

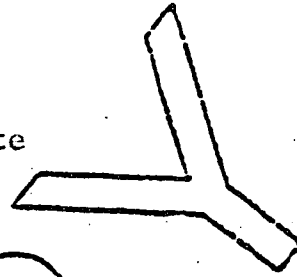


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FILE NO. S-1448

SCHOOLS AND SCHOOL DISTRICTS:  
Power of School Board to Regulate  
Leaves of Absence Requested by  
Teacher-Legislators



Honorable J. Glenn Schneider, Chairman  
Committee on Elementary and Secondary Education  
Room 2130 Stratton Building  
Springfield, Illinois 62706

Dear Mr. Schneider:

I have your letter wherein you request an opinion  
on the following questions:

1) Where a state legislator desires leave  
from his teaching responsibilities pursuant to  
Sec. 24-13 [of The School Code], may he be required  
to file a separate request as to each and every day  
for which such leave is sought?

2) May a Board of Education refuse to grant  
leave in excess of one day a week to a teacher who  
has been elected to serve in the General Assembly,  
on the grounds that the individual has not agreed  
to take leave for the entire week?"

Section 24-13 of The School Code (Ill. Rev. Stat.  
1977. ch. 122, par. 24-13) provides in part:

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"The contractual continued service status of a teacher is not affected by his promotion, absence caused by temporary illness or temporary incapacity as defined by regulations of the employing board, leave of absence mutually agreed upon between the teacher and the board, or because of absence while in the military service of the United States. If a teacher is elected to serve in the General Assembly, the board shall grant him a leave of absence if he so requests.  
\* \* \* (Emphasis added.)

It has been held that article 24 of The School Code (Ill. Rev. Stat. 1977, ch. 122 et seq.) [previously known as the Teacher Tenure Law] was "enacted primarily for the protection of Illinois teachers who, prior to its enactment in 1941, served at the pleasure of the boards of directors of education. Its object was to improve the Illinois school system by assuring teachers of experience and ability a continuous service and a re-hiring based upon merit rather than failure to rehire upon reasons that are political, partisan or capricious. \* \* \*"  
(Donahoo v. Board of Education (1952), 413 Ill. 422, 425.)  
Further, the Act is to be strictly construed in favor of those whom the law is intended to protect. (Hauswald v. Bd. of Education of Comm. High School Dist. No. 217, Cook Co. (1958), 20 Ill. App. 2d 49.) Consequently, the authority of a school board to adopt regulations which tend to interfere with the right to leave granted in section 24-13 should be strictly construed in favor of the teacher-legislator (hereinafter referred to as legislator).

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Section 24-13 relates generally to the question of leaves of absence. The school board is vested with discretion to regulate the terms and conditions of leaves granted for temporary illness, incapacity or other mutually agreed reasons. (Elder v. Bd. of Education of School Dist. No. 127 1/2 (1965), 60 Ill. App. 2d 56.) But with respect to members of the General Assembly, the school board has no discretion:

" \* \* \* [T]he board shall grant him a leave of absence if he so requests. \* \* \*" (Ill. Rev. Stat. 1977, ch. 122, par. 24-13.)

The requirement that the legislator request such a leave serves only to provide the school board with notice of the impending absence. Thus the board can adopt a rule which requires the legislator to make his request in a prescribed manner.

The clear legislative intent expressed in section 24-13 is that an individual teacher who is elected to serve in the General Assembly not be penalized or hampered in the performance of his duty. The schedule of sessions of the General Assembly and meetings of its committees and commissions are subject to change on short notice, and it is therefore often not possible for a legislator to plan his schedule with any degree of precision. In contrast, the typical school board meets on a regular schedule, normally once and

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occasionally twice a month. Therefore, a requirement that each leave be held in abeyance until formally approved by the board would severely impair the ability of a teacher to fulfill his legislative duties. Such a rule is inconsistent with the intention of the legislature.

Section 24-13 places the power to request a leave of absence in the hands of the legislator. Logically, the extent and duration of the leave is to be determined by the legislator at the time the request is made. It is clear that any rule which is adopted by a school board which forces a legislator to take more or less leave than he requests or desires is beyond the board's power. To require a legislator to take five days of unpaid leave when he only needs or requests two or three is a penalty which is directly attributable to his service in the General Assembly. Such a penalty is contrary to the intent expressed in the Act.

For the foregoing reasons, it is my opinion that pursuant to section 24-13, a school board may require a teacher to file a separate request for each period of leave taken but that it may not require such leave to be held in abeyance pending final approval by the board. It is also my opinion that a school board may not require a legislator to take any more or less leave than the amount he has requested.

Very truly yours,

A T T O R N E Y G E N E R A L