Newton Edwards, The Law Governing Pupils (Danville, Ill.: Interstate Printers and Publishers, 1969).

[13]W. Richard Brothers, "Procedural Due Process: What Is It?," National Association of Secondary School Principals (NASSP) Bulletin, 59: 387:1-8, 1975.

[14]Michael T. Cole, "Expulsion and Long Term Suspension: Is It Legal?," Journal of Law and Education, 4:2:325-335, 1975.

[15]Merle McClung, "The Problem of Due Process Exclusion: Do Schools Have a Continuing Responsibility to Educate Children with Behavior Problems?," Journal of Law and Education, 3:4:491-527, 1974.

due process were the focus of articles by Schimmel and Fletcher[16] as well as Dessem,[17] though the latter offers a more extensive study and includes many lower court decisions of interest. Dessem also extends the study to private schools and universities, and discusses the applicability of the Fifth and Fourteenth Amendments' due process clauses for higher education students. Keller and Meskill[18] also spoke to this topic, using mostly state appellate and state supreme court decisions to defend their stand that states must accept the responsibility for guarding student rights in higher education.

Teacher Contract and Negotiation Literature

Though many articles associated with contracts and negotiations are written with concentration on teacher due process, other aspects of contracts and negotiations also have an adequate bulk of case study to permit review in the literature. One topic on the cutting edge of judicial interpretation in Kansas is that of determining an acceptable scope of negotiations for both parties in the bargaining process.

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[16]David Schimmel and Louis Fletcher, "Discipline and Due Process in the Schools," The Education Digest, 43:5:5-8, 1978.

[17]Lawrence R. Dessem, "Student Due Process Rights in Academic Dismissals from the Public Schools," Journal of Law and Education, 5:3: 277-306, 1976.

[18]Drewe L. Keller and Victor Meskill, "Student Rights and Due Process," Journal of Law and Education, 3:3:389-398, 1974.

Metzler[19] and Kay[20] both addressed this topic in sequential articles, looking at the private sector and making comparisons in case study.

An extensive study of past statutorial enactments and emerging doctrine as a result of litigation in this area was undertaken by Skillett.[21] A state-by-state comparison of statutory provisions in nine areas, in addition to the scope of negotiations, was made with selected relevant judicial decisions mentioned. The recent frequency of reliance upon mediation and fact-finding stages for help with collective bargaining by Kansas school districts seems to indicate a need for looking to studies such as that by Skillett. Alternative procedures used in other states can be used as a way to speed up the bargaining process and avoid judicial review.

The number of cases involving teacher due process issues has prompted writers such as Baird and McArthur[22] to draw comparisons between the public and private sectors with relation to employment conditions and seniority implications. Asche and DeWolf[23] also elaborated on the unique

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[19]John H. Metzler, "The Need for Limitation Upon the Scope of Negotiations in Public Education, I," Journal of Law and Education, 2:1: 139-154, 1973.

[20]William F. Kay, "The Need for Limitation Upon the Scope of Negotiations in Public Education, II," Journal of Law and Education, 2:1: 155-175, 1973.

[21]Jack P. Skillett, "An Analysis of Judicial Decisions and Statutory Enactments Pertaining to Collective Negotiations in the Public School," (Doctoral Dissertation, Oklahoma State University, 1971).

[22]James Baird and Matthew McArthur, "Constitutional Due Process and the Negotiation of Grievance Procedures in Public Employment," Journal of Law and Education, 5:2:209-232, 1976.

[23]Bernard F. Asche and John DeWolf, "Procedural Due Process and Labor Relations in Public Education: A Union Perspective," Journal of Law and Education, 3:4:561-613, 1974.

aspects of working in the public sector, though their focus was directed toward cases which have tested the issue whether government employment is a right or a privilege.

Dismissal of teachers for a variety of possible reasons has been mentioned in several works of interest. In recent California cases, dismissal for moral beliefs when in contrast to those of the board of education, was seen by Fleming[24] as an extremely sensitive issue. The stance taken was that lifestyle preference is difficult to cite as just cause for dismissal unless classroom effectiveness is affected. An overall look at teacher employment rights by Young and Gehring[25] combines dismissals with other concerns about working conditions, and uses cases for illustration. Similarly, Garber and Edwards[26] also reviewed many cases concerning due process and employment rights in their sixty-three reported cases involving teaching personnel.

Other Related Publications

A very useful resource for the parent or educator would be one which combines cases on many topics into one work, such as those of

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[24]Thomas Fleming, "Teacher Dismissal for Cause: Public and Private Morality," Journal of Law and Education, 7:3:423-430, 1978.

[25]Parker D. Young and Donald Gehring, "Teacher Employment Rights and Due Process," Educational Horizons, 54:3:52-56, 1975.

[26]Lee O. Garber and Newton Edwards, The Law Governing Teaching Personnel (Danville, Ill.: Interstate Printers and Publishers, 1964).

Gee and Sperry[27] and Strahan.[28] In the latter, Strahan provides separate sections on the disruptive student, due process, teacher contracts, and an entire chapter is provided for discussion of professional negotiations. Gee and Sperry use a format which lists topics alphabetically to accomplish the same goal.

The work of Kirp and Yudof[29] is of a similar nature, as is that of Reutter and Hamilton.[30] Also in a topical arrangement but perhaps easier to read is the book by Nolte,[31] which provides one hundred-one cases in a consistent, logical format. The general background of each case is provided, then the ruling, with the reasoning of the court, and the case citation for further reference at the end.

In all of the above, both federal and state cases were cited. Zirkel[32] also covered many topics, but used only decisions reached in cases before the United States Supreme Court.

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[27]Gordon E. Gee and David Sperry, Education Law and the Public Schools: A Compendium (Boston: Allyn and Bacon, Inc., 1978).

[28]Richard Dobbs Strahan, The Courts and the Schools (Lincoln, Neb.: Professional Educators Publications, Inc., 1973).

[29]David L. Kirp and Mark Yudof, Educational Policy and the Law: Cases and Materials (Berkeley, Cal.: McCutchan Publishing Corp., 1974).

[30]Edmund E. Reutter, Jr. and Robert Hamilton, The Law and Public Education, 2 ed. (Mineola, N.Y.: The Foundation Press, Inc., 1970).

[31]M. Chester Nolte, School Law in Action (West Nyack, N.Y.: Parker Publishing Co., Inc., 1971).

[32]Perry Zirkel, ed., A Digest of Supreme Court Decisions Affecting Education (Bloomington, Ind.: Phi Delta Kappa, 1978).

Summary

Parents and educators have a more than adequate base of information concerning pupil control and discipline, pupil and teacher due process, and teacher contracts and negotiations in the existing literature. This information provides an excellent framework and yardstick for comparing school law as determined by Kansas Supreme Court decisions with that of other states. It is through such comparisons that we come to understand and formulate opinions of trends nationwide in judicial review of the law.

Knowledge of Kansas decisions alone and their interpretations seems to be in short supply however. A need for follow-up studies or current descriptive research is apparent.

Chapter 3

PUPIL CONDUCT AND DISCIPLINE

The teacher's right to govern the conduct of students in the place of the parent during the school day has become accepted through the years as education has shifted gradually from the home to a state school system. The legal term in loco parentis has come to have a meaning in common law based upon the courts' description of the teacher and pupil relationship.[1] School officials in general may prescribe regulations and act in a rational manner to control student behavior provided such regulations and actions can meet the tests of reasonableness, consistency, and prudence and so long as such actions or regulations are not enforced discriminately, capriciously, or maliciously. Failure of the pupils to obey the state and local school laws and regulations may result in corporal punishment, suspension, or expulsion.

This chapter contains those Kansas Supreme Court cases testing or asking clarification of the statutes relating to pupil conduct and discipline. Also provided is a summary of the points of law established by the court as results of the cases. An analysis of any apparent trends or anomalous findings in the decisions is given as well.

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[1]M. Chester Nolte and John Linn, School Law for Teachers (Danville, Ill.: Interstate Printers and Publishers, Inc., 1963), p. 207.

Review of Litigation

Kansas Supreme Court cases dealing with pupil conduct and discipline have been divided into the areas of compulsory attendance and truancy, suspension and expulsion, student due process, locker searches, and corporal punishment for the purpose of this study. In all, twelve cases have been selected, reviewed, categorized, summarized, and presented in this chapter with pertinent statutorial enactments and majority opinions of the court quoted where applicable.

Compulsory Attendance and Truancy

Kansas has had compulsory school attendance laws since 1874, with numerous amendments reflecting changes since the frontier era.[2] Most of these amendments have been to remove exemptions or clarify the language of the statutes.

> Question: What if compulsory attendance laws require parents to subject their children to the risks of bodily harm each day as they pass to and from school?

In a 1908 case involving four black children in Parsons,[3] whose school assignment had been changed due to segregation of the races, the court held that the danger involved in their crossing sixteen railroad tracks to attend the newly assigned school outweighed the purpose of the order and the compulsory attendance law. The court opinion stated in part:

> . . .the question is whether the perils that must be encountered are so obvious and so great that in exercise of reasonable prudence their parents should not permit them to incur the hazard necessarily

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[2] State v. Garber, 197 Kan. 567, 419 P. 2d. 896 (1966).

[3] Williams v. The Board of Education of the City of Parsons, 79 Kan. 202, 99 Pac. 216 (1908).

and unavoidably attending the school. . . .It would seem that ordinary prudence, as well as just parental anxiety would impel the father and mother to refrain from exposing their children to such hazards.

While the court upheld the right of the board to establish schools for white and black children, as was common in that time period, it said that the board's order in this case was a misuse of discretion:

Having power to maintain separate schools in cities of the first class, the duty rests upon the boards of education therein to give equal educational facilities to both white and colored children in such schools. . . .But where the location of a school is such as to substantially deprive some of the children of the district of any educational facilities it is manifest that this equality is not maintained, and the refusal to furnish such privileges, where it is practicable to do so, is an abuse of discretion for which the courts will afford a remedy.

The court thus found Williams not to be in violation of compulsory attendance laws due to the unusual and dangerous circumstances involved and he was entitled to relief by mandamus. His children were not compelled to attend the designated school for colored children, though they were not necessarily to be readmitted to Lincoln school as requested.

Question: How does attendance at a private school stand in compliance with Kansas compulsory school attendance laws and truancy statutes?

Prior to 1903 the truancy act was somewhat vague in referring to private education, as it opened saying:

That every parent, guardian, or other person in the state of Kansas having control of any child or children between the ages of eight and fourteen years, shall be required to send such child or children to a public school or private school, taught by a competent instructor, for a period of at least twelve weeks in each year, six weeks of which time shall be consecutive unless such child or children are excused from such attendance by the board of the school district. . .[4]

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[4] Kansas Statute 1901, Sec. 6420

A revision in 1903 increased the compulsory attendance age and further defined the status of private school attendance as it read in part:

> That every parent, guardian or other person in the state of Kansas having control or charge of any child or children between the ages of eight and fifteen years, inclusive, shall be required to send such child or children to a public school, or a private, denominational or parochial school taught by a competent instructor, each school year for such period as said school is in session. . .[5]

An appeal from Harvey district court in 1916 sought to reverse a decision that placement of a student, Henry Will, in a private school which was not equal in all respects to the public schools was a violation of the truancy act. The private school in question taught only German reading, German grammar, German spelling, Bible history, and arithmetic.

Regarding the changes in the truancy act, the court ruled as follows in State v. Will:[6]

> The act of 1903 (Laws 1903, ch. 423, Gen. Stat. 1909, S. 7736 et. seq.) enlarges as to the kind of schools which a child may attend to excuse him from public school attendance. They may be either private, denominational or parochial, but nothing is said as to the course of study in such schools.
>
> . . .The legislature may well have believed that if such schools were taught by a competent instructor the sufficiency and scope of the course of study would necessarily follow to fully qualify the child for his future duties as a citizen.
>
> . . .Presumably this defendant's child attended the public school from September until April while the public school was in session. When the private school began its term he attended it instead of the public school. In such case the child was not a truant.

