

LEGAL SERVICES FOR LOCAL SCHOOL DISTRICTS

By

RONNIE O'NEIL KIRKLAND

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LEGAL SERVICES FOR LOCAL SCHOOL DISTRICTS

By

Ronnie O'Neil Kirkland

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The focus of this study was on the legal services needed by local school districts and the means of providing such services. Theoretical propositions were derived from the literature concerning legal services for local school districts. These theoretical propositions were tested in the field by gathering data from the school districts of a selected state. These field data were collected through a questionnaire which was mailed to school board attorneys, school board chairmen, and school superintendents in the 67 school districts of Florida. The returned questionnaires were analyzed and the 2,083 comments from 128 study participants (39 school board attorneys, 36 school board chairmen, and 53 school superintendents) were catalogued according to subject. Frequency distributions were established and commonalities and/or differences were noted.

In regard to the nine theoretical propositions derived from the literature, the field data supported those that

dealt with the need for local school districts to have legal counsel, the lack of legal assistance from the state attorney general, the school board attorney as being the most available source of legal counsel, the need to establish policies concerning the role and functions of the school board attorney, and the requirement for legal services in the area of student and personnel problems. The propositions concerning equal access to legal services for all school districts and the need for attorneys to have special training in school law were supported by perceptions of the need but not by perceptions of actual practice. The propositions dealing with the need for the state department of education to provide consistently legal assistance to local school districts and the need to standardize among the school districts the conditions of employment of attorneys were supported neither by perceptions of need nor by perceptions of practice.

Based upon the theoretical propositions derived from the literature and the results of the field data, the writer developed a theoretical design for the provision of legal services to local school districts. This design includes the following provisions:

1. Legal services regions are established throughout the state.
2. Each legal services region is headed by an attorney who acts as an assistant to the local school districts in that region. This attorney helps

coordinate the legal services needed by the local school district.

3. Separate attorneys are retained to represent the interests of the school board and the school superintendent.
4. The school superintendent designates someone on his staff to be a legal specialist in the day-to-day operations of the school district.
5. Courses in school law and training seminars are required of attorneys retained by the local school districts. Field experiences in local school districts are made available to law students.
6. A formal contract, specifying duties and responsibilities, is established between the attorney and the agency retaining the attorney, whether state or local school district. The basis for remuneration for services rendered is a standardized hourly schedule.

CHAPTER I  
INTRODUCTION

The legal aspects of public school administration and policy formulation have been affected by court decisions, legislation, and pressure generated by an increased public concern for the educational processes (Shannon, 1973, p. 23). These factors had created by 1975 a broad field of law within which local school officials were required to operate.

Court decisions have been rendered relative to due process for students such as in Dixon v. Alabama State Board of Education (1961), Tinker v. DesMoines Independent Community School District (1969), and Scoville v. Board of Education (1970). Also, due process for teachers has formed the basis for legal action, as in Perry v. Sinderman (1972). Other areas affected by the courts have included religion, desegregation, school finance, civil rights, corporal punishment, sex discrimination, search and seizure, and busing (Alexander, Corns & McCann, 1969, passim).

During the 1974 session of the Florida Legislature, 69 bills were passed that related to public education in the state (Laws Relating . . ., 1974). Included in the enacted laws was a provision for the waiver of sovereign immunity. This provision allowed the state and its agencies to be sued for the actions of employees (pp. 12-32).

Also adopted by the Florida Legislature in the 1974 session was a collective bargaining bill for public employees which permitted school district personnel to bargain with the local school board (pp. 151-153). Such legislative enactments placed greater legal responsibility upon those charged with the operations of a school district.

Relative to the means of providing legal services to local school districts, Barr (1971) examined the function of the attorney general of Georgia in the capacity of legal advisor to public officials of that state. He found that such services received from the attorney general had been curtailed in recent years. He concluded that local public school officials had only one consistently available source of legal assistance: the local school board attorney. Barr's findings were later substantiated in a study conducted by Pettit (1974) of all 50 state departments of education. His research indicated that most states allowed the local school district to retain private legal counsel and that assistance from the attorney general was in the form of legal opinion only.

With each passing year, more formal procedures and more legal services were required of and needed by local school districts. Studies were conducted by researchers (Fessler, 1971; Price, 1967; Stover, 1960) who examined the responsibilities of school board attorneys that might be determined at that time. These investigations revealed the link made

by the attorney between the legal sphere of laws, statutes, and courts and the local school system.

In this context of legal responsibility the research reported herein was conducted to determine the legal services needed by local school districts and the means of providing such services.

### The Problem

#### Statement of the Problem

The focus of this study was on the legal services needed by local school districts and the means of providing such services. The first part of the problem was to establish theoretical propositions concerning the provision of legal services to local school districts. These propositions were derived from available research and related literature. The second part of the problem was to test the theoretical propositions by gathering empirical data from a state system of school districts. Specifically, the objective of the second part of the study was to determine the perceptions of local school board chairmen, school superintendents, and school board attorneys relative to the following questions:

1. What legal services are needed by local school districts?
2. What should be the responsibilities of local school board attorneys in providing these services?
3. Under what special circumstances, if any, should attorneys other than the school board attorney be

- retained by local school districts?
4. What should be the terms and conditions of employment of attorneys retained by local school districts?
  5. What should be the qualifications of attorneys retained by local school districts?

#### Delimitations and Limitations

The following restrictions were observed while conducting the study:

1. The review of the research and literature was limited to the 20-year period 1955-1975.
2. The collection of the field data for the study was limited to the 67 school districts in the state of Florida. Specifically, the questionnaires were mailed to 66 school board attorneys, 67 school board chairmen, and 67 school superintendents. One school district retained no school board attorney. Responses were received from 39 school board attorneys, 36 school board chairmen, and 53 school superintendents.

A questionnaire technique was used which necessarily possessed weaknesses inherent in this method: the inability to manipulate independent variables and the risk of improper interpretation of data.

Although the collection of the field data in this study was limited to Florida, the standardization of public

educational practices in the United States has reached the point that the data collected might have some implications for other states. Much of the litigation involved federal law pertaining to all states. As suggested, although the states had separate school systems, many of the procedures relative to the legal control and administrative practice have been standardized over the past one hundred years prior to 1975.

#### Justification for the Study

The results of this study will add to the knowledge available at the time of this report relative to the legal services needed by local school districts and the conditions that should exist in providing these services. Previous studies have determined existing conditions, but they have not dealt with the questions: What is needed? and What should be? This study sought answers to these questions.

As stated elsewhere, the need for legal services in school systems has grown enormously during the two decades 1955-1975. Nunnery and Kimbrough (1971, p. 127) reported that the number of school districts decreased from over 115,000 in the 1940s to less than 18,000 in 1970. During this time the number of students increased, and as a result, larger and more complex schools were created. Local school boards and public school administrators were under constant pressure from legal requirements in carrying out their

duties and responsibilities. An example of such requirements can be found in an opinion issued by the attorney general of Florida in November 1974 concerning corporal punishment and the procedures required of school personnel to protect the rights of students (Shevin, 1974). The opinion listed eight conditions that should be met before administering corporal punishment.

Stover (1969) made the following statement:

Questions developing as a result of the maze of educational legislation in the Congress as well as the states, the school decisions of numerous court cases, including federal, state and local, and numerous opinions on educational matters rendered by attorneys, too, indicate the importance and the need for school attorneys. . . . Answers to many such questions relating to legal services have been lacking due to the limited amount of research available on the role of the school attorney in school administration and school board functions. (p. 1)

These factors pointed to the need for review of the legal aspects of public school administration and the requirements of legal counsel; not on the basis of that which existed, but on the basis of what was needed and perceptions of what should exist.

Relative to procedures for the establishment of school board attorneys, Wells (1960) reported that he found no accepted pattern for school board attorneys in Michigan. He further concluded that most districts did not follow sound criteria in establishing an attorney for the school board.

In a study of attorneys in two counties in New Jersey, Austin (1963) concluded that the functions and duties of these attorneys were often vague. This vagueness was attributed to a lack of definitive agreements or specifications of duties.

Without proper legal counsel, school officials, through improper procedures, could become involved in litigation resulting in expenditures of monies that could be used in the classroom. Glime reported in 1972 that through neglect in establishing protective clauses in negotiated contracts, school boards could be liable in a wide variety of suits. He cited an example of such a mistake which cost a school district \$100,000 (p. 28).

In the years that have passed since these studies were conducted, conditions have changed such that a study of this nature is fully justified.

#### Definition of Terms

Local school district.--That unit of organization of the state school system established locally by the state to provide educational processes for students in the area.

Responsibilities of attorneys.--Those areas of concern which are assigned to the attorney either by contractual or by informal agreements.

School board.--That body of persons elected by the voters of the school district which has the responsibility for the organization and control of public schools in

that district. It is used interchangeably with the term board.

School board attorney.--The attorney retained by the local school board for counsel and legal representation.

School board chairman.--That person elected by members of the local school board to serve as chairman of the board. It is used interchangeably with the term chairman.

School superintendent.--That person who is elected to office by the voters of the school district or that person appointed to this office by the school board in those districts where that option has been chosen by the electorate. He is responsible for the administration of the schools and is the executive officer of the school board. It is used interchangeably with the term superintendent.

Terms and conditions of employment of attorneys.--The agreed-upon schedule of remuneration for services rendered and any arrangements that are effected, whether formal or informal.

### Procedures

#### Study Design

An extensive review of the research and related literature was completed concerning the legal services needed by school districts and the manner of providing these services. The results of this review formed the basis of theoretical propositions developed by the writer for providing legal services to local school districts. These propositions were

used as the basis for conducting the field study of the school districts in Florida.

The empirical phase of the problem utilized the questionnaire design in order to ascertain the perceptions of the field study participants relative to the legal services needed by local school districts and the means of providing such services.

#### Research and Literature Review

A review of the research and related literature was conducted by the writer. This review was limited to materials that were produced during the 20-year period 1955-1975. These sources included Dissertation Abstracts International, Educational Resources Information Center (ERIC), The Encyclopedia of Educational Research, American Jurisprudence, journal articles, books, and court cases dealing with aspects of public school administration.

Each item of information was evaluated according to its relevance and contribution to the problem. Not all items were included in the review, and it is acknowledged that some sources may have been omitted which could have added to the depth of this study. The review of the research and related literature is included in Chapter II.

#### Participants for the Field Study

The prospective participants for the field study included the school board chairman, school superintendent, and school board attorney in each of the 67 school districts in

the state of Florida. This choice provided a maximum of 201 potential participants selected for the study.

#### Instrumentation and Data Collection

To collect the data for analysis, each school board chairman, school superintendent, and school board attorney was asked to respond to the following questions:

1. In your opinion, what legal services are needed by local school districts?
2. What are some of the legal services that you think a school board attorney should provide?
3. Under what circumstances, if any, do you think that an attorney other than the school board attorney should be retained by local school districts?
4. In your opinion, what should be the terms and conditions of employment of attorneys retained by local school districts?
5. Based upon your experience, what do you think should be the qualifications of attorneys retained by local school districts?

Each study participant received by mail a list of the five questions (see Appendix A). Since the information that he provided would not be directly connected to the conditions that might have existed in that particular district, each participant was asked to respond to the questions freely and frankly. A second mailing was sent out four

weeks later to those who had not responded. Three weeks after the second mailing, telephone calls were made to the remainder of the potential study participants. The writer learned through these calls that some questionnaires had not been received through the mail and that another questionnaire must be sent for completion.

The participants were identified and placed in school district categories according to the student membership of the individual school district at the end of the 1973-74 school year (Report of . . ., 1975). There were 10 school districts that had a kindergarten through 12th-grade membership of more than 40,000. In the 10,001 to 40,000 category, there were 17 districts. There were 40 school districts in the 0 to 10,000 membership category. As can be readily seen from these data, a majority of the school districts in Florida were in the 0 - 10,000 membership category (see Appendix C).

Each school district had a potential of three study participants had all eligible entities participated in the study. As stated previously, the realization of this potential would have provided a total of 201 participants from the 67 school districts in Florida. However, the writer discovered that one school district did not employ a school board attorney; which reduced the total of possible study participants to 200. Of these, 128 reacted to the questionnaire sent by mail to all potential participants.

As shown in Table 1, the school district superintendents (53) returned more of the questionnaires than did the school board chairmen (36) or school board attorneys (39). The maximum return possible from each was 67, with the exception of the school board attorneys; the maximum return for attorneys was 66, because one district had no school board attorney.

The percentage of response can be seen in Table 2 by school district membership category and study participant title. Of the total possible study participants in each group, the response was 59.1 percent for the school board attorneys, 53.7 percent for the school board chairmen, and 79.1 percent for the school superintendents.

The school superintendents responded more frequently in all categories of school district size. For the larger (more than 40,000), medium (10,001 to 40,000), and smaller (0 to 10,000) categories the response was 80.0 percent, 94.1 percent and 72.5 percent, respectively. The spread between the highest and lowest percentile was 21.6 points. Of all those answering the questionnaire, 41.4 percent were school superintendents.

The school board attorneys comprised 30.5 percent of the study participants, placing them second to the school superintendents in response frequency. For the large, medium, and small school districts the response was 60.0 percent, 64.7 percent, and 56.4 percent, respectively.

TABLE 1

Distribution and Response of Study Participants According to  
School District K-12 Membership

| School District<br>K-12 Membership<br>Categories <sup>a</sup> | Number of<br>School Districts<br>in Category | Response of Study Participants         |                          |                             |
|---|--|--|--------------------------|-----------------------------|
|   |  | School Board<br>Attorneys <sup>b</sup> | School Board<br>Chairmen | School Super-<br>intendents |
| More than<br>40,000   | 10   | 6                                      | 5                        | 8                           |
| 10,001-<br>40,000   | 17   | 11                                     | 8                        | 16                          |
| 0-<br>10,000  | 40   | 22                                     | 23                       | 29                          |
| Total   | 67   | 39                                     | 36                       | 53                          |

Note: Grand total of study participants - 128. Total of possible study participants - 200.

<sup>a</sup>Based on school district kindergarten through 12th grade membership at the end of the 1973-74 school year.

<sup>b</sup>One school district in the 0-10,000 membership category had no school board attorney.

TABLE 2

Percentage of Distribution and Response of Study Participants  
According to School District K-12 Membership

| School District<br>K-12 Membership<br>Categories | Number of<br>School Districts<br>in Category | Percent of Responses of the Study Participants |                          |                             |
|--|--|--|--------------------------|-----------------------------|
|  |  | School Board<br>Attorneys                      | School Board<br>Chairmen | School Super-<br>intendents |
| More than<br>40,000                              | 10   | 60.0%  | 50.0%                    | 80.0%                       |
| 10,001-<br>40,000                                | 17   | 64.7%  | 47.1%                    | 94.1%                       |
| 0-<br>10,000                                     | 40   | 56.4%  | 57.5%                    | 72.5%                       |
| Total responses                                  |  | 30.5%  | 28.1%                    | 41.4%                       |
| Possible responses                               |  | 59.1%  | 53.7%                    | 79.1%                       |
| Those responding from all categories - 64%       |  |  |                          |                             |

The spread between the highest percentile and the lowest was 8.3 points.

Responding least frequently were the school board chairmen. Of the total responses, 28.1 percent were from school board chairmen. In the K-12 membership categories of large, medium, and small, the response was 50.5 percent, 47.1 percent, and 57.5 percent, respectively. The spread between the highest percentile of participation and the lowest was 10.4 points.

Table 3 shows the results of the chi-square tests of significance for large, medium, and small districts relative to the number of respondents from each participant group in the respective district sizes. No significant difference was indicated by these tests in the three groups of study participants when they were compared by the chi-square procedure.

The results of the chi-square tests of significance on the number of questionnaires returned by the school board attorneys, school board chairmen, and school superintendents, shown by Table 4, indicated no statistically significant difference.

#### Data Treatment

From the review of the research and related literature, the author developed a set of propositions concerning the legal services needed by school boards and the means whereby such legal services should be provided to local school districts.

TABLE 3

Results of Chi-Square Tests of Significance  
for School District Size and  
Study Participant Response

| Group                   | O  | E     | O-E   | (O-E) <sup>2</sup> | (O-E) <sup>2</sup> /E |
|-------------------------|----|-------|-------|--------------------|-----------------------|
| <u>Large districts</u>  |    |       |       |                    |                       |
| SBA <sup>a</sup>        | 6  | 6.33  | - .33 | .11                | .017                  |
| SBC <sup>b</sup>        | 5  | 6.33  | -1.33 | 1.78               | .281                  |
| SS <sup>c</sup>         | 8  | 6.33  | 1.67  | 2.78               | .439                  |
|                         |    |       |       |                    | <u>.737*</u>          |
| <u>Medium districts</u> |    |       |       |                    |                       |
| SBA                     | 11 | 11.67 | - .67 | .45                | .039                  |
| SBC                     | 8  | 11.67 | -3.67 | 13.57              | 1.154                 |
| SS                      | 16 | 11.67 | 4.33  | 18.75              | <u>1.607</u>          |
|                         |    |       |       |                    | 2.8*                  |
| <u>Small districts</u>  |    |       |       |                    |                       |
| SBA                     | 22 | 24.67 | -2.67 | 7.13               | .289                  |
| SBC                     | 23 | 24.67 | -1.67 | 2.79               | .113                  |
| SS                      | 29 | 24.67 | 4.33  | 18.75              | <u>.760</u>           |
|                         |    |       |       |                    | 1.162*                |

\*Not significant at the .05 level.

<sup>a</sup>SBA = School board attorney.

<sup>b</sup>SBC = School board chairman.

<sup>c</sup>SS = School superintendent.

TABLE 4

Results of Chi-Square Test of Significance for the Number  
of Questionnaires Returned by Each Participant Group

| Group            | O    | E     | O-E   | (O-E) <sup>2</sup> | $\frac{(O-E)^2}{E}$   |
|------------------|------|-------|-------|--------------------|-----------------------|
| SBA <sup>a</sup> | 39.0 | 42.67 | -3.67 | 13.47              | .316                  |
| SBC <sup>b</sup> | 36.0 | 42.67 | -6.67 | 44.49              | 1.043                 |
| SS <sup>c</sup>  | 53.0 | 42.67 | 10.33 | 106.71             | <u>2.501</u><br>3.86* |

\*Not significant at the .05 level.

<sup>a</sup>SBA = School board attorney.

<sup>b</sup>SBC = School board chairman.

<sup>c</sup>SS = School superintendent.

The data collected through the use of the questionnaire were analyzed, and frequency tables were developed to show the responses of the study participants. Response areas were identified, and the data were grouped accordingly. Ranks and sums of ranks were used to develop a priority listing of the findings. Chi-square tests of significance were conducted on the number of comments made in response to individual questions of the questionnaire.

Commonalities and/or differences among and between the responses of the study participants were noted and discussed in the research report. One of the purposes of this research was not only to determine areas of consensus and/or differences but also to consider emerging conditions and their possible impact on organizational and administrative processes in public education.

#### Organization of the Research Report

The research is reported in six chapters. Chapter I serves as an introduction to the study and includes descriptive aspects of the problem. An extensive review of the available research and related literature is presented in Chapter II, as well as theoretical propositions for the provision of legal services to local school districts. Chapter III contains a presentation of the responses made by the field study participants to the questionnaire. The field study data are discussed and compared in Chapter IV. Chapter V contains a discussion of the theoretical propositions in

light of the field data and the implications of the research. A summary of the findings and conclusions is presented in Chapter VI along with a theoretical design for the provision of legal services to local school districts.

## CHAPTER II

### THEORETICAL PROPOSITIONS FOR THE PROVISION OF LEGAL SERVICES TO LOCAL SCHOOL DISTRICTS

The purpose of this chapter is to review the research and related literature concerning the legal services needed by local school districts and the means of providing such services. These literature sources included Dissertation Abstracts International, Educational Resources Information Center (ERIC), The Encyclopedia of Educational Research, American Jurisprudence, journal articles, books, and court cases dealing with related aspects of public school administration. This review was restricted to materials that had been developed during the 20-year period 1955-1975. Theoretical propositions concerning legal services for local school districts were developed by the writer as a result of this review.

#### Research Studies

Ten doctoral dissertations were found that dealt with the subject of legal services for public schools. Of the 10 dissertations, four concerned the role of the state attorney general of several states; five dealt with the school board attorney, his function and role; and one surveyed the legal services provided by state departments of education.

In addition to the dissertations, two studies were reported as journal articles and in the paragraphs that

follow, the results of the dissertations and of the studies reported as journal articles are described.

