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OFFICE OF THE SUPERINTENDENT

DRAFT AGENDA

Special Meeting – Board of Education

Administration Building
2700 Poplar Street
North Little Rock, AR 72115

Monday, October 27, 2014

1. Classified Personnel Policies Committee Report
2. Licensed Personnel Policies Committee Report
(LPPC meeting will be held Monday, October 27 at noon.
Minutes will follow when provided by the committee)
3. Bonus Plan for Staff
4. Health Savings Account Discussion

“World Class Schools for World Class Students”

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CLASSIFIED PERSONNEL POLICIES COMMITTEE MEETING

Thursday, October 23, 2014

9:00 A.M.

The CPPC met at the Child Nutrition Office on Thursday, October 23, 2014, at 9:00 A.M. Present were Robin McCarroll, Jarvis Dickerson, Tamara Rogers, Marsha Satterfield, and Gregg Thompson. Robin McCarroll called the meeting to order.

I. Old Business

- a. Jarvis Dickerson made a motion to modify the bonus recommendation to the district administration and Board that read as follows: " A one-time \$500.00 nonrecurring bonus be distributed to classified staff working twenty (20) hours or more per week in their primary job. Those classified employees working twenty (20) hours or more per week in their primary job who are currently "topped out" on their respective salary schedule(s) would receive a \$750.00 one-time nonrecurring bonus. Classified employees working less than twenty (20) hours per week would receive a one-time nonrecurring bonus prorated to the amount based on their primary position. In the circumstances where certified employees have dual employment in classified positions, the certified employees would not be eligible for the classified bonus. The motion was seconded by Tamara Rodgers. After discussion the motion passed 5-0.

II. New Business

- a. Robin McCarroll shared information requesting additional study on policy 8.141 Sick Leave Redemption. The committee agreed additional study was needed and the topic is to be addressed at the November 4, 2014 CPPC meeting.
- b. Gregg Thompson shared information regarding an upcoming proposal to review current classified policy 8.1 CLASSIFIED SALARY SCHEDULES. It was noted consideration needs to be given to establishing consistency between licensed and non-licensed policies regarding awarding of credit for years experience for prior work experience. A draft of policy revisions was distributed and a request for input at the upcoming November 4th meeting was solicited.
- c. A need to review classified employment policy regarding applications for employment was shared, specifically as it applies to applicants resumes, criminal background checks, Child Maltreatment checks, and updates currently recommended by ASBA. The topic was to be added to the upcoming November 4th CPPC meeting agenda.
- d. The committee discussed the topic of individual groups not named by statute for representation on the CPPC; specifically, technology, nurses, crossing guards, lunch aides, school health, OT/PT's, social workers, etc. The committee referred the matter to further study at the November 4th meeting.

III. Meeting adjourned at 10:10 A.M.

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MEMORANDUM

To: Mr. Kelly Rodgers, Superintendent
From: Paul Blume 
Re: Bonuses/Nonrecurring Salary Payments
Date: October 14, 2014

For licensed personnel, if the School Board desires to distribute a bonus, otherwise known as a "nonrecurring salary payment," the bonus to be paid must be an equal amount for all licensed employees, from the first-year teacher to the Superintendent. That is, if there is to be a distribution of, say, \$500.00, that same amount must be paid to all licensed personnel.

A different distribution may be made, but only upon a majority vote of licensed personnel, with that distribution being approved by the School Board, as well. Without such a vote by licensed employees, or without agreement by the Board, the equal distribution is required.

The statute requiring such a distribution is A.C.A. §6-20-412, a copy of which is attached. See also, Opinion of the Arkansas Attorney General, No. 2013-056, attached.

Section 6-20-412 does not apply to classified employees. By its own language, it applies only to licensed employees. There is no statute or regulation which mandates an equal distribution of bonuses to any other than the licensed personnel. See Commissioner's Memo No. FIN-11-2011, attached.

In summary, bonuses for licensed employees must be distributed equally and to all licensed employees, without exception, unless there is a vote by a majority of licensed employees for a different distribution, and then only with the approval of the School Board.

Bonuses to classified employees may be made in any fashion which the School Board approves, whether that would be different amounts paid to different employees, or groups of employees; or withholding bonuses from employees or groups of classified employees. The distribution to classified employees is, therefore, not legally determined, but is a managerial determination which can be made with only considerations such as merit being considered. It goes without saying, of course, that any deviation from an equal and universal distribution will be met with considerable resistance from those individuals or groups not included in the distribution.

Opinion No. 2013-056

July 8, 2013

The Honorable Bryan B. King, Senate Chair
The Honorable Kim D. Hammer, House Chair
Legislative Joint Auditing Committee
172 State Capitol
Little Rock, AR 72201-1099

Dear Senator King and Representative Hammer:

I am writing in response to your request for my opinion on a question relating to McCrory School District No. 12 (the "District").

