



COMMONWEALTH OF KENTUCKY
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Dear Ms. Miller:

Although this letter is not a formal opinion of this office, we hope the views expressed will be of some assistance. You have asked the following questions regarding KRS 160.353(3)(a):

1. Does the Board have the statutory authority to adopt rules and regulations that establish the qualifications that a person must have to be eligible to serve as one of the teacher representatives on the committee?
2. If the Board has such statutory authority, what are the eligibility requirements that may be applied by the Board?

This letter borrows heavily from the Attorney General's analysis set forth in OAG 02-006 (a copy of which is attached). In that decision, the Attorney General opined that the *process* of electing teacher representatives to a superintendent selection committee pursuant to KRS 160.352(3), including whether the local school board could restrict the manner of nominating persons to appear on the ballot at each school and also whether the local school board could establish sections within the school district for purposes of voting, was exclusively the province of the teachers working to elect their own representatives.

OAG 02-006 generally affirmed the General Assembly's grant of control and management authority to a school board over the operation of the public schools in its district. However, this grant of control is distinct from any control the local school board may have over ancillary organizations of employees who work within the public school system, *e.g.*, teachers. *See id.* The authority of local school boards is derivative of KRS 160.160 generally, which, *inter alia*, authorizes boards to establish schools, courses and other services necessary for education and welfare of students. School boards fulfill



this statutory duty by adopting rules, regulations and bylaws to regulate meetings, transact business and establish qualifications and duties of their employees and principals. *Id.* KRS 160.290 further delineates the scope of a school board's power. Cumulatively, these provisions confirm that local school boards have authority over the operation of the school system and the education of students.

However, neither KRS 160.160 nor KRS 160.290 go so far as to grant school boards the authority to establish the rules and procedures governing the election of teacher representatives to superintendent selection committees pursuant to KRS 160.352(3), including establishing the necessary qualifications of any potential candidates or elected teacher representatives. *See generally* OAG 02-006. In fact, the act of establishing or otherwise judging the *eligibility* of candidates for election under KRS 160.352(3)(a) strikes this office as substantially similar to the act of restricting the manner of nominating persons to appear on the ballot; both appear to be largely procedural aspects of the electoral process. In OAG 02-006, the Attorney General expressly held that the electoral process derivative of KRS 160.352(3)(a) was exclusively the province of the teachers working to elect their own representatives. The idea of placing restrictions on those whom teachers could nominate is, as a matter of practical import, intractably related to the broader concept of eligibility: a putative candidate could not be nominated for election unless he or she was eligible, and an eligible candidate would need to meet nomination requirements to make the ballot. The inherent correlation between electoral eligibility and electoral nomination underscores the importance of the analysis presented in OAG 02-006.

Under current law, if a superintendent vacancy occurs, as it has in Jefferson County, a school board is required to appoint a new superintendent of schools after receiving the recommendations of a screening committee. That screening committee is established pursuant to KRS 160.352(2). Subsection (3) of the same statute lists the screening committee composition as follows:

- (3) A screening committee shall be composed of:
 - (a) Two (2) teachers, elected by the teachers in the district;
 - (b) One (1) board of education member, appointed by the board chairman;
 - (c) One (1) principal, elected by the principals in the district;
 - (d) One (1) parent, elected by the presidents of the parent-teacher organizations of the schools in the district;
 - (e) One (1) classified employee, elected by the classified employees in the district; and
 - (f) If a minority member is not elected or appointed to a screening committee in districts with a minority population of eight percent (8%) or more, as determined by the enrollment on the preceding October 1, the committee membership shall be increased to include one (1) minority parent. This minority parent member shall be elected by the parents in an election conducted by the local school board. Parents in the district shall be given adequate notice of the date, time, place, and purpose of the election.

KRS 160.352(3).

Much like the inquiry precipitating OAG 02-006, the relevant question is whether this statute authorizes local school boards to establish rules controlling candidate eligibility. We believe it does not.