Roesch (1956, pp. 58-60) reported research, conducted in five areas, involving the school attorney in Michigan. His inquiry studied the following: (1) the number of school districts retaining a private attorney or law firm; (2) the services the attorneys were providing school districts; (3) the administrative relationship of the attorney to the superintendent of schools and the board of education; (4) the value of private legal counsel for the school district; and (5) the cost of legal services. The research was descriptive. The population studied was school districts in Michigan that employed between 20 and 800 teachers. This limitation resulted in a study that included districts with populations of 1,500 to 100,000.

A systematic sample was obtained by listing the schools alphabetically and selecting every second school district. A postcard was sent to the superintendent of each district selected, to determine if that district employed a school attorney. The superintendents of districts that employed a school attorney were then sent a detailed questionnaire regarding the extent and cost of legal services.

Roesch's study resulted in the following summarized findings and conclusions:

1. The use of a school attorney in Michigan was a common practice.
2. The size of the school district was not the only factor that determined the need for school attorneys.

3. The request for legal assistance tended to coincide with board meetings, and the major sources of this assistance was the local school attorney and the state department of public instruction.
4. The school attorneys were involved in nearly all phases of the general school administration, but "full and adequate legal coverage" (p. 60) of all school problems was beyond the resources of many local school attorneys.
5. The researcher found that of the 103 superintendents, 55 had the responsibility for recommending a school attorney for employment. In 34 districts the board retained this responsibility, and this task had not been assigned in the remaining 14 districts.
6. The superintendents indicated that the attorney's knowledge of school law was the most important consideration when selecting a school attorney.
7. A qualified school attorney was considered to be a very desirable resource for the public schools of Michigan. (pp. 58-60)

Roe and Wells (1959, pp. 26-27) reported a study in response to queries from boards of education in Michigan asking how they should work with legal counsel and in response to complaints from school superintendents about two aspects of the school attorney's relationship to the school district: (1) the frequent infringement upon the educational leadership function of the superintendent by legal counsel and (2) the lack of a fair and consistent policy of fee determination.

This study by Roe and Wells sought to determine:

1. What were the conditions of employment of the school attorney?
2. What were the problems arising from the working relationship between the school attorney, the

board of education, and the superintendent of schools?

3. What were some criteria useful in establishing a successful relationship or administrative pattern? (p. 26)

A questionnaire was distributed to 376 midwestern school superintendents to gather the data necessary for the study.

Roe and Wells (1959) found:

1. A school attorney was employed on a regular basis by approximately 40 percent of the school districts surveyed.
2. Thirty percent of the districts paid the attorney on a retainer basis and 52 percent paid the attorney on a fee basis.
3. In 79 percent of the cases the selection of the school attorney was made by the board and the superintendent acting jointly.
4. Slightly more than 50 percent of the school attorneys specialized in school law to some extent.
5. Of the districts surveyed, 37 percent employed attorneys who resided locally.
6. Special bonding attorneys were employed by 67 percent of the districts surveyed for bond elections.
7. Specific written policy on the relationship of the school attorney to the school administration was present in only 30 percent of the districts surveyed. (p. 27)

The following summarized problems in the school board-superintendent-attorney relationship became apparent as a result of the data gathered in the survey:

1. Confusion, misunderstanding, and lack of confidence resulted, because in many cases the attorney's direction came from one source and his report went to another.

2. Interference of the attorney in educational policy matters was a cause of friction.
3. The wide variation in fees charged by the attorneys was a major source of problems. (p. 27)

Roe and Wells suggested that the board and the superintendent establish clear-cut lines of communication between the attorney, the board, and the superintendent; that fees paid to attorneys be understood before hand and be open to public scrutiny; and that the attorney's role in the school district organization be properly established (p. 27).

As a result of the study, these authors developed several criteria for employing school attorneys:

1. School attorneys should be appointed as a result of a joint study by the superintendent and the board of education.
2. Specialization should be the basis for the selection of attorneys.
3. For bond issue elections and subsequent affairs leading to the acquisition of the bond money, special bonding attorneys should be employed by the board of education.
4. Time required for the services performed by the attorney should be the basis for the fee charged by the attorney.
5. The superintendent of schools should give direction to and receive the report from the school attorney.
6. The school attorney should attend board meetings only when specific matters within his jurisdiction come up.
7. The school attorneys should be treated administratively as consultants to the superintendent and board of education on legal matters.

8. Written policy that has been made a matter of record should be the basis governing the financial and the working relationship of the school attorney to the superintendent and the board of education. (p. 27)

In 1960 Stover reported a study of the school attorney in Pennsylvania. The problem was to determine the attorney's influence upon the educational program and to evaluate various practices and functions of the school attorney.

Stover examined related literature, statutes, court decisions, and the annual financial reports of the districts. He gathered data from questionnaires filled out by attorneys, superintendents, and school board members.

The following abstracted conclusions resulted:

1. There was an increasing and consistent need by Pennsylvania's school officials for legal counsel and services.
2. The attorney has little influence on the administration of the educational program. Attorneys were needed to guide procedure in financing school buildings, securing court decisions on school law, and protecting the legal rights of school boards.
3. Most Pennsylvania schools that had a chief school administrator employed an attorney who attended all board meetings, was paid a fixed salary, was responsible to board and administration jointly, and served two or more school boards.
4. The attorney's most common service was giving legal advice and interpreting the school code. His median annual compensation was \$350.
5. Respondents indicated that attorney salaries should be increased and that their qualifications should include special training in school legal procedures.
6. Lack of uniformity relating to the interpretation of school law was reported within counties and within the Commonwealth as a whole. (pp. 172-175)

Wells (1960, abstract) investigated the relationship between school attorneys, boards of education, and school superintendents in Michigan. The study was an attempt to analyze the conditions of employment of school attorneys in the state, to determine problems arising from the three-way relationship between the school attorney, the board of education, and the superintendent of schools, and to determine criteria helpful in establishing the school attorney as an integral part in the operation of the school's administrative system.

The following questions were established as being most pertinent to the purpose of the study:

1. What are the elements of a successful relationship between the school attorney, superintendent, and board of education?
2. What contractual or employment relationships do school boards have with school attorneys?
3. How much do school boards pay for legal services on bond issues? (abstract)

All school superintendents in Michigan were sent a questionnaire. Then school districts were selected at random, and case studies were then made of those districts. Data on legal fees in connection with bond issues were secured from the files of the Michigan Municipal Finance Commission.

In order to measure the status of the attorney-board-superintendent relationship, a scale was constructed. It was developed from a series of statements evaluated by a

group of experts. The criteria, established by 11 men who had acknowledged expertise in the fields of school administration and school law, resulted from their evaluation of the series of statements.

Relative to the central questions the following conclusions were reached:

1. No accepted pattern for the establishment of the school attorney in the local school organizational plan existed in Michigan prior to this study.
2. Failure of Michigan school officials to pay careful attention to sound administrative procedures in the establishment of the attorney-superintendent-board relationship had created difficulties in that relationship in a significant number of school districts.
3. Criteria exist which can be isolated and applied to the problem of establishing an attorney in the organizational plan of local school districts on a sound basis. These criteria had been isolated in this study. Michigan school districts did not meet most of the criteria.
4. There is a tremendous disparity between Michigan school districts in the amount paid for comparable legal services in connection with school bond issues. (Wells, 1960, abstract)

A doctoral study was conducted by Austin (1963, abstract) to determine the functions and status of the school attorney in Bergen and Passaic counties of the state of New Jersey. Austin made an intensive examination of research studies that related to the school board attorney, policies, regulations, statutes, and rules on both the state and local level. In order to collect the data for the study, questionnaires were distributed to all school superintendents and practicing school board attorneys in

the two counties. The construction of the questionnaires was such that many of the items were common to both the superintendents' and the school board attorneys' questionnaires. This design provided two points of view.

Austin found the following:

1. New Jersey statutes, rules and regulations of the state board of education, and working instruments employed by the state department of education ascribed very little status and few functions to the local school board's counsel. However, three-fourths of the school districts of Bergen and Passaic Counties engaged regularly employed and practicing school board attorneys.
2. The practicing school board attorneys were not prepared in law schools for the practice of school law. They acquired their knowledge of the field largely by independent study. They were experienced professionals both in general practice and in the practice of school law.
3. There was a general lack of definitive agreements between practicing school board attorneys and their employing boards of education both in regard to their responsibilities and their sources of directions. The functions of most of the practicing school board attorneys were defined either vaguely or not at all. Vagueness was in evidence also in regard to services which should be compensated for by fees or by basic salaries. Payments for services related to bonding proceedings, as compared to payments for all other services rendered, were extremely high.
4. There was little overt dissatisfaction with the services of the practicing school board attorneys despite the high fees for bonding services. Superintendents had generally found their board attorneys cooperative. Boards generally abided by the advice of their attorneys. However, superintendents usually listed the county superintendent of schools as the first source of legal advice whenever they faced legal problems.
5. The needs for legal services, as perceived by the superintendents, were well met by the actual services performed, except for checking some of

the working instruments, obtaining extension of credit, and carrying out condemnation proceedings. (abstract)

As a result of the study, Austin made the following recommendations:

1. It was recommended that recognition be given the practicing school board attorney at the state level and that some framework be made to guide the local boards of education regarding their legal counsels. Within this framework, local boards should develop policy statements clarifying the status and functions of their attorneys. These policies should include responsibilities, compensations, inter-personal relationships, and channels of communications.
2. Law schools should offer courses in the study of school law, but these courses should not replace the attorney's independent study. The New Jersey Association of School Attorneys should continue. It should conduct seminars, make sound recommendations concerning charges for services including bonding services, and generally promote the professional practice of school law.
3. Boards of education, superintendents and the public should look upon the practicing school board attorney as a member of the public school organization, and the attorney should consider himself an active member of the team whose function it is to supply all legal services for the school districts. Preventive measures should be emphasized more than the current practice emphasized them. (abstract)

Price (1967) investigated the school attorney in the public school districts of Colorado and New Mexico. He was specifically interested in determining (1) how many schools in New Mexico and Colorado employed an attorney on a continuing basis; (2) what kinds of legal advice the attorney was asked to give; (3) how the attorney participated in the decision-making process as perceived by the superintendent

and attorney; (4) the source of the attorney's direction as perceived by the superintendent and the attorney; and (5) the degree of similarity or difference in the role of the school attorney between large, medium, and small school districts (p. 18).

Data were collected through the use of two questionnaires. One was sent to all superintendents in both states, and the other, to all school attorneys in both states. Each questionnaire was designed to permit comparison of superintendents' and attorneys' perceptions on various facets of the attorney's role (pp. 20-21).

Price found that

1. Thirty-eight percent of the school districts in Colorado employed attorneys on a continuing basis.
2. Thirty percent of the school districts in New Mexico employed an attorney on a continuing basis.
3. As districts increased in size, the proportions employing an attorney on a continuing basis increased.
4. Generally, attorneys from the two states attended board meetings only when called.
5. Eighty percent of the districts in Colorado employing an attorney had written statements of employment.
6. Eighty-one percent of the districts in New Mexico employing an attorney had written statements of employment.
7. Attorneys in both states felt that the agreements did not adequately outline their duties, responsibilities, and relationships.
8. In both states the attorneys were most likely to be asked questions about elections and least likely to be asked about curricular matters.

9. Doing legal research and identifying legal problems when requested was the way attorneys in both states participated in the decision-making process most often.
10. No significant difference was found in the role of the attorney in Colorado or New Mexico.
11. There was no significant difference in the role of the attorney among large, medium, and small school districts.
12. Superintendents and attorneys in both states agreed that the attorney received directions from the board and the superintendent acting together.
13. The school attorney served as the first source of legal advice for school districts in both states. The state department of education was the second source. (pp. 51-58)

Price reached the following conclusions based on his data and findings:

1. Colorado superintendents and school board attorneys generally agreed on the attorney's role in school board decision making. The attorney assisted the board of education in identifying legal problems when requested, rather than on his own initiative. He was more likely to give opinions than to make recommendations.
2. The New Mexico superintendents and attorneys were in general agreement in respect to the attorney's role in school board decision making. However, the attorneys saw more involvement for themselves in giving legal advice and in making contributions to board decisions than the superintendents saw for the attorneys.
3. The existing board policies did not adequately define the duties, responsibilities, and relationships of the school board attorneys.
4. The school board attorneys were not kept adequately informed of board of education problems that require their assistance in time to prevent litigation. (p. 59)

Fessler (1971) reported an investigation of the function and employment of school attorneys in the Missouri public schools. Specifically, his study sought answers to the following questions:

1. What were the conditions of employment of school attorneys in Missouri public schools?
2. What was the extent of the employment of special attorneys in Missouri public schools?
3. What was the function of the school attorney in Missouri public schools?
4. What were the working relationships between the school board, the superintendent of schools, and the school attorney in Missouri public schools?  
(p. 95)

Data for the study were obtained by sending a survey questionnaire to 451 school superintendents and to 10 school attorneys randomly selected from among those school districts that retained attorneys. Of the school superintendents, 434 responded to the questionnaire. All of the selected attorneys completed the survey instrument (pp. 23-24).

The findings of Fessler's study were as follows:

1. The majority of schools employed an attorney, usually on a retainer basis.
2. The employment agreements between the schools and the attorneys were often vague and unsatisfactory.
3. The employment of special bonding attorneys was quite prevalent.
4. The employment of special attorneys for negotiations with teachers was practically non-existent.
5. The functions of the attorneys were numerous, with their services most commonly required in the areas of bonding, real estate, in-court negotiations, school elections, and general legal counsel.

6. The overall relationship between the board, the superintendent, and the attorney was generally good. (pp. 96-99)

He further concluded:

1. As school district size increased, so did the tendency to employ an attorney.
2. School districts overlooked the population requirements of Section 162.411 of the Public School Laws of Missouri. Therefore, one could have concluded that this law probably should have been changed to allow all school districts to employ an attorney on a retainer basis, regardless of how small the district might have been.
3. Larger school districts accorded more importance to their attorneys than did smaller districts.
4. A greater degree of specificity in employment agreements between school districts and attorneys was needed.
5. Attorneys sometimes exceeded their role of legal consultant.
6. The overall relationship between boards of education, superintendents, and attorneys was generally good.
7. Law schools placed little importance or emphasis on preparing their students for careers as school attorneys. Few attorneys specialized in school law. (Fessler, 1971, pp. 100-101)

White (1969, abstract) investigated the relationship between offices of state attorneys general and state departments of education in the United States. He gathered data through the use of questionnaires sent to the attorney general's office and the department of education in each of the 50 states. Thirty-nine of the 50 offices of attorneys general responded, and 42 of the state departments of education completed the questionnaire.

The findings from White's study indicated that offices of attorneys general were organized to provide legal aid for departments of education. However, many offices did not provide full- or even part-time deputies to be assigned to work with the department of education. His findings further indicated that many departments of education had the power to hire legal counsel other than that provided by an attorney general's office. White found that these outside attorneys employed by the departments of education unofficially replaced the attorney general as legal advisor to the department.

White concluded that while the services and assistance provided by offices of attorneys general had been good, some departments of education had a definite need for full-time assistants assigned to their work from an attorney general's office. He also concluded that the offices of attorneys general, on occasion, became involved in non-legal matters which normally should have been handled as policy matters by the departments of education.

Barr (1971, abstract) conducted a study focused on the function of the attorney general of Georgia as a legal advisor to public school officials of that state. He found that the department of law, which included the attorney general, was the sole source of official legal advice and representation for the Georgia department of education.

Officials of the two departments interviewed by Barr identified four significant duties performed by the attorney general on behalf of the department of education. They were: (1) to represent the department in litigation; (2) to render legal opinions; (3) to prepare contracts and legislation; and (4) to assist the state board of education on appeals from decisions made by local boards of education (abstract).

The attorney general of Georgia had maintained a relationship with local school districts through the rendition of unofficial legal opinions. Burr reported that this service had been curtailed in recent years and that only 12 of the 168 local school districts had asked for legal advice from the attorney general in 1969. Of the 12 that had asked for help, only 5 were satisfied with the services that they received.

Barr reached the following conclusions:

1. The attorney general exerted considerable influence in shaping and interpreting the legal framework within which the state government operated.
2. The distribution of attorney general opinions had been neither systematic nor widespread.
3. Attorney general opinions related to public education had been consistently substantiated by the state appellate courts and thus represented reliable interpretations of the law.
4. The major function performed by the attorney general for the department of education was the rendering of legal advice in the form of official opinions.
5. Local public school officials had only one consistently available source of legal assistance: the local school board attorney. (abstract)

Brooks (1971, abstract) analyzed the opinions rendered by the attorney general of Texas concerning the administration of public schools in that state. He reviewed legal encyclopedias such as American Jurisprudence, Corpus Juris, and Corpus Juris Secundum to find statements of general principles relating to the role of the attorney general.

Based on his analysis Brooks developed a lengthy list of conclusions. He concluded that public school administrators had little understanding of the inner workings of the attorney general's office and that the size and number of school districts in Texas seemed to prevent effective communication with the public schools concerning the functions of the attorney general's office.

The role of the attorney general of Indiana as a legal advisor to public school officials was studied by Ray (1973). His research procedure was similar to that of Brooks: he analyzed opinions that had been formulated by the attorney general of Indiana concerning aspects of public school administration. He also reviewed the various sources of legal reviews of court cases.

To gather data from the local school superintendents, he sent a questionnaire to 57 selected at random. These data and his legal review led Ray to the following conclusions:

1. The attorney general exerted considerable influence in shaping and interpreting the legal framework within the state government and its agencies.

2. The office of the superintendent of public instruction was not an effective liaison between the office of the attorney general of Indiana and local school authorities from the standpoint of systematic compilation and distribution of attorney general's opinions to local school officials.
3. The major function performed by the attorney general of Indiana for the office of the superintendent of public instruction was the rendering of legal advice in the form of official opinion.
4. Local school corporation authorities apparently realized the hesitancy on the part of the attorney general to respond to requests for unofficial opinions as was evidenced by the small number of requests made during 1972. (abstract)

Pettit (1974, abstract) conducted a national survey of legal services provided state departments of education. The purpose of this survey was to examine (1) the legal assistance provided to local school districts by state departments of education, (2) the areas of school law which demand the most time from legal counsel, and (3) the organizational structure of the legal division of one state department of education.

Questionnaires were sent to all 50 state departments of education in the United States. He received a 100 percent return of the questionnaires. From the data he established the following findings:

1. There was no one organizational model for providing legal assistance to local schools.
2. Most state departments employed attorneys.
3. Almost all states allowed school districts to hire private legal counsel.

4. State departments of education generally believed that local school officials would seek help from private attorneys when confronted with a serious legal problem.
5. Assistance from the attorney general was usually in the form of legal opinion only. (abstract)

Pettit also made a detailed study of the legal division of the office of the Illinois superintendent of public instruction. He found that the legal division was encouraging local schools to hire their own private legal counsel for help with routine legal problems. They were also attempting to provide improved legal services to rural areas that did not have access to competent private counsel (1974, abstract).

#### The Courts

In a perusal of court actions related to education, no case was found relating directly to the problem in this study. That is, there were no cases specifically establishing precedents about the nature of legal services to boards of education. However, during the 1960s and 1970s the courts have been extremely active in establishing case law which inevitably affects the nature of legal services needed by boards of education. Some of these precedent-setting cases are briefly reviewed below.

The courts have been increasingly involved in issues relating to public schools and their administration. This section of the review deals with the courts and their decisions as they have influenced the legal requirements of

public school officials specifically and local school districts in general.

The issue of student rights has been debated in the courts. One of the early cases was Dixon v. Alabama State Board of Education (1961). In this case, due process for students was the issue, and the court decided that certain procedures should be followed when expelling a student from college. In Tinker v. Des Moines Independent Community School District (1969) the court ruled that freedom of expression which did not interfere with school operation was permissible. The students in this case had been wearing black armbands in protest of the Vietnam War. The courts in Scoville v. Board of Education (1970) further expanded the rights of students to express themselves in the student newspapers, even though the school officials disagreed with the material printed.

In Goss v. Lopez (1975) the Supreme Court of the United States declared that an education was a property right and that students could not be suspended from school for short periods of time without due process. The Supreme Court also decided in Wood v. Strickland (1975) that school officials could be held monetarily liable if proper procedures were not implemented to insure the basic rights of students.