You report that the latest audit of the District contained the following finding:

On November 17, 2011, the District's Board voted to give a nonrecurring salary bonus of \$800 to all certified employees. Certain administrators' bonuses were increased by index factors, which, as defined by the Arkansas Department of Education, constituted an unequal distribution. The District did not obtain a vote of the majority of teachers agreeing to this distribution as required by Ark. Code Ann. § 6-20-412.

You further report that the audit prompted the following actions:

Subsequently, the district submitted the issue to the district's teachers that were employed during the relevant school year (201112). A majority of teachers retroactively approved the unequal distribution noted in the finding.

Against this backdrop, you have posed the following question:

Does Ark. Code Ann. § 6-20-412, or any other controlling Arkansas law, permit retroactive approval of an unequal distribution of a nonrecurring salary payment?

RESPONSE

In my opinion, although no case law or statute addresses this specific issue, a reviewing court, employing standard contract principles of ratification, would in all likelihood affirm the "retroactive approval" under the facts you have recited.

For purposes of my discussion, I will take as a given that the administrators' bonuses, as increased by index factors, indeed constituted an unequal distribution. I will likewise accept without further inquiry

the auditor's representation that the unequal distribution occurred among licensed school-district personnel, thereby triggering operation of the referenced statute.

The statute provides in pertinent part:

(a) A school district in this state may pay licensed personnel a nonrecurring salary payment from revenues not considered to be recurring sources of revenue.

(b) A nonrecurring salary payment under this section shall not increase the base salary of the recipient for purposes of calculation of future salary requirements.

(c) A nonrecurring salary payment under the provisions of this section shall be divided equally among licensed personnel employed by the school district at the time approved by the board of directors of the school district unless the board of directors and a majority of the licensed personnel agree to a different distribution.^[1]

In my opinion, the highlighted subsection of this statute clearly anticipates that a nonrecurring salary payment will be equally divided unless the district's board and licensed personnel, prior to the time payments are made, agree that the distribution will be unequal.^[2] Your concern is apparently whether the failure to obtain such prior agreement renders the payments subject to challenge even when a majority of those individuals who were licensed personnel at the time of the payments later ratify the unequal distribution. Although the Code is silent on this question, I believe a reviewing court would deem such ratification sufficient to sustain the unequal payments.

As a matter of contract law, "the law in effect at the time a contract is made forms a part of the contract as if it had been expressed in the contract."^[3] This principle clearly applies to that statutory condition that discretionary, nonrecurring salary payments may be unequally distributed among licensed district personnel only if a majority of those personnel agree to the unequal distribution. At issue is in your question is simply whether that agreement may occur after the fact.

Ratification is generally defined as "the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority."^[4] In a comment to this definition, the Restatement Reporter remarks:

As the term is used in agency law, ratification is both an act and a set of effects. The act of ratification consists of an externally observable manifestation of assent to be bound by the prior act of another person. . . . The set of effects that ratification creates are the consequences of actual authority. That is, when a person ratifies another's act, the legal consequence is that the person's legal relations are affected as they would have been had the actor been an agent acting with actual authority at the time of the act.^[5]

Ratification thus implicates agency – in this case, the district's – action in making the distribution as though the district's licensed personnel had granted the required authorization. It is an after-the-fact approval of an action taken on one's behalf, thereby legitimizing the action despite the fact that the action was taken without one's required participation therein. By virtue of the subsequent ratification, the party taking the action under such circumstances is deemed to have been the ratifying party's agent, regardless of whether or not the ratifying party had designated the agent to act on his behalf either in undertaking the action ratified or in any other matter.^[6]

One leading commentator on contract law, after summarizing the foregoing, offers the following regarding the availability of ratification in light of publicpolicy and publicsector considerations:

Provided that the principal's ratification is not against public policy, it is, in general, as effectual as original authorization. . . .

The doctrine of ratification applies with equal force to any principal, including municipalities and other governmental bodies^[7]

So long as the transaction ratified would have been permissible if initially approved – a condition that applies in this instance – the ratification will be given effect.^[8] By contrast, ratification will be ineffective if the contract would have been impermissible under any circumstances.^[9] I am unaware of any principle of Arkansas law that would support deeming the unequal distribution in this instance void ab initio.

Assuming the facts to be as represented in your summary and in the audit report – an assumption that I, not being a finder of fact, am not situated to test – the conditions supporting ratification would appear to have been met. The majority approval of those personnel licensed at the time of the distribution, even though belated, would thus appear to have validated the unequal distribution.^[10]

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM/JHD:cyh

^[1]A.C.A. § 6-20-412 (Supp. 2011) (emphasis added).