The parent, John Will, satisfied the truancy statute by keeping his son in regular attendance in the public school or the private German school for the term in session. The transfer from one school to the

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[5]Kansas Statute 1909, Sec. 7736.

[6]State v. Will, 99 Kan. 167, 160 Pac. 1025 (1916).

other did not constitute a violation of compulsory attendance laws.

Enrollment in correspondence courses and in an Amish community school did not satisfy the compulsory attendance laws and did constitute truancy however, as ruled in State v. Garber.[7] The defendant, Leroy Garber, allowed his daughter, Sharon, to enroll in the American school through correspondence study after her completion of the eighth grade. When in 1965 the Kansas legislature raised the age of compulsory attendance to sixteen,[8] a school was opened by the Amish community called the Harmony school. After being served with a statutory notice of truancy, Leroy Garber, a member of the Old Order Amish Mennonite Church, enrolled his daughter in the Harmony school. The school met one day per week, and then released the students for vocational home training in farming and home economics. This still did not meet the requirements of the law, however, as home instruction was not a valid exemption from compulsory attendance. Using the Will case for reference as to the statutory changes, the court ruled in this instance:

> Thus we see neither the American nor the Harmony school, being essentially home instruction systems, constitutes a private, denominational or parochial school within the meaning of our truancy act. Even if, as contended by the defendant, the instruction given through them could be considered as instruction equivalent to that given in a public, private, denominational or parochial school, this would not be an excuse for nonattendance at the latter for the reason that the legislature has made no provision for such equivalent instruction as the basis for exemption.

Also a question in this case was whether or not the compulsory school attendance law, as applied to Mr. Garber and his daughter, violated their constitutionally guaranteed religious freedom. In answer to

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[7] State v. Garber, 197 Kan. 567, 419 P.2d. 896 (1966).

[8] Kansas Statutes Annotated, 1965 Supplement, 72-4801.

this point, the court cited a comment from a U.S. Supreme Court ruling on school attendance and parental control which said in pertinent part:[9]

> . . .neither the rights of religion nor right of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. . .

Since the freedom to believe and worship remained absolute and unaffected by Kansas statutes, the court failed to see how requiring school attendance removed such liberties. The judgement of the court was to affirm the decision of the Reno district court which found Garber in violation of the truancy act and not entitled to relief on the basis of infringement of religious freedom. In conclusion the court remarked:

> . . .It can scarcely be doubted that defendant is sincere when he says his religious convictions are violated if his daughter receives a secular type of education found in the secondary public schools, but. . .no matter how sincere he may be the individual cannot be permitted upon religious grounds to be the judge of his duty to obey laws enacted in the public interest.

Although the court, in revising the compulsory attendance statutes, has not been specific in defining what constitutes either a private, denominational, or parochial school, they have on one occasion determined what does not constitute such. Dr. and Mrs. Lowry of El Dorado, dissatisfied with the public school instruction in that city, decided to educate their children in the Lowry home instead. Mrs. Lowry, holder of a life teaching certificate in Kansas, was the instructor and her four children were the only students. The district first notified the Lowry family of their violation of the truancy act, then began the prosecution.[10] Convicted separately of truancy in Butler district court, both

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[9]Prince v. Massachusetts, 321 U.S. 158, 88 L.ed. 645, 64 S. Ct. 438

[10]State v. Lowry, 191 Kan. 701, 383 P.2d. 962 (1963).

Lowry parents filed for a joint appeal.

The court found no quarrel with Mrs. Lowry on meeting the qualified teacher or English language requirements of the applicable truancy statute.[11] The legislature had prescribed certain minimum curricular standards for all schools however, which the Lowry instruction did not meet. General Statute 1949, 72-1103 provided in pertinent part:

> All schools, public, private or parochial, shall provide and give a complete course of instruction to all pupils, in civil government, and United States history, and in patriotism, and the duties of a citizen, suitable to the elementary grades. . .

Upon establishing failure to meet the statutory requirements for curriculum in the Lowry home "school" the court concluded its ruling in part by saying:

> When all the facts and circumstances are considered together, the only conclusion that can be reached is that this was not a private school conceived or promoted for the purpose of educating anyone desiring to attend, but it is really only scheduled home instruction . . .which is no longer an excuse for nonattendance in the schools of the types prescribed in the act.

The judgement was affirmed, finding both Dr. and Mrs. Lowry in violation of the truancy act. Their contention that they operated a private school of their own did not hold up in court, and they were so fined.

Suspension and Expulsion

The Constitution of the State of Kansas provides local school boards with the power to control the public schools in Article 6, Section 5 which states in part:

> S
> S5. Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. . .

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[11] Kansas General Statutes 1949, 72-4801.

Though the opportunity of education must be made available to all on equal terms,[12] the state legislature has provided local boards with the authority to suspend or expel students in certain instances for certain conduct.

The applicable statute reads as follows:[13]

> The board of education of any school district may suspend or expel, or by regulation authorize any certificated employee or committee of certificated employees to suspend or expel, any pupil or student guilty of any of the following:
> (a) willful violation of any published regulation for student conduct adopted or approved by the board of education, or
> (b) conduct which substantially disrupts, impedes or interferes with the operation of any public school, or
> (c) conduct which substantially impinges upon or invades the rights of others, or
> (d) conduct which has resulted in conviction of the pupil or student of any offense specified in Chapter 21 of the Kansas Statutes Annotated or any criminal statute of the United States, or
> (e) disobedience of an order of a teacher, peace officer, school security officer or other school authority, when such disobedience can reasonably be anticipated to result in disorder, disruption or interference with the operation of any public school or substantial and material impingement upon or invasion of the rights of others.

Question: How does the court view marriage as grounds for removal from school?

In September of 1928 Dorothy Nutt Mitchell, upon enrolling for her second year of high school in Goodland after withdrawing the previous spring to become married and give birth to a child, was told that she would not be allowed to attend school because she was married. Her mother then filed an original proceeding in mandamus to have Dorothy admitted to the Sherman County Community High School.[14]

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[12]Brown v. Board of Education of Topeka, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686, 38 A.L.R.2d. 1180.

[13]Kansas Statutes Annotated, 1971 Supplement, 72-8901.

[14]Nutt v. Board of Education of Goodland, 128 Kan. 507, 278 Pac. 1065.

Upon examining affidavits from both parties, Dorothy's reputation, character, attendance, discipline, and academic achievement were all without sufficient fault as to exclude her. The majority opinion summarized its ruling by declaring:

> . . .while great care should be taken to preserve order and proper discipline, it is proper also to see that no one within school age should be denied the privilege of attending school unless it is clear that the public interest demands the expulsion of such pupil or a denial of his rights to attend.

As to the case in point, the opinion went on:

> It is the policy of this state to encourage the student to equip himself with a good education. The fact that the plaintiff's daughter desired to attend school was of itself an indication of character warranting favorable consideration.
> . . .Her child was born in wedlock and the fact that her husband abandoned her should not prevent her from gaining an education which would better fit her to meet the problems of life.

The court in this case did not feel that the board's action was taken with sufficient evidence to warrant her expulsion. Thus marriage alone was not viewed as adequate grounds to exclude a student from school.

> Question: How does the court view failure to salute the flag based on religious convictions as grounds for expulsion?

Almost identical cases on this issue were consolidated in an appeal from Cherokee district court in 1942, in which the children of Mr. and Mrs. J. Alfred Smith and Mr. and Mrs. Olie Griggsby were expelled due to failure to salute the flag for religious reasons.[15] The Smiths were shown a letter by the school principal saying that a recent U.S. Supreme Court opinion held that it was within the power of a school

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[15] State v. Smith and State v. Griggsby, 155 Kan. 588, 127 P.2d 518.

district board to require participation in the flag salute ceremony.[16] Upon removing their children from school and being served with a complaint for truancy, they were found guilty in both juvenille and district court.

The Kansas Supreme Court did not use the Gobitis case as a precedent however, as it dealt with federal constitutional provisions concerning a valid Pennsylvania state law. It was noted that the Kansas law (General Statute 1935, 72-5308) did not provide penalties for the state superintendent if he failed to outline a flag salute program, nor for a school official if he failed to carry out the program, nor was there any penalty for a student if he failed to participate.

In ordering that the district court decisions be reversed, the court ruled that:

> . . .no school board, county, or state superintendent of public instruction ever acted upon the theory that failure of the child to salute the flag, where such failure was based on sincere religious beliefs of the child or his parents, would require or justify the expelling of the child from school.
> . . .Here we have no valid state law for the expelling of a child for such a reason. Indeed, we think no valid state law to that effect could be enacted.

Another expulsion case, filed in 1930, was an original proceeding in mandamus to have John Jacobs' two children admitted to their rural high school after they were expelled.[17] The two had left school early on a Friday in September to attend a football game in a neighboring town, and were not permitted to resume schoolwork upon their return the

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[16] Minersville District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1575, 127 A.L.R. 1493.

[17] Jacobs v. Templeton, 130 Kan. 248, 285 Pac. 541.

following Monday. The students tried again to return on Wednesday and were ordered to leave, threatened with physical force if necessary, and told not to return by the principal. Mr. Jacobs called upon each of the board members to protest the expulsions, but the board took no action after several meetings. Mr. Jacobs then alleged that he had no adequate remedy at law available.

The defendants contended that a statute (Revised Statute 72-1029) did provide a remedy at law which stated:

> The district board may suspend, or authorize the director to suspend. . .any pupil guilty of immorality or persistent violation of the regulations of the school, which suspension shall not extend upon a period of sixty days: Provided that the pupil suspended shall have the right to appeal from the decision of said board of directors to the county superintendent who shall. . .determine as to his guilt or innocence of the offense charged, whose decision shall be final.

The court ruled that Jacobs was not remedied under the statute cited by the defendants however, for three reasons:

1) The expulsion was made by the school principal and not the district board.

2) It was an expulsion without the limitation of time and not a sixty day suspension as in the statute.

3) It was an expulsion for a single infraction, not persistent violation of a regulation.

The defendants' motion to quash the alternative writ in mandamus was therefore overruled. The court clerk noted that the defendants stated that the school had been open to the Jacobs pupils since November of the same school year, thus the court declared the matter moot.

A case in 1972 involving male hair length and student dress codes in general was appealed from Sedgwick district court to the Kansas

Supreme Court. In Blaine v. Haysville[18] the court was asked to determine criteria for evaluating dress codes, and whether or not they were constitutionally permissible.

A dress code at Campus High School had restricted wearing of "extreme hair styles" by males since 1962. After some years of controversy, a committee of twenty was formed to revise and propose a dress code in 1971, which the Board of Education afterwards adopted without change. The committee was made up of parents, elected student council members, teachers, junior high students, school administrators, and a school board member.

After the code's adoption, twenty of the 540 boys at Campus High were advised by the principal that they were violating the hair style regulation, and were given reasonable time to comply. The only three not to comply were the appellants of the Blaine case. They were first suspended and later expelled by the board, based on the board's authority in Kansas Statutes Annotated 1971 Supplement 72-8901(a) which allows suspension or expulsion for "willful violation of any published regulation for student conduct adopted or approved by the board of education." The district court found the regulation reasonable which prompted this appeal.

The court research indicated that at least seventy-eight "hair regulation" cases had been heard, recorded, appealed, researched, briefed, argued, decided, written and reported in case law to that date nationally in federal district and circuit courts.[19] Upon examination of

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[18]Blaine v. Board of Education Haysville, 210 Kan. 560, 502 P.2d. 693.