The courts have also expressed concern for teachers and their rights. In Board of Regents of State Colleges v. Roth (1972) the courts decided that procedural due process

was not required for annual contract teachers, but in Perry v. Sinderman (1972) there was implied continuation of the teacher in his position and he was upheld. Relative to oaths for teachers, the courts have held that teachers can be required to sign oaths pledging support of the Constitution of the United States and that of the particular state in question, but such oaths cannot contain statements relative to beliefs or philosophies; the situation in Connell v. Higginbotham (1971). Teachers also have been allowed to recover damages for unconstitutional dismissals under the provisions of the Civil Rights Act of 1871, as demonstrated in McLaughlin v. Tilendis (1968). Using this Civil Rights Act of 1871 as a basis, the court held in Harkless v. Sweeny Independent School District (1970) that a school district, trustees, and superintendent were persons subject to suit within the provisions of Title 28 U.S.C.A., Section 1343, and Title 42 U.S.C.A., Section 1983, if constitutional rights were violated.

Religion and public schools have generated legal disputes relative to such things as transportation, provision of textbooks and materials, released time, compulsory school attendance, the pledge to the flag, prayer, and Bible reading. If the issue had the appearance of being in violation of the establishment clause of the First Amendment, it was generally defeated. In Lemon v. Kurtzman (1971), the Supreme Court of the United States stated that salary

supplements and purchase of services for parochial schools constituted an impermissible entanglement between church and state. In this case the court summarized three tests for determining the constitutionality of a state statute that provided aid to parochial schools. The tests were:

- (1) The statute must have had a secular legislative purpose.
- (2) Its principal or primary effect must have been one that neither advanced nor inhibited religion.
- (3) It must not have fostered excessive government entanglement with religion.

Relative to curriculum the most controversial issue has been sex education. The supreme court of Hawaii, in Medeiros v. Kiyosaki (1970), held that sex education did not invade the constitutional rights of privacy or religion, since it was not mandatory for the children and the parents had the opportunity to view the materials prior to their presentation in class.

Another issue that arose in the decade of 1970 was sex discrimination in the public school. In Bray v. Lee (1972) the court held that admissions standards and quotas that favored male applicants to a school were unconstitutional. Athletics was also an area that concerned some courts in sex discrimination cases. A United States district judge held in Brenden v. Independent School District 742 (1972) that to exclude girls from some sports could not be constitutionally applied.

Governmental immunity has been a question with which the courts have wrestled. Some states have removed school districts from this immunity and held the school district liable for tort for its actions and those of its employees. Such was the case in Titus v. Lindberg (1967).

School desegregation has been the subject of court cases. A landmark case was that of Brown v. Board of Education of Topeka, Kansas (1955), in which the lower courts were directed to develop strategies for the desegregation of schools. In Swann v. Charlotte-Mecklenburg Board of Education (1971), the United States Supreme Court indicated that busing was a judicially acceptable alternative to overcome racial segregation. This same court held in Wright v. Council of the City of Emporia (1972) that the establishment of separate school districts was constitutionally impermissible if it impeded the progress of dismantling segregation.

The funding of education also has been debated in the court rooms. In Serrano v. Priest (1971) the supreme court of California held that the quality of an education in public schools was not to be a function of one's wealth or the wealth of his neighbors. In Shepherd v. Godwin (1968) a United States district court held that federal impact funds could not be used to reduce state aid to those local school districts that received such funds.

Collective bargaining for public employees has been

prohibited in many states and in federal groups. However, there was a movement that began in the decade of 1960 to secure this process for public school employees. In October of 1969, President Richard Nixon issued Executive Order 11491. This order provided for the use of binding arbitration for the bargaining process between federal employees and government agency employers. Executive Order 11491 supplanted Executive Order 10988, issued by President John Kennedy in 1962, which recognized the right of federal employees to organize and to participate in collective negotiations. As in most statutes, these orders prohibited the employees from striking. However, as can be seen in Board of Education of the City of New York v. Albert Shanker (1969), strikes have occurred.

#### Journal Articles and Related Materials

The literature in educational administration contains much material about the legal problems of boards of education. In the paragraphs that follow, the literature related to either the legal problems of school boards or the nature of legal services needed is reviewed.

The rules of school boards governing discipline and expulsion have been a source of embarrassment and expense to school districts. Rahala (1974, p. 25) stated that expulsions should be reserved for only the most serious offenses and that any other approach was a clear invitation to legal troubles.

Nolte (1971, p. 38-39) concluded that most of the new rules regarding student discipline were for the school officials rather than for the students. He stated that schools had been viewed as serving the needs of society rather than the good of the student, and as such, society could remove the student from the protections usually afforded the adult citizen, but the courts have enlightened school officials that such was not really the case and that students were entitled to their rights and freedoms.

In 1973 Steinhilber reported that handicapped children and children who did not speak English might have had their rights violated if their educational needs had not been served. Steinhilber made the following statement concerning this issue:

Out there in some of the courtrooms of this country a wave of legal decisions is quietly building momentum and setting precedents that, say some observers, may cause as big a splash in public education as have court decisions involving integration and school finance. Currently just a ripple that virtually has gone unnoticed, this new potential legal tidal wave is made of cases that seek to protect the rights of handicapped children and of non-English-speaking children. (p. 55)

In light of judicial decisions relative to due process, not only students but also teachers are the subject of due process. The burden of proof rests on the school board to show the teacher is insubordinate, immoral, incompetent, neglectful of his or her duty, or otherwise a failure. Nolte (1972, p. 22) observed that many school boards have been embarrassed when they tried to dismiss a teacher. Their

chagrin resulted from the fact that their evidence against the instructor did not hold up in court.

Policies of school boards regarding maternity leave have also been legal issues in several court cases. French (1973, pp. 30-31) stated that no court was likely to interfere with a school board's responsibility to enforce a maternity leave policy if the board could prove that it had sound, compelling, educational reasons for setting the policy. French also stated that establishing those reasons was the problem. He concluded that if there was a regulation established by the school board concerning maternity leave for teachers, then there should be valid reasons for the regulation, otherwise it would be held unconstitutional.

Tollett and Tollett (1974, pp. 29-32) investigated the legal issues involved in the use of teacher aides. They discovered that only 23 states had any laws on the legal status of teacher aides and paraprofessionals. This vacuum of laws was an invitation to serious legal problems according to these authors. They suggested that guidelines be established governing the use of teacher aides and their duties. The main concern centered around who was liable when damage or injury situations occurred in the schools.

In the January 1974 issue of the American School Board Journal, Nolte offered the following advice:

As for the future, this much is clear: No longer can the administrator and school board act as their own lawyer. Advice to school districts: Locate and

put on your team that missing element, the school board attorney. A school board member I know opined to me recently that his school district's attorney is, to him at least, the best "sleep insurance" on the market. (p. 51)

As to the liability of school districts, Kuntz (1973) stated the following:

Setting the mood on a dollar-and-cents note, you should be aware that in many litigation cases concerning public school districts, the potential liability of a district far exceeds its multimillion dollar budget. Let it sink in: Potential liability of a district far exceeds its multimillion dollar budget. All the more reason why the board should establish criteria for assessing the performance of the lawyer retained to represent the district in a lawsuit. (p. 35)

Edwards (1971, pp. 159-160) reported that many states had statutes specifically authorizing school boards to employ attorneys, but even in the absence of a statutory grant of such authority, a board could as a general rule employ counsel to represent the school district whenever its legal rights and interests were involved. Power to employ counsel was implied from the power to own property, to sue and be sued, and to enter into and enforce contractual obligations. In the case of Arlington v. Jones (1917) the court expressed the rule as follows:

There is no authority expressly given to trustees to employ an attorney to bring a suit in behalf of trustees against a teacher to cancel a teaching contract. But, having the power, as trustees have by the terms of the statute, to contract and to sue and be sued in the courts, the authority on the part of trustees to employ an attorney to institute and prosecute an action in their behalf would exist as a necessary incident of the powers to contract and to sue

and to manage and control the affairs and interests of the public school.

In 1973, Shannon made the following observation:

There are three principal ways in which a school attorney works with the school administrator. They are: (1) as an advisor on the law; (2) as a counselor on governance of the schools; (3) as the attorney in charge of litigation in which the school district is a plaintiff or defendant. . . . One of those persons serving the schools today whose significance to the educational effort has expanded dramatically during the past decade is the school attorney. The old functions of the school attorney involving lawsuits, business contracts, claims for money damages against the schools, condemnation and school bond and tax elections are still being performed by him, though many of these functions have broadened in scope because of the litigious era in which we live. But more importantly, a whole new vista has opened in the operation of the public schools today that demands a special approach by the school administrator which can successfully be made only with the advice and counsel of the schools' attorney. This new dimension was created during the 1950's and is daily being enlarged by the courts and the legislatures throughout the nation. (pp. 22-23)

In a paper presented to the National School Boards Association, Stover (1969) made the following statement:

Issues relating to individual rights of pupils in the classroom or in the school, such as haircuts, dress, suspensions, religious observances, flag salute, the wearing of insignias, demonstrations, the underground press, and others are being contested by individuals and organizations. Principals and superintendents need constant legal advice for the development and implementation of such regulations which jointly sustain individual rights and the welfare of the school without a great amount of risk for litigation. (p. 14)

Stover went on to say that questions involving student justice, punishment, discipline, suspensions, expulsions; fraternity membership of pupils, status of married pupils; after-school-hour regulations, use of automobiles, lunch

time procedures; compulsory attendance, right to attend school; liability of school district, school board members, and teachers for student damages; and transportation and curriculum problems as related to students were areas which were subject to legal challenge (p. 17).

#### Theoretical Propositions

As can be seen from the literature, there were many complex legal problems in the administration of local public schools at the time of this research report. The research that had been done previously examined conditions as they existed. The purpose of this research has been to move beyond the state of "what is" to perceptions of "what should be" and to develop a theoretical design for the provision of legal services to local school districts. As was pointed out previously, proper legal counsel could save a school district many thousands of dollars that otherwise might be lost in court suits and litigations. The loss or saving of this money could have a direct effect on the quality of education that the student in such a district received.

The following theoretical propositions, based on the literature, were developed by the writer relative to providing legal services to local school districts.

Proposition 1: Each local school district must have the services of legal counsel.

The empirical studies of legal services to school boards, the massive amount of litigation involving the

administration of schools, and the literature support the need for providing legal services of quality for school districts. Within the past years the districts have been affected by many precedent-setting court cases. As pointed out previously, Kuntz (1973, p. 35) observed that the potential liability of boards of education exceeds their budgets in any one year. Moreover, ill-advised board actions may result in very costly litigation and expenditure of money which could be used in educating children.

Proposition 2: School districts must have equal access to legal services without regard to their wealth, size, or geographic location.

Some of the research indicates that small rural school districts may not have appropriate legal counsel. The dramatic increase in litigation and the passage of complex laws governing the administration of schools demand that all boards of education have adequate legal services. The complexity of statutes, laws, and case law will touch all boards regardless of size or the nature of the community. Ill-advised actions of boards of small districts can involve the expenditure of thousands of dollars which these districts need for the educational program.

Proposition 3: The state attorney general cannot be considered as a continuing source of legal counsel for local school districts.

The information extracted from the review of the literature indicates that the role of the state attorney general in providing legal counsel is restricted to legal opinions.

Since the attorney general's office services many other agencies in the state, it cannot be considered an effective and continuing source of legal counsel for school districts.

Proposition 4: The state department of education must consistently provide legal assistance to local school districts and act as a coordinator of special legal services that may be required by these school districts.

Since public education has been identified as a function of the states, it then follows that the means must be provided by the state for each local school district to have access to legal services. There is little evidence in the literature and research that indicates that state departments of education are actively engaged in assisting the local school districts in the area of legal services. The increasing complexity of laws and statutes has generated the need for a legal specialist in certain areas of the law. It would be unreasonable to think that all school districts could, in and of themselves, maintain the availability of these legal specialists.

Proposition 5: The local school board attorney must be the most available source of legal counsel for the local school district.

The past experiences of school districts, as reported in the literature, show that it is unwise to operate without the assistance of legal counsel. Several writers of the literature reviewed have recommended the employment of an attorney to advise school officials on the operations of public schools. Such an attorney should be available to school officials when needed.

Proposition 6: The conditions of employment for attorneys utilized by local school districts must be standardized among the school districts.

Several of the research studies indicated that the conditions of employment of attorneys utilized by school districts varied greatly from district to district. In order to reduce these differences, the terms and conditions of employment should be standardized. Such a standardization would avoid excesses, and the school officials in the district would know what to expect for their expenditures for legal services.

Proposition 7: Policies must be established by the local school board concerning the role and functions of the school board attorney.

Clearly stated policies need to be established by the local school board concerning the operations of the school board attorney and the limits of his authority. These policies should specify his role during policy-making activities and from whom he receives his direction and to whom he reports. The position of the school board attorney in the organization of the school district should be clearly identified to avoid any potential conflicts with the school district administrative staff.

Proposition 8: Attorneys retained by local school boards must have special training in school law.

It is difficult to determine when legal counsel will be needed to handle a complex legal issue. Consequently, school districts should not be forced to jeopardize the

educational opportunities of children by retaining attorneys who have had no previous experience or training in school law. The body of law concerning the operations of public schools is complex and increasing in volume because of the many changes being effected by courts and legislative bodies. The literature has pointed out many of these issues and problem areas, and the researchers have indicated the desirability of having previously trained attorneys to represent the interests of the school district.

Proposition 9: Student and personnel problems form a large area for which special legal services must be provided to the school board and administrative staff on a continuing basis.

There has been an increased emphasis on preserving and maintaining the rights of both students and employees. Many issues have arisen, as noted in the literature, that affect the manner in which schools are administered. The courts have made it clear that students do not shed their rights as they enter the public schools and that precautions must be taken to insure those rights. Legislative bodies have enacted laws that allow employees to bargain collectively with local school boards, and these employees have become more militant in their approaches to these boards of education. The teachers' unions bring with them not only their local members but trained experts, and these unions receive assistance from other groups outside of the local school districts.

### Summary

In this chapter, the writer has reviewed available research and related literature concerning many legal aspects of public school administration. The research studies have indicated the need for legal services for local school districts. The court cases and other literature have shown the wide variety of issues confronting public school officials in the daily operations of schools.

The data from the literature indicated a growing realm of complex legal questions confronting local school districts. Research concerning the school attorney revealed the expanding role of this resource individual and the vital part that he played in the administration of public schools. The data further described the limited function of the state attorneys general as legal advisors to local school officials. State departments of education have not delivered the legal assistance needed by local school districts. These limited resources of legal assistance, state attorneys general and state departments of education, emphasized the essential nature of the local school attorney. The courts and legislative bodies, through their decisions and enactments, influenced the composition and procedures of the educational process. One of the most contested areas in education was that of human rights. These rights included not only those of school district employees but the rights of students as well.

Drawing from the review of the research and the related literature, the writer developed and discussed nine theoretical propositions concerning the provision of legal services to local school districts.

### CHAPTER III

#### PRESENTATION OF THE RESPONSES MADE TO THE QUESTIONNAIRE BY THE STUDY PARTICIPANTS

As stated in Chapter I, one aspect of the problem in this study was to determine the legal services needed by local school districts and the means of providing such services as perceived by selected school board attorneys, school board chairmen, and school superintendents. All school districts in Florida were included. The purpose of this chapter is to present, group, and illustrate the data obtained from the responses made by the study participants.

##### Analysis of the School Board Attorneys' Responses to the Questionnaire

The school board attorney in each school district was asked to respond to the questionnaire in light of his experiences and perceptions of the needs and requirements of local school districts in Florida relative to legal services. Each was presented with the following five questions:

1. In your opinion what legal services are needed by local school districts?
2. What are some of the legal services that you think a school board attorney should provide?
3. Under what circumstances, if any, do you think that an attorney other than the school board

attorney should be retained by the local school district?

4. In your opinion what should be the terms and conditions of employment of attorneys retained by local school districts?
5. Based upon your experience what do you think should be the qualifications of attorneys retained by local school districts?

In this section of the research report their responses are analyzed and discussed.

The answers supplied by the school board attorneys are reflected in tables. Their reactions and comments are presented with the most frequently mentioned areas listed first. However, the writer felt that it was important to note that one of the primary purposes of this research was to investigate developing trends and needs in the area of legal services for local school districts. Consequently, single responses were considered as well as those most frequently reported by the study participants, because single responses might indicate developments for future consideration.

#### Legal Services Needed By Local School Districts

As can be seen in Table 5, there was a wide variety of reactions by school board attorneys to the question concerning legal services needed by local school districts in the state of Florida. A total of 19 general areas were

TABLE 5

Frequency of School Board Attorney Responses Relative  
to the Legal Services Needed by  
Local School Districts

| Areas of Service Needed   | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>General services</u>   |                     | 43              |
| Formulating policy, rules and regulations under the Administrative Procedures Act or applicable state law | 18                  |                 |
| Legal opinions concerning any rule, regulation, statute, or policy  | 12                  |                 |
| Review proposed policies  | 7                   |                 |
| Legal advice at board actions   | 5                   |                 |
| Review all board actions  | 1                   |                 |
| <u>Student and personnel matters</u>  |                     | 43              |
| Student discipline problems   | 8                   |                 |
| During expulsion of students  | 7                   |                 |
| Advise administrators, principal, and teachers of their rights  | 7                   |                 |
| Legal services needed during teacher dismissal proceedings  | 6                   |                 |
| Protection of students' rights during procedures for suspension and expulsions                            | 5                   |                 |
| Civil rights matters  | 3                   |                 |
| Due process   | 2                   |                 |
| Termination of district employees   | 2                   |                 |
| Instructional personnel tenure  | 2                   |                 |
| Teacher retirement  | 1                   |                 |
| <u>Collective bargaining and negotiations</u>   |                     | 33              |
| Collective bargaining areas   | 28                  |                 |
| Review and approve the master contract  | 2                   |                 |
| Advise during negotiations  | 2                   |                 |
| Arbitration and mediation procedures  | 1                   |                 |
| <u>Finances</u>   |                     | 24              |
| Public school financing, taxation, and budget preparation   | 17                  |                 |
| Bonds and borrowing money   | 7                   |                 |

TABLE 5--(continued)

| Areas of Service Needed   | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Litigation</u>   |                     | 20              |
| <u>Oversee contractual activities</u>                                     |                     | 20              |
| <u>Purchases and sales of property</u>                                    |                     | 13              |
| Purchases and sales of real property                                      | 12                  |                 |
| Purchasing  | 1                   |                 |
| <u>Liability and immunity</u>   |                     | 11              |
| Tort actions and liability  | 9                   |                 |
| Sovereign immunity matters  | 2                   |                 |
| <u>New legislation and statutes</u>                                       |                     | 4               |
| <u>Services for large corporation</u>                                     |                     | 4               |
| <u>Insurance</u>  |                     | 3               |
| <u>Facilities</u>   |                     | 2               |
| Physical grounds and facilities   | 1                   |                 |
| Sanitation and sewage regulations   | 1                   |                 |
| <u>Services should be tailor-made for the particular political entity</u> |                     | 2               |
| <u>Unable to answer</u>   |                     | 2               |
| Too new to answer   | 1                   |                 |
| Unable to respond   | 1                   |                 |
| <u>Public documents law</u>   |                     | 1               |
| <u>Accreditation</u>  |                     | 1               |
| <u>Liaison among legal specialists</u>                                    |                     | 1               |
| <u>Child custody problems</u>   |                     | 1               |
| <u>Parliamentary procedure</u>  |                     | 1               |
| Total   |                     | 229             |

identified among the 229 comments, with many sub-areas included so that the reader may have a broad exposure to the perceptions of the study participants.

The area of services that received the most responses was related to the legal nature of the actions of the school board. There was a total of 43 comments made concerning the need for school districts to have legal counsel in order to act in accordance with regulations and statutes. The area most frequently mentioned by the school board attorneys was the formulation of policies, rules, and regulations to comply with the Administrative Procedures Act enacted by the Florida Legislature in 1974. This act provided for comprehensive public listing of all rules and regulations by all agencies of state government. All changes of policy and procedure had to be advertised in the local press and public hearings had to be held before the changes were instituted. It was designed to protect the consumer of governmental services from arbitrary actions of government officials.

Other legal services cited by attorneys in the general services area were: legal opinions concerning any rule, regulation, statute, or policy; review of proposed policies; legal advice at board meetings; and review of all board actions.

Receiving an equal number of responses (43) as general services was the area dealing with student and personnel matters. Of these, student discipline received 8 comments

and when these comments are considered with expulsions and suspensions of students, the total rises to 20. The balance of the comments dealt with processes and procedures for school district employees. The need for legal services when dealing with suspension, expulsion, or dismissal of individuals dominated the comments in this area.

The area of collective bargaining and negotiations was the basis of 33 comments by attorneys. The school board attorneys felt that negotiations with school district employees would require legal services for the school district. Table 5 lists some of the points where legal counsel would be helpful, such as reviewing contracts, advising during negotiations, and developing procedures to be followed during the bargaining process. One school board attorney reported that he spent about 40 percent of his time in dealing with issues that arose in collective bargaining.

