

May 2, 1969

Opinion Letter No. 153

Honorable Robert L. Prange
State Senator, 14th District
12714 Bellefontaine Road
St. Louis, Missouri 63138



Dear Senator Prange:

This is in response to your letter of February 20, 1969, in which you raised the following questions:

"Is it legally permissible for teachers as a group by their elected representatives to issue sanctions against a school board in Missouri?"

"Is it legally permissible for a board to adopt the policy as shown in the attached policy of a school board?"

Your first question asks whether it is legally permissible for teachers as a group by their elected representatives to issue sanctions against a school board in Missouri?

We assume your reference to sanctions is to the copy of Professional Sanctions of the St. Louis Suburban Teachers Association; therefore the conclusions drawn by the office will reflect only on such sanctions which have evidently been invoked by the Community Teachers Association, to wit:

"Level I: Sanctions

"A. Formal statement of local sanctions made by the CTA to the Board of Education.

"B. Curtailment or suspension of non-teaching

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assignments for which there is no direct remuneration.

"C. Public notification of censure made through distribution of printed statements, use of radio and television, purchase of newspaper advertising space, and public meetings.

"Description of SLSTA Sanctions

"Level I:

"A. A formal statement shall be made to all concerned parties that SLSTA sanctions have been invoked.

"B. All SLSTA members shall be notified of the application of sanctions and reason for that action.

"C. SLSTA shall revoke placement services and all activities in assisting said district in the employment of educational personnel.

"D. SLSTA shall refuse information compiled or available through SLSTA facilities, unless local CTA officers request the release of certain materials.

"E. SLSTA shall cancel all services normally accorded to said school district.

"F. Information concerning existing conditions in the local school district shall be released to all local news media."

The foregoing standards promulgated by the Community Teachers Association are amplified in the letter of S. Dean Brown, President of the Hazelwood Community Teachers Association, to wit:

"These sanctions shall be lifted when:

"a. The Board accepts the report of the factfinding committee and acts favorably on its recommendations. This would include

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a written statement that contracts will be rewritten if additional state funds become available.

"b. The Board acts in good faith in the discussion with the CTA of salary schedule, 1970-71.

"c. Assurance is given that all pertinent materials and information be made available to the CTA Professional Discussion Team at the earliest opportunity.

"d. The Policy in Regard to Professional Discussion and Understanding has been jointly revised to correct apparent lack of clarity revealed in actions of 1968-69.

"e. The Board officially recognizes the professional training and standing of the instructional staff and agree to work with the staff for the general improvement of education program in the Hazelwood District."

The exact form the action, or inaction, contemplated by the Community Teachers Association is to take under their term of "sanction" is vague. Level I, sanction (A) appears to be nothing more than a filing of a statement with the Board of Education of the Association's "sanctions". Level I, sanction (C) apparently contemplates notification to the news media that "sanctions" have been issued against a Board of Education and are on the surface protected First Amendment rights. This "sanction" would have legal implications only to the extent that libel and slander on the part of the Association become evident.

A problem does arise, however, with Level I, sanction (B). This "sanction" talks of the "curtailment or suspension of non-teaching assignments for which there is no direct remuneration". An immediate problem here would be the nature of such "non-teaching assignments" in relation to the contract of an individual teacher. If the teaching contract covered the non-teaching assignment which the Association contemplates curtailing, obviously such action would be improper. Additionally, if the non-teaching assignment is a "rule or regulation" of the Board of Education, and was explained as such to the individual teacher before his contract was signed, said rule or regulation should be considered incorporated into the teaching contract:

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"SECTION 168.121, RSMo Supp. 1967:

" * * * The faithful execution of the rules and regulations furnished by the board shall be considered as part of the contract if the rules and regulations are furnished to the teacher by the board when the contract is made. * * * "
(Emphasis added)

Thus, to the extent that sanction (B) results in a curtailment of a contract obligation, by an individual teacher, the action would be improper.