[19]See, e.g., Bishop v. Colaw, 450 F.2d. 1069; Karr v. Schmidt, 460

these cases, the court spoke to the first question raised in this area on evaluation of dress codes in general saying:

> The only factual issue to be resolved is whether the board of education has shown a reasonable justification, in terms of the general educational process or the disciplinary problems at the school facility sufficient to justify the regulation as one with a rational school purpose. Its adoption must be motivated by legitimate school concerns. It must not be arbitrary, capricious or unreasonable and it must not be unfairly or discriminately enforced . . .A school regulation must not be oppressive or unreasonable. A regulation to be reasonable must be a proper one to further the educational processes in the school and the means adopted to accomplish a purpose must be appropriate to accomplish the educational mission.

In specific response to the Campus High case the court ruled that no evidence existed that the board or school administration had enforced the regulation arbitrarily or capriciously. It was pointed out that while local problems in carrying out the educational mission vary widely depending upon the location of the districts and the background of the people in the districts, the regulation adopted appeared to the court to be appropriate for Campus High School.

The second question before the court in Blaine was whether or not the adopted dress code was constitutionally permissible. The students contended that it violated their individual rights under the United States Constitution in four ways:

1) It deprived them of liberty in controlling personal appearance in violation of the 5th, 9th and 14th Amendments.

2) It took their personal property without sufficient state justification, violating the 14th Amendment.

F.2d. 609; Richards v. Thurston, 424 F.2d. 1281: Freeman v. Flake, 448 F.2d. 258; Valdes v. Monroe County Board of Public Instruction, 325 F. Supp. 572; and Olff v. East Side Union High School District, 404 U.S. 1042.

3) It denied them equal protection of the law and discriminated between male and female students, violating the 14th Amendment.

4) It violated freedom of speech under the 1st Amendment in that long hair is symbolic speech; an expression of non-conformity.

The court heard testimony from the Campus High principal, a teacher at the school, and the district superintendent, in addition to reviewing the bulk of federal case study mentioned previously. After utilizing these resources, the court was convinced it should not enter "the tangled thicket" of federal constitutional law arising from "seeds of protest against society in the form of hair styles" as was mentioned in the majority opinion. This does not mean that they declined to rule however.

The majority opinion held that:

> A student has a right to govern his own personal appearance but the state has a countervailing interest in providing public education for all students, and on proper showing that state interest may justify intrusion upon the student's individual right. . .Most of these youth are seeking their own identity as well as an education. If a suitable atmosphere for instruction, study and concentration is to be provided, the students and the teachers must be subjected to a wide variety of disciplinary rules. For many adolescents learning is a discipline rather than a pleasure and it must be carried on in dignified and orderly surroundings if it is to be practiced satisfactorily. . .Careful recognition should be given to differences between what are reasonable restraints in the public classroom and what are reasonable restraints on a non-student on the public street corner.

The court felt that the district court evidence supported its finding and conclusion that male hair styles at Campus High distracted other students, disrupted classroom atmosphere and interfered with the educational process. The court affirmed the decision of the lower court rather than substitute its judgement for that of the district court or the board.

Student Due Process

The Kansas Supreme Court gave its only known opinion on a case involving student procedural due process in 1973, when the expulsion of a student from Wichita West High School, Gary Smith, was challenged.[20] The court received the case on appeal from Sedgwick district court primarily on procedural due process defects by the board and its hearing examiner, it was alleged. The questions before the court were two: Was the student in this instance provided with due process of law? What process of law is due?

On September 11 of 1972 four separate assaults occured in the halls of Wichita West High. Three of the persons assaulted reported the incidents, but could not identify an assailant. The fourth student assaulted, Martin Clemence, identified Smith from a student yearbook photo as his assailant. The next day the principal wrote Smith's parents a letter notifying them of his suspension for "gross misconduct," and of the recommendation that Smith be expelled. A hearing date, place, time and examiner was announced in the letter, along with a copy of the Board policy and Laws of Kansas pertaining to the procedure involved.

At the hearing an affidavit was sent on behalf of Clemence, who had identified Smith, since Clemence did not wish to be present. Two days after the hearing, the examiner adopted the recommendation to expel Smith and so informed his parents by letter. Smith, through counsel, appealed the decision to the Board of Education and requested to return to school pending the appeal. On October 3, the examiner wrote Smith's parents to say that he should be returned to school, but recommending

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[20]Smith v. Miller, 213 Kan. 1, 514 P.2d. 377.

the Metro Program for the remainder of the semester. Smith declined due to its not being a "regular school with normal curriculum" and also due to a transportation problem which would arise.

Smith received his de novo hearing by a board appointed hearing officer on October 12. During the proceedings, the issue of confrontation and cross-examination of witnesses against him was raised on Smith's behalf. The hearing officer prepared a written report upon conclusion of the hearing recommending Smith be expelled for the 1972-73 school year which was adopted by the Board on October 16. An appeal to district court was made in challenge of the due process procedure and portions of the expulsion statutes. On October 20 the trial court held that the challenged statutes were constitutional and that Smith had been afforded due process throughout. Both the injunctive and declaratory relief requested were denied.

Prior to the case reaching the Kansas Supreme Court, the school term in question ended, which in a sense made the case moot. The appeal was still entertained however, because of the nature of the controversy in existence over the statutes.

Smith, the appellant, cited several contentions which the majority opinion dealt with chronologically. First, he asserted that he was denied due process under the 14th Amendment of the federal constitution when he was not furnished the names of any witness against him and the substance of charges against him prior to the first hearing. This assertion was granted valid by the court in that the letter from the principal about Smith's initial suspension, dated September 12, failed to contain the name of any witness and also failed to contain the substance of charges against him.

Kansas law pertaining to this right stated:

> . . .In all cases wherein a pupil or student might be suspended for an extended term or might be expelled, he shall first be suspended for a short term. A written notice of any short term suspension and the reason therefore shall be given to the pupil or student involved and to his parents or guardians within twenty-four (24) hours after such suspension has been imposed. A written notice of any proposal to suspend for an extended term or to expel and the charges upon which the same is based shall be given to the pupil or student proposed to be suspended or expelled and to his parents or guardians within forty-eight (48) hours after the pupil or student has had imposed a short term suspension.[21]

Smith next complained that the examiner had failed to base his decision entirely on evidence presented at the first hearing, a contention in which the court found no justification. Another complaint was that the examiner erred when his report contained no finding respecting Smith's return to school pending any appeal. The court found no error in that this decision was left to the sound discretion of the examiner. He testified that he had decided it would not be in the best interest of all concerned to return Smith to the classrooms at Wichita West, and he thus recommended the Metro school.

A further contention was that the applicable statute to administration of disciplinary action, Kansas Statutes Annotated 72-8902 (a) (c), allows short term suspensions before a hearing and permits removal from school pending a final determination. He contended the status quo should be maintained meanwhile. Again, the court found no justification for the complaint. The basis here was that the misconduct charged was of a nature disruptive to the orderly operation of the school.

The principal contention in Smith v. Miller was that Smith had

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[21] Kansas Statutes Annotated, 72-8902 (a).

been deprived of procedural due process in the denial of the right of confrontation and cross-examination of the witnesses against him. Kansas law relating to the hearing process does not provide cross-examination as a right to the student defendant. The law provides only the following:

> . . .(a) The right of the student or pupil to have counsel of his own choice present and to receive the advice of such counsel or other person whom he may select, and
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> (b) the right of the parents or guardians of the student or pupil to be present at the hearing, and
>
> (c) the right of the student or pupil and his counsel or advisor to hear or read a full report of testimony of witnesses against him, and
>
> (d) the right of a student or pupil to present his own witnesses in person or their testimony by affidavit, and
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> (e) the right of the student or pupil to testify in his own behalf and give reasons for his conduct, and
>
> (f) the right of the student or pupil to have an orderly hearing, and
>
> (g) the right of the student or pupil to a fair and impartial decision based on substantial evidence. . .[22]

The majority opinion remarked that the courts have been divided in different directions on cross-examination in prior decisions. The court recognized that outside the criminal area, cross-examination is not an absolute right but depends rather upon a case by case assessment of the circumstances. Stating the position to be taken on the issue, Justice Harman spoke for the majority:

> We see no objection to the use of affidavits when the testimony is of minor importance or of a cumulative nature. But when the outcome is directly dependent upon the credibility of two witnesses (possibly including the student threatened with expulsion) whose statements are directly conflicting, then cross-examination is imperative in establishing the truth, absent compelling reasons for dispensing with it. When cross-examination is required the school's interest can be protected by holding the hearing in private and by limiting the scope of cross-examination to prevent the student or his lawyer from badgering witnesses. Reasonable restraints on its use can be imposed. Hard and fast rules cannot be prescribed to fit

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[22] Kansas Statutes Annotated, 72-8903.

all circumstances.

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Accordingly we hold that as a matter of due process under the particular circumstances appellant should have been afforded the right to confront and cross-examine the principal witness against him and the trial court erred in ruling otherwise.

With these findings the court reversed the Sedgwick district court decision in the Smith case. Three justices dissented with the cross-examination statements, one because he felt the case was moot and two others because they felt the right to cross-examine could not be granted without the power to subpoena witnesses. Nonetheless, the court waits to be tested again on its student due process stance.

Locker Searches

The lone case on this topic was brought before the court in 1969 on appeal from Franklin district court. In January 1968 an Ottawa music store was broken into and cash as well as other property taken. Madison Stein, a student at Ottawa High School, was charged with and later convicted of second degree burglary and grand larceny in connection with the incident.

On the day following the burglary, two police officers visited Ottawa High. The principal, at the officers' request and with Stein's consent, opened Stein's school locker and brought the contents to his office. Stein agreed that the officers could look through the locker contents, which revealed a key to another locker in the Lawrence Bus Depot. Upon obtaining a search warrant, the Lawrence locker was found to contain most of the stolen cash and merchandise.

The principal point of this appeal[23] was that Stein was not given

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[23] State v. Stein, 203 Kan. 638, 465 P.2d. 1.

a warning such as that provided for in the Miranda decision by the U.S. Supreme Court.[24] This warning essentially provides that the accused be told he has a right to remain silent, that anything he says may be used against him in court, that he is free to exercise his Fifth Amendment privilege protecting against self-incrimination during the interrogation, that he has the right to the presence and consultation of a lawyer, and that if he is unable to get a lawyer one will be appointed for him.[25]

The court rejected Stein's argument on two grounds. The first was that in a previous Kansas ruling the court had held that the Miranda rule was not applicable to a search and seizure situation, and that valid consent to the search of private premises does not depend on the owner's having been given the mentioned warnings.[26]

Secondly, the court ruled that the argument must fail due to the nature of a high school locker. On this point the court elaborated:

> . . .Its status in the law is somewhat anomalous; it does not possess all the attributes of a dwelling, a motor vehicle, or a private locker. . . .Although a student may have control of his school locker as against fellow students, his possession is not exclusive against the school and its officials. A school does not supply its students with lockers for illicit use in harboring pilfered property or harmful substances. We deem it a proper function of school authorities to inspect lockers under their control and to prevent their use in illicit ways or for illegal purposes. We believe this right of inspection is inherent in the authority vested in school administrators and that the same must be retained and exercised in the management of our schools if their educational functions are to be maintained and the welfare of the student bodies preserved.

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[24]Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602.

[25]J. Shane Creamer, The Law of Arrest, Search, and Seizure (Philadelphia: W. B. Saunders and Col, 1975), pp. 342-343.

[26]State v. McCarty, 199 Kan. 116, 427 P.2d. 616.

Corporal Punishment

The only Kansas case on record in the corporal punishment area was one in the Elk County District Court, filed in 1885. State v. Ward was a case in which a teacher, Hattie Ward, was charged with assault and battery on a student, George Hubbell, after she had whipped him with a rod as punishment for "gross misconduct."

The district court upheld the right to inflict corporal punishment and provided guidelines under which it should be practiced:

> In chastising a pupil, the teacher should exercise reasonable judgement and discretion, and should be governed as to the mode and severity of the punishment by the nature of the offense committed, the previous good or bad conduct of the pupil, . . .the age, size, sex and apparent power of endurance of the pupil, the present apparent effect of the punishment, both on the body and mind of the pupil, as well as any other consideration which tends to show the reasonableness or unreasonableness of the punishment under all the circumstances of the case.