Financing the school district's operations was also listed frequently as an area in which legal services were often needed. Specific comments (24) were made relative to taxation, budget preparation, bonds, and loans.

Litigation and contracts were next in the listing, with each receiving 20 comments. These were followed by purchases and sales of property (13) and liability and immunity concerns (11). Such areas in the opinion of some of the attorneys would require legal services, especially litigation and contracts.

At the time of this research study, the Florida Legislature was meeting annually. Consequently, new legislation was enacted annually. Four attorneys indicated that legal counsel was needed in order to advise the local school districts of any new regulations, responsibilities, and/or mandates that might have been established by the legislature.

Four attorneys simply answered that a school district needed the same services that any large corporation would need. Apparently they drew a parallel between the operations of the school district and those of a large corporation.

Other areas mentioned were insurance (3), facilities (2), tailor-made services (2), public documents (1), accreditation (1), liaison among legal specialists (1), child custody problems (1), and parliamentary procedures (1).

In summary, legal services were thought to be needed in many areas. The data revealed the following:

1. General legal counsel was advised for the school district when the school board was in session to insure that its actions were in harmony with prevailing regulations and statutes.
2. Student and personnel problems were designated as an area of concern that would require legal counsel in order to safeguard the rights of individuals.

3. The advent of collective bargaining for public employees in Florida in 1974 developed an area in which legal expertise was reported as needed in order to represent the interests of the school board and administration.
4. Legal counsel was frequently needed in the financial operations of the school district.
5. The loss of sovereign immunity for school districts by a 1974 enactment of the Florida Legislature created a need for legal counsel.
6. There was a need for coordination among the various legal specialists that were employed by local school districts.
7. Legal services should fit the specific and individual needs of the particular school district.

#### Services a School Board Attorney Should Provide

If all of the services identified by the attorneys are to be provided, an important question arises concerning who should provide such services and under what circumstances. One is immediately impressed with the thought that providing such a large number of services may go well beyond what traditionally has been expected of the school board attorney.

Table 6 shows the replies made by school board attorneys to the second question of the questionnaire relative to the services that a school board attorney should provide.

TABLE 6

Frequency of School Board Attorney Responses Relative  
to the Services That School Board Attorneys  
Should Provide

| Areas of Service  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Collective bargaining and negotiation</u>                    |                     | 40              |
| Advise on collective bargaining proceedings                     | 34                  |                 |
| Be a member of collective bargaining team                       | 4                   |                 |
| Review proposed master contracts                                | 2                   |                 |
| <u>General counsel</u>  |                     | 36              |
| General counsel   | 12                  |                 |
| Advise on policy  | 9                   |                 |
| Provide counsel to district staff day to day                    | 7                   |                 |
| Provide counsel on issues when asked by board or superintendent | 5                   |                 |
| Provide all legal services for a large corporate client         | 2                   |                 |
| Provide counsel when requested                                  | 1                   |                 |
| <u>Attendance at meetings</u>                                   |                     | 29              |
| Attend all board meetings                                       | 22                  |                 |
| Attend monthly board meetings held for business matters         | 4                   |                 |
| Monitor board meetings for law violations                       | 2                   |                 |
| Be present at staff meetings if needed                          | 1                   |                 |
| <u>Contracts</u>  |                     | 27              |
| Review and prepare contracts                                    | 27                  |                 |
| <u>Student and personnel matters</u>                            |                     | 18              |
| Counsel on student discipline                                   | 6                   |                 |
| Advise on teacher dismissals                                    | 5                   |                 |
| Advise on employee dismissal                                    | 3                   |                 |
| Advise on all hearings, expulsions, and suspensions             |                     |                 |
| Attend grievance hearings at the board level                    |                     |                 |
| <u>Represent the board in all litigation</u>                    |                     | 13              |
| <u>Finances</u>   |                     | 11              |
| Counsel on questions of taxation                                | 7                   |                 |
| Counsel on budget preparation                                   | 3                   |                 |
| Review vouchers payment sheets                                  | 1                   |                 |

TABLE 6--(continued)

| Areas of Service   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Laws and regulations</u>  |                     | 10              |
| Counsel on law, statutes, regulations, etc.  | 5                   |                 |
| Brief the board on new laws and changes made by each legislative session                               | 3                   |                 |
| Draft proposed legislation   | 1                   |                 |
| Represent the board before the legislative delegation on enactments or changes of law                  | 1                   |                 |
| <u>Property matters</u>  |                     | 9               |
| Advise on property transactions  | 7                   |                 |
| Real estate matters  | 2                   |                 |
| <u>Associate with other specialized counsel when needed</u>  |                     | 6               |
| <u>Advise under the rules of the Administrative Procedures Act</u>                                     |                     | 6               |
| <u>Review school board actions</u>   |                     | 5               |
| <u>Review and prepare resolutions</u>  |                     | 3               |
| <u>He should be kept informed by the board and the superintendent</u>                                  |                     | 2               |
| <u>The school board attorney should follow the guidelines established by the statutes and case law</u> |                     | 2               |
| <u>Provide counsel on workmen's compensation and insurance</u>   |                     | 1               |
| <u>The school board attorney should be available</u>   |                     | 1               |
| <u>Cannot respond because of my position as the school board attorney</u>                              |                     | 1               |
| <u>I am still learning my job</u>  |                     | 1               |
| Total  |                     | 221             |

The category of collective bargaining and negotiations was mentioned most often by these participants (40) as an area in which the local school board attorney should be involved. Of the 40 comments made in this area, 34 indicated that the school board attorney should advise on the negotiations process. Two other attorneys wrote that the school board attorney should have the responsibility of reviewing the negotiated contracts to insure their legality and effect on the operations of the school district. Fifteen responses were made that indicated that the school board attorney should not be on the bargaining team representing the school district. The concept expressed was that the attorney would lose his position as an advisor and counselor to the school board in the event of litigation or the need for interpretation of the resulting contract. In other words, by having been part of the negotiating team that helped to develop the contract, he would have become prejudiced as to its content. This bias, then, would influence his counsel to the board. Four school board attorneys felt that participation on the negotiations team would be advisable. Their feeling was that his presence would strengthen the position of the administration and would provide legal input into the formation of contractual agreements between the negotiating parties.

The area of general counsel accounted for 36 of the 221 comments made in response to this question by the school

board attorneys. General statements concerning counsel were made by 12 attorneys. Nine attorneys cited advice on policy as a service that the school board attorney should provide. Greater involvement in the day-to-day operations was indicated by some of the attorneys. Others in this group restricted their statements to a condition that attorneys be asked prior to becoming involved in the operations of the schools. Two attorneys drew a parallel between the legal services required by large corporations and those required by the school district.

The attendance of the school board attorney at school board meetings received a total of 29 comments. A majority of those making these comments (22) felt that he should attend all meetings of the school board to provide counsel and to advise concerning legal questions that might present themselves to the board. This area, when combined with the areas listed in Table 6 of general counsel and review of school board actions, provided a broader view of the involvement of the school board attorney in the operations of the school district. Such involvement, according to one respondent, made him a non-voting member of the board. Another indicated that the school board attorney, if he had a personal bias, could influence policy as a result of the legal opinions that he rendered concerning the policy. However, eight respondents stated that the school board attorney should give counsel only when asked and that he should

refrain from influencing board actions and policies, since this would be a breach of professional ethics unless there was an illegal aspect of the action or policy.

Although it is not expressed in Table 6, one attorney made a suggestion relative to easing the work load of the school board attorney. He stated that because of the increased complexity of school district operations, he could devote himself full time to dealing with the issues and problems connected with the school. To avoid this he suggested that each superintendent appoint a staff member to be a specialist in rules, regulations, and laws relative to school district operations, thus reducing the amount of time the school board attorney would have to spend answering inquiries from the district staff and school board members.

The school board attorney should review and prepare the contracts that are entered into by the school board, according to 27 of the replies made to this question. Some of the attorneys clarified their statements by indicating that some contracts that are routine in nature would not need a review if the practice was standardized and historical in nature.

The category of student and personnel matters was cited by 18 attorneys as an area of service to be provided by the school board attorney. He would act as counselor to the board in these matters and in some cases as the hearing examiner. His presence was needed to keep the board advised

of its legal responsibility to the employee or student and to insure the rights of the individual.

The school board attorney should represent the interest of the school board in all situations that develop into litigation, according to 13 of the attorneys. The other attorneys did not specifically mention litigation as a distinct area, and their comments were spread over other areas of service.

Another sphere in which the school board attorney could serve was noted by some respondents as being in the preparation of legislation and in representing the school district before the local legislative delegation when issues in the state legislature might arise affecting the district. They also felt that the school board attorney should brief the school board and district staff on changes effected by the legislature that would influence the policies and operations of the school district.

Comments were made by the attorneys about some things that the school board attorney should not do. He should not be on the collective bargaining team (15), advise on the interpretations of a negotiated contract if he is a member of the negotiating team (1), make policy by legal opinions (1), inject his personal viewpoint into an issue (1), or influence board actions except where a legal conflict might have existed.

As evidenced by the listings in Table 6, the services that a school board attorney should provide covered a variety of areas. In review, the data indicated the following:

1. The six areas receiving the most comments included collective bargaining, general counsel, attendance at school board meetings, contracts, student and personnel matters, and litigation.
2. The services required of a school board attorney were needed, it was noted, in nearly every aspect of school district operations. Consequently, his role and influence would be widespread; he would have opportunities to mingle personal bias with legal opinion.
3. Because of this wide range of services that a school board attorney might be called upon to provide, one respondent suggested that several districts, otherwise unable financially to do so, band together and retain a legal firm to provide these services on a more specialized basis, rather than depend upon a single individual to do it all.
4. One attorney suggested that a staff member be given the task of being a specialist on rules, regulations, and school law.

Retaining Attorneys Other Than  
the School Board Attorney

In reviewing Table 7 there apparently were many conditions that could have required the employment of an attorney other than the school board attorney. This table reflects the responses made by school board attorneys, based upon their experience and perceptions, to the question: Under what circumstances, if any, do you think that an attorney other than the school board attorney should be retained by the local school district?

The condition that received the most comments was student and personnel matters. A total of 24 comments were tallied in this area. The sub-area that was noted most frequently was teacher termination (7), which was followed closely by employee dismissal (6). In view of numerous court cases and legislation concerning student rights and due process, affirmative action plans, and other legal entanglements in this area, one is not surprised to find this sub-area heading the responses of attorneys to the question. There is a growth of opinion that the traditional arrangements for a school board attorney does not meet the legal needs of school systems today or in the future.

The reason expressed for retaining another attorney under these conditions was so that he, rather than the school board attorney, could prosecute the case. During these proceedings the school board attorney acted as the legal advisor to the school board or as the hearing

TABLE 7

Frequency of Responses of School Board Attorneys Relative  
to the Need for Attorneys Other Than  
the School Board Attorney

| Conditions  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Student and personnel matters</u>  |                     | 24              |
| During teacher termination, school board attorney should advise school board                                    | 7                   |                 |
| Employees dismissal   | 6                   |                 |
| During student suspension or expulsion proceedings  | 4                   |                 |
| During school board conflicts with employees  | 3                   |                 |
| During discipline cases when school board attorney advises the school board                                     | 2                   |                 |
| During conflicts between school board attorney and district employees   | 1                   |                 |
| During staff suspensions or dismissals  | 1                   |                 |
| <u>Special expertise needed</u>   |                     | 16              |
| When services are needed in an area outside of the competence of the school board attorney                      | 12                  |                 |
| When a specialist is needed   | 4                   |                 |
| <u>Conflicts</u>  |                     | 15              |
| When superintendent is in conflict with the school board  | 12                  |                 |
| During conflicts between the superintendent and staff   | 1                   |                 |
| School board attorney should disqualify himself during conflict between the school board and the superintendent | 1                   |                 |
| When conflict arises between school board members   | 1                   |                 |
| <u>When school board attorney has a conflict of interest</u>  |                     | 13              |
| <u>Collective bargaining</u>  |                     | 12              |
| During collective bargaining negotiations   | 6                   |                 |
| A labor attorney is needed during collective bargaining negotiations  | 5                   |                 |
| During collective bargaining with teachers, labor law expertise is needed                                       | 1                   |                 |

TABLE 7--(continued)

| Conditions   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Federal and state actions</u>   |                     | 10              |
| During federal proceedings   | 4                   |                 |
| School board attorney should be able to handle federal cases             | 3                   |                 |
| When involved in state suits   | 2                   |                 |
| When a suit is in federal court if it is lengthy                         | 1                   |                 |
| <u>When advised by the school board attorney</u>                         |                     | 8               |
| <u>Unable to respond</u>   |                     | 2               |
| <u>During tort actions</u>   |                     | 1               |
| <u>School board attorney should work with firms retained by insurers</u> |                     | 1               |
| <u>When involved with Securities and Exchange Commission</u>             |                     | 1               |
| <u>Bond counsel during bonding procedures</u>                            |                     | 1               |
| <u>When involved with Internal Revenue Service</u>                       |                     | 1               |
| <u>When the school board members decide they need it</u>                 |                     | 1               |
| Total  |                     | 106             |

examiner. Under these circumstances the school board acted as a jury, and then the school board attorney acted as a judge. Consequently another attorney would be needed to prosecute, since the school board attorney could not function in both capacities of judge or legal referee and of prosecutor.

Table 7 shows that the next condition most frequently noted occurred when a certain expertise was needed which existed outside of the competences of the school board attorney, or when conditions dictated that a specialist was needed. These conditions received 16 comments. One respondent expressed the opinion that there was an increased need for legal specialists and that school districts should cooperate in some manner so as to be able to share the costs of having these specialists available in specific areas.

Conflicts between parties within the school district provided a set of conditions that justified the employment of additional legal assistance. Fifteen of the respondents to the questionnaire felt that the school board attorney could not represent opposing parties. When faced with this type of situation, he would have to either disqualify himself or represent the interests of the school board. In instances of conflict between the superintendent and the school board, it was recommended that the school board attorney disqualify himself from involvement in the situation, since he usually served both the needs of the board

and the superintendent. However, if an attorney was employed on a continuing basis for the superintendent, then the school board attorney could represent the board. Under other circumstances the same procedure for other student and personnel hearings would apply when the school board attorney acted as legal advisor to the board. If a situation arises where the school board attorney has a conflict of interest, 13 respondents indicated that another attorney should be retained to deal with that situation. One school board attorney said that professional ethics ought to apply in such situations.

Table 7 shows the concern expressed by this group of study participants for the need of expertise in the area of collective bargaining. Of those responding, 12 comments were concerning this specialty. As can be seen, they felt that labor law experts were needed to help with the bargaining process.

Those mentioning federal actions were evenly divided on the issue. Four stated that another attorney should be employed who could handle such proceedings. The rest said that the school board attorney should be able to deal with federal proceedings without the board hiring another attorney.

In review, the data indicated the following:

1. Student and personnel matters dominate, the comments noted, conditions that could dictate the employment of an attorney other than the school

board attorney. The action would be precipitated by the need for the school board attorney to act as the legal advisor to the board in such proceedings. This area and that of conflicts between parties within the structure of the school district accounted for 49 of the 106 comments made concerning this question.

2. Expertise needed and when advised by the school board attorney were areas that received a combined total of 24 comments as conditions under which additional legal assistance should be sought.
3. The situation in which the school board attorney had a conflict of interest that would prevent him from representing the school board without bias was indicated as cause for using other legal counsel.
4. Collective bargaining received the next largest number of comments (12) after the situation in which the school board attorney had a conflict of interest (13). Collective bargaining had been made available to public employees on a state-wide basis at the beginning of 1975, and these responses indicated the need to bring in experts in negotiations and labor law to represent the interest of the school board and administration.
5. Role to be played, expertise, and conflicts formed the core of reasons why it would be necessary to

employ legal counsel in addition to the school board attorney.

Conditions of Employment Between School Districts and Attorneys

The responses to Question 4 of the questionnaire, as presented in Table 8, indicated a variety of conditions of employment for these attorneys retained by local school districts. This question read as follows: In your opinion what should be the terms and conditions of employment of attorneys retained by local school districts? A total of 64 comments were made by the school board attorneys responding (39). These were catalogued and placed into groups of similar responses.

As Table 8 shows, the most frequent responses to this question involved formal contracts for the services. Of those school board attorneys responding, 11 mentioned that there should be a formal agreement between the school district and the attorney. Four attorneys stated that a formal contract or agreement was not necessary, as can be seen when the third and the last comments in this area are combined. Those favoring contracts indicated that the contract should contain a listing of services to be provided and the manner of remuneration for these services.

One attorney said that by having a contract with the school district, he was able to secure for himself the benefits offered to other school district employees with the exception of retirement.

TABLE 8

Frequency of School Board Attorney Responses Concerning  
the Conditions of Employment Needed Between  
School Districts and Attorneys

| Conditions  | Number of Responses |                    |
|---|---------------------|--------------------|
|   | Within<br>Areas     | Total for<br>Areas |
| <u>Formal contracts</u>   |                     | 15                 |
| Formal contracts listing duties and basis of remuneration         | 3                   |                    |
| Formal contract with retainer delineating functions               | 3                   |                    |
| No formal contract  | 3                   |                    |
| Formal contract for basic services plus hourly schedule           | 2                   |                    |
| Formal contract with monthly salary and provisions for extra work | 1                   |                    |
| Negotiated agreements that are mutually acceptable                | 1                   |                    |
| Negotiated contracts for services                                 | 1                   |                    |
| Formal contract not necessary, just general statements            | 1                   |                    |
| <u>Retainer plus hourly schedule</u>                              |                     | 11                 |
| <u>Full-time attorney and district size</u>                       |                     | 10                 |
| Full-time attorney if size warrants                               | 4                   |                    |
| Depends on district and services required                         | 3                   |                    |
| Legal services should be tailor-made for district                 | 1                   |                    |
| Full-time in-house attorney should not be hired                   | 1                   |                    |
| Full-time attorney on salary basis                                | 1                   |                    |
| <u>Retainer plus fee</u>  |                     | 9                  |
| Annual retainer plus negotiated fees                              | 3                   |                    |
| Retainer plus fees  | 2                   |                    |
| Monthly retainer and fees for extra services                      | 2                   |                    |
| Retainer plus litigation fees                                     | 2                   |                    |
| <u>Hourly rate</u>  |                     | 5                  |
| Hourly basis unless full time                                     | 2                   |                    |
| Combination of hourly schedule and success and risks              | 1                   |                    |
| Hourly rate   | 1                   |                    |
| Hourly schedule with a different rate for litigation              | 1                   |                    |

TABLE 8--(continued)

| Conditions  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Representation of other agencies or interests</u>  |                     | 5               |
| Permissible to represent other agencies   | 2                   |                 |
| Attorneys should not represent clients whose interests would be adverse to those of the school board                | 2                   |                 |
| Attorneys should not be employed who represent other governmental agencies which may conflict with the school board | 1                   |                 |
| <u>Retainer</u>   |                     | 2               |
| Retainer only   | 1                   |                 |
| Retainer for general services to school board and superintendent  | 1                   |                 |
| <u>Retainer plus billing for work in court and for non-advisory activities</u>                                      |                     | 2               |
| <u>No response</u>  |                     | 2               |
| <u>Expenses incurred should be reimbursed</u>   |                     | 1               |
| <u>Serve at pleasure of the school board or fixed term</u>  |                     | 1               |
| <u>The school board attorney should serve both the school board and the superintendent</u>                          |                     | 1               |
| Total   |                     | 64              |

The next most frequently mentioned condition of employment was the provision for a retainer for basic advisory services and an hourly schedule for other activities (11). The retainer would be on an annual or monthly basis, and the hourly schedule would have a dollar figure. The suggested hourly rate ranged from \$25 per hour to \$50 per hour. The amount of the retainer was seldom mentioned, and in the three instances where it was discussed, the smallest amount was \$50 per month and the largest was \$200 per month. There were indications in several of the responses that the amount of the retainer ought to be based on the number of hours anticipated to be spent in the advisory capacity during a specified time period, such as a month, and that number of hours multiplied by an hourly rate would result in a figure suitable to be used as a retainer.

Other methods of remuneration noted in Table 8 are retainer plus fees (9), hourly rate (5), retainer (2), retainer plus billing for services (2), and reimbursement of expenses (1).