It would appear, however, that the mere issuing of sanctions by a teachers' organization would not give statutory authority to a board of education to take action against an individual teacher; only when a teacher fails or refuses to comply with his contract or the rules and regulations of the board may a board act:

"SECTION 168.121, RSMo Supp. 1967:

" * * * If the teacher fails or refuses to comply with the terms of the contract or to execute the rules and regulations of the board, the board may refuse to pay the teacher, after due notice in writing is given by order of the board, until compliance therewith is rendered. * * * "

Thus, as can be seen, the contract relationship is between a board of education and an individual teacher, and only when the individual teacher fails to comply with his contract or the rules and regulations of the board does the board find statutory authority to act. In the "description of SLSTA sanctions" mention is made that "SLSTA shall cancel all sources normally accorded to said school district". In the rather vague context involved, we assume that the services referred to are not services to be performed under a contract with a school board and the SLSTA, and thus are gratuitous services which the SLSTA may cancel at its discretion.

The reference in the letter of Mr. Brown, President of the Hazelwood Community Teachers Association, as to the actions the Board must take before sanctions are to be lifted may at best be viewed as recommendations to the Board, which the Board may entertain at its discretion. (Opinion of the Attorney General, Prange, 12/12/68, copy of which is enclosed.)

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This office reaches the conclusion, then, that the issuing of Level I sanctions by the Hazelwood Community Teachers Association is legally permissible; however, to the extent that the implementation of such "sanctions" by an individual teacher would result in the failure to perform under his contract, said action would be unlawful.

II

Your second question asks whether it is legally permissible for a school board to adopt the policy as shown in the attached policy of a school board? We assume that your reference to "policy" is to the policy of the Hazelwood School District in regard to professional discussion and understanding, and the conclusions drawn by this office will reflect only on said policies and understanding which have evidently been set out in writing by the Board of Education of the Hazelwood School District.

The agreement states on Page 2, under the heading "Recognition" that:

"The Board of Education recognizes the Hazelwood Community Teachers Association as the representative of the professional staff for the purpose of discussing and arriving at understanding on matters concerning the improvement and development of the educational program, salary, welfare conditions, working conditions, and other areas of mutual concern. * * *"
(Emphasis ours)

The Board of Education, however, has no statutory authority to deal with the C.T.A. as a bargaining representative for individual teachers which make up the membership of the C.T.A., in light of Section 105.510, RSMo Supp. 1967:

"Employees, except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing * * *"
(Emphasis ours)

The relevant portion underlined quite obviously excludes school

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teachers from the class of state employees which may designate a bargaining agent.

Therefore, to the end that the "policy" attempts to establish the Hazelwood Community Teachers Association as a bargaining agent it is a nullity.

This is not to say, however, that the School Board may not consider group-teacher proposals. By former opinion of this office, Attorney General's Opinion No. 276, Prange, 12/12/68, this office has held that a school board may consider such group-teacher proposals, and may act favorably upon said proposals to the extent they do not conflict with applicable law.

To the extent therefore that the "policy" of the School Board herein is mere recognition by the Board that the procedures outlined are recommendations and are to be given consideration, it would appear proper. If the Board has signed this memorandum with the intent to bind itself to these procedures, however, it has acted without statutory authority. Pursuant to Section 168.121, supra, when read with Section 105.510, supra, the School Board can only bind itself contractually with individual teachers, and thus cannot bind itself to a contract with a teacher representative group.

This office reaches the conclusion then that the Hazelwood Board of Education may only enter into contracts with individual teachers and is without authority to enter into group contractual agreements with the Community Teachers Association.

It is the opinion of this office, therefore:

(1) that the issuing of "Level I sanctions" by the Hazelwood Community Teachers Association is legally permissible; however, to the extent that the implementation of said "sanctions" by an individual teacher would result in the failure to perform under his contract, said action would be unlawful.

(2) that the Hazelwood Board of Education may only enter into contracts with individual teachers and is therefore without authority to enter into a group binding agreement with the Community Teachers Association.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enc: Opinion No. 276
Prange, 12/12/68