



JOY HOFMEISTER  
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION  
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

May 10, 2018

The Honorable Mike Hunter  
Oklahoma Attorney General  
c/o Opinion Coordinator  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105

RE: Attorney General Opinion Request

Dear Attorney General Hunter:

In the 2<sup>nd</sup> extraordinary session of the 56<sup>th</sup> Oklahoma Legislature, House Bill 1023XX was passed by the Legislature and signed by the Governor. In effect, House Bill 1023XX will include a new minimum salary schedule for Oklahoma teachers.

As set forth in detail below, questions of law, that I believe have not heretofore been answered, have arisen as to the legal effect of certain terms contained in House Bill 1023XX. Moreover, on May 1, 2018, pursuant to the Oklahoma Constitution at Article V, Section 3, a referendum petition ("Referendum Number 25" or "State Question 799") was filed. State Question 799 seeks to repeal House Bill 1010XX, and has caused questions of law to arise as to its impact, if any, on the new Minimum Salary Schedule included in House Bill 1023XX. As such, and because Oklahoma teachers, families, and school districts are actively seeking to make plans for the upcoming school year, including but not limited to contracts for employment<sup>1</sup> and their budgets, I am writing to respectfully request a legal opinion from your office on the following questions of law as they relate to Section 3 of House Bill 1023XX and State Question 799. As an initial matter, a recitation of the pertinent provisions of House Bill 1023XX and the Oklahoma Constitution as it relates to the referendum is in order.

House Bill 1023XX provides for an effective date of August 1, 2018, and includes a Section providing as follows:

---

<sup>1</sup> For example, Oklahoma law provides that a contract for employment shall be binding on a teacher and the school district board of education until the individual has been legally discharged or released from the contract. *See* 70 O.S. §6-101. Further, school districts are prohibited from reducing the salary and fringe benefits of a teacher from one year to the next unless duties are changed. *See* 70 O.S. §18-114.9.

The provisions of this act [House Bill 1023XX] shall be contingent upon the *enactment* of the provisions of Enrolled House Bill No. 1010 of the 2<sup>nd</sup> Extraordinary Session of the 56<sup>th</sup> Oklahoma Legislature and the *enactment* of the provisions of Enrolled House Bill No. 1011 of the 2<sup>nd</sup> Extraordinary Session of the 56<sup>th</sup> Oklahoma Legislature and shall not become *operative* as law otherwise. (Emphasis added).

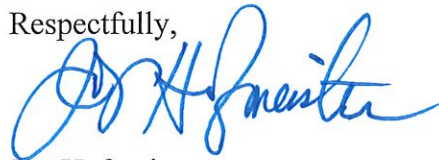
Article V, Section 3 of the Oklahoma Constitution provides in part that “[a]ny measure referred to the people by the initiative or referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise.” In light of these statements of law, my questions are as follows:

1. Upon what legal act(s) or occasion(s) does an act of the Legislature, approved by the Governor, become enacted? As evidence, HB 1010XX was signed by the Governor on March 29, 2018 and will become effective 90 days after signature (June 27, 2018). HB 1023XX was also signed March 29, 2018 and will become effective Aug. 1, 2018.;
2. Upon what legal act(s) or occasion(s) did/do the provisions of House Bill 1010XX become enacted?;
3. Upon what legal act(s) or occasion(s) did/do the provisions of House Bill 1023XX become “operative as law” as described in Section 3 of that measure and included for reference above?;
  - a. Notwithstanding the answer to Question 3, does House Bill 1023XX become effective when it is operative as law, or on the effective date set forth therein of August 1, 2018?;
4. What is the legally operative act upon which a legislative measure is “referred to the people” as that phrase is used in Article V, Section 3 of the Oklahoma Constitution?;
  - a. Does this occur upon the filing of a referendum petition, the filing of the requisite number of signatures supporting an initiative or referendum petition, the verification of such signatures, or otherwise?
5. At the time a referendum is “referred to the people,” does it impose a stay on the implementation of the legislative measure to which the referendum relates?;
6. If State Question 799 is “referred to the people,” as that phrase is used in Article V, Section 3 of the Oklahoma Constitution, are the provisions of House Bill 1010XX stayed until the votes on State Question 799 are certified?;
7. Because of the language of Section 3 of House Bill 1023XX, if State Question 799 is “referred to the people,” as that phrase is used in Article V, Section 3 of the Oklahoma Constitution, are the provisions of House Bill 1023XX stayed until the votes on State Question 799 are certified?;
8. If Question 6 is answered in the affirmative, and therefore House Bill 1010XX is stayed, are school districts required to pay the amounts otherwise due pursuant to House Bill 1023XX during the time of such stay?
9. If Question 7 is answered in the affirmative, and therefore House Bill 1023XX is stayed, are school districts required to pay the amounts otherwise due thereunder during the time of such stay?

10. If Questions 6 and 7 are both answered in the affirmative, are school districts required to pay the amounts otherwise due pursuant to House Bill 1023XX during the time of such stay?
11. If State Question 799 is rejected, and Question 7 is answered in the affirmative, are school districts required to retroactively provide the full salary amount provided in House Bill 1023XX for the period of time in which such provisions were "stayed" pending the vote on State Question 799?

Again, Oklahoma families, teachers, and school districts have a vested interest in these issues. Your attention and expeditious review of these matters is of great importance and sincerely appreciated.

Respectfully,



Joy Hofmeister,  
State Superintendent of Public Instruction