The employment of a full-time attorney or of an in-house attorney drew 10 comments from these study participants. Five of them suggested that if size and complexity of the particular school district warranted, then an attorney should be retained on a full-time basis and paid a salary. They cited the increased complexity of school district operations and the increased need for legal counsel

as justification for their recommendations. However, a school board attorney from one of the largest school districts responded in the negative to such an arrangement. He reasoned that a legal counselor should not be wholly dependent upon the entity he counsels for his financial income. Such an arrangement, he contended, would be vulnerable to prejudice generated by an employer-employee situation. He felt that such vulnerability would not be conducive to the counselor-client relationship that ought to exist between the school district and the attorney.

A condition of employment mentioned by five school board attorneys was that of representing other entities whose interests could be adverse to those of the school district. Of these, two stated that it would be permissible to represent other agencies, but three indicated that such a condition would not be advisable. The reason given by those approving such situations was that the attorney could disqualify himself should a conflict of interest arise. As for those disapproving, their comments were directed towards the need for the attorney to represent the interests of the school district without bias.

In summary, the 39 school board attorneys responding to this question relative to conditions of employment for attorneys retained by local school districts in Florida made the following points:

1. Eleven school board attorneys stated that a formal contract should be developed listing the services

to be performed and the basis of remuneration for such services. The remainder of the attorneys described several ways of establishing the conditions of employment.

2. A retainer plus an hourly schedule was the most frequently noted method of remuneration for services rendered. The basis of these other methods in the final analysis was an hourly schedule, since the retainer was based on an estimation of time spent advising the board and staff on school operations.
3. The school board attorneys who mentioned a full-time attorney for school districts indicated that size and complexity of the district were factors that might engender such an action. In this regard, one respondent did not recommend a full-time attorney, because of the detrimental effect that such an arrangement might have on the counselor-client relationship.

#### Qualifications of Attorneys Retained

Table 9 shows a listing of the comments made by the school board attorneys responding to the question regarding the qualifications of attorneys retained by the local school district. There were 96 comments catalogued in 10 groups of similar responses.

TABLE 9

Frequency of School Board Attorney Responses Relative  
to the Qualifications Desired of Attorneys  
Retained by the School Districts

| Qualifications  | Number of Responses |                    |
|---|---------------------|--------------------|
|   | Within<br>Areas     | Total for<br>Areas |
| <u>Formal qualifications and experience</u>   |                     | 29                 |
| At least 5 years of experience  | 8                   |                    |
| A general practitioner  | 6                   |                    |
| Member of Florida bar   | 4                   |                    |
| A competent lawyer  | 4                   |                    |
| A few years of experience   | 2                   |                    |
| Litigation experience   | 1                   |                    |
| At least 7 years of experience practicing law   | 1                   |                    |
| Trial and appellate experience  | 1                   |                    |
| A competent civil attorney  | 1                   |                    |
| The ability to deliver full service personally<br>or by association                                       | 1                   |                    |
| <u>Personal attributes</u>  |                     | 23                 |
| A good reputation in the community  | 5                   |                    |
| Willing to study, learn, and work   | 4                   |                    |
| Should have children in the school system   | 3                   |                    |
| Interest in school law and the desire to work   | 2                   |                    |
| Ability to work with the school board team  | 2                   |                    |
| Candidness with the school board about law and<br>issues  | 2                   |                    |
| Patience with school administrators   | 1                   |                    |
| Familiar with the local governmental situations   | 1                   |                    |
| Availability and dependability  | 1                   |                    |
| A good attitude and able to work with public<br>bodies  | 1                   |                    |
| Sense enough to ask for help when needed  | 1                   |                    |
| <u>Special training</u>   |                     | 11                 |
| Knowledge of school law   | 4                   |                    |
| Special training in school law  | 2                   |                    |
| Law school courses in labor law, administrative<br>law, legal accounting, corporations, and<br>school law | 2                   |                    |
| Courses in school law in law school   | 1                   |                    |
| Training in labor law   | 1                   |                    |
| Training in collective bargaining   | 1                   |                    |

TABLE 9--(continued)

| Qualifications   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>No special training needed</u>  |                     | 10              |
| No special qualifications needed   | 5                   |                 |
| No prior particular training needed  | 2                   |                 |
| Special training in school law is not needed   | 2                   |                 |
| Specialized training could limit the school board attorney   | 1                   |                 |
| <u>Prior experience with school operations</u>   |                     | 9               |
| Prior experience is desirable but scarce   | 7                   |                 |
| Prior experience with school operations  | 1                   |                 |
| Experience with the Florida school code  | 1                   |                 |
| <u>Attendance at seminars</u>  |                     | 6               |
| Attend seminars to stay updated  | 2                   |                 |
| Attendance at Florida School Board Attorneys Association meetings and seminars   | 2                   |                 |
| Required to attend seminars of the Florida School Board Association and the Florida School Board Attorneys Association | 2                   |                 |
| <u>Requirements vary</u>   |                     | 4               |
| Requirements vary from district to district  | 2                   |                 |
| Depends on local conditions and situations   | 2                   |                 |
| <u>Jack-of-all trades</u>  |                     | 2               |
| <u>Unable to respond</u>   |                     | 1               |
| <u>I'm still learning my job</u>   |                     | 1               |
| Total  |                     | 96              |

Formal qualifications and experience was the group that received the largest number of comments (29). It was followed by personnel attributes (23), special training (11), no special training needed (10), prior experience with school operations (9), attendance at seminars (6), requirements vary (4), jack-of-all-trades (2), unable to respond (1), and I'm still learning my job (1).

Of those responses catalogued in the formal qualifications and experience group, eight thought that an attorney retained by the school district should have a minimum of five years of experience. Another listed seven years as a minimum. Others felt that being a general practitioner or a member of the Florida bar was sufficient as far as formal qualifications were concerned. Some respondents (2) indicated that a particular area of experience was needed such as trial or litigation experience.

The next grouping, personal attributes, accounted for 23 comments. A good reputation in the community was the attribute most frequently noted in this group. Also four respondents felt that the attorney should be willing to study, learn, and work in order to fulfill his duties and responsibilities to the school district. Others (3) indicated that the attorney should have children in the school system. By having his children involved in the system, he would be more concerned about the success of the school district.

One school board attorney stated that an important qualification was the sense to ask for help when it was needed. He failed to suggest a procedure which would reveal whether the prospective school district attorney possessed that sense other than by experience with the individual. This condition would be most applicable when further employment of the attorney is being considered.

Relative to special training, 3 of 11 comments indicated that training should occur in law school in order for the attorney to be adequately prepared to function in the area of school law. However, most of the comments (6) in this grouping simply stated that knowledge of or special training in school law was desirable. Training in labor law and collective bargaining each received a single comment.

On the opposite side, 10 respondents stated that no particular or specialized training was required. One school board attorney said that specialized training could limit the services that a school board attorney should provide a school district. His contention was that the school district needed a person who could offer a wide range of general services, and if a need did arise for a specialist, then one could be employed until the need was satisfied.

Prior experience with school operations was mentioned as desirable in nine comments made by this group of study participants. However, seven of them concluded that such

prior experience was scarce and hard to find, especially for the smaller local school districts where there might be but one attorney in the entire school district.

Attendance at seminars received six comments. The respondents indicated that attendance at the meetings and seminars of the Florida School Board Attorneys Association and the Florida School Board Association was needed in order to stay updated on the legal aspects of school district operations. One school board attorney suggested that the state department of education, through the offices of its general counsel, should provide a special training session for all new school board attorneys so that they could, in a shorter period of time, become familiar with the detailed workings of public school law. He asserted that such a session could possibly deter costly errors. This point was further emphasized by the school board attorney who responded to the questionnaire by saying that he was still learning his job and that he would be in a better position to give more specific answers after a few months of working with the school district.

In review of the responses made to this question relative to the qualifications of attorneys retained by local school districts as perceived by school board attorneys, the data revealed the following:

1. Leading the list of qualifications for attorneys retained by local school districts were the formal

aspects, such as having at least five years of experience, being a competent general practitioner, and a member of the Florida bar.

2. The personal characteristics and attributes desirable in an attorney representing the interests of the district, such as reputation, dedication, and interest, placed second according to the data in Table 9.
3. The training category was almost evenly divided on whether it was needed, with the positive aspect representing the majority of those commenting on this facet of the question.
4. Along with the desirability of special training was the area of prior experience with school operations. The difference here was that seven of the nine comments indicated the scarcity of that qualification.
5. The scarcity of prior experience would give added emphasis to the responses that mentioned the need for attorneys representing school districts to attend the seminars sponsored by the associations for school boards and school board attorneys.
6. One school board attorney suggested that specialized attorneys could operate successfully in the larger districts or serve a number of smaller districts if the proper coordination process was

instituted. Such a program would have expertise available on an organized level to all the school districts within the state regardless of size.

Analysis of the Responses Made by School  
Board Chairmen to the Questionnaire

The school board chairman in each school district was asked to respond to the questionnaire using his experience and perceptions of the needs of local school districts in Florida as a basis in formulating his responses. Each was asked to answer the following five questions:

1. In your opinion what legal services are needed by local school districts?
2. What are some of the legal services that you think a school board attorney should provide?
3. Under what circumstances, if any, do you think that an attorney other than the school board attorney should be retained by local school districts?
4. In your opinion what should be the terms and conditions of employment of attorneys retained by local school districts?
5. Based upon your experience what do you think should be the qualifications of attorneys retained by local school districts?

The comments of school board chairmen are reflected in tables, with the most frequently noted group listed first. A table was developed for each question to which they were

asked to respond and was constructed in such a way as to demonstrate groups of similar responses and in some cases individual comments.

#### Legal Services Needed by Local School Districts

Table 10 shows the responses made by the school board chairmen to Question 1 relative to their opinions of those legal services needed by local school districts. A total of 167 comments were made by those respondents. These comments were divided into 18 areas, with similar statements being placed in the same area.

General services accounted for 42 of the 167 comments. As can be seen, some chairmen contributed more than one comment to this area, since there were 36 chairmen who responded to the questionnaire. Within the group the need for counsel regarding the formulation of policies received 12 comments and was followed by the need for legal interpretation of local, state, and federal laws and statutes (11). These were followed by the need for advice on legal matters (6), implications of the sunshine law (3), review of board policies for possible conflicts with statutes (3), general counsel (2), and several single statements. These data indicate that compliance with laws and statutes accounted for most of the comments in this area.

Collective bargaining and negotiations was next in the listing and was mentioned 22 times as an area in which the local school districts needed legal services. Of those

TABLE 10

Frequency of School Board Chairmen Responses Relative  
to the Legal Services Needed by  
Local School Districts

| Services   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>General services</u>  |                     | 42              |
| Policy formulation   | 12                  |                 |
| Counsel regarding the interpretation of local, state, and federal laws       | 11                  |                 |
| Advise for the board on legal matters  | 6                   |                 |
| Implications of the sunshine law   | 3                   |                 |
| Review board policies for possible conflicts with statutes                   | 3                   |                 |
| General counsel  | 2                   |                 |
| Counsel on all matters pertaining to school law                              | 1                   |                 |
| Counsel and advice for board members   | 1                   |                 |
| Provide legal services to the board and superintendent                       | 1                   |                 |
| Defining areas of responsibility for the school board and the superintendent | 1                   |                 |
| Monitor board meetings   | 1                   |                 |
| <u>Collective bargaining and negotiations</u>                                |                     | 22              |
| Advise on collective bargaining  | 20                  |                 |
| A professional labor consultant needed to handle collective bargaining       | 2                   |                 |
| <u>Student and personnel matters</u>   |                     | 22              |
| Formal hearings, grievances, etc.  | 5                   |                 |
| Suspensions and expulsions of pupils   | 5                   |                 |
| Personnel dismissal  | 5                   |                 |
| Civil rights matters of citizens and personnel                               | 3                   |                 |
| Teacher tenure   | 2                   |                 |
| Due process  | 1                   |                 |
| Counsel for the superintendent on personnel matters                          | 1                   |                 |
| <u>Professional legal counsel</u>  |                     | 18              |
| An attorney at the board meetings  | 4                   |                 |
| An attorney on retainer  | 3                   |                 |
| Only a school board attorney is needed                                       | 3                   |                 |
| An attorney to be sure that things are done right                            | 2                   |                 |
| A full-time attorney   | 2                   |                 |

TABLE 10--(continued)

| Services  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Professional legal counsel--(continued)</u>  |                     |                 |
| An attorney specialized in school law   | 1                   |                 |
| An attorney active in the Florida School Board Attorneys Association who is familiar with school law                | 1                   |                 |
| The legal training and mental discipline of an attorney is needed; it is lacking in school administration personnel | 1                   |                 |
| <u>Litigation</u>   |                     | 16              |
| <u>Review and preparation of contracts</u>  |                     | 9               |
| <u>Taxation</u>   |                     | 9               |
| <u>Purchases and sales of property</u>  |                     | 8               |
| <u>Bond issues</u>  |                     | 4               |
| <u>Matters pertaining to school board members</u>   |                     | 3               |
| Financial disclosure of school board members  | 2                   |                 |
| Conflict of interest of school board members  | 1                   |                 |
| <u>Draft resolutions and legal documents as required</u>  |                     | 3               |
| <u>Advice for the board on new legislation</u>  |                     | 3               |
| <u>Legal advice under the provisions of Administrative Procedures Act</u>   |                     | 3               |
| <u>Bids and bidding procedures</u>  |                     | 2               |
| <u>Budget amendments</u>  |                     | 1               |
| <u>Business activities same as any corporation</u>  |                     | 1               |
| <u>Parliamentary procedures</u>   |                     | 1               |
| <u>State help and advice; no local attorney needed</u>  |                     | 1               |
| Total   |                     | 167             |

reporting this area of need, two stated that a professional labor consultant was needed to handle the collective bargaining process on behalf of the school district.

Receiving the same number of comments as did collective bargaining and negotiations was the area of student and personnel matters (22). Legal counsel was specified for hearings, suspensions, expulsions, dismissals, and other related instances. Because of the need to protect the rights of individuals, these respondents felt that the district required legal counsel in order to insure that these rights were respected and that the proper procedures were followed during such actions.

In order to satisfy the need for legal advice and counsel, 18 comments were made relative to having professional legal counsel available to the school board and district staff. The chairmen indicated that such counsel was needed at board meetings (4); although not specifically mentioned, it is implied in the first grouping relative to general services.

The area of litigation polled 16 responses as needing legal services. It was followed by four areas that indicated the same need. These were contracts (9), taxation (9), purchases and sale of property and real estate (8), and bond issues (4). Special services for bond issues were needed because the local attorney usually did not have the background to handle them or because the avenues of selling the bonds were not readily available to him.

Matters pertaining to school board members, such as financial disclosure and conflicts, received three comments. Apparently those who made these remarks felt that legal advice was needed in order to comply with state law.

The final response depicted by Table 10 merits comment in that the chairman making it wrote that his board retained no attorneys and depended on the state to provide any legal service and advice that was needed. He indicated that things went along smoothly in his district and he did not foresee the need for attorneys to be retained by the school district in the near future.

In comparing the responses of the board chairmen and board attorneys to this question, some important agreements and dissimilarities were noted. For example, both the chairmen and attorneys emphasized the need for general legal services, collective bargaining services, and student personnel matters. However, the board chairmen emphasized the professional advisory role of the attorney at board meetings more than did the attorneys.

In summary, the responses of the chairmen to this question revealed the following:

1. The area of general services led the list of answers supplied to Question 1. The concern to comply and be in harmony with laws and statutes was apparent by the emphasis it received. When considered in connection with professional legal

counsel, a total of 60 comments of the 167 that the entire question received were accounted for in these two areas of service.

2. Collective bargaining was high on the list with 22 comments. The grouping expressed the concern that the chairmen had about this subject, since 22 of the 36 responding to the questionnaire mentioned it.
3. Student and personnel matters also received 22 comments as an area in which legal services were needed by the school district.
4. The last comment in Table 10 indicated that no local attorney was employed in one school district.

#### Services a School Board Attorney Should Provide

The responses made by the school board chairmen responding to the question concerning the services that the school board attorney should provide are shown in Table 11. This question received 160 comments which were assigned to 16 different areas.

The area receiving the most comments as part of the responses to this question was general counsel. It received 41 of the 160 comments made in reference to the services a school board attorney should provide. A common factor noted in the 12 statements concerning the provision of counsel was the phrase when asked. The reader should note the comment recorded toward the bottom of Table 11 about too much

TABLE 11

Frequency of School Board Chairmen Responses Relative  
to the Services That School Board Attorneys  
Should Provide

| Areas of Service   | Number of Responses |                    |
|--|---------------------|--------------------|
|  | Within<br>Areas     | Total for<br>Areas |
| <u>General counsel</u>   |                     | 41                 |
| Provide counsel when asked   | 12                  |                    |
| General counsel at all school board meetings   | 11                  |                    |
| Advise during the development of policy or policy<br>change  | 7                   |                    |
| Monitor the total legal requirements of the board  | 3                   |                    |
| Be available and on call   | 2                   |                    |
| Advise the superintendent of legal matters   | 2                   |                    |
| Initiate advice when he sees cause   | 2                   |                    |
| School board attorney should provide counsel to<br>the superintendent                                | 1                   |                    |
| Assist with points of procedure  | 1                   |                    |
| <u>Attendance at meetings</u>  |                     | 26                 |
| Attend all board meetings  | 12                  |                    |
| Attend monthly school board meetings   | 10                  |                    |
| Attend board meetings which require legal opinions   | 3                   |                    |
| Attend all regular school board meetings   | 1                   |                    |
| <u>Collective bargaining and negotiations</u>  |                     | 26                 |
| Advise on collective bargaining  | 20                  |                    |
| Be a member of collective bargaining team  | 5                   |                    |
| Review negotiated contracts as to the board's<br>interest  | 1                   |                    |
| <u>Contracts</u>   |                     | 16                 |
| Review all board actions and contracts   | 7                   |                    |
| Review and prepare contracts   | 7                   |                    |
| Handle all contractual matters   | 2                   |                    |
| <u>Laws and regulations</u>  |                     | 12                 |
| Counsel on regulations and school law  | 5                   |                    |
| Provide legal interpretation of Florida statutes   | 3                   |                    |
| School board attorney should stay updated on the<br>changes in the law                               | 2                   |                    |
| School board attorney should keep updated on<br>information provided by the School Board Association | 1                   |                    |
| Interpret legislation  | 1                   |                    |

TABLE 11--(continued)

| Areas of Service   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Finances</u>  |                     | 9               |
| Advise on the issuance of bonds  | 7                   |                 |
| Advise the financial director  | 2                   |                 |
| <u>Student and personnel matters</u>   |                     | 6               |
| Represent the board in all judicial and quasi-judicial proceedings                                 | 3                   |                 |
| Suspensions and expulsions of students   | 1                   |                 |
| Dismissals of teacher  | 1                   |                 |
| Act as judge in hearings   | 1                   |                 |
| <u>Handle property transactions</u>  |                     | 6               |
| <u>Represent the school board in all litigation</u>  |                     | 6               |
| <u>Association with other specialized counsel</u>  |                     | 4               |
| School board attorney should provide all legal services  | 2                   |                 |
| Associate with other attorneys on special situations   | 1                   |                 |
| Outside attorneys waste taxpayers' money   | 1                   |                 |
| <u>Prepare legal documents and resolutions</u>   |                     | 3               |
| <u>Too much legal advice is troublesome if not requested</u>                                       |                     | 1               |
| <u>School board attorney should be responsible to school board members</u>                         |                     | 1               |
| <u>School board attorney should be knowledgeable in insurance, bids, and bidding procedures</u>    |                     | 1               |
| <u>No need for a school board attorney; contact the state for help when needed</u>                 |                     | 1               |
| <u>School board attorney should be used in all areas; he possesses a more disciplined approach</u> |                     | 1               |
| Total  |                     | 160             |

advice being troublesome. However, when the total of the comments (41) made and catalogued in this area of service was compared with the total of those making this statement (12), it became obvious that the condition of unsolicited comments made by the school board chairmen was not considered all that important by a majority of those responding to the questionnaire.

Several statements (8) were made that pointed up the concern of the chairmen for having counsel available to insure that the actions of the board were meeting the requirements of law. These concerns can be seen in the first area listed in Table 11, where the statements utilize terms such as legal requirements, legal matters, cause, and procedures.

Of those responding, 26 mentioned that the school board attorney should attend the meetings of the board. Attendance at all meetings was specified by 12 respondents, and 10 others indicated that he should attend the monthly board meetings. Three of the respondents said that he should attend those meetings where legal opinions would be required.

