

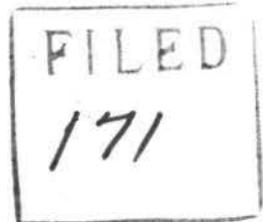
SCHOOLS:
COMPENSATION:
CONSTITUTIONAL LAW:

In school districts in which a school board is authorized by Section 168.191, RSMo 1969, to enter into a contract with a superintendent

of schools for the school district for a period of not to exceed three years, Section 38(a) of Article III, and Section 39(3) of Article III, Missouri Constitution, prohibit such school board and the superintendent from terminating a partially performed three year contract and executing a new three year contract providing for the performance of the same duties at a greater compensation when the only reason for so doing is to increase the superintendent's compensation before the expiration of the current contract.

OPINION NO. 171

May 4, 1971



Honorable Donald J. Gralike
Representative, District 49
Room 301, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Gralike:

This official opinion is issued in response to your request for a ruling on the following question:

"On May 6, 1970 you issued opinion No. 211 which states in conclusion that additional school monies received by a school district may not be legally paid by the district to teachers already under contract.

"In St. Louis County many school superintendents are under three year contract. It is common practice for superintendents to resign before the expiration of the three year contract and be reappointed to this position by the school board with a salary increase for a new three year period.

"Due to the fact that you have held this procedure improper for teachers, it would appear that the method being followed by the school superintendents would also be in violation."

The implicit assumption underlying the factual situation presented by your opinion request is that the only reason for terminating a superintendent's current three year contract before its term expires and executing a new contract for another three year period is to increase the superintendent's compensation before the

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expiration of the current contract. With the exception of the greater compensation, we understand, and will assume for the purposes of this opinion, that all other terms and conditions in the new contract are the same as in the terminated agreement.

Section 168.191, RSMo 1969, governing the employment of a school superintendent in a first class county provides in part as follows:

"In all counties of the first class, any school board, other than boards in urban districts, in charge of a public school system maintaining a classified high school, previously approved by the state board of education, and employing a superintendent devoting his full time to supervisory and administrative work, may employ and enter into contract with a superintendent of schools for the school district for a period of not to exceed three years. . . ."

Article III, Section 38(a), Constitution of Missouri of 1945, provides in part as follows:

"The general assembly shall have no power to grant public money or property, . . . to any private person, . . . excepting aid in public calamity, . . ."

As a school board derives its powers from the General Assembly, and can have no greater power than the General Assembly, Article III, Section 38(a) is also a limitation upon the authority of a school board. Kizior v. City of St. Joseph, 329 S.W.2d 605, 609 (Mo. 1959).

In the present case, the school board proposes to increase the superintendent's compensation, without altering the nature of his obligation, by terminating a partially performed contract and executing a new contract providing for a greater rate of compensation. This is but an indirect way of increasing the superintendent's compensation for the remainder of the partially performed contract, and has the same effect as would a direct payment of extra compensation during the term of such contract. We believe this arrangement amounts to a "grant of public money" to a private person in violation of Article III, Section 38(a).

Relying in part on the predecessor to Article III, Section 38 (a), this office previously determined that a school district may not pay a bonus to a teacher at the end of the year when said bonus is not provided by contract (Opinion No. 16, dated April 23, 1938).

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Also, a school board may not make a monetary donation or gift to a school teacher or superintendent during the term of contract (Opinion No. 21, May 10, 1939). In Opinion No. 211, dated May 6, 1970, we concluded that Article III, Section 38 (a) prohibited a school board from increasing a teacher's compensation during the term of contract either by making a direct payment to the teacher during the term of the contract, or by terminating the contract and entering into a new contract for the same year providing for the same terms and conditions but at additional compensation.

In comparing the instant factual situation with the factual situation in Opinion No. 211, the only potentially meaningful distinction is that here the school board proposes to terminate a current contract and enter into a new contract for a subsequent three year period whereas in Opinion No. 211 the school board proposed to execute a new contract for only the remainder of the term of the partially performed contract. This distinction does not furnish a basis for distinguishing the instant situation from that presented in Opinion No. 211 because we are assuming that the terms and conditions of the new three year contract are the same as the partially performed contract except for higher compensation. Therefore, for the period of time left in the old contract, which is included in the new contract, the school board by increasing the superintendent's compensation has granted public money to a private individual in violation of Section 38(a).

In State ex rel. Wander v. Kimmel, 256 Mo. 611, 165 S.W. 1067 (1914), the Supreme Court of Missouri held that a statute which denied witness fees to policemen who testified in certain cases but contained an exception which allowed a policeman who was a member of a police relief association to collect witness fees for the use and benefit of the association was unconstitutional. The money so collected was used by the association to pay pensions and other benefits to its members. In construing the predecessor of Article III, Section 38(a), the court stated that:

"Moreover, as judicial construction is not a thing that may ride without bits or reins, it is a fundamental proposition to be accepted as a sound rule of exposition that what is forbidden to be done in a straight line may not be done in a crooked line. What is forbidden to be done directly may not be done indirectly or obliquely. If, then, the effect of the legislation in question is to create a pension fund out of the common chest and thereby grant pensions out of public funds to policemen . . . the statutes questioned

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cannot be held a constitutional exercise of legislative power in that regard." Id. at 1072.