It is axiomatic that in determining the purpose and meaning of a statute, courts will rely on the plain language of the enactment and will be precluded from adding benefits or provisions that the legislature itself did not include. *Johnson v. Branch Banking and Trust Co.*, 313 S.W.3d 557, 559 (Ky. 2010) citing *Stogner v. Commonwealth*, 35 S.W.3d 831, 834 (Ky.App. 2000).

In OAG 02-006, this office wrote:

The plain language of KRS 160.352(3) states that the two teacher representatives on the superintendent selection committee shall be 'elected by the teachers in their district.' *Id.* The plain language of this statute indicates that the teachers are responsible for electing their own representatives to the committee. Although local school boards are required by this statute to establish rules and procedures governing the committee itself, that statute does not also authorize local school boards to establish the rules and procedures governing the election of teacher representatives.

This interpretation comports with the language of the statute as a whole. In the same provision governing the superintendent selection committee described above, the General Assembly specifically provides for the election of a minority parent representative to the committee '*in an election conducted by the local school board.*' KRS 160.352(3)(f) (emphasis added). This precise language is a clear directive from the General Assembly that rules and procedures governing the election of the minority parent are to be established by the local school board. If the General Assembly intended to provide the local school boards the identical authority over the teacher election, it would have used the same precise language to achieve the result. This interpretation of KRS 160.352(3) reflects a primary Kentucky rule of statutory interpretation providing that 'where particular language is included in one section of a statute, but omitted in another section of the same statute, it is generally presumed that the legislature acted intentionally and purposefully in the disparate inclusion or exclusion.' *Palmer v. Commonwealth*, Ky. App., 3 S.W.3d 763 (1999); *Liberty National Trust Co. of Louisville v. George*, 70 B.R. 312 (W.D. Ky. 1987); *Commonwealth v. Taylor*, Ky., 945 S.W.2d 420 (1997).

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OAG 02-006 at 2.

KRS 160.352(3)(a), when read in congruence with the remaining provisions of its parent statute, clearly vests teachers with the statutory authority to adopt rules and regulations that establish the qualifications that a person must have to be eligible to serve as one of the teacher representatives on the committee. Although the local school boards establish the rules and procedures governing the operation of the superintendent selection committee, the election of teacher representatives to that committee must be conducted under the sole authority of the teachers themselves. Consequently, local school boards are not authorized by Kentucky law to establish rules and procedures controlling the eligibility of teacher representatives to those committees.

The Board essentially acknowledges the likelihood of our conclusion in Note 4 of its opinion request by aptly observing that the word teacher is used twice in KRS 160.352(3)(a): in the first instance to refer to the two elected teacher representatives, and in the second instance to refer to the teachers who elected the representatives. The Board continues:

The Attorney General opined in OAG 02-006 that the rules and procedures for conducting the teacher election are outside the authority of the Board. Thus, the Board believes that under OAG 02-006 the interpretation of the second use of the word is outside the authority of the Board. For this reason, the Board's request to the Attorney General for an opinion involves only the interpretation of the first word.

Letter from Miller to Conway of 2/15/11, at Note 4, page 4.

The Board zeroed in on the core issue. The two words should be interpreted in the same manner using the same analysis. A holding affirming the Board's authority over "teachers" as that term is used in the first part of the statute at issue, but denying the Board's authority over "teachers" as that term used in the second part of the statute, would be deeply illogical. To conclude otherwise would show clear disregard for long-standing principles of statutory consistency. When interpreting statutory language, a court should interpret the statute as a coherent whole and give consistent meaning to terms throughout the statute. *In re Shelbyville Mixing Center, Inc.*, 288 B.R.765, 768 (Bkrtcy. E.D.Ky. 2002) *citing Jones v. Federated Fin. Reserve Corp.*, 144 F.3d 961, 964 (6th Cir.1998) (basic rule of statutory construction "requires us to read a statutory provision in a manner consistent with the statute's other provisions").