The area of collective bargaining and negotiations polled 26 of the 160 comments made by this group of study participants. Of these, 20 felt that the school board attorney should provide advice on the bargaining process. Five others indicated that he should be on the bargaining team. Either way, it definitely appeared that the school

board attorney should be involved in the bargaining process, according to these responses made by the school board chairmen. Although Table 11 was not structured to show negative comments in this area, the writer wishes to bring to the attention of the reader that six chairmen wrote that the school board attorney should not be on the negotiations team.

The next area most frequently noted was that of contracts (16). It was followed by the need for service in the area of laws and regulations. Twelve comments were catalogued in this area. This concern for the legalities of actions connects back to the first area, where these same feelings were expressed. The chairmen seemed to feel that they needed this guidance from a legal counselor.

In regard to finances, the chairmen registered nine comments. These were in two subject areas. The first subject was concerning the issuance of bonds and the procedures that accompanied the sale of bonds. The second concern related to giving assistance to the financial director. In some of the smaller school districts the finances apparently were handled by clerks who lack sophisticated skills in such matters.

Student and personnel matters received six comments as a distinct area of concern. The statements made cast further light on the role of the school board attorney. They indicated that the school board attorney should advise the board when it was functioning in a quasi-judicial manner.

As for associating with other specialized counsel, only one respondent mentioned it. Two respondents said that the school board attorney should provide all the services needed and another added further emphasis by saying that outside attorneys were a waste of the taxpayer's money.

One chairman made the statement that the school board in his district was fortunate in that it had had the same school board attorney for nearly twenty years and that because of his many years of working with the school district, he added stability to the activities of the school board. He further added that most school members and school superintendents only last four to eight years in their respective offices. This statement is pregnant with all kinds of implications as to the role and influence of school board attorneys.

In summary, the following indications were made by this group of study participants:

1. As shown in Table 11, the area of general services received the most comments. The chairmen indicated that the school board attorney should provide general counsel and help in guiding the board through the requirements of laws, regulations, and procedures.
2. The presence of the school board attorney was desired at board meetings.
3. The area of collective bargaining was third on the list. As can be seen in Table 11, there was some

question as to the involvement of the school board attorney in the bargaining process. Most of those discussing this area indicated that his role should be advisory.

4. Even though it was mentioned by only one school board chairman, the last statement listed in Table 11 seemed to indicate in a broader sense the service that could be rendered by the school board attorney.
5. The school board attorney who had served the board for a period of years added stability to the activities of the board, according to one school board chairman.
6. It appears from the information presented by Table 11 that these chairmen viewed the school board attorney as an individual on whom they would depend for guidance, counsel, and a disciplined approach to the board's concerns.

#### Retaining Attorneys Other Than the School Board Attorney

The data presented in Table 12 represent the comments made regarding the conditions that could require the services of an attorney other than the school board attorney. The school board chairmen made a total of 59 statements in response to Question 3 of the questionnaire.

Of those responding to this question, 10 indicated that an attorney other than the school board attorney should

TABLE 12

Frequency of Responses of School Board Chairmen Relative  
to the Need for Attorneys Other Than  
the School Board Attorney

| Conditions   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Expertise needed</u>  |                     | 10              |
| When a certain expertise is needed   | 4                   |                 |
| When school board attorneys can't handle it  | 3                   |                 |
| When a specialist is needed  | 1                   |                 |
| When the school board attorney doesn't provide the services needed   | 1                   |                 |
| Specialist in labor disputes   | 1                   |                 |
| <u>Collective bargaining</u>   |                     | 9               |
| During collective bargaining   | 7                   |                 |
| Specially trained counsel, such as a labor attorney, to negotiate with unions  | 2                   |                 |
| <u>Conflicts</u>   |                     | 9               |
| For the superintendent when a conflict arises with the school board  | 5                   |                 |
| For the superintendent if needed   | 1                   |                 |
| When the superintendent is involved in a lawsuit   | 1                   |                 |
| An attorney for the superintendent   | 1                   |                 |
| During conflicts within the school board membership  | 1                   |                 |
| <u>Federal actions</u>   |                     | 7               |
| <u>Student and personnel matters</u>   |                     | 5               |
| When the school board acts as a quasi-judicial body because school board attorneys can't act as advisor and prosecutor | 2                   |                 |
| Hearings on student discipline problems  | 1                   |                 |
| To prosecute cases   | 1                   |                 |
| During hearings on dismissals of employees   | 1                   |                 |
| <u>When the school board attorney has a conflict of interest</u>   |                     |                 |
| Conflict of interest in the part of the school board attorney  | 3                   | 5               |
| When the school board attorney is retained by opposing parties   | 2                   |                 |

TABLE 12--(continued)

| Conditions   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>None to the present</u>   |                     | 3               |
| <u>When the school board sees the need</u>                                   |                     | 3               |
| <u>Litigation</u>  |                     | 3               |
| If the school board is sued  | 1                   |                 |
| Litigation between the school board and employees                            | 1                   |                 |
| An attorney for individual board members if sued because of board membership | 1                   |                 |
| <u>Experts in state and federal law; the 67 districts need a pool</u>        |                     | 1               |
| <u>None if the school board attorney and superintendent do their jobs</u>    |                     | 1               |
| <u>When the school board attorney is overloaded</u>                          |                     | 1               |
| <u>During processes of property purchases</u>                                |                     | 1               |
| <u>As the school board attorney advises</u>                                  |                     | 1               |
| Total  |                     | 59              |

be retained when a certain expertise is needed or when the local school board attorney cannot handle the situation. The inability of the school board attorney to handle the situation could depend on the expertise needed, the location of the action, or the amount of time and effort that the contemplated action might consume, according to those that mentioned this area of concern.

Following closely to the preceding area was the need for help during the collective bargaining process. Of those commenting in this area, two suggested that specially trained counsel, such as labor attorneys, might be retained to negotiate with the unions.

The third area most frequently noted was that of conflicts. It accounted for nine statements, with eight of them referring to the situation of the superintendent needing an attorney to represent his interest when involved in a legal problem or lawsuit. A single comment was registered in this area regarding conflicts within the membership of the school board. The thought expressed was that the school board attorney represented the board in its entirety, not single members. Consequently a conflict between board members would cause the school board attorney to disqualify himself from representing individual or groups of school board members. This type of situation would be closely connected with the area indicated in Table 12, concerning the condition of conflicts of interest on the part of the school board attorney, which tallied five responses.

Federal actions were noted by seven respondents as an area that might require additional legal counsel. One chairman indicated that the state should maintain a pool of legal experts in state and federal law to be available to the 67 school districts in Florida.

Student and personnel matters accounted for five comments in the responses to this question. One chairman emphasized that the school board attorney could not act as the advisor to the board and prosecute a case at the same time. He suggested that another attorney should be retained to prosecute the case. Another chairman agreed that additional help was needed at times when involved with personnel matters, but he felt the need occurred because the school board attorney sat around doing nothing about the situation.

Three chairmen said that they had not been required to retain other attorneys as yet, and another indicated that such a need would not arise if the school board attorney and superintendent did their jobs.

Regarding the purchases of property, one chairman suggested that it might be wise to retain another attorney so that he could represent the school district and negotiate for the property without the seller knowing that the prospective buyer was the school district. He reasoned that such a procedure might keep the price of the property from becoming inflated.

With regard to this question concerning the need to employ attorneys other than the school board attorney, the responses indicated the following:

1. Of the 59 comments made by the responding school board chairmen to the question concerning the conditions that could require the employment of an attorney other than the school board attorney, over 50 percent were catalogued in the top four areas listed in Table 12. Of these four areas, three related to conditions that required a special expertise. The other involved conflicts in which the school board attorney's position as advisor to the school board might be compromised.
2. Collective bargaining was second in the listing of conditions that might require additional legal counsel to aid in the bargaining process.
3. Student and personnel matters as an area presented a view of the role that the school board attorney played when the school board acted as a quasi-judicial body. He was to be the board's advisor in such matters and should not actively prosecute the case. Prosecution should be left to another attorney. The school board attorney would act as the legal referee or judge.
4. One chairman stated that because of the need for specialists to aid local school districts, a pool

of such knowledgeable experts should be maintained on a statewide basis, from which the local district could draw should the need arise.

#### Conditions of Employment Between School Districts and Attorneys

There were a total of 41 statements made by the school board chairmen responding to the following question: In your opinion what should be the terms and conditions of employment of attorneys retained by local school districts? These statements were assigned to 12 different groups containing similar responses. As can be seen in Table 13, a variety of conditions of employment and methods of remuneration was noted.

The most frequently mentioned aspect of employment conditions was the method of remuneration for services rendered by attorneys retained by local school districts. This aspect accounted for over 50 percent of the comments made relative to this part of the questionnaire.

Of the several methods suggested, retainer plus fee received more positive comments (13) than retainer plus hourly schedule (11), formal contracts (6), full-time attorney (3), hourly rate as needed (1), retainer plus costs for school board business (1), services on a bid basis (1), and shared with other governmental bodies (1). The school board was to pay part of the cost.

Formal contracts were mentioned by six respondents, who emphasized that the contract should contain the specific

TABLE 13

Frequency of School Board Chairmen Responses Concerning  
the Conditions of Employment Needed Between  
School Districts and Attorneys

| Conditions   | Number of Responses |                    |
|--|---------------------|--------------------|
|  | Within<br>Areas     | Total for<br>Areas |
| <u>Retainer plus fee</u>   |                     | 13                 |
| Retainer plus fee  | 5                   |                    |
| Retainer for routine tasks and fee schedule<br>for others  | 4                   |                    |
| Flat fee plus fees for work not normally done  | 2                   |                    |
| Annual retainer and fee schedule beyond normal<br>service  | 1                   |                    |
| Monthly salary with additional fees for court<br>work  | 1                   |                    |
| <u>Retainer plus hourly schedule</u>   |                     | 11                 |
| Retainer plus hourly schedule  | 5                   |                    |
| Annual retainer plus hourly schedule; retainer<br>should cover advisory services to school board<br>and superintendent | 4                   |                    |
| Monthly retainer plus hourly schedule  | 2                   |                    |
| <u>Formal contracts</u>  |                     | 6                  |
| Formal contract listing specific duties with<br>provisions for extra compensation for extra<br>work                    | 3                   |                    |
| Formal contract with specific duties   | 1                   |                    |
| Formal annual contract with specific duties<br>listed with retainer and hourly schedule<br>specified                   | 1                   |                    |
| School board attorney should be hired annually<br>with listed services in his contract                                 | 1                   |                    |
| <u>Full-time attorney</u>  |                     | 3                  |
| The school board attorney should be full time  | 2                   |                    |
| Fee and retainer if unable to retain an attorney<br>full time  | 1                   |                    |
| <u>Hourly rate as needed</u>   |                     | 1                  |
| <u>Retainer plus costs for school board business</u>   |                     | 1                  |
| <u>Negotiations with the attorney</u>  |                     | 1                  |

TABLE 13--(continued)

| Conditions  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Service should be put out on a bid basis</u>   |                     | 1               |
| <u>Shared with other governmental bodies; school board pays part of the cost</u>                  |                     | 1               |
| <u>The school board attorney should not represent other governmental bodies</u>                   |                     | 1               |
| <u>The school board attorney should be responsible to school board, not to the superintendent</u> |                     | 1               |
| <u>None, since an attorney isn't retained</u>   |                     | 1               |
| Total   |                     | 41              |

services that the attorney was to provide and the method of remuneration for those services. With this procedure all parties would have an understanding of what could be expected within the realm of the contract.

With reference to conflicts of interest and representation, one chairman felt that there would be no problem in sharing an attorney with other governmental bodies. The school district would pay part of his cost, assuming that his services were used full time by those governmental bodies. However, another chairman stated that an attorney retained by the school district should represent no other governmental body.

The area of full-time attorney drew three comments from the school board chairmen. They indicated that the increased complexity of school operations demanded more legal attention and that a full-time attorney was needed to monitor the daily operations of the school district.

Other comments made included the idea that the services to be rendered by attorneys on behalf of the school district should be put out on a bid basis so that the attorneys could compete for them. The results, he reasoned, would be lower costs to the district for these services.

Another chairman felt that it should be stipulated that the school board attorney was, in the final analysis, responsible to the school board, not to the superintendent.

In summary, listed below are some of the indications made by the data:

1. Retainer plus fee as an area received more comments than any other aspect of employment conditions that were mentioned by the school board chairmen. It was followed by retainer plus hourly schedule, formal contracts, and full-time attorney as areas noted by more than one chairman.
2. Formal contracts were emphasized as a means of defining the responsibilities of the attorneys retained by the school district. Those who supplied this suggestion stated that the contract should list the services to be provided and the payment schedule for those services.
3. One chairman suggested that the legal services needed by a local school district be put out on a bid basis. Another suggested that a county attorney be shared by the governmental bodies within that county including the school district.
4. As can be readily seen from the data in Table 13, a majority of those responding to this question felt that a retainer with a fee schedule, whether hourly or by type of service required, was the most suitable for school districts. However it should be noted that a different arrangement might be required if a specialist was retained for a specific instance of a short duration.

### Qualifications of Attorneys Retained

Table 14 shows the responses made by the 36 school board chairmen to Question 5 of the questionnaire. They made a total of 82 statements regarding the qualifications of attorneys retained by local school districts in Florida. These statements were assigned to groups of similar responses for analysis. Eight such groups were identified and are depicted in Table 14.

The group to which the most statements were assigned was concerning special training that an attorney might need if he were retained to represent the interests of the school district. The chairmen that made these comments expressed the concern that such an attorney should have a background in or special exposure to the area of service needed. As can be seen in Table 14, a total of 21 statements were made by the study participants in this area.

A chairman from one of the smaller counties suggested that a law student might be employed to work with the school districts and the regular school board attorney as a training experience for the student and a benefit to the district.

Another chairman commented that their board attorney at that time was not versed in school law and, as a result, he was apprehensive in his advice and counsel to the board. This statement related to the first area listed in Table 14 describing the feelings expressed by the chairmen that special training was needed. The lack of training

TABLE 14

Frequency of School Board Chairmen Responses Relative  
to the Qualifications Desired of Attorneys  
Retained by the School Districts

| Qualifications  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Special training</u>   |                     | 21              |
| Special training in law school                                    | 7                   |                 |
| A knowledge of school law   | 6                   |                 |
| One who is familiar with Florida school law                       | 3                   |                 |
| Labor law experience  | 1                   |                 |
| Expertise in the area needed                                      | 1                   |                 |
| A graduate course in school law                                   | 1                   |                 |
| A good land attorney  | 1                   |                 |
| Expert in school law  | 1                   |                 |
| <u>Personal attributes</u>  |                     | 21              |
| Be willing to study and learn                                     | 4                   |                 |
| Willingness to spend the necessary time                           | 3                   |                 |
| Should have children attending school                             | 3                   |                 |
| Self-motivated to keep updated on laws                            | 2                   |                 |
| Interested in having a good school system                         | 2                   |                 |
| Availability  | 2                   |                 |
| Familiar with the district  | 1                   |                 |
| Good reputation in the county                                     | 1                   |                 |
| A top-notch person  | 1                   |                 |
| Resides in the district   | 1                   |                 |
| Lived in the community for at least 5 years                       | 1                   |                 |
| <u>Formal qualifications and experience</u>                       |                     | 13              |
| Any good experienced attorney                                     | 5                   |                 |
| A good existing practice  | 3                   |                 |
| Law degree  | 2                   |                 |
| Experience and good common horse sense                            | 1                   |                 |
| Knowledgeable about the affairs of government                     | 1                   |                 |
| Top half of law class   | 1                   |                 |
| <u>Attendance at seminars</u>                                     |                     | 11              |
| Attendance at seminars for attorneys on a periodic basis          | 6                   |                 |
| Attendance at Florida School Board Attorneys Association seminars | 4                   |                 |
| Stay updated with laws through seminars                           | 1                   |                 |

TABLE 14--(continued)

| Qualifications                                       | Numbers in Response |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Prior experience with school operations</u>       |                     | 9               |
| Previous school experience                           | 3                   |                 |
| Prior experience with school operations              | 3                   |                 |
| Attorneys experienced in school law are hard to find | 1                   |                 |
| Knowledgeable of school board activities             | 1                   |                 |
| Experience as a school board attorney                | 1                   |                 |
| <u>No special training needed</u>                    |                     | 5               |
| No special qualifications for small districts        | 2                   |                 |
| No special training needed                           | 2                   |                 |
| No prior experience needed                           | 1                   |                 |
| <u>Use a county attorney</u>                         |                     | 1               |
| <u>An attorney not needed</u>                        |                     | 1               |
| Total  |                     | 82              |

could be costly to a school district if loss of funds for the education of children resulted.

Significantly, the first group listed in Table 14 was equaled by the second group in the number of comments made (21 of the 82) in response to this question.

The data presented show that the chairmen were just as concerned about the personal attributes of the attorney as they were about his special training and expertise. These comments ranged from his willingness to study and learn to having lived in the community for at least five years.

Formal qualifications and experience was listed third as a group. It accounted for 13 comments, some of which stood in contrast to the first grouping that dealt with special training. Five indicated that any good experienced attorney could handle the legal needs of a school district. Another mentioned that he should have graduated from law school in the top half of his class.

Attendance at seminars was seen as important, according to 11 comments that were made concerning qualifications. The feeling of the school board chairmen who made these comments was that the attorneys needed to stay updated and informed on laws and changes affecting education and that attendance at the seminars and conferences sponsored by various groups was a good way to stay in the flow of information.

In reference to seminars, one chairman suggested that the Florida department of education sponsor them on an area basis so that the attorneys working with school districts could be properly trained and advised on matters relating to school operations. He considered this to be very important to small and medium-sized districts where that portion of the attorney's business relating to educational matters was less than his other interests.

Prior experience with school operations was noted by nine of the study participants as being desirable. However, one of them added that finding an attorney with prior experience was difficult. Regarding experience and special training, five comments were made that none was necessary. Two chairmen added the phrase for small counties, as if to indicate that larger districts might require special qualifications.

In review, these points were made by the school board chairmen relative to Question 5:

1. The school board chairmen made a total of 82 comments regarding the qualifications of attorneys retained by the school district. Special training and personal attributes as groups received an equal number of statements (21). They were followed by formal qualifications and experience (13), attendance at seminars (11), prior experience with school operations (9), no special training needed

- (5), use a county attorney (1), and attorney not needed (1).
2. The size of a district seemed to dictate the availability of legal services for the smaller districts. This problem could give emphasis to the need for regional services.
  3. A law student could be employed to work with school districts, not only as an aid to the districts but also as a training experience for himself.
  4. One chairman suggested that the Florida department of education sponsor regional seminars for attorneys employed by the local school district.

Analysis of the Responses Made by School  
Superintendents to the Questionnaire

The school superintendent in each school district was asked to respond to the same questionnaire that was mailed to the board chairmen and to the board attorneys. Of the 67 superintendents in the state of Florida, 53 supplied answers to the following five questions:

1. In your opinion what legal services are needed by local school districts?
2. What are some of the legal services that you think a school board attorney should provide?
3. Under what circumstances, if any, do you think that an attorney other than the school board attorney should be retained by the local school district?

4. In your opinion what should be the terms and conditions of employment of attorneys retained by local school districts?
5. Based upon your experience what do you think should be the qualifications of attorneys retained by local school districts?

The comments of these 53 superintendents are analyzed and discussed in this section. Tables were developed to reflect the responses made by these study participants to each question.