^[2] Although neither the courts nor this office have construed this provision, this reading strikes me as apparent on the face of the statute.

^[3] Woodend v. Southland Racing Corp., 337 Ark. 380, 384, 989 S.W.2d 505 (1999), citing Mahurin v. Oaklawn Jockey Club, 299 Ark. 13, 771 S.W.2d 19 (1989).

^[4] Restatement (Third) of Agency § 4.01(1) (2006).

^[5] Id. at cmt. b (emphases added).

^[6] This principle is set forth as follows in one hornbook formulation: If one not assuming to act for himself or herself does an act for or in the name of another upon an assumption of authority to act as the agent of such other, even though without any precedent authority whatever, and if the person in whose name the act was performed subsequently ratifies or adopts what has been so done, the ratification relates back and supplies original authority to do the act. It is equivalent to, or a substitute for, and has the effect of curing the absence of, original authority and relates back to the time when the unauthorized act was done. Even though the act may have been done without any precedent authority whatsoever, ratification creates the relationship of principal and agent.

^[7] 12 Williston on Contracts § 35:22 (4th ed.) (footnotes omitted).

^[8] See, e.g., American Federation of State, County and Municipal Employees, Local 380 v. Hot Spring County, Arkansas, 362 F.Supp.2d 1035 (W.D. Ark. 2004), (citing Watson v. Union County, 193 Ark. 559, 101 S.W.2d 791 (1937) and Leathern & Company v. Jackson County, 122 Ark. 114, 182 S.W. 570 (1916) for the proposition that a “county may . . . ratify an unauthorized contract made in its behalf, if it is one the county could have made in the first instance. Such ratification will be equivalent to original authority[.]”). As a general rule, ratification is deemed unavailable if a statute calls for penalizing a party

for contracting without obtaining a required prior agreement. See, e.g., *Platt v. Aspenwood Condominium Association, Inc.*, 214 P.3d 1060, 1065-66 (Colo.App. 2009), citing *Benham v. Heyde*, 122 Colo. 233, 241, 221 P.2d 1078, 1082 (1950), which in turn cited 17 C.J.S. Contracts §§ 202 and 203. No such penalty applies under the statute at issue in your request.

[9] See, e.g., *Goodwin v. State*, 235 Ark. 457, 464, 360 S.W.2d 490 (1962) (holding “void” contracts executed in violation of Arkansas Constitution, art. 12, § 4 and stating that “[h]aving held the contracts were ‘void’ they could not be ratified”).

[10] Compare *Platt*, supra at n. 8 (affirming a trial court judgment denying specific performance of a sales contract when condominium owners failed to ratify by the statutory majority the prior contract for sale of a condominium unit).



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ARKANSAS
DEPARTMENT
OF EDUCATION

Version History

Title	Nonrecurring Salaries (Bonuses)
Memo Number	FIN-11-064
Memo Date	2/8/2011
Attention	Co-op Directors; Superintendents; General Business Managers
Memo Type	Regulatory
Response Required	No
Section	Fiscal & Administrative Services
Regulatory Authority	Ark. Code Ann. § 6-20-412
Contact Person	Bill Goff, Assistant Commissioner - Fiscal and Administrative Services
Phone Number	(501) 682-1297
E-Mail	bill.goff@arkansas.gov
Memo Text	<p>Ark. Code Ann. § 6-20-412 pertains to nonrecurring salaries paid to certified personnel and states:</p> <ol style="list-style-type: none"> Any school district in the state may pay certified personnel a nonrecurring salary payment from revenues not considered to be recurring sources of revenue. A nonrecurring salary payment under this section shall not be construed to increase the base salary of the teacher recipient for purposes of calculation of future salary requirements. Any nonrecurring salary payment under the provisions of this section shall be divided equally among certified personnel employed by the school district at the time of payment unless the board of directors of the district and a majority of the teachers agree to a different distribution. A report indicating the source of the moneys and the name and amount paid to each recipient shall be furnished to the Department of Education and the Division of Legislative Audit by the ex officio financial secretary of the school district. A payment to a targeted educator made in the form of a supplement as an addendum to a contract in fulfilling this section §6-5-307(a), and §6-17-2101 et seq. [repealed] shall

not be considered a nonrecurring salary payment under this section.

Examples of revenues "not considered to be recurring sources of revenue" mentioned above in (a) would include fund balances and proceeds from the sale of school district property or any other one-time source of funds.

Item (c) above requires the nonrecurring salary payment to be "divided equally" among certified personnel "employed at the time of payment" unless the school board and a majority of teachers agree to a different distribution. This means that the payment must be an equal dollar amount paid to all certified personnel employed at the time of payment, regardless of date of hire, number of days contracted, or status as full or part-time employees. If the dollar amount paid is not the exact same amount for each certified employee, it is necessary that the board and a majority of teachers vote for a different distribution of payments.