A brief discussion of the second point of your inquiry is in order. KRS 160.352(3)(a) plainly requires *teachers* of the local school district to elect *teachers* to the superintendent selection committee. We gather that some confusion exists about who among us qualifies as a "teacher" for purposes of the statute. Both common sense and standard rules of statutory interpretation support the notion that the two distinct uses of the word "teacher" within KRS 160.352(3)(a) should hold identical meanings. *In re Shelbyville Mixing Center, Inc.*, at 768.

Because the two uses of the word “teacher” in KRS 160.352(3)(a) must share the same meaning, it is of paramount importance to understand what, exactly, the word teacher means as used. The term “teacher” is not expressly defined in KRS 160.352. However, the term “teacher” is defined in other provisions of Chapter 160. Specifically, KRS 160.345 defines teacher as follows: “[A]ny person for whom certification is required as a basis of employment in the public schools of the state, *with the exception of principals and assistant principals.*” *Id.* (emphasis added). This definition of teacher should control KRS 160.352(3)(a). See *Petitioner F. v. Brown*, 306 S.W.3d 80, 85-86 (Ky. 2010) (summarizing long standing common law that statutes should be read as a whole and in context with other parts of the law). Note that this definition is silent as to “classroom status;” that is, the General Assembly’s definition of “teacher” does not contemplate whether an individual is engaged in daily classroom instruction. The sole predicates for classification as a teacher for purposes of KRS Chapter 160 are 1) possession of the required certification for employment in Kentucky public schools, and 2) not a principal or assistant principal. This qualifier, “not a principal or assistant principal,” is consistent with both general and legal understanding that the teachers in a school and the administrators in a school are distinct subgroups with overlapping yet distinguishable interests. See *Hooks v. Smith*, 781 S.W.2d 522, 523 (“the ordinary duties of a school principal differs greatly from that of a school teacher. Administrative personnel have either fiscal management duties and educational supervisory duties, or both, with responsibilities which are quite different from those of classroom teachers. The role of an administrator in carrying out policy and in formulating overall policy is also quite different from that of a teacher”).

The General Assembly’s exclusion of principals and assistant principals from the definition of “teacher” underscores a clear intention to separate employees, *i.e.*, teachers, from managers, *i.e.*, principals and assistant principals, even though both require certification for employment in Kentucky schools. By virtue of this exclusion, the legislature has made it expressly clear that certification for employment in Kentucky schools is not, in and of itself, that which establishes a person as a teacher. We believe the legislature further committed itself to this separation of teachers and administrators by operation of KRS 160.352(3)(a) and (c), as the former allows teachers to elect two representatives to the superintendent selection committee and the latter allows principals to elect one representative to the superintendent selection committee. We believe the Kentucky legislature intended teachers and administrators to vote separately for their respective representatives to the superintendent screening committee. We further believe that affirmatively taking steps to associate oneself with school administration, such as completing masters-level degrees in school administration to advance into administrative positions, or affiliating with a professional association representing administrators, weighs strongly against any one individual’s assertion that they should be considered a teacher for purposes of KRS 160.352(3)(a). Whether a particular administrator should be considered a teacher depends upon individual circumstances, but those who are not eligible to vote in the teacher’s election would possibly be eligible to vote in the principals’ election pursuant to KRS 160.352(3)(c).

In issuing this letter, we are aware that certain employees feel disenfranchised from the process of electing representatives to the superintendent selection committee. For example, the Jefferson County

Association of School Administrators (“JCASA”) noted in a letter to this office that if the Attorney General were to conclude, as we have, that “teacher” for purposes of KRS 160.352(3)(a) means a person who holds certification for employment in Kentucky schools but is not a principal or assistant principal, a gray area will remain in the law. JCASA rightly points out that counselors, for example, do not fit neatly in any particular category: counselors hold certification for employment in Kentucky schools yet are not principals or assistant principals. One could conclude that they are teachers. JCASA reasons that if imperfect results occur as a result of our analysis, such as the exclusion of counselors from the electoral process for the superintendent selection committee, then we must re-interpret the statute to ensure that all parties fit neatly in one of the enumerated categories of KRS 160.352(3). This is not our charge.¹