#### Legal Services Needed by Local School Districts

Of the 271 comments made in response to Question 1 of the questionnaire, 72 were accounted for in this group relative to general services for the local school district, as can be seen in Table 15. The need for legal counsel in matters relating to policy received 22 comments and was noted most frequently in this grouping. It was followed by the statements made regarding the Administrative Procedures Act. As discussed previously, the Administrative Procedures Act, enacted by the Florida Legislature in 1974, requires that the local school district be accountable to the state and public for its policies and procedures. It requires the district to comply with requisites prior to changing a policy or administrative procedure. These changes have to be reviewed at the state level, advertisements have to be placed in the local press, and hearings have to be held

TABLE 15

Frequency of Superintendent Responses Relative  
to the Legal Services Needed  
by Local School Districts

| Services   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>General services</u>  |                     | 72              |
| Policy formulation and interpretation  | 22                  |                 |
| Counsel relative to the Administrative Procedures Act as it relates to the operation of the school board | 12                  |                 |
| Legal counsel at board meetings  | 8                   |                 |
| Representation in all legal matters  | 8                   |                 |
| General advice to the board and superintendent   | 5                   |                 |
| Help for the superintendent and staff  | 4                   |                 |
| More legal services are needed   | 3                   |                 |
| Legal advice in board meetings   | 2                   |                 |
| Legal services to the board and superintendent   |                     |                 |
| Legal services for the superintendent  | 1                   |                 |
| Law and statute interpretation: school code  | 1                   |                 |
| Research on legal questions  | 1                   |                 |
| Interpretation of Supreme Court rulings  | 1                   |                 |
| Legal basis of policy formulation  | 1                   |                 |
| Review policy and district documents   | 1                   |                 |
| <u>Student and personnel matters</u>   |                     | 48              |
| Due process for students   | 9                   |                 |
| Due process for employees  | 8                   |                 |
| Personnel dismissal  | 6                   |                 |
| Personnel matters  | 6                   |                 |
| Student dismissal  | 4                   |                 |
| Integration  | 3                   |                 |
| Student discipline   | 2                   |                 |
| Hearing examiners  | 2                   |                 |
| Participation in hearings  | 2                   |                 |
| Teacher dismissal  | 2                   |                 |
| Hearings   | 1                   |                 |
| Civil rights   | 1                   |                 |
| Equal employment problems  | 1                   |                 |
| Disciplinary actions   | 1                   |                 |
| <u>Collective bargaining and negotiations</u>  |                     | 43              |
| General advice   | 34                  |                 |
| Working with the chief negotiator  | 6                   |                 |
| Labor attorney for collective bargaining   | 2                   |                 |
| Execution of negotiated contracts  | 1                   |                 |

TABLE 15--(continued)

| Services  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Litigation</u>                                       |                     | 32              |
| Litigation  | 31                  |                 |
| Negotiations to preclude court actions                  | 1                   |                 |
| <u>Contracts</u>  |                     | 19              |
| Review contracts and their formulation                  | 16                  |                 |
| Inter-/intra-agency agreements                          | 2                   |                 |
| Administrator contracts                                 | 1                   |                 |
| <u>Finances</u>   |                     | 18              |
| Taxation  | 11                  |                 |
| Bonding issue; special help is needed                   | 7                   |                 |
| <u>Purchases and sales of property</u>                  |                     | 10              |
| <u>Documents</u>  |                     | 6               |
| Paper work: resolutions, federal and state replies      | 3                   |                 |
| Legal documents   | 3                   |                 |
| <u>Liability and immunity</u>                           |                     | 5               |
| Immunity litigation                                     | 2                   |                 |
| Tort liability problems                                 | 2                   |                 |
| Liability litigation                                    | 1                   |                 |
| <u>Specialist for certain court cases</u>               |                     | 4               |
| <u>Bids and bidding procedures</u>                      |                     | 4               |
| <u>A full-time attorney</u>                             |                     | 3               |
| <u>Preparation of legislative programs</u>              |                     | 2               |
| <u>Vandalism</u>  |                     | 1               |
| <u>Insurance</u>  |                     | 1               |
| <u>Selection of architects</u>                          |                     | 1               |
| <u>Legal specialist through consolidated government</u> |                     | 1               |
| <u>Needs vary from district to district</u>             |                     | 1               |
| Total   |                     | 271             |

before the changes are instituted. The concern of the 13 superintendents who mentioned this act by name was expressed by one of the group who stated that this act had already cost his district thousands of dollars in legal fees.

Another statement that was catalogued in this area dealt with the need for legal services for the superintendent apart from those rendered on behalf of the board. The five superintendents making this comment felt that as the chief school executives, they needed unprejudiced counsel for their offices. One of the superintendents stated that running the schools was becoming so complicated from a legal standpoint that he needed an attorney in his office, with their desks adjoining to save on travel and telephone calls.

The next area in the listing was that of student and personnel matters. A total of 48 comments were made about the need for legal services when dealing with individuals, whether students or employees of the district. The two statements accounting for the most comments in this area dealt with due process for students and employees. These statements accounted for 17 of the 48 statements made. Many of the other comments made in this area were similar in nature, and some of the landmark cases mentioned in Chapter I point up the requirements that school districts had in preserving the rights of individuals.

Collective bargaining and negotiations was noted by 43 of this group of study participants as an area that could

require legal services. Thirty-four comments were made to the effect that legal advice was needed in this realm to aid the administration in the bargaining process. The collective bargaining bill was enacted in 1974 as a process available to public employees.

Litigation, contracts, finances, and documents are areas listed in Table 15 as needing legal services. Also indicated in this table were transactions concerning property and real estate.

The area of liability and immunity accounted for five comments of the 271 made in response to this question. In that same legislative session in 1974, sovereign immunity was lifted from the school districts, and they became liable for suit. This liability, of course, could lead to litigation and the further need for legal counsel.

In review, the following statements reflect some of the perceptions of the superintendents responding to Question 1:

1. The concerns of the superintendents as revealed by their responses to Question 1 relative to legal services needed by local school districts dealt mostly with services such as counsel on policies and procedures, student and personnel matters, collective bargaining, contracts, and finances.
2. A concern was expressed about the implications of the Administrative Procedures Act and the legal services required to meet the school districts' obligations under its provisions.

3. A feeling was expressed about the need that superintendents might have for legal counsel to aid them in carrying out the duties of the office.
4. Emphasis was placed on legal services in matters relating to students and employees. In the answers to Question 1, 48 statements were made regarding processes and procedures for handling student and personnel problems. Legal counsel was needed to insure the rights of these individuals and to be assured that the school district was executing its responsibility properly.
5. With the advent of collective bargaining, 43 superintendents indicated the need for legal assistance in representing the interests of the school board and the administration. General advice was the subject most frequently mentioned as being needed in this area. However, two superintendents suggested the services of a skilled labor attorney were needed to deal with these matters.
6. Three superintendents stated that a full-time attorney was needed in their districts to handle the required legal services.
7. Other areas were noted, as can be seen in Table 15, and they are self-explanatory as to the need for legal services in those areas.

### Services a School Board Attorney Should Provide

Table 16 shows the responses made by the superintendents to Question 2 of the questionnaire, relative to the services that the school board attorney should provide. A total of 275 comments were identified, and each was catalogued in one of 15 different subject areas.

The subject area that received the most comments dealt with the general types of services that an attorney might provide to a school district and its officials. Sixty-five statements were made, and of these, 41 were concerning the provision of general counsel and advice to the school district officials. However, 25 of these 41 qualified their remarks by saying that the school board attorney should provide this counsel and advice when asked. Another emphasized the point by stating that the school board attorney should "keep his mouth shut" if not asked about an issue.

The area of contracts was mentioned in 44 statements made by the superintendents. Of these, 25 were directing their concern toward those contracts that were not routine in the normal operations of the school district. One superintendent stated that most form contracts used by other parties did not fit the needs of the school district. Therefore, the board attorney should draw up the contracts in a manner compatible with the board's requirements.

TABLE 16

Frequency of Superintendent Responses Relative to  
the Services That School Board Attorneys  
Should Provide

| Areas of Service   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>General counsel</u>   |                     | 65              |
| Provide counsel on matters and issues when asked                                   | 19                  |                 |
| General counsel and advice to the board and superintendent                         | 16                  |                 |
| Advise the superintendent and staff on local matters when requested                | 6                   |                 |
| Review and update policies   | 6                   |                 |
| Monitor school board meetings and advise on process and procedure                  | 4                   |                 |
| School board attorney should guide the school board in all decision-making efforts | 2                   |                 |
| Advise staff on business items for the school board agenda                         | 2                   |                 |
| Review administrative proceedings relative to legality                             | 2                   |                 |
| Keep the schools out of legal trouble  | 1                   |                 |
| Advise on the legal implications of school board actions                           | 1                   |                 |
| Provide counsel voluntarily when matters come to his attention                     | 1                   |                 |
| School board attorney should be available  | 1                   |                 |
| School board attorney should keep his mouth shut if not asked                      | 1                   |                 |
| Assist in other areas when requested   | 1                   |                 |
| Serve on committees appointed by the superintendent                                | 1                   |                 |
| Answer any legal questions asked by the school board                               | 1                   |                 |
| <u>Contracts</u>   |                     | 44              |
| Review all board contracts that are not routine                                    | 25                  |                 |
| Preparation of contracts, agreements, resolutions, and documents                   | 19                  |                 |
| <u>Collective bargaining and negotiations</u>                                      |                     | 37              |
| Advise on collective bargaining  | 32                  |                 |
| Be a member of the collective bargaining team                                      | 5                   |                 |

TABLE 16-- (continued)

| Areas of Service  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Attendance at meetings</u>   |                     | 32              |
| The school board attorney should attend all board meetings                      | 21                  |                 |
| Attend all regular school board meetings  | 10                  |                 |
| Attend the school board meetings if agenda items have legal implications        | 1                   |                 |
| <u>Laws and regulations</u>   |                     | 26              |
| Counsel relative to law, regulations, etc., when developing school board policy | 9                   |                 |
| Provide interpretation of laws, statutes, and regulations                       | 8                   |                 |
| Update the board and superintendent on new legislation                          | 2                   |                 |
| Keep the school board within scope of prevailing law, policies, and statutes    | 2                   |                 |
| Advise on the implications of court cases                                       | 2                   |                 |
| Assist with legislative matters   | 2                   |                 |
| School board attorney should provide expertise on school law                    | 1                   |                 |
| <u>Student and personnel matters</u>  |                     | 23              |
| Personnel problems  | 8                   |                 |
| Advise on suspensions and dismissals  | 8                   |                 |
| Personnel items that could lead to litigation                                   | 5                   |                 |
| Attend hearings   | 2                   |                 |
| <u>Handle litigation proceedings involving the school board</u>                 |                     | 17              |
| <u>Property transactions</u>  |                     | 9               |
| <u>Finances</u>   |                     | 9               |
| Counsel on finances   | 7                   |                 |
| Be involved in the auditing process   | 2                   |                 |
| <u>Bidding procedures</u>   |                     | 5               |
| <u>Associate with other specialized counsel when needed</u>                     |                     | 4               |

TABLE 16--(continued)

| Areas of Service   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>School board attorney should attend the school board association meetings and others designated by the school board</u> |                     | 4               |
| <u>Superintendent should be the only contact with the school board attorney between board meetings</u>                     |                     | 1               |
| <u>Depends on the size of the districts and the financial arrangements with the school board attorney</u>                  |                     | 1               |
| <u>A school board attorney is not employed; legal services are provided through the city</u>                               |                     | 1               |
| Total  |                     | 275             |

The next area most frequently noted was collective bargaining and negotiations. It polled 37 comments. These statements were reduced to two subject areas. Thirty-two of the superintendents indicated that the school board attorney should advise on the bargaining process. However, five superintendents said that the school board attorney should be on the bargaining team. It is clear that the majority of opinion rests in favor of the advisory capacity of the school board attorney relative to collective bargaining.

Some negative comments were noted by the writer. One superintendent stated that the school board attorney seldom understood what the teams were bargaining about and that his presence could be detrimental to the process. Of the superintendents responding to the questionnaire, 12 clearly indicated that the school board attorney should not be a member of the negotiating team.

Attendance at school board meetings was seen as desirable according to the 32 comments that were catalogued in this area. Of these, 21 indicated that the school board attorney should attend all of the board meetings. Ten indicated all regular board meetings, and one said that attendance was necessary only if there were items on the agenda that might have legal implications.

Laws and regulations accounted for 26 of the comments made in answer to this question. The respondents indicated

a need for legal counsel to insure that the actions and activities of the school district personnel were in harmony with existing laws and regulations. They noted the need to be kept updated on the changes in the laws that affected school district operations, since these changes seemed to be coming about so frequently.

Student and personnel matters was noted as an area specifically needing the services of the school board attorney. However, only 23 of the 275 comments made were directed toward this area of concern.

Other groups are listed in Table 16 and are self-explanatory. The table, however, shows that one superintendent felt that the superintendent should be the only contact with the attorney during and between meetings of the school board.

In summary, the data revealed the following concerning the responses of the superintendents to Question 2:

1. As can be seen in Table 16, a total of 275 comments were recorded from the responses made by the 53 superintendents responding to the question concerning the legal services that the school board attorney should provide.
2. The services that were general and advisory in nature received the most comments. A point was made that school board attorneys should provide these advisory services when asked and that

voluntary involvement might not be desired by some school boards and superintendents. Even though they wanted him to be quiet unless invited to participate, a majority of the superintendents felt that the school board attorney should be present at the meetings.

3. A majority of the superintendents mentioned contracts, their preparation and review, as an area of service that the school board attorney should provide along with such services as those needed in litigation, property transactions, finances, and bidding procedures.
4. The role of the school board attorney should be advisory during collective bargaining processes.
5. There was an area of service identified relative to laws and regulations that required legal counsel. Such counsel was needed to insure that the actions of the school district officials were in harmony with the current laws and regulations.
6. One respondent indicated that legal services were provided the school district through the legal department of the city government.

Retaining an Attorney Other Than  
the School Board Attorney

Table 17 reflects the opinions of the superintendents who responded to Question 3 of the questionnaire. A total of 100 statements were made in response to this question.

TABLE 17

Frequency of Superintendent Responses Relative  
to the Need for Attorneys Other Than  
the School Board Attorney

| Conditions   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Conflicts</u>   |                     | 21              |
| An attorney for the superintendent during conflicts with the school board  | 12                  |                 |
| For the superintendent and his staff   | 3                   |                 |
| An attorney for the superintendent when he is involved in a case   | 2                   |                 |
| Conflict within the school board membership  | 1                   |                 |
| For the superintendent's problems  | 1                   |                 |
| Between the school board and the administration  | 1                   |                 |
| During conflicts with the administration   | 1                   |                 |
| <u>Student and personnel matters</u>   |                     | 19              |
| During suspensions or terminations of employees, since the school board attorney acts as an advisor to the board | 8                   |                 |
| During public hearings in suspensions or dismissals of employees   | 4                   |                 |
| For teacher dismissals   | 3                   |                 |
| Before the professional practices council  | 1                   |                 |
| When the school board attorney acts as an advisor to the school board concerning personal problems               | 1                   |                 |
| During the prosecution of a teacher for legal reasons  | 1                   |                 |
| For student suspensions or expulsions  | 1                   |                 |
| <u>Expertise needed</u>  |                     | 17              |
| When a specific expertise is essential or needed   | 11                  |                 |
| When the school board attorney lacks the required expertise  | 4                   |                 |
| When the school board attorney needs more help   | 2                   |                 |
| <u>Collective bargaining</u>   |                     | 9               |
| An attorney for collective bargaining trained in labor law during contract negotiations                          | 6                   |                 |
| A specialist in labor law, employee problems, and contracts  | 3                   |                 |

TABLE 17--(continued)

| Conditions   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Federal and state actions</u>   |                     | 9               |
| Federal law suits  | 5                   |                 |
| Suits involving federal and state agencies   | 1                   |                 |
| Federal suits if the school board attorney is not certified to try such cases                                  | 1                   |                 |
| Suits involving a number of school districts   | 1                   |                 |
| Integration suits  | 1                   |                 |
| <u>When the school board attorney advises of the need</u>  |                     | 8               |
| <u>When the school board attorney has a conflict of interest</u>   |                     | 4               |
| <u>None</u>  |                     | 3               |
| <u>Time and location requirements</u>  |                     | 2               |
| For drawn-out situations requiring lots of time and concentration  | 1                   |                 |
| When representation is needed in a distant location  | 1                   |                 |
| <u>For any public official in the execution of his duties</u>  |                     | 1               |
| <u>One or two attorneys should be retained by the 67 districts to issue reviews periodically on school law</u> |                     | 1               |
| <u>School board attorney should handle most situations</u>   |                     | 1               |
| <u>Depends on the size or complexity of the school district</u>  |                     | 1               |
| <u>Special bond counsel</u>  |                     | 1               |
| <u>School board attorney should advise both the school board and the superintendent</u>                        |                     | 1               |
| <u>For arbitration of damage suits</u>   |                     | 1               |
| <u>When public interest warrants such action in the opinion of school board</u>                                |                     | 1               |
| Total  |                     | 100             |

These comments were divided into 17 groups containing similar statements.

The group that contained the most statements as shown by Table 17 was the area of conflicts. It accounted for 21 of the 100 statements made. The majority of these comments, 12 of 21, reflected the feeling that an attorney would be needed for the superintendent when he was in conflict with the school board on issues that might precipitate legal action. In fact, with the exception of one comment, the rest of the statements catalogued in this area insinuated that there were occasions when the superintendent and his staff needed legal counsel apart from the services of the school board attorney. As for conflicts between the school board and the superintendent, one respondent stated that there was no need to employ another attorney because the next election would solve that problem.

Student and personnel matters was mentioned by 19 respondents as an area requiring additional legal services. Of these, 18 were centered in the requirement for the school board attorney to act as a legal advisor to the school on matters relating to suspensions, dismissals, expulsions, or terminations of employment. When dealing with such matters, the school board acts as a quasi-judicial body, according to the superintendents making these statements. The term jury was used by a superintendent when discussing this area of concern. He used this term in referring to the school

board membership. Another superintendent described the situation in a manner that indicated that the superintendent prepared the charges against an individual, and another attorney was employed to prosecute the case before the school board. Under these circumstances, the school board attorney would not act as the judge and prosecutor at the same time. Therefore, another attorney should be employed to prosecute the case.

The third area listed in Table 17 refers to conditions that dictated a special skill or expertise that might not exist in the inventory of abilities of the school board attorney, or if they did exist, he would be unable to utilize them because of his responsibilities to the school board. This area accounted for 17 comments.

Collective bargaining was also noted as an area of service that might require additional counsel. It received nine comments from this group of study participants. Most of them (6) indicated the need for an attorney trained in labor law to aid the administration during contract negotiations.

Federal and state actions also accounted for nine comments from the superintendents. Federal actions were noted in five of the responses to the question concerning the conditions that might require additional counsel.

One superintendent suggested that the 67 school districts retain one or two attorneys to review periodically

laws concerning education and the administration of school districts and to publish reports to the school districts along with recommendations.

The superintendents answering Question 3 of the questionnaire made 100 comments in 17 categories relative to the conditions that might require additional legal counsel besides the school board attorney. In review, the following points were indicated by these comments:

1. The matter of conflicts was the condition most frequently noted by the superintendents; more specifically, conflicts between the superintendent and the school board during which the superintendent would need legal counsel.
2. Student and personnel hearings might require another attorney to prosecute the case, since the school board attorney should act as an advisor to the board.
3. The school board attorney might not be able to deliver certain services, because of his role as the school board attorney or because he lacked the needed expertise.
4. Closely related to the preceding point was the need for assistance during the collective bargaining process, such as that from an attorney trained or experienced in labor law.

5. Federal and state actions were designated as conditions that might require additional counsel. This point could be closely related to the areas listed in Table 17 as time and location requirements.
6. One or two attorneys should be retained by the 67 school districts to review periodically the laws and issues concerning education and to report to the districts their findings and recommendations.

#### Conditions of Employment Between School Districts and Attorneys

A total of 75 comments were made in response to Question 4 relative to the terms and conditions of employment of attorneys retained by local school districts. These comments were grouped into 15 different subject areas. Table 18 shows these areas and the number of statements made in each area or condition of employment.

As can be seen in Table 18, several methods of remuneration for services rendered were noted. Receiving the most comments (19) was the method that employed a retainer plus a fee schedule for different types of services.

Sixteen statements indicated the desirability of a formal contract covering the services to be provided and the means of remuneration for those services. These superintendents expressed the need for a formal agreement that specifically stated the duties of the attorney retained and his relationship to the superintendent and school board.