The district court also indicated where the burden of proof would fall in such cases by saying:

> In absence of proof to the contrary, the law will presume that a teacher punishes a pupil for a reasonable cause, and in a moderate and reasonable manner; but this presumption may be rebutted by proof.[27]

Analysis of the Rulings

As the preceding cases were studied, an interesting shift in the court's ruling trend was observed. While vast differences in circumstances in the several cases cited make generalizations difficult, a chronological examination nonetheless reveals a pattern of change in the outcome of decisions.

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[27] State v. Ward, 1 Kansas Law Journal 370.

From the early decisions to approximately the middle of this century, the court seemed consistently to find rulings against the state or local school boards and in favor of students or parents. The Williams case started the trend in 1908, followed by Will in 1916, Nutt in 1928, Jacobs in 1930, and Smith and Griggsby in 1942. The trend shifted in later years, when parents and students saw their cases being decided in favor of local boards and the state. Lowry in 1963 was the first evidence of this shift, followed by Garber in 1966, Stein in 1969, and Blaine in 1972. The Smith case in 1973 was an exception, though several of the points contested were found in favor of the board. As the most recent case in the areas under study in this chapter, perhaps the Smith ruling signifies the beginning of a return to a period of student and parent satisfaction in the eyes of the court.

Chapter 4

TEACHER CONTRACTS AND NEGOTIATIONS

Management and operation of public schools is the responsibility of the state legislatures, which have delegated that authority by statutes to school district boards of education in all fifty states.[1] Boards then negotiate and contract with teachers for services to carry out the educational missions of the schools. During the course of teacher negotiations in Kansas, questions have arisen concerning the amount of compensation, length of school year, what items are negotiable, and what procedures would govern unsuccessful negotiations. Questions have likewise emerged regarding verbal contracts with teachers, contracts with non-certified teachers, the effect of dismissal or nonrenewal by the board and the right to hearings of cause for such, continuing contracts, and general contract validity.

This chapter reviews Kansas Supreme Court cases which have required judicial interpretations of the statutes dealing with teacher contracts and negotiations. A summary of established legal principles and an analysis of the decisions are also provided.

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[1]Robert L. Drury and Kenneth Ray, Essentials of School Law (New York: Meredith Publishing Company, 1967), p.7.

Review of Litigation

The topics of teacher contracts and negotiations have been treated numerous times by cases in the Kansas Supreme Court. For this study, the cases have been categorized into the areas of requisites and general validity of contracts, teacher resignations, teacher dismissals for a variety of causes, procedural due process regarding teacher dismissals, teacher contract nonrenewals, compensation, continuing contract law, impasse procedures and mediation, and scope of professional negotiations. Fifty-one cases on the areas above have been selected, reviewed, categorized, summarized, and presented in this chapter, along with additional Kansas cases and statutorial enactments supporting the decisions cited.

Requisites and General Validity of Contracts

A teacher's contract with a school district for services to be rendered is a legally binding document and may include all the characteristics of other valid contracts. Hazard defines these traits by stating:

> The employment of a teacher is based on a contract between the school board and the teacher. The contract, usually written, includes all the elements required by common law: (a) mutual assent (the board makes an offer which is accepted by the teacher), (b) competent parties (the board and the teacher are legally capable of making the agreement), (c) consideration (the board agrees to pay the teacher for his services), (d) legal bargain (the agreement is not prohibited by law), and (e) agreement made in the form required by law.[2]

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[2]William R. Hazard, Education and the Law (New York: The Free Press, 1971), p. 278.

The Kansas Supreme Court first dealt with the topic of written contracts in 1889 when one month's wages for teaching were sought by Charles Faulk. The district's director contended that no contract was drawn during the board meeting, therefore only an invalid oral agreement existed which was not binding on the board. The contract had been drawn immediately after the meeting.

In reversing the Finney district court decision favoring the director, the court ruled that a legal contract did exist and could be reduced to writing after adjournment of a meeting. The court stated:

> Probably a majority of the contracts for teachers' wages in the state are made in parol, and afterwards reduced to writing; it may be done at a meeting of the district board - that is the better way; it may, however, be directed to be done at that time and immediately afterward reduced to writing and signed by the parties.[3]

In 1932 another case involving the stipulation that contracts be in writing reached the court, which prompted Justice Burch to ask and answer in his majority opinion "...What did the legislature of this state mean in 1876 when it provided that contracts of employment between school board and teacher shall be in writing?"[4] The ruling, in answer to the question, was that to be binding a written acceptance of any agreement must be made. Therefore in this case, the board record of a meeting at which the teacher was declared elected with a stated salary did not constitute a contract since no written acceptance was made. The ruling was consistent with that in a previous case regarding the election of superintendents in which no written acceptance was found.[5]

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[3]Faulk v. McCartney, 42 Kan. 695.

[4]Petrie v. Sherman County High School, 134 Kan. 464, 7 p.2d. 104.

[5]Sinclair v. Board of Education, 115 Kan. 434, 222 Pac. 766.

The court has reached several decisions containing stipulations for a contract to be binding upon the board of the school district. The earliest of these was a case in 1882 in which a written teacher's contract was signed by two of the three board members, each doing so in absence of the other, and the third member was not asked to sign. This method of signing a contract was not considered valid nor binding by the court. In defining the board's responsibility to meet on such matters the court stated:

> ...We think, in view of the elementary principles applicable to the duty of a body like the district board, consisting of several persons aurthorized to do acts of a public nature, where the power to contract with the person seeking employment as a teacher is vested by the statute in the "board", that all must meet together, or consult over the employment of a teacher, before a contract can be legally entered into by them so as to bind the district.[6]

When two out of three board members signed a teacher's contract in 1895, after having met with the third board member to discuss the matter, the contract was considered as binding upon the board by the court.[7] The failure to obtain the third board member's signature did not invalidate the contract as long as all three had met or had opportunity to meet on the matter as set forth in the Aikman decision.

Though a teacher's contract may be unenforceable because of some irregularity in the making of it, as in Aikman, ratification of the contract by the board may be implied from a board action such as acceptance of the service of a teacher and payment thereupon.[8] This was the

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[6] Aikman v. School District No. 16, 27 Kan. 129.

[7] Brown v. School District No. 41, 1 Kan. App. 530.

[8] Lee O. Garber and Newton Edwards, The Law Governing Teaching Personnel (Danville, Ill.: Interstate Printers and Publishers, 1969), p. 4.

situation in 1917 when Mattie Parrick had been paid for four months of teaching by the board though her contract had been signed through individual interviews with two board members.[9] The irregularities of the contract and its execution were judged to be the board's errors, and the contract was recognized by the court as having been ratified through implication. This decision paralleled one in 1898 when a teacher's contract, though drawn up legally, was said by the board to be invalid despite their having paid the teacher two months' wages. Here again the court found that payment on the terms of the contract constituted sufficient ratification to make it binding upon the board.[10]

Two other questions of contract validity have been answered by the court. The first dealt with the time of year that a contract may be issued. An appeal in 1930 asked the court to determine whether a school district board could legally contract with a teacher prior to the board's annual meeting, for a term to begin at a date subsequent to the meeting. The court, citing the legislature's probable intentions in creating an annual meeting, ruled that any contract enacted prior to such meeting would not be valid. The opinion states in pertinent part:

> It appears that the annual meeting of the school district is intended by the legislature to be a pure democracy. Each qualified voter residing within the district is given the right to appear at the annual meeting and there exercise his voice in all matters pertaining to the conduct of the affairs of the school district as outlined by the statutes. Each voter has the right to say...how long a term shall be conducted during the ensuing school year. Each voter has the right likewise to voice his judgement as to the amount of compensation to be paid to each teacher hired by the district.[11]

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[9] Parrick v. School District No. 1, 100 Kan. 569.

[10] Jones v. School District No. 144, 7 Kan. App. 372.

[11] Calloway v. Atlanta Rural High School, 284 Pac. 377.

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> Until the annual meeting has fixed the length of term and the amount of wages to be paid, it is manifest that the board is in no position to make a contract.

A second question of contract validity reached the court by appeal in 1934.[12] In this case a contract was signed by the teacher and two board members in the halls of the county courthouse, which was not within the school district's geographical limits. The court here affirmed the Coffey district court's judgement that the contract was invalid. Cases concerning similar circumstances in Kansas, in which officials were ruled powerless outside their territorial limits of jurisdiction, were cited in the opinion regarding justices of the peace,[13] county commissioners,[14] and elected officers in general.[15]

Though teacher certification in general is not a topic under study in this work, two cases concerning requisites to contract and the validity of such contracts will be mentioned. The first involved Virgil Strange, a teacher, who contracted to teach with the school board at Green, Kansas in September of 1927. His letter of application in May, just after finishing his work at Kansas State Teachers College, Emporia, stated that he was the holder of a three-year teaching certificate, though in fact he was not. When the superintendent learned of Strange's true status, the district did not permit him to teach and thus

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[12] Dunfield v. School District No. 72, 138 Kan. 800, 28 P.2d. 987.

[13] Phillips v. Thralls, 26 Kan. 780.

[14] State v. Scott County, 58 Kan. 491, 49 Pac. 663.

[15] Markham v. Cornell, 136 Kan. 884, 18 P.2d. 158.

the case was filed.[16] The court was sympathetic to the situation imposed upon the school at Green which was then without a teacher. Nonetheless, the contract was ruled unenforceable due to Strange's inability to make a legal agreement without a certificate.

Also unable to contract legally was Verna Buchanan, a teacher who had signed a contract with a school district in 1932, prior to taking an examination for a county certificate.[17] The Kansas Supreme Court reversed the Elk district court's decision in favor of Buchanan. Here, as in Strange, it was ruled that a teacher must be a holder of, not just allegedly entitled to, a certificate if a signed contract is to be made.

When the district has signed a contract recognizing that a teacher is qualified, it is required to honor the contract even though the certificate date states only a year of issue. This was the ruling in an 1882 case[18] alleging that the teacher was unable to contract due to a defect in the certificate date. No antagonism was shown with the date of contractual commencement however, and the contract was held valid for payment.

Another contract declared invalid was one made between Mamie Webber, a teacher, and common School District No. 48 of Montgomery County for the school year of 1934-35. The contract was made through a board violation of the cash-basis law which states in part:[19]

> ...it shall be unlawful after May 1, 1933, for the governing body of any municipality to create any indebtedness in excess of the

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[16] Strange v. School District No. 97, 132 Kan. 268, 292 Pac. 672.

[17] Buchanan v. School District No. 134, 143 Kan. 417, 54 P.2d. 930.

[18] Hamrick v. Board of Education of Wellington, 28 Kan. 385.

[19] Kansas General Statutes 1935, 10-1113.

> amount of funds actually on hand in the treasury of such municipality at the time for such purpose, or to authorize the issuance of any order, warrant, or check, or other evidence of such indebtedness of such municipality in excess of the funds actually on hand in the treasury of such municipality at the time for such purpose.

The school district was entitled to $721.04 according to the county clerk's 1934 tax roll, yet Webber's contract was entered into by the district for eight months of teaching at a salary of $110.00 per month, or a total of $880.00. In this case, brought on appeal from Montgomery district court in 1937,[20] the contract was ruled invalid as it was in clear violation of the statute cited. The court based its ruling on the section of the cash basis law dealing with contracts which read:

> Any contract entered into between the governing body of any municipality and any person, which violates the provision of this act, shall be void, and any order, warrant, check or other evidence of indebtedness drawn on the treasurer of any municipality in violation of the provisions of this act shall be void.[21]

Teacher Resignations

Three Kansas Supreme Court cases have been decided on issues stemming from teachers resigning from their contractual duties. The first, in 1936, was when a teacher brought suit against the school district after she had resigned to avoid a dismissal.[22] The next day after talking with an attorney, she wrote the board to void her resignation and was soon informed that the board had dismissed her for incompetence. While a jury voted in her favor against such dismissal in Miami district

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[20] Patterson v. Board of Commissioners of Montgomery County, 145 Kan. 559.