In State ex rel. Curators of the University of Missouri v. Neill, 397 S.W.2d 666, (Mo. banc 1966), the Supreme Court of Missouri noted that:

"The Constitution in general is subject to the same rules of construction as other laws with due regard being given to the broader scope and objects of the Constitution as a charter of popular government, . . ." Id. at 669.

One such rule of construction provides that:

"The legislative act should be given such construction as to suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and for private gain, and to add force and life to the cure and remedy, for the public good. . . ." State v. Schwartzmann Service, Inc., 40 S.W.2d 479, 480 (St.L.Ct. App. 1931)

Consistent with these principles we believe that in the present case a school board cannot circumvent the limitation of Article III, Section 38(a) by increasing a superintendent's compensation under a partially performed contract in the indirect fashion proposed.

Furthermore, we believe that the proposed arrangement to increase a superintendent's compensation is prohibited by Article III, Section 39(3), Constitution of Missouri of 1945, which reads in part as follows:

"The general assembly shall not have power:

* * *

"(3) To grant or authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part;"

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In Opinion No. 211 we determined that a school district was a "municipal authority" within the meaning of Article III, Section 39(3), and that a school board was, therefore, prohibited from increasing the compensation of one of its teachers by terminating a current contract before expiration and entering into a new contract for the same year providing for greater compensation. In the instant case, terminating an existing three year contract and entering into a new three year contract with the same terms and conditions and requiring performance of the same duties is an attempt to accomplish indirectly what could not be accomplished directly--increasing the superintendent's compensation during the term of the contract. We believe such a scheme violates Section 39(3) of Article III.

In Kizior v. City of St. Joseph, supra, the city had entered into an exclusive contract with a private corporation for the collection of garbage for a ten year period at a specified annual fee. After partial performance the contractor complained that the contract had become unprofitable and an attempt was made to increase the compensation paid by the city without changing the contractor's obligation. In holding that the increase in compensation was unlawful, the Supreme Court of Missouri described the purpose underlying Article III, Section 39(3), as follows:

" . . . Certainly the fact that appellant may have entered into an improvident contract would afford no basis for creating an exception to the application of a clear constitutional prohibition. Section 39(3), Article III was adopted by the people as a safeguard against the squandering of public money and to prohibit public officers from giving gratuities to contractors, and it may not be cast aside even though one who has acted in good faith may suffer hardships. The courts of this state have adhered to a policy of strictly enforcing the constitutional and statutory safeguards applicable to the contract of public corporations. Likes v. City of Rolla, 184 Mo.App. 296, 167 S.W. 645; Webb-Boone Paving Co. v. State Highway Commission, 351 Mo. 922, 173 S.W.2d 580; Donovan v. Kansas City, 352 Mo. 430, 175 S.W.2d 874. . . ." Id. at 610.

Watts v. Levee Dist. No. 1, Mississippi County, Mo., 164 Mo. App. 263, 145 S.W. 129 (St.L.Ct.App. 1912), demonstrates the liberal interpretation courts have given to this constitutional provision in order to fully effectuate its beneficial purpose. In

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that case, the court, interpreting the predecessor of Article III, Section 39(3), stated that:

". . . While this constitutional prohibition does not literally cover the class of officers or public agencies to which these drainage districts belong, it would seem that its spirit should cover them, and that spirit is against the allowance or payment for public work, services or labor of any kind done in the first instance without authority of law, as was the case here." Id. at 134.

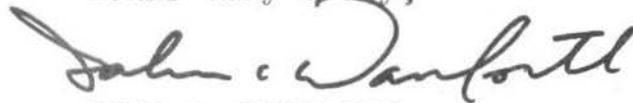
In light of the broad purposes and liberal interpretation of Article III, Section 39(3), a school board cannot evade the restrictions of Section 39(3) by increasing a superintendent's compensation under a partially performed contract in the indirect fashion proposed.

CONCLUSION

It is, therefore, the opinion of this office that in school districts in which a school board is authorized by Section 168.191, RSMo 1969, to enter into a contract with a superintendent of schools for the school district for a period of not to exceed three years, Section 38(a) of Article III, and Section 39(3) of Article III, Missouri Constitution, prohibit such school board and the superintendent from terminating a partially performed three year contract and executing a new three year contract providing for the performance of the same duties at a greater compensation when the only reason for so doing is to increase the superintendent's compensation before the expiration of the current contract.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 211
5-6-70, Belt

Op. No. 21
5-10-39, Dawson

Op. No. 16
4-23-38, Chamier