JCASA presents a false choice: either all public school personnel without classroom instructional duties must be excluded as both voters and candidates under KRS 160.352(3)(a), or anyone who holds a teaching certificate, regardless of their actual employee classification, must be allowed to vote and / or run as a candidate in an election held under KRS 160.352(3)(a). JCASA’s position is untenable as it rather conspicuously brushes aside a truly fundamental tenet of education law: teachers and administrators working within the public school system *are* different and, consequently, *are* treated differently. *See generally Hooks v. Smith, supra*. KRS 160.352(3) bears this out using clearly delineated subsections mandating separate elections of teachers (KRS 160.352(3)(a)) and administrators (read: principals, via KRS 160.352(3)(c)). We also disagree with JCASA’s representation that the legislature showed “clear intent” in KRS 160.352(3) to “engage all relevant stakeholders” in the superintendent selection process. Letter from Hirn to Seiler of 03/1/11, at 1-2. It is apparent from the very words used within that statute that the legislature only intended to engage teachers, the board of education, principals, parents, classified employees and minority communities. By individually listing these subgroups, the legislature showed the intent to exclude those stakeholders not listed, most notably students. *See Palmer v. Com*, 3 S.W.3d 763, 764 (Ky. App. 1999) (“As a general rule of statutory construction, ‘*expressio unius est exclusio alterius*’ provides that an enumeration of a particular thing demonstrates that the omission of another thing is an intentional exclusion”).

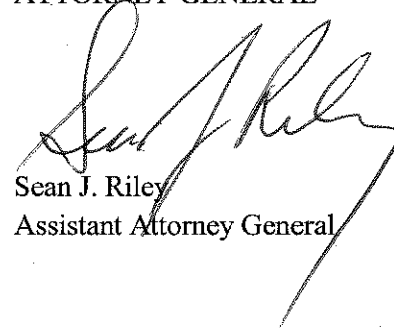
With respect to the teachers’ election of Mr. Brent McKim to one of the two teacher positions on the superintendent selection committee pursuant to their obligations under KRS 160.352(3)(a), we take notice of the fact that Mr. McKim is certified for employment in the Jefferson County public schools and is neither a principal nor an assistant principal. Furthermore, he has never taken any affirmative action on his own behalf to affiliate himself with administrative employees of the Jefferson County public schools. Although he is currently serving as the President of the Jefferson County Teacher’s Association, such

¹ It remains possible that many of the employees that JCASA perceives to be disenfranchised might find acceptance as ‘classified employees’ under KRS 160.352(3)(e). We also note that distinctions among employees generally classified as administrators have long been recognized by Kentucky courts. *See, e.g., Arney v. Campbell*, 856 F.Supp. 1203, 1205 (W.D.Ky. 1994) (finding a “that there is a legitimate distinction between principals and other administrators”).

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service does not, as a matter of law or fact, negate Mr. McKim's qualifications as a teacher.² The Attorney General places great weight on the Agreement between the Jefferson County Teacher's Association and the Jefferson County Board of Education regarding the employment status of the President of the JCTA. Under mutually agreed to terms, the President of the JCTA "shall be considered in an active duty status and shall receive compensation and benefits in accordance with the labor agreement covering teachers." If the Jefferson County Board of Education expressly defines the President of the JCTA as a teacher "on active duty status," we see no reason why those vested with the authority to do so, *i.e.*, teachers, would disqualify Mr. McKim from the superintendent selection committee based on ineligibility.

Sincerely,
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ATTORNEY GENERAL



Sean J. Riley
Assistant Attorney General

² As President of JCTA, we note that Mr. McKim represents public school teachers in Jefferson County in the ordinary course, and his colleagues elected him to do so. We see no reason why the individual whom teachers elected to represent them in *all matters* should be precluded from representing them in one specific matter.