[21] Kansas General Statutes 1935, 10-1119.

[22] Cook v. School District No. 29, 143 Kan. 532, 56 P.2d. 66.

court, the decision was here reversed. In reviewing the evidence the court found that the teacher had been visited by the superintendent, principal, and board members, all of whom agreed that she was having discipline problems. She was given ample notice of this deficiency, and notice of a board meeting at which it was discussed. It was there that she wrote her resignation. The court upheld the board, saying that the teacher's consultation with a lawyer "did not change the force and effect of what was done." No contractual relief was required.

A second case on this topic reached the court in 1946, in which the resignation was not of controversy but the contract language was.[23] John Francis, a teacher, had given his notice of resignation which was effective December 30, 1942. In attempting to receive his compensation up until that point, Francis sought to recover the difference between the amount received for the four months he had taught calculated on a twelve-month basis, and the amount he would have received for those months had his salary been calculated on a nine-month school year basis. This was the difference between one-third and one-half of the teacher's salary.

How many months comprise a school year? The court upheld Francis' definition. Francis contended that the contract considered the first eighteen weeks of school to be a full semester, and a semester could be defined as half-yearly. A full year would then be two semesters, or thirty-six weeks, or nine months of four weeks each. The court ruled that the ambiguity of the contract in defining a school year must be resolved against the board, citing an earlier court case in which it was declared:

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[23] Francis v. Shawnee Mission Rural High School, 161 Kan. 634, 170 P.2d. 807.

> There is an elementary rule of law that where one party to a contract is privileged to set down in writing the terms to which another party is to give assent, and a controversy arises as to their meaning, the contract should be construed strictly against the writer and liberally toward the other party.[24]

A third case involved a resignation accepted by the school board based on a note attached to an unsigned contract which was returned. The teacher, testifying she was shocked to learn her note had been accepted as a resignation, brought suit claiming the board and broken the continuing contract law guidelines. The court did not agree. The opinion stated:

> The law referred to speaks to what is required in case of unilateral termination of a teacher's contract of employment. There is nothing in the statute which prevents termination by mutual assent. We see no reason why a contract of employment between a teacher and a school board should be any different than any other contract....Mutual assent to abandon a contract may be inferred from the conduct of parties and the attendant circumstances. Recission depends upon the intention of the parties as shown by their acts, words, or written expressions.[25]

Teacher Dismissals - In General

In the early days of our state's schools it was recognized that if a district should be unable legally to rid itself of a poor teacher a public calamity might exist. A law to govern teacher dismissals was written to protect the district and quality of instruction. It stated:

> The district board in each district shall contract with and hire qualified teachers for and in the name of the district,...and in conjuction with the county superintendent may dismiss for incompetency, cruelty, negligence, or immorality.[26]

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[24] Bankers Mortgage Co. v. Dole, 130 Kan. 367, 286 Pac. 258, p. 376.

[25] Brinson v. School District No. 431, 223 Kan. 465, 576 P.2d. 602.

[26] Laws of 1869, Chapter 86, Section 7.

An 1870 contract stating only that the district board could discharge a teacher "at any time he fails to give satisfaction to said board" was held by the court to be clear enough in statement of grounds and consistent with the statute cited above. The teacher who had taught for three-and-a-half months before his discharge sought unsuccessfully to receive payment for the remainder of his six-month contract.[27]

A second teacher brought suit against a school district in contention of a contract proviso allowing the board to annul the contract for "inability or neglect" of the teacher, causing the school's interests to suffer. She had been dismissed in March of 1881 for complaints to the board accusing her of crocheting and writing letters too much. Here again the reasoning in Colvin was used. The court ruled that if she was in fact negligent and incompetent, as the trial court and board had found, then the board had legally discharged her in accordance with the contract and applicable statute.[28]

The question of dismissal for failure to give satisfaction to the board arose again in an 1895 case previously mentioned concerning contract validity. In Brown v. School District No. 41,[29] L. C. Brown, a teacher, was hired and dismissed prior to his entering upon the duties of the contract. A school district meeting was held at which a large majority of the district's qualified electors voted to dismiss Brown, and he was sent notice of such. The court held that the contract's clause did not require actual classroom performance of duties before a discharge

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[27]School District No. 45 v. Colvin, 10 Kan. 283.

[28]Armstrong v. Union School District No. 1, 28 Kan. 345.

[29]Brown v. School District No. 41, 1 Kan. App. 530.

could be made. There existed an abundance of testimony in the Cowley district court decision to sustain the reasonableness of the grounds for dissatisfaction.

A case in 1959 also questioned the general grounds for dismissal and the appeal procedure following such dismissal. Notice of the discharge simply referred to a board meeting discussing the "past actions and statements" made by the teacher. The court ruling stated that no sufficient cause of action was presented by the teacher. The contract clearly stated that the board "may dismiss the teacher for cause," and the board found the past actions and statements to be sufficient cause. The contract also allowed appeals of dismissals to be made to the county superintendent. The teacher made no such appeal.[30]

Teacher Dismissals - Incompetency

An early case involving a teacher dismissed for alleged incompetency provided an important ruling of the board's authority in dismissal hearings and the nature of such hearings. When Joseph McCoy was dismissed by the county superintendent and school board in January of 1881, he contended successfully in district court that he should have a formal trial concerning the dismissal. The Bourbon district court agreed and held that the school board, acting in conjuction with the county superintendent, was substantially a court and had not followed correct legal procedure in conducting a trial on the matter.

The Kansas Supreme Court reversed this decision, finding no statute providing that the group mentioned should constitute a court.

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[30] Moore v. Starkey, 185 Kan. 26, 340 P.2d. 905.

Instead, the opinion stated:

> ...on the contrary, the statute would seem to indicate that the proceeding is to be a mere summary proceeding, and to be carried on and determined in the mode which the district board and the county superintendent may for the time being consider best, and the most likely to do justice and promote the best interests of the public.[31]

Another dismissal for incompetency was contested in 1910 when a teacher contended that the board and county superintendent had not acted together in discharging her. The court here again reversed a district court decision favoring the teacher. The board members had gone to see the county superintendent and had discussed the matter, after which the notice was signed. No other formal meeting between the board and county superintendent was required by the court to make the discharge valid, despite the complaint that they should be required to meet and organize as a tribunal to hear evidence.[32]

Teacher Dismissals - Negligence

Though a few of the Kansas cases decided include negligence as a charge, only one case reviewed cites it as the chief ground for dismissal. Negligence was charged by the board for the teacher's having taken an extra week of vacation at Christmas time of 1914 without the board's consent, though they had been notified of the teacher's intentions. The county superintendent could not concur in their reasoning for dismissal, however. Herein was the basis for the ruling. The court stated the dismissal must carry the agreement of both county superintendent and the

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[31] School District No. 23 v. McCoy, 30 Kan. 268.

[32] Duncan v. School District No. 8, 83 Kan. 580.

board as separate entities. The reasoning was given in the opinion:

> ...the authority for dismissing a teacher for negligence, etc. is not vested in a mere majority of four persons, the three members of the board and the superintendent, but requires the independent assent of the superintendent in addition to that of the board. . . . In this way the legislature, in its wisdom, has sought to safeguard district school teachers from dismissal without sufficient cause or through arbitrary action, caprice or injustice on the part of the school board.[33]

Teacher Dismissals - Cruelty to Students

The Kansas cases studied revealed three cases in which teacher dismissals for cruelty to students were challenged. The first, in 1896, involved removing a teacher one-half month before school was to let out, for her punishment tactics. The board insisted that she could be discharged according to the district rules of which she had a copy, stating in part that teachers were elected for one year "unless sooner removed by vote of the board." The court agreed with the Franklin district court's decision in favor of the teacher. In that lower court the jury had determined that the above clause in the board's rule must be interpreted to mean a vote of removal for sufficient cause. No statute existed at this time which defined causes for dismissal of teachers in second class cities. The jury also did not find her punishment to be of such cruelty to justify her dismissal. With these findings the Kansas Supreme Court found no error in the lower court judgement.[34]

A second dismissal for similar charges evolved into a case which reached the court on appeal in 1904. The teacher here was questioning the final authority of the school board and county superintendent to

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[33] Parrick v. School District No. 1, 100 Kan. 569.

[34] Board of Education of the City of Ottawa v. Cook, 3 Kan. App. 269.

reach a combined decision to dismiss. The court responded to the teacher's question in the opinion which stated:

> ...We believe that the legislature established this tribunal, clothed with the power to dismiss, with the intention that its acts should be final. The teacher takes his employment with the knowledge of this power and it enters into his contract of hire, however made or formulated. We can see no purpose or object of the legislature in joining the county superintendent with the district board and giving the tribunal thus created the power to dismiss teachers unless it was intended that, in the absence of fraud, corruption, or oppression, its acts should be final and conclusive.[35]

In so stating, the court reversed a Kearny district court decision which had awarded the teacher damages based on special findings. The findings of fact by the board and county superintendent in regard to the causes for dismissal were seen as not subject to review by the courts so long as no fraud, corruption, or oppression were evident.

In 1934 still another dismissal for cruel punishment brought to the court a case in which the only question was whether the board and county superintendent had acted in bad faith concerning the dismissal. Here, as in Davies, the board and county superintendent together were trusted to have made sound judgement upon the actions sufficient to warrant the discharge. The teacher's claim that the board members had not visited her school and thus were not acting fairly in dismissing her, carried no weight in court. In stating the opinion that no injustice was evident in the dismissal, the court mentioned:

> ...the fact that the members of the board did not go to the school, or to the teacher, get her version of things, and consult and advise with her, contains no implications and warrants no inference that they acted fraudulently, corruptly, or oppressively;

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[35]School District No. 18 v. Davies, 69 Kan. 162, 76 Pac. 409.

dishonestly, insincerely, or hypocritically; with guile, deceit, or simulation; or with any other kind of obliquity which may be indicated by the term bad faith.[36]

Teacher Dismissals - Failure to Teach Assigned Courses

Two teacher cases in this state have resulted from board dismissals for failure to perform in compliance with assignments made. A 1937 case was the first. Here a teacher was assigned to teach the seventh and eighth grades or permitted to complete study for a first grade certificate. She desired to teach only the second grade, however. The trial court held that a special provision in the contract made the question unnecessary of determination so long as the board had acted in good faith. The Kansas Supreme Court affirmed this lower court ruling, along with upholding the dismissal in accordance with a separate contract clause allowing either party, teacher or board, to annul the contract on thirty days written notice. Though such a provision was viewed by the court as unusual, it was not forbidden by any statute or earlier decison and it was seen to have given the teacher equal privilege to annul the contract if dissatisfied.[37]

Refusal to teach an English class, resulting in the dismissal of a shop teacher, was the origin of a second case on this topic which reached the court in 1970. Contending that a letter from the superintendent outlining tentative classes for the coming year constituted a binding commitment, the teacher refused to teach any other courses

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[36]Morris v. School District No. 40, 139 Kan. 268, 30 P.2d. 1094.

[37]Voran v. Rural High School District No. Joint A., 145 Kan. 311, 65 P.2d. 340.

despite a contract clause reserving the board's right "to assign said teacher to such building and work as the best interest of the schools of the district require." The court viewed the contract as binding and complete in its instruction, despite any oral negotiations between the teacher and superintendent. The dismissal was upheld for sufficient cause.[38]

Teacher Dismissals - Procedural Due Process

Though many of the cases previously cited have contained elements of a required due process in their decisions, the following are cases in which the chief points of law concerned such. The first case, in 1957, involved a tenured teacher who was discharged for incompetency, inefficiency and neglect of duty.[39] She contended that the termination violated the applicable Tenure of Instructors Act[40] entitling her to "continue in service in such public school system during good behavior and efficient and competent service," and also violated the Continuing Contract Law[41] providing for continued employment unless terminated as provided by law.