There is no law governing nonrecurring salaries for classified personnel. Therefore, the school board may decide how nonrecurring salary payments will be distributed to classified personnel.

The report to the Arkansas Department of Education (ADE) required by Ark. Code Ann. § 6-20-412 (d) is provided as a part of cycle 9. The report for the Division of Legislative Audit should be mailed to:

Larry Hunter, Deputy Legislative Auditor
Division of Legislative Audit
State Capitol-Room 172
Little Rock, AR 72201






In order to satisfy the reporting requirement to ADE in cycle 9, it is necessary that districts use a unique pay code pertaining to nonrecurring salaries and object codes 61510 for certified personnel and 61520 for classified personnel.

Version: 13.0

Created at 2/8/2011 3:39 PM by Lynn Kinsey (ADE)

Last modified at 2/14/2011 3:55 PM by Phyllis Stewart (ADE)

Arkansas Code

-  **Arkansas Code**
 -  **Title 6. Education.**
 -  **Subtitle 2. Elementary and Secondary Education Generally**
 -  **Chapter 20. Finances.**
 -  **Subchapter 4. District Finances**
-

6 - 20 - 412 . Nonrecurring salary payments.

(a) A school district in this state may pay licensed personnel a nonrecurring salary payment from revenues not considered to be recurring sources of revenue.

(b) A nonrecurring salary payment under this section shall not increase the base salary of the recipient for purposes of calculation of future salary requirements.

(c) A nonrecurring salary payment under the provisions of this section shall be divided equally among licensed personnel employed by the school district at the time approved by the board of directors of the school district unless the board of directors and a majority of the licensed personnel agree to a different distribution.

(d) A payment to a targeted educator made in the form of a supplement as an addendum to a contract in fulfilling this section, and § **6-5-307**(a) shall not be considered a nonrecurring salary payment under this section.

History. Acts 1989, No. 268, § 1;
2001, No. 1456, § 8; **2009, No. 376**, § 38; **2011, No. 989**, § 62.

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October 21, 2014

Via Email and U.S. Mail

Mr. Kelly Rodgers
Superintendent of Schools
North Little Rock School District
2700 Poplar Street
North Little Rock, AR 72114

Re: Employee Bonuses

Dear Kelly:

This letter is in reference to the recent proposal made to the District's Board of Directors by the Licensed Personnel Policies Committee ("LPPC") concerning the payment of one-time bonuses to licensed personnel. The LPPC proposal excludes certain administrative personnel in the District from receiving the bonus and otherwise provides for unequal payments to licensed personnel.

The payment of nonrecurring monies to District personnel is addressed in the Arkansas Code. Ark. Code Ann. § 6-17-119 requires alternative pay programs such as bonuses for additional responsibilities, mastery of new knowledge and skills, advanced career opportunities, increased student achievement, attracting highly qualified teachers, or professional development exceeding state minimums, to be implemented on a district-wide or school-by-school basis so that every licensed or classified employee may participate in the program. Accordingly, it would violate this statute to exclude specified employees from the program.

Ark. Code Ann. § 6-20-412, which applies only to licensed personnel, permits a school district to pay licensed personnel a nonrecurring salary payment such as a bonus from revenues not considered to be recurring sources of revenue. This provision requires the payment to be divided equally among licensed personnel unless the board and a majority of licensed personnel agree to a different distribution.

At the Board meeting last week, the LPPC appeared to rely on a 2013 Arkansas Attorney General Opinion, which the LPPC claimed would support action by the Board to approve the LPPC's proposal. The LPPC's reliance on this opinion is misplaced. In Opinion 2013-056, the Attorney General was asked whether a bonus approved by a school board pursuant to Ark. Code Ann.

Mr. Kelly Rogers
October 21, 2014
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§ 6-20-412 which made unequal payments to district personnel that was not also approved by a majority of licensed personnel was lawful if the bonus payment was "retroactively approved" by a majority of licensed personnel. This is not the issue here. In this case, the issue is whether the payment of a bonus to all licensed personnel except those excluded from the bonus payment by the LPPC proposal is lawful. In my opinion, while Ark. Code Ann. § 6-20-412 would permit such a payment if the Board and a majority of the licensed personnel in the District approved the payment, I believe that if the bonus is paid pursuant to the program established by Ark. Code Ann. § 6-17-119, the bonus proposal must allow all employees to participate and receive the bonus.

Please feel free to contact me should you have further questions concerning this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Bequette", with a stylized flourish at the end.

Jay Bequette

cc: Mr. Gregg Thompson (*via email*)