The contentions were not substantiated in the evidence to the court. The board was found to have provided the teacher with a warning of the defects and a timely written notice of the discharge and

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[38]Robertson v. McCune, 205 Kan. 696, 472 P.2d. 215.

[39]Million v. Board of Education of Wichita, 181 Kan. 230, 310 P.2d. 917.

[40]Kansas General Statutes, 1949, Chapter 72, Article 54.

[41]Kansas General Statutes, 1955 Supplement, 72-5410 to 72-5412, inclusive.

entitlement to a hearing. A hearing was held and the teacher's counsel examined and cross-examined witnesses. Following the hearing she was terminated by the board without the court's finding any error in the procedure or cause for dismissal.

The dismissal of a non-tenured teacher led to a case in 1975 which essentially defined the due process rights of such employees. The teacher, Charles Wertz, was advised at least twice by the principal that his classroom discipline problems were in need of improvement. On the day following a third such evaluation with similar findings, Mr. Wertz was notified by letter that he was immediately suspended without pay and that his discharge would be recommended at the next board meeting by the superintendent. The next day the board met and notified Mr. Wertz of his discharge without pay. This letter stated the reasons for such and allowed him thirty days in which to request a hearing if desired.[42]

The discharge without a prior hearing was invalid in the opinion of the court. A mid-year dismissal was considered sufficiently injurious to call for a hearing, even though not accorded by statute at that time.[43] His dismissal without pay concerned a property interest in continued employment protected by the due process clause of the 14th Amendment to the U.S. Constitution. In weighing the interests of both Mr. Wertz and the school district, the court could not justify his immediate dismissal before a hearing and without pay. The hearing

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[42]Wertz v. Southern Cloud Unified School District No. 334, 218 Kan. 25, 542 P.2d. 339.

[43]The procedural guideline for a due process hearing on termination of a teacher's contract (Kansas Statutes Annotated, 1974 Supplement, 72-5436, et. seq.) was not in effect at the time of this discharge.

offered in the letter of discharge, after notice of dismissal, did not constitute due process of law.

Two U.S. District Court cases from Kansas also concern this topic and will be briefly mentioned. The first case also involved the dismissal of a teacher without a hearing which was deemed in violation of the teacher's "valuable inalienable right of following one's chosen occupation coupled with a right or interest of an expectancy of continued employment," similar to the cases mentioned above. In this 1971 action, sufficient cause for dismissal was not substantiated.[44]

The second case reached the court in 1977. Here the teacher's dismissal was also ruled invalid on due process grounds. Dismissed originally on a jury's verdict convicting him of possession of marijuana, a school teacher who was subsequently acquitted at a later trial but not reinstated by the board, brought suit against his dismissal without a hearing of charges other than the court action against him. No additional cause for discharge was found, and the teacher was awarded damages and back pay from the time of original dismissal, as well as reinstatement.[45]

Teacher Contract Nonrenewal

Just as school boards may discharge teachers for valid reasons prior to the completion of contractual agreements, so also may boards decide not to continue the employment of a teacher for the next school year. Four Kansas cases on questions concerning the nonrenewal of

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[44] Endicott v. Van Petten, 330 Federal Supplement 878 (D. Kan. 1971).

[45] Bogart v. Unified School District No. 298, 432 Federal Supplement 895 (D. Kansas 1977).

teaching contracts have been decided; three by the Kansas Supreme Court and one in the U.S. Court of Appeals, Tenth Circuit.

The earliest of these cases reached the Kansas Supreme Court in 1924. In this instance a music teacher had been notified that her contract had been cancelled for the coming year because of a board decision to do away with some departments in view of the school's financial situation. The contract which this teacher had signed in April for the following year was terminated by the board at the end of May. Her legal action charged the board with cancelling her contract without reasonable ground to do so, and also without sufficient notice of cancellation. The teacher was unable to prove that the board had acted capriciously or without justification however, and the court found that the notice to cancel was made as soon as the board knew of the approaching economic circumstances. The termination was ruled to be within the district's power.[46]

In 1979, a second case concerning nonrenewal for economic reasons reached the court on appeal by a community junior college instructor. The controversy hinged upon the definition of one word in the teacher's contract. The college board of trustees had a policy for reduction in force, stated in the contract, saying that the faculty member with least service at the school in the "division" in question was to be released first. They construed the term "division" to mean a particular instructor's program, such as the technical drafting program they wished to eliminate. The teacher held a different opinion of the contract clause which prompted his legal action. The court agreed with the teacher's

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[46]Brown v. Board of Education of Bonner Springs, 117 Kan. 256.

evidence which contended that there were seven administrative "divisions" at the school, as provided in the table of organization. Within the Division of Industrial Education were nine instructors, with other teachers having less seniority than the plaintiff in this case. Thus, the court found he had been wrongfully terminated.[47] This case was first heard in Butler district court de novo, since no statute for a due process procedure was applicable to community junior college teachers at the time of this case.[48]

The federal case mentioned also concerned termination of tenured teachers because of declining enrollment and was decided in 1977. The teachers contended that the real reason for their nonrenewal was in retaliation for their exercise of free speech in NEA activities which therefore violated their First Amendment freedoms. They also charged that they were not given a pre-termination hearing which violated their due process rights of the Fourteenth Amendment. The decision of the U.S. District Court for the District of Kansas that the school board was not required to pay damages or reinstate the teachers was reversed in this appeal decision of the U.S. Court of Appeals, Tenth Circuit. The due process violations of no pre-termination hearings were substantiated but the charge of bad faith dismissals was not.[49]

A fourth case, involving the nonrenewal of a teacher's contract for sufficient cause and with due process, was decided by the Kansas

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[47]Boatright v. Board of Trustees of Butler County Community Junior College, 225 Kan. 327, 590 P.2d. 1032.

[48]The opinion noted that the procedure provided in Kansas Statutes Annotated, 1974 Supplement, 72-5436 et. seq. was extended to community junior college teachers in 1975.

[49]Unified School District No. 480 v. Epperson, 551 F.2d. 254.

Supreme Court in January of 1980. The teacher was served with a notice of nonrenewal in March for the reason that criminal charges of shoplifting were pending against her in another state. After her request for a hearing, the board served her with a supplemental list of reasons for nonrenewal. The hearing committee found insufficient evidence to warrant termination, but the board unanimously decided to continue with nonrenewal. The case was then presented to district court where the teacher was awarded judgement for reinstatement with backpay. The school board appealed on two points of error, and the teacher filed a cross-appeal on one claim.

The board felt that the supplemental list of reasons for nonrenewal was worthy of consideration, and the district court had ruled that it was not. Also, the board felt that substantial evidence to support nonrenewal existed, though the district court disagreed.

In this appeal decision the court upheld both of the board's two contentions. The majority opinion stated:

> The hearing was held on September 21, 1977, four-and-one-half months after the supplemental reasons were served. There is nothing in the statute which precludes school boards from amending a notice and giving additional reasons for nonrenewal. We have concluded that, if a teacher is afforded a full opportunity to dispute any supplemental reasons and has not been prejudiced in any way, supplemental reasons for nonrenewal of a teacher's contract may be considered by a hearing committee. . . .So long as a school board is required to sustain its burden of proof and the teacher is afforded a full opportunity to present evidence in her defense, a school board should be permitted to serve supplemental reasons for nonrenewal after the statutory date.

The combination of all charges against the teacher was found by the court to be sufficient as grounds upon which to base nonrenewal. The teacher's cross-appeal charged bad faith by the board in not accepting the hearing committee findings, but the court did not concur with this contention. The district court decision was reversed so as to render

judgement in favor of the school board.[50]

Teacher Compensation

Though in most of the cases involving teacher resignations, dismissals, and nonrenewals some recovery of compensation is sought, several early cases dealt specifically with compensation of teachers. The earliest of these involved the recovery of three month's wages by a teacher from the board, after having performed the services. Here the court laid the base for future compensation decisions in 1871, by sustaining the teacher's right to be paid, saying:

> It does not follow from this that the district can have the benefit of the teacher's services without compensating him therefor. The teacher or his assignee can recover of the district, . . .the reasonable value of the services actually performed.[51]

The manner in which teachers should be paid has been largely left up to the discretion of the local school boards. One case regarding such reached the court in 1876, involving board payment of a salary through individual orders requested by a teacher to cover his indebtedness.[52] This procedure was held to be valid so long as the teacher received all that which was due him for his services.

A case in 1898 raised the question of whether teachers should be paid for holiday school adjournments, in particular two days at Thanksgiving. The court ruled that in such cases the obligation to pay the teachers, who would otherwise be prepared to teach if school were in

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[50] Gillett v. Unified School District No. 276, 227 Kan. 71.

[51] Jones v. School District No. 47, 8 Kan. 362.

[52] School District No. 10 v. Collins, 16 Kan. 406.

session, was a "necessary inference" and was within the board's authority.[53]

In a similar tone, the court ruled in 1913 that school boards were compelled to pay teachers in accordance with contractual agreements even though the board had ordered schools be closed prior to the time set in the contracts. In this case a teacher sought and received recovery of his wages for the portion of the term which the schools were closed due to a contagious disease in the community. Since the teacher was at all times ready to teach, he was entitled to his salary as earlier agreed upon.[54]

Continuing Contract Law

Along with compensation, several of the cases previously cited have dealt with alleged breach of the continuing contract law for Kansas teachers. In the following cases this law was the primary focus, usually requiring judicial interpretation.

A case before the Kansas Supreme Court in 1973 asked for clarification of the statutorial requirement of a notice of intention to terminate the contract. In Krahl v. Unified School District No. 497,[55] the appellant Krahl received a letter from the board indicating that they were withholding the extension of his employment at that time, with additional evaluations to be made concerning his status for the coming year. The board, in the case before the court, felt that this letter was

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[53]Board of Education of Emporia v. The State, 7 Kan. App. 620.

[54]Smith v. School District No. 64, 89 Kan. 225.

[55]Krahl v. Unified School District No. 497, 212 Kan. 146, 509 P.2d. 1145.

sufficient notice of their intention to terminate the contract, and Krahl felt that it was not. The court sided with the board's position. The controlling statute at that time was not specific as to what such a notice should contain, saying only:

> All contracts of employment of teachers in the public schools in the state, shall continue in full force and effect during good behavior and efficient and competent service rendered by the teacher, and all such contracts of employment shall be deemed to continue for the next succeeding school year unless written notice of intention to terminate the contract be served by the governing body upon any such teacher on or before the fifteenth day of March or the teacher shall give written notice to the governing body of the school district on or before the fifteenth day of April that the teacher does not desire continuation of said contract.[56]

The court interpreted this statute to mean that any language in a timely written notice that could be fairly understood to indicate termination, as in the letter withholding the extension of employment, would be sufficient under the law. This upheld the Douglas district court decision in favor of the board.

An excellent illustration of the recent emergence of litigation in the contract negotiations area is shown in the next two cases. Both presented clarification of the statutes, and both were decided by the court on the same day in February of 1979.

The first case dealt with the renegotiation of certain specified articles of a two-year contract, in reference to the second year. After negotiations on the articles had unsuccessfully ceased, the board issued unilateral individual contracts. The teachers' association filed an action shortly thereafter accusing the board of acting in bad faith.[57]

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[56] Kansas Statutes Annotated, 72-5411.

[57] National Education Association - Wichita v. Unified School District No. 259, 225 Kan. 395, 592 P.2d. 80.

Three issues on appeal by the board were answered by the court. The first was whether teachers could rely on two Kansas statutes together as the Continuing Contract Law. The court ruled that both statutes cited by the teachers' association were in full effect and not in disharmony. The statutes in question were Kansas Statutes Annotated 72-5411 mentioned in Krahl, and Kansas Statutes Annotated 1976 Supplement 72-5437 which is of similar wording. The majority opinion noted here that the latter statute is part of what is referred to as the Teachers' Due Process Act,[58] and that both statutes were amended in 1978 to change the notices by the board from March 15 to April 15 and by teachers from April 15 to May 15. Secondly, the court did not find the Continuing Contract Law to be in disharmony with the Collective Negotiations Law,[59] and thus teachers have the option of accepting the board's unilateral contract offer or proceeding under the Continuing Contract Law when in absence of a ratified, collectively negotiated agreement. Concerning those who would choose the latter alternative of not accepting the offer but proceeding under the Continuing Contract Law, the court ruled thirdly that these teachers were entitled to move up on salary track and step, as appropriate, the second year.

In the second case decided by the court on the same day and topic, a school board also issued unilateral contracts after unsuccessful negotiations and were sued by a teachers' association.[60] Two appeal issues

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[58]Kansas Statutes Annotated, 1976 Supplement, 72-5436 through 5446.

[59]Kansas Statutes Annotated, 1976 Supplement, 72-5413 to 5425, inclusive.

[60]Riley County Education Association v. Unified School District No. 378, 225 Kan. 385, 592 P.2d. 87.

were settled in the ruling. First the court held that it would be unreasonable to conclude that a negotiated agreement made in good faith must be expressly included as a part of the teacher's contract. Thus the term "contract of employment" under the Continuing Contract Law was defined as to include both the teacher's individual contract and the negotiated agreement applicable to all teachers represented by the association, even if the agreement is not expressly a part of the individual contract. Secondly, the court held that after good faith negotiations had unsuccessfully ceased, the board could issue unilateral contracts including an item not noticed for earlier negotiaion. The item in question in the case before the court was a payment by a teacher, as a condition for release from contractual obligations, which increased the previous amount.

A third case in 1979 asked the court to decide if step and track raises, as granted to teachers electing to continue employment under the Continuing Contract Law for the second of a two-year contract in NEA-Wichita, were also applicable to teachers whose one-year contracts had expired and who elected to continue their employment also.[61] The court found nothing to indicate that the legislature had intended teachers to be entitled to pay increases as part of an expired negotiated agreement. The Continuing Contract Law was construed by the court to permit teachers whose contracts had expired to continue under the same terms and rates of pay for the ensuing year.

Two additional cases concerning the continuation of contracts dealt with the effect of school district consolidation on employment of

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[61] National Education Association-Goodland v. Unified School District No. 352, 225 Kan. 596, 592 P.2d. 907.

teachers. The earlier of the two reached the court in 1934. Here a teacher was contracted in April for the coming school year but the district consolidated with another district in June. The teacher and others like her without employment brought suit against the newly consolidated district. The court ruled that the newly consolidated district was responsible for the property and debts of the included dissolved districts. Full recovery of the compensation agreed upon was awarded to the teacher.[62] In the latter case, before the court in 1958, almost identical circumstances occurred involving a teacher with a contract but no employment after a consolidation of districts. The court used the same principles as it had earlier in Fuller, and again awarded a full contract amount to the teacher bringing suit.[63]

Negotiation Impasse and Mediation

Three cases have been brought before the highest court of Kansas concerning the declaration of an impasse in negotiations and subsequent mediation procedure. The first, in 1978, reached the court on appeal from Shawnee district court where an impasse had been declared to exist between the school board and the teacher's association of Topeka. The board contended that the declaration of impasse by the district court was a final decision which therefore could be appealed.[64] The Kansas Supreme

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[62]Fuller v. Consolidated Rural High School District No. 1, 183 Kan. 881, 28 P.2d. 750.

[63]Shirley v. School Board of School District No. 58, 183 Kan. 748, 332 P.2d. 267.

[64]In Re: Petition of National Education Association-Topeka, 224 Kan. 582.

Court disagreed. No provisions in the applicable Professional Negotiations Act[65] cover appeals of district court orders declaring an impasse, and thus the appeal was dismissed.

A second case, also in 1978, was a mandamus action by a teachers' association which wished to compel the Finney district court judge to order that impasse resolution procedures be commenced between the association and the board.[66] The judge had declared the impasse to exist but ruled that further impasse proceedings would be a nullity because they could not possibly be completed by July 1, which was a date the Kansas Supreme Court had set as a deadline for termination of negotiations to facilitate district budgeting.[67] In this appeal the court gave overriding power to the statute. The deadline, though practical for boards of education in preparing budgets, was not seen by the court as sufficient cause to interrupt the negotiation process. The ruling held that once an impasse had been declared, the resolution procedures must begin.

The third case[68] on this topic questioned the constitutionality of allowing the Secretary of Human Resources to handle appointments of mediators and fact-finders in impasse resolution, and therefore questioned the constitutionality of the negotiations statutes in general. The teachers' association involved had petitioned the district court to declare impasse, and the board contended the constitutionality of the

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[65]Kansas Statutes Annotated, 1977 Supplement, 72-5413 et. seq.

[66]Garden City Educators' Association v. Vance, 224 Kan. 732, 585 P.2d. 1057.

[67]National Education Association of Shawnee Mission, Inc. v. Board of Education, 212 Kan. 741, 512 P.2d. 426.

[68]National Education Association-Fort Scott v. Unified School District No. 234, 225 Kan. 607, 592 P.2d. 463.

procedure as a defense. The board felt that the assignment of mediators and fact-finders should be made by the State Board of Education, as it had been done prior to 1977 amendments to the teachers' Collective Negotiations Act, and therefore appealed. The court received the case in 1979, and upheld the constitutionality of the amendments. The Secretary of Human Resources was seen as a logical choice for such authority in that his office performs similar functions for labor disputes of many types in this state. The State Board of Education still controlled the schools in the eyes of the court, regardless of delegating the power to make such appointments.

Scope of Professional Negotiations

In contract negotiations in Kansas an agreement as to which items are subject to negotiation precedes the actual negotiation process. Such agreement has not always been a smooth process, as evidenced in five cases recently decided by the Kansas Supreme Court.

The initial case asking for judicial determination as to the negotiability of certain issues reached the court in 1973 from Johnson district court. The ruling in this case has been used as a guidepost in each of the other four subsequent decisions affecting the scope of negotiations. In this Shawnee Mission case, the board took the position that virtually nothing was negotiable, while the teachers' association claimed that virtually everything was. The statute in question concerning negotiations was found in Kansas Statutes Annotated, 72-5413(g) which defines professional negotiation as "meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service." The ruling spoke both specifically and generally. First, the court affirmed the

Johnson district court's definition which found that areas to be mandatorily negotiable included:

> Salaries and wages; hours and amounts of work; vacation allowance; holiday, sick and other leave; number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty and grievance procedure and such other areas that directly or by implication involve these factors.

In addition, the Kansas Supreme Court added items, found on a teachers' association list, which the board had agreed to negotiate including probationary period, transfers, teacher appraisal procedures, disciplinary procedure, resignations, and termination of contracts. The court then proceeded to form a general test for future issues, saying:

> ...The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole. The line may be hard to draw, but in the absence of more assistance from the legislature the courts must do the best they can.[69]

Assistance from the legislature came when the 1977 legislature amended the existing statute to define "terms and conditions of professional service."[70] The amendment essentially made statutory law out of the Shawnee Mission ruling with minor alterations. Added to the ruling were the inclusion of community junior college personnel, and a clause allowing as negotiable other matters mutually agreed upon by both parties. Removed in the statute were the items of probationary period, transfers, and teacher appraisal procedures, thus deleted as mandatorily negotiable.

A second case in point was brought before the court in 1979, when ten items were the cause of an impasse requiring a determination as

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[69] National Education Association of Shawnee Mission, Inc. v. Board of Education, 212 Kan. 741, 512 P.2d. 426.

[70] Kansas Statutes Annotated, 1978 Supplement, 72-5413(1).

to their negotiability. The Shawnee district court had found all but two of the items to be mandatorily negotiable. The Kansas Supreme Court disagreed. Applying the "impact test" of the Shawnee Mission ruling, the court added seven items to the list of mandatorily negotiable areas for school district talks. These were payroll deduction of teachers' association dues also called "dues checkoff," transaction of association business in the schools on nonduty time, paid leave days for association officials, use of school mail system by the association, distribution of copies of the negotiated agreement to each teacher, written conformity of individual primary contracts to the negotiated agreement, and conditions of extended employment relating to primary contracts.[71]

Another 1979 decision was made on an appeal and cross-appeal from Labette district court, again asking for the court to determine which items were negotiable by mandate. Here six items were in question, and the court found only one area subject to mandatory negotiation. Agreed by both courts to be mandatorily negotiable was the number of in-service days in excess of the required 180 school days. The only item reversed was that of negotiation of supplemental contracts, which the high court had ruled not mandatorily negotiable previously in NEA-Topeka and did so again here.[72]

On the same day as the above ruling, a third decision on the scope of negotiations was made.[73] Of the nineteen items raised on appeal

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[71]National Education Association-Topeka, Inc. v. Unified School District No. 501, 225 Kan. 445, 593 P.2d. 93.

[72]National Education Association-Parsons v. Unified School District No. 503, 225 Kan. 581, 493. P.2d. 414.

[73]Chee-Craw Teachers' Association v. Unified School District No. 247, 225 Kan. 561, 593 P.2d. 406.

from Crawford district court by the board, all of which were there found to be mandatorily negotiable, only five were agreed to be such in the Kansas Supreme Court ruling. Four of these five (procedure for discipline of teachers, pay for unused sick leave, insurance coverage following "lay off," and workday to include duty-free lunch, arrival and departure time, and number of teaching periods) were all based in the statute itself, stemming from the Shawnee Mission case. The fifth item, proposing a committee for recommendations as to in-service activities, was found to pass the "impact test" and was mandatorily negotiable.

The court also attempted in Chee-Craw to expedite the collective negotiations process by establishing four rules of law and procedure for future areas of dispute. The first required the district courts to provide summary hearings commencing within five days after the dispute is filed. The second rule declared that district courts should decide negotiability questions as a matter of law, permitting evidence to be considered on a topic basis, regardless of phraseology. Topics already determined to be negotiable or not would remain such. The fourth rule spoke to use of the "impact test" and logical extensions of the statutory items, beyond which the determinations may be reversed.

A fourth case again decided in 1979, concerned the topic under discussion. Of the twenty four areas brought before the court in dispute, the court found only three to be mandatorily negotiable, none of which were new to the lists already determined in the previous cases. This decision was in sharp contrast to the Montgomery district court

ruling on the case, which held all of the items to be mandatorily negotiable.[74]

Since the items considered by the court to be mandatorily negotiable have been presented above and constituted a minority of the items in question, a review of those items held to be not mandatorily negotiable is needed. The following items are not in any significant order, nor are they classified by the case in which they were presented, as many were duplicated. The court has held in NEA-Parsons that these items may still be negotiated if both parties are in agreement and no statute stipulates otherwise. Found upon determination of the Kansas Supreme Court to be not mandatorily negotiable were: probationary period of teachers; transfers; teacher appraisal procedures; class size; supplemental contracts; discipline of students; disposition of new funds from the federal program for "mainstreaming" into regular classrooms; the number of contract days; school library hours; proposals for reduction and recall of teachers; selection of materials and supplies; academic and personal freedom to include freedom of expression and political activity; teacher assignments; binding arbitration of grievances; frequency of grade cards; residual rights for teachers' work copyrighted and sold by the school district; teachers' association rights to include a classroom telephone for the president, being first on the agenda at board meetings, and requiring principals and the board to meet with association representatives at least once a month; sabbatical leave; and the form of individual teacher contracts.

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[74]Tri-County Educators' Association v. Tri-County Special Education Cooperative No. 607, 225 Kan. 781, 594 P.2d. 207.

Analysis of the Rulings

In only one category of cases involving teacher contracts and negotiations, the area of requisites and validity of contracts, does any judicial trend appear in reference to a time period. On this topic, six cases were tried prior to 1918, and six cases decided between 1930 and 1937. Five of the earlier cases were ruled favoring teachers. This pattern began in 1882 with Hamrick, followed by Faulk in 1889, Brown in 1895, Jones in 1897, and Parrick in 1917. The lone exception was a pro-school board ruling on the Aikman case in 1882. This trend reversed in the 1930's however, when the Kansas Supreme Court ruled all six of the requisite and validity cases in favor of school boards. These included Calloway in 1930, Strange in 1931, Petrie in 1932, Dunfield of 1934, Buchanan of 1936, and Patterson in 1937.

While no other chronological pattern emerges, precedents have been established in the results of decisions. Only three cases on the topics of teacher resignations and dismissals have been decided in favor of teachers since 1882. Rulings in twelve such cases have favored school boards over the same time span, with the earliest being Armstrong in 1882 and the most recent being Robertson in 1970. The last such case decided for the teacher was Francis in 1946.

The areas of teacher contract nonrenewal, compensation, and continuing contract law, have all seen relatively equal numbers of decisions favoring either school boards or teachers, similar to the requisites and validity area. The dismissal cases testing due process procedures have been decided against school boards in three of four instances, though it should be recalled that two of these three were federal appellate decisions. Rulings in two cases concerning the impasse

procedure have favored teachers' associations.

The scope of negotiations cases, being largely in the form of declaratory judgements on the determination of mandatory negotiability, offer some degree of confusion as to which party actually was favored in the decision. In general, teachers' associations have wished to require negotiation on a large number of items, while school boards have contested mandatory negotiability. With this in mind, three of the cases on scope could be viewed as pro-school board decisions in that the majority of the items in question were determined in court to be not mandatorily negotiable. These were the cases of Chee-Craw, Tri-County, and NEA-Parsons, all decided in 1979. The teachers' associations appear to have been favored in the other two rulings, in which a majority of the questionable items were deemed mandatorily negotiable. Here the cases of Shawnee Mission in 1973 and NEA-Topeka in 1979 are referred to.

Chapter 5

SUMMARY AND RECOMMENDATIONS

In an effort to create an informed public capable of running a sound democratic system of government, the public schools of our nation operate under the guidance of local school boards, elected by the citizenry and controlled by the state legislatures. In regulation of school programs, the legislatures create statutes governing all phases of the school environment, which school boards use as guidelines in policy formulation. The state court systems act as interpreters of the statutes on the issues which arise from the policies and laws created.

Two areas in which statutes and policies have been formulated and tested in the Kansas Supreme Court have been discussed in this study. The cases have been located, analyzed, and presented in the two foregoing chapters. This chapter offers a summary of the findings therein, along with recommendations and suggestions for further research.

Summary

The preceeding chapters, containing litigation in the areas of pupil conduct and discipline, as well as teacher contracts and negotiations, have presented sixty-three Kansas Supreme Court decisions between 1871 and 1980. During this time period, a shift was evident in the court's pattern of decision on pupil conduct and discipline cases. Students and parents were favorably treated from the earliest decisions until the mid-twentieth century, when school boards and the state saw

more decisions in their favor. The only such chronological trend in the realm of teacher cases fell between the late 1880's and latter 1930's, when cases concerning teacher contract requisites and validity were early decided "pro-teacher" only to shift later to a "pro-school board" pattern. Cases concerning teacher resignations and dismissals have been ruled in favor of boards of education in twelve of fifteen instances, establishing the only other apparent trend in the decisions. Of all the cases reviewed, those concerning the scope of negotiations and teacher due process were the most current, suggesting areas in which the laws are being tested and defined presently in Kansas.

In the decisions reviewed, many points of law were established. As in many collections some items are more valuable than others, so it was found that certain rulings carried greater significance than the rest. Though it is granted that both significance and value are based upon personal judgement, the following key points of law obtained from majority opinions of the Kansas Supreme Court are offered in summary of the foregoing chapters.

1). Compulsory attendance laws do not compel parents to subject their children to dangers of life and limb so great that reasonable prudence would not permit them to incur the hazard.

2). A child may attend a public, private, denominational or parochial school without being subjected to penalties of the truancy law.

3). Any school in the state must provide a complete course of instruction as provided by the Kansas statutes on curriculum content.

4). Local school boards possess the authority to suspend or expel students, for certain conduct, in accordance with the statutorial guidelines for exclusion of pupils.

5). Local school boards may not expel or suspend students solely on the grounds of marriage or failure to salute the flag for sincere religious reasons.

6). Local school boards may adopt regulations to maintain proper standards of learning and discipline, including dress codes, so long as the regulations are not oppressive or unreasonable and they further the educational processes in the school by appropriate means.

7). When the outcome of a proceeding for expulsion or extended term suspension of a student is dependent upon the credibility of two witnesses with conflicting statements, cross-examination is permitted as part of the due process procedure.

8). A high school principal, having custody and control of school lockers and access thereto, is empowered to open and search them upon the request of officers of the law.

9). Contracts between a teacher and the school board must be in writing, entered into by qualified parties, agreed upon by both parties, and not in excess of funds available for payments specified.

10). Contract ratification may be implied by performance or acceptance of services.

11). Contracts may be terminated at any time by mutual assent of both parties, and such assent may be inferred from the conduct of the parties and attendant circumstances.

12). School boards may dismiss teachers for a variety of reasons if such dismissal is conducted in good faith, with sufficient cause, and after a fair hearing of which a timely written notice stating the reasons for discharge is provided.

13). School boards may elect not to renew a teacher's contract for a variety of reasons, if such nonrenewal is conducted with the same prudence as dismissal.

14). Teachers may recover compensation lost through dismissals or nonrenewals by the board, but bad faith on the part of the board must be proven.

15). Written notice of intent to terminate a contract may be in any language which may be reasonably understood to indicate desire for termination.

16). In the absence of a ratified, collectively negotiated agreement, the teacher has the option of accepting a unilateral contract offered by the board or proceeding under the Continuing Contract Law.

17). Teachers electing to proceed with employment under the Continuing Contract Law, absent a ratified, collectively negotiated agreement and in place of accepting a unilateral contract offered by the school board, are entitled to step and track salary increases (where appropriate) for the second year of a two-year master contract. Teachers electing the same but whose one-year contracts have expired, are not entitled to such increases.

18). Teachers' contracts of employment referred to in the Continuing Contract Law (K.S.A. 1978 Supplement, 72-5411 and 72-5437) include both the teachers' individual contracts and the negotiated agreements.

19). District court judges must order impasse resolution procedures to commence upon determination that an impasse does exist between parties. Such determination is not appealable.

20). Representatives of teachers' organizations and of the school boards are required to negotiate on terms and conditions of professional service in a good faith effort by both parties to reach agreement.

21). Agreements which are ratified by both the board of education and a majority of the members of the negotiating unit (not just of the representative organization) become binding on both parties.

22). In determination of whether an issue is negotiable or not, an assessment should be made as to the direct impact it has upon the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole. Such assessment must be made on a case-by-case basis, but through consideration of topical areas cited in the applicable statute (K.S.A., 1978 Supplement, 72-5413,1).

23). The items held not mandatorily negotiable by the Court or the statutes may be negotiated by agreement of both parties.

24). Supplemental contracts are not subject mandatorily to collective negotiation because of the express statutory exclusion contained in K.S.A. 72-5412a.

The above comments are attempts toward a concise review of the points of law found in the Court's majority opinions. Additional findings may be taken from the syllabi of the rulings themselves.

Recommendations

After consideration of the summarized points of law and the responsibilities of parents, certified school personnel, and boards of education to provide a quality educational environment in the public schools, the following recommendations seem to be in order.

First, it is recommended that boards of education become familiar with past judicial decisions in the realm of school law in addition to knowledge of the state statutes pertaining to education. Through the rulings already handed down a feel for what will be acceptable and reasonable policies may be obtained, and thus potentially costly legal confrontations may be avoided. Often issues in question in one district have been decided previously in similar situations elsewhere.

Second, it is recommended that school administrators and teachers also become cognizant of the law and judicial decisions on areas within their realm of employment. Administrators need to make careful reviews of the teacher and student due process stipulations, and note the violations that have caused litigation in the past. Teachers need to become especially familiar with the decisions in cases regarding continuing contracts, dismissals, tort liability, and professional negotiations, in order to better understand the reasons behind current board policy and be aware of what has been taken to court from other districts. To achieve this awareness it is recommended that teachers acquire at least one semester of school law either during graduate or undergraduate training. In the absence of availability of such a course, it is recommended that teachers seek to learn of the law through reading any of the many texts and articles written for that purpose, though the shortage of Kansas studies is again brought to mind.

A further recommendation, to parents, should be made. Parents need also to become aware of the laws governing the schools and the judicial decisions especially in areas concerning financing and taxation of districts, pupil eligibility, attendance, discipline, and student due process rights. Again, if enrollment in a school law course is

inconvenient, texts and articles are available. As most school administrators deal frequently with one type of legal process or another, parents may wish to direct questions on the law to school administrators. A final recommendation to parents is that they become familiar with state legislation and school board actions being taken currently. Attendance at meetings of the board is seldom discouraged. Also, since board members are elected representatives, they may be contacted for discussions of policy matters.

Future Research

The field of Kansas school law is ripe for research by interested students in either education or legal preparation. A review of the second chapter of this work would indicate the areas which have been studied in the past, with respect to Kansas Supreme Court Decisions, though note should be taken of the dates of such research. The need of updated, scholarly reports on legal actions, statutes, and judicial determination on issues in question both past and present should be fulfilled.

The following recommendations are offered in an effort to stimulate curiosity, interest, and research in the field of school law, especially in Kansas:

1. Legal research should be undertaken to analyze judicial decisions in Kansas concerning areas not treated in this study. Reviews of court decisions on the topics of school finance or segregation and desegregation would seem particularly valuable, at this time, since these are areas of concern across both Kansas and the nation.

2. Legal research should be undertaken to update the work done in existing studies. The interpretation and validity of the law changes with time, as do the conditions which may have caused the law to be created. Current school laws may be better understood if studies are made to illustrate the process of "legal evolution" through which our statutes have passed to arrive in present form. The early Kansas studies provide excellent reviews of court decisions and statutory enactments up to the time of their publication, and are worthy of revision and continuation by students of school law.

3. Legal research should be undertaken to review current decisions in any of the topical areas of this study, on a nation-wide basis, through comparison and contrast of the different state decisions. The areas of student suspension and expulsion, dress codes, compulsory attendance, corporal punishment, teacher dismissal, contract validity, and collective negotiations are in themselves subjects worthy of investigation and analysis, to name only a few. Through such study, trends may emerge within the various regions of the country which differ from decision patterns in other locales, and attempts to justify the differences could be presented.

4. Legal research should be undertaken to trace the development of current board policies, laws, and judicial decisions affecting school law topics over specified periods of time. Again a comparision of states could be used, or a review of litigation and legislation in one state could be highlighted.

5. Legal research should be undertaken to provide Kansas parents, teachers, administrators, and school board members with a handbook or series of concise publiciations outlining the established points of school law as determined through district and supreme court decisions and legislation. Such points could be footnoted with reference to the cases of determination or statutes making the provisions. The law points could be arranged by topic for swift reference, and easily revised by simply adding new points as they become significant. Annual or semi-annual revisions may be in order in the more rapidly emerging areas of litigation.

In summary, the body of law determined through Kansas Supreme Court decisions and enactments of the Kansas Legislature provides many topics virtually untouched in current research work. The possibilities for study which would combine and compare the laws of Kansas with those of other states, on similar issues, seem endless. It would be to the benefit of educators, parents, and the public in general if future research could be presented in a clear and concise manner to provide increased understanding of the existing body of law, and therein serve to promote the best possible environments for the teaching and learning of boys and girls in Kansas and across the nation.

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