TABLE 18

Frequency of Superintendent Responses Concerning  
the Conditions of Employment Needed  
Between School Districts and Attorneys

| Conditions   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Retainer plus fee</u>   |                     | 19              |
| A combination of fee and retainer  | 10                  |                 |
| Retainer for specified work and a fee for additional services                                | 3                   |                 |
| Retainer for advisory services and fees for other items                                      | 2                   |                 |
| Annual retainer plus fees for specific services, e.g., bonds, school board business          | 1                   |                 |
| Hired annually with basic fee for routine items plus standard fee for others                 | 1                   |                 |
| For the school board attorney, retainer plus a fee schedule                                  | 1                   |                 |
| A combination of retainer and fee depending on the need                                      | 1                   |                 |
| <u>Formal contracts</u>  |                     | 16              |
| Negotiated contracts for specific services when needed                                       | 4                   |                 |
| A contract specifying duties and fee schedule  | 3                   |                 |
| Annual contract and salary with specific duties listed and described                         | 3                   |                 |
| A contract for basic services plus an hourly rate for other activities                       | 2                   |                 |
| A formal contract with specific duties   | 2                   |                 |
| A contract for the school board attorney with a fee schedule for services rendered           | 1                   |                 |
| A written contract made with the superintendent, listing duties                              | 1                   |                 |
| <u>Retainer plus hourly schedule</u>   |                     | 13              |
| Retainer plus an hourly schedule   | 6                   |                 |
| Retainer plus an hourly schedule for the school board attorney                               | 2                   |                 |
| Monthly retainer for certain duties and time allocations and an hourly schedule for overruns | 2                   |                 |
| A retainer and hourly schedule with duties determined at the time of appointment             | 1                   |                 |
| A flat fee for certain services, then an hourly schedule                                     | 1                   |                 |
| Retainer plus hourly rate and expenses   | 1                   |                 |

TABLE 18--(continued)

| Conditions  | Number of Responses |                 |
|---|---------------------|-----------------|
|   | Within Areas        | Total for Areas |
| <u>Full-time attorney</u>   |                     | 8               |
| Full-time attorney if size warrants   | 4                   |                 |
| Full-time attorney  | 1                   |                 |
| Trends point toward full-time attorney                                      | 1                   |                 |
| An in-house attorney with a formal contract, salary, and listed duties      | 1                   |                 |
| A full-time attorney is needed for districts with 20,000 students or more   | 1                   |                 |
| <u>Retain a legal firm</u>  |                     | 4               |
| Retain a firm of attorneys to be available                                  | 3                   |                 |
| Retain a firm of attorneys for the school district                          | 1                   |                 |
| <u>Depends on the size and complexity of the district</u>                   |                     | 4               |
| <u>Hourly rate</u>  |                     | 3               |
| Hourly rate   | 2                   |                 |
| An hourly rate for attorneys other than the school board attorney           | 1                   |                 |
| <u>Fee basis for attorneys other than the school board attorney</u>         |                     | 1               |
| <u>Share an attorney with other public agencies</u>                         |                     | 1               |
| <u>Attorney should attend school board meetings when</u>                    |                     | 1               |
| <u>Limit the school board attorney to 8 years of service</u>                |                     | 1               |
| <u>Employ the school board attorney for no less than 2 years</u>            |                     | 1               |
| <u>The school board attorney should not represent other public agencies</u> |                     | 1               |
| <u>Retain legal counsel for the superintendent and staff</u>                |                     | 1               |
| <u>No response</u>  |                     | 1               |
| Total   |                     | 75              |

Closely related to the first area in Table 18 was the method of remuneration that incorporated a retainer plus an hourly schedule. This method accounted for 13 comments made by the superintendents. When considered with the group of statements that mentioned only an hourly rate without a retainer (3), then the two groups accounted for 16 comments.

Eight superintendents mentioned that a full-time attorney was needed in their school district. One suggested that districts with 20,000 or more students could utilize the services of an attorney on a full-time basis. Another superintendent stated the legal requirements for the operation of a school district were becoming so complex that he needed an attorney 24 hours a day, with their desks adjoining each other.

Of the superintendents responding, four suggested that a firm of attorneys be retained. They reasoned that greater flexibility could be achieved in this manner. By retaining a firm, then several attorneys could be made available to the school district to provide counsel on the many aspects of its operations.

Two superintendents placed time limitations on the employment of the school board attorney. One stated that the attorney retained in this position should be limited to eight years of service. He did not explain his reasoning for this statement. Another stated that the school board attorney should not be retained for less than two years.

Both of these superintendents leave the reader without an explanation, and one can only guess as to what such an explanation might have revealed.

Only two respondents in this group of study participants indicated any opinion on whether an attorney retained by the school district should represent other governmental agencies. One said that attorneys could be employed in cooperation with other governmental bodies. However, another stated that the attorney retained should not represent such other entities.

In review, the following points were indicated by the 75 comments of the 53 superintendents who responded to Question 4 concerning the terms and conditions of employment of attorneys retained by local school districts:

1. Several methods of remuneration for services rendered were indicated. A retainer plus a fee schedule was noted more frequently (19) than formal contracts (16), retainer plus hourly schedule (13), full-time attorney (8), or hourly rate (3).
2. The use of formal contracts was advocated by 16 superintendents in order to identify clearly those services to be provided and the means of remuneration.
3. The use of a full-time attorney was encouraged by eight superintendents where the size of the district would permit. One superintendent suggested

that a district with 20,000 students or more would need a full-time attorney.

4. The use of a firm of attorneys would add flexibility to the legal services available to the school district.
5. Two superintendents mentioned limits on length of employment of the school board attorney. One said a minimum of two years and another said a maximum of eight years.

#### Qualifications of Attorneys Retained

The superintendents answering the question relative to the qualifications of attorneys retained by local school districts made 137 statements that were divided into 9 subject areas. Table 19 depicts the responses made to this question by subject area and the number of comments catalogued in each area.

Special training led the list as the qualification most frequently noted by the superintendents. It accounted for 40 of the 137 comments made. Of these 40 comments, 20 were directed towards special training in school law, and if a speciality were required, then 4 superintendents felt that special training in that area would be desirable. Four other respondents from this group stated that attorneys retained by a school district should have special training in law school. The other comments made in this area indicated

TABLE 19

Frequency of Superintendent Responses Relative to  
the Qualifications Desired of Attorneys  
Retained by the School Districts

| Qualifications   | Number of Responses |                    |
|--|---------------------|--------------------|
|  | Within<br>Areas     | Total for<br>Areas |
| <u>Special training</u>  |                     | 40                 |
| Special training in school law   | 20                  |                    |
| Special training in law school desirable   | 4                   |                    |
| Additional training in the expertise required,<br>e.g., labor law, collective bargaining | 4                   |                    |
| Expertise in due process proceedings   | 3                   |                    |
| Knowledge of school law  | 2                   |                    |
| Familiar with school law   | 2                   |                    |
| A special training course in school law  | 1                   |                    |
| An expert inschool law   | 1                   |                    |
| An understanding of the statutes relating to<br>education                                | 1                   |                    |
| Knowledge of state law relating to education   | 1                   |                    |
| Management training  | 1                   |                    |
| <u>Formal qualification and experience</u>   |                     | 28                 |
| Member in good standing of the state bar   | 4                   |                    |
| A general practitioner   | 4                   |                    |
| Background in property law   | 4                   |                    |
| Background in contract law   | 4                   |                    |
| Law degree   | 3                   |                    |
| Courtroom ability (trial experience)   | 3                   |                    |
| An attorney qualified to practice law in Florida   | 1                   |                    |
| Practical law experience   | 1                   |                    |
| Knowledge of governmental operations   | 1                   |                    |
| A minimum number of years of exeperience   | 1                   |                    |
| License ot practice in the federal courts  | 1                   |                    |
| Lots of civil experience   | 1                   |                    |
| <u>Personal attributes</u>   |                     | 27                 |
| Interest in public schools   | 6                   |                    |
| Willing to devote time and effort to learn   | 4                   |                    |
| Good reputation  | 3                   |                    |
| Knowledgeable of local conditions in the school<br>district                              | 3                   |                    |
| A willingness to help solve school problems  | 2                   |                    |
| Having a desire to help schools  | 2                   |                    |
| Effectiveness is better than training  | 1                   |                    |
| Ability in conducting hearings   | 1                   |                    |
| A respected and experienced attorney from within<br>the district                         | 1                   |                    |

TABLE 19--(continued)

| Qualifications   | Number of Responses |                 |
|--|---------------------|-----------------|
|  | Within Areas        | Total for Areas |
| <u>Personal attributes--(continued)</u>  |                     |                 |
| Trustworthiness  | 1                   |                 |
| Personable and cool  | 1                   |                 |
| Availability   | 1                   |                 |
| Not reluctant to call on additional help if needed   | 1                   |                 |
| <u>Prior experience with school operations</u>   |                     | 26              |
| Previous experience with school operations   | 17                  |                 |
| Experience in school law   | 4                   |                 |
| Prior school board experience  | 3                   |                 |
| Previous teaching experience   | 2                   |                 |
| <u>Attendance at seminars</u>  |                     | 5               |
| Willing to attend training seminars held by the Florida department of education and the Florida School Board Association | 3                   |                 |
| Yearly updating needed   | 1                   |                 |
| In-service training needed   | 1                   |                 |
| <u>Most school board attorneys lack proper qualifications</u>  |                     | 5               |
| <u>Experience with employee relations in the public sector</u>   |                     | 3               |
| <u>No special training needed</u>  |                     | 2               |
| <u>Retain the attorney long enough to gain experience</u>  |                     | 1               |
| Total  |                     | 137             |

the desirability of employing, if possible, those attorneys with school law exposure.

The area of formal qualifications and experience accounted for 28 comments. These were scattered over 12 statements that described what was desired in this respect. Table 19 depicts these statements and the number of times that each was mentioned by those commenting on this area.

Personal attributes were mentioned in the responses that were made to Question 5 of the questionnaire. Six comments were made to the effect that the attorney should have an interest in public education. In addition he should be willing to devote time and effort to learn his job according to four of the statements. The rest of the comments generally addressed themselves to such traits as willingness, desire, effectiveness, ability, and trustworthiness.

Prior experience with school operations was a qualification deemed desirable, according to 26 statements made by superintendents commenting on this area. One superintendent described the ideal person for the position of school board attorney as someone with an educational background, including administrative experience, who thereafter obtained a law degree.

Attendance at seminars was seen as important by five superintendents. Three of these indicated that the attorney should be willing to attend the appropriate seminars, and

two others pointed out the need for updating and in-service training for those providing legal services to school districts.

Table 19 shows the last 4 groupings of the 10 established. They accounted for 11 of the 137 comments catalogued. Five of the superintendents expressed their view that most school board attorneys lacked proper qualifications and that qualified attorneys were scarce. Three comments indicated that experience in employee relations would be of value, but two others simply stated that no special training was needed. The final comment, made by one superintendent, offered the advice that an attorney should be kept long enough to gain experience in school district operations, so that he could better serve the legal needs of the district.

Reflected in Table 19 are the responses of the superintendents to Question 5 of the questionnaire. In summary, the following points were indicated by the data:

1. Special training was the most frequently noted qualification for an attorney being considered for employment by a local school district.
2. An attorney should be a member in good standing of the Florida bar as well as having practical experience in the legal profession.
3. Personal attributes were also important in the opinions of the superintendents. The overall

feeling was that of interest in and concern for the success of the public school operations.

4. Prior experience with school operations was seen as desirable but difficult to find.
5. The attorneys retained should stay updated on the changing legal requirements of the district.
6. Since most attorneys have little prior experience with school operations, they should be retained for a sufficiently long period of time to gain the experience necessary to serve the legal needs of the school district properly.

#### Summary

In this chapter, the writer has presented the responses made by the school board attorneys, the school board chairmen, and the school superintendents to the questionnaire which contained the following five questions:

1. In your opinion what legal services are needed by local school districts?
2. What are some of the legal services that you think a school board attorney should provide?
3. Under what circumstances, if any, do you think that an attorney other than the school board attorney should be retained by the local school district?
4. In your opinion what should be the terms and conditions of employment of attorneys retained by local school districts?

5. Based upon your experience what do you think should be the qualifications of attorneys retained by local school districts?

The responses made by each group of study participants to each question were accumulated, and tables were presented that indicated the frequency of responses in the various subject areas. Also, some conditions and suggestions not reported in the tables were discussed and included as a part of this chapter.

A wide variety of reactions to the first question concerning legal services needed by local school districts was reported by the field study respondents. Areas mentioned ranged from general counsel to questions on parliamentary procedure. In response to the second question, the data indicated that the school board attorney should provide the majority of the services needed by the local school district. However, the responses to the third question clearly indicated that there were circumstances that would dictate the use of an attorney other than the school board attorney. Concerning the terms and conditions of employment of attorneys retained by local school districts, the respondents reported a variety of perceptions regarding these conditions. The attorneys favored the use of formal contracts that specified their duties and responsibilities. The other two groups of respondents were less concerned about such contracts and most frequently mentioned other conditions of

employment. Relative to the last question concerning qualifications of attorneys retained, the school board chairmen and superintendents emphasized the need for special training in school law. The school board attorneys emphasized formal qualifications and law practice experience.

## CHAPTER IV

### COMPARATIVE ANALYSIS OF THE FIELD DATA

This chapter deals with the responses of the participants included in the field study on a comparative basis. Commonalities and/or differences as reflected by the tables that were prepared for each question are discussed as well as other aspects of providing legal services to local school districts.

#### Comparison of the Number of Comments Made by the Study Participants

Table 20 shows the quantity of responses made to the questions by each of the three groups of study participants. As can be seen, 2,083 comments were analyzed and catalogued in the various tables. The average number of comments made per questionnaire was 16.27. The school board attorneys averaged more comments per questionnaire (18.36) than did the school superintendents (16.19) and the school board chairmen (14.14). This pattern was consistent through all of the questions, with the exception of Question 5, where the mean of the school superintendents (2.58) was greater than that of the school board attorneys (2.46) and the school board chairmen (2.28). The school board chairmen made the fewest comments in response to all questions. t tests were not computed on these data because of unequal numbers in the three groups of study participants.

TABLE 20

Number of Comments Made by the Study Participants to Each Question of the Questionnaire

| Question Number                                     | Number of Attorney Comments | Mean  | Number of Chairman Comments | Mean  | Number of Superintendent Comments | Mean  | Total of Comments |  |
|---|-----------------------------|-------|-----------------------------|-------|-----------------------------------|-------|-------------------|--|
| 1   | 229                         | 5.87  | 167                         | 4.64  | 271                               | 5.11  | 667               |  |
| 2   | 221                         | 5.67  | 160                         | 4.44  | 275                               | 5.19  | 656               |  |
| 3   | 106                         | 2.72  | 59                          | 1.64  | 100                               | 1.89  | 265               |  |
| 4   | 64                          | 1.64  | 41                          | 1.14  | 75                                | 1.42  | 180               |  |
| 5   | 96                          | 2.46  | 82                          | 2.28  | 137                               | 2.58  | 315               |  |
| Totals  | 716                         | 18.36 | 509                         | 14.14 | 858                               | 16.19 | 2083              |  |
| Mean for all study participants' comments . . . . . |                             |       |                             |       |                                   |       | 16.27             |  |

Chi-square tests of significance were computed on the number of comments made in response to each question. This information is presented by Table 21. No significance was found at the .05 level with the exception of Question 3. Upon inspection of the data it was obvious that the school board attorney's component of the chi-square value contributed heavily to this significance. The attorneys cited significantly more conditions that could justify the employment of an attorney other than the school board attorney than did the other study participants. These values can be seen by inspecting the data presented in Tables 20 and 21.

Comparison of Area Rankings of Responses Made  
by the Study Participants to Each Question of  
the Questionnaire

Tables were prepared that show the ranking of subject areas most frequently mentioned in the responses of the school board attorneys, school board chairmen, and school superintendents. Each subject area was ranked according to its response frequency when compared with other subject areas cited by that group of study participants. The number of ranks less than ten was dependent upon the appearance of single entries in the listings. By combining the rankings of each subject area, an overall response ranking was established for each question.

The Legal Services Needed by Local School Districts

As can be seen in Table 22, the area of general services was ranked first in order by all three groups of study

TABLE 21

Results of the Chi-Square Tests of Significance  
on the Number of Comments Made in Response  
to Each Question

|                   | O   | E      | (O-E)  | (O-E) <sup>2</sup> | (O-E) <sup>2</sup> /E |
|-------------------|-----|--------|--------|--------------------|-----------------------|
| <u>Question 1</u> |     |        |        |                    |                       |
| SBA <sup>a</sup>  | 229 | 203.23 | 23.77  | 664.09             | 3.268                 |
| SBC <sup>b</sup>  | 167 | 187.59 | -20.59 | 423.95             | 2.260                 |
| SS <sup>c</sup>   | 271 | 276.18 | - 5.18 | 26.83              | .097                  |
|                   |     |        |        |                    | <u>5.625*</u>         |
| <u>Question 2</u> |     |        |        |                    |                       |
| SBA               | 221 | 199.88 | 21.12  | 446.05             | 2.232                 |
| SBC               | 160 | 184.50 | -24.5  | 600.25             | 3.253                 |
| SS                | 275 | 271.62 | 3.38   | 11.42              | .042                  |
|                   |     |        |        |                    | <u>5.527*</u>         |
| <u>Question 3</u> |     |        |        |                    |                       |
| SBA               | 106 | 80.74  | 25.26  | 638.07             | 7.903                 |
| SBC               | 59  | 74.53  | -15.53 | 241.18             | 3.236                 |
| SS                | 100 | 109.73 | - 9.73 | 94.67              | .863                  |
|                   |     |        |        |                    | <u>12.002+</u>        |
| <u>Question 4</u> |     |        |        |                    |                       |
| SBA               | 64  | 54.84  | 9.16   | 83.91              | 1.530                 |
| SBC               | 41  | 50.62  | - 9.62 | 92.54              | 1.828                 |
| SS                | 75  | 74.53  | .47    | .22                | .003                  |
|                   |     |        |        |                    | <u>3.361*</u>         |
| <u>Question 5</u> |     |        |        |                    |                       |
| SBA               | 96  | 95.98  | .02    | .00                | .000                  |
| SBC               | 82  | 88.95  | - 6.59 | 43.43              | .490                  |
| SS                | 137 | 130.43 | 6.57   | 43.16              | .331                  |
|                   |     |        |        |                    | <u>.821*</u>          |

\*Not significant at the .05 level.

+Significant at the .05 level.

<sup>a</sup>SBA = School board attorney.

<sup>b</sup>SBC = School board chairman.

<sup>c</sup>SS = School superintendent.

TABLE 22

Ranking of the 10 Most Frequently Mentioned Areas of  
Legal Services Needed by Local School Districts

| Areas of Legal Services                    | Ranking by       |                  |                  | Sum of<br>Ranks |
|--|------------------|------------------|------------------|-----------------|
|  | SBA <sup>a</sup> | SBC <sup>b</sup> | SSC <sup>c</sup> |                 |
| General services                           | 1.5              | 1                | 1                | 3.5             |
| Student and personnel matters              | 1.5              | 2.5              | 2                | 6.0             |
| Collective bargaining and negotiations     | 3                | 2.5              | 3                | 8.5             |
| Finances                                   | 4                | 9                | 6                | 19              |
| Litigation                                 | 5.5              | 5                | 4                | 14.5            |
| Oversee contractual activities             | 5.5              | 6.5              | 5                | 17              |
| Purchases and sales of property            | 7                | 8                | 7                | 22              |
| Liability and immunity                     | 8                | X                | 9                | 28              |
| New legislation and statutes               | 9.5              | 11.0             | X                | 31.5            |
| Services for a large corporation           | 9.5              | X                | X                | 31.5            |
| Professional legal counsel                 | X                | 4                | X                | 26              |
| Taxation                                   | X                | 6.5              | X                | 28.5            |
| Matters pertaining to school board members | X                | 11.0             | X                | 33              |
| Documents                                  | X                | 11.0             | 8                | 30              |
| Specialist for certain court cases         | X                | X                | 10.5             | 32.5            |
| Bids and bidding procedures                | X                | X                | 10.5             | 32.5            |

Note: X = 11 or one more than the last rank.

<sup>a</sup>School board attorney.

<sup>b</sup>School board chairman.

<sup>c</sup>School superintendent.

participants. The school board attorneys did view the area of student and personnel matters as an area equally requiring legal services. The school board chairmen ranked both student and personnel matters and collective bargaining and negotiations second in the listings. It is apparent from the data presented in Table 33 that there was general agreement regarding the areas in which legal services were needed in the first three areas of service listed.

The area of finances was not ranked as high by the school board chairmen as by the school board attorneys or the superintendents. Instead, the school board chairmen identified the area of professional legal counsel as a service needed and placed it fourth in the listing. Also the school board chairmen ranked taxation higher than did the school board attorneys or the superintendents.

Comparison of the Responses to Question 2  
Relative to the Services That the School  
Board Attorney Should Provide

According to the data in Table 23, the school board attorneys ranked collective bargaining and negotiations higher than did the other groups of study participants. Of the top four, it was ranked first by the school board attorneys, second by the school board chairmen, and third by the superintendents.

The school board attorneys and chairmen did agree that attendance at the board meetings was important and ranked it third. Attendance at meetings was ranked fourth by the

TABLE 23

Ranking of the 10 Most Frequently Mentioned Areas  
of Service That a Local School Board Attorney  
Should Provide

| Areas of Service  | Ranking by       |                  |     | Sum of<br>Ranks |
|---|------------------|------------------|-----|-----------------|
|   | SBA <sup>a</sup> | SBC <sup>b</sup> | SSC |                 |
| Collective bargaining and negotiations                      | 1                | 2.5              | 3   | 6.5             |
| Attendance at meetings                                      | 3                | 2.5              | 4   | 9.5             |
| General counsel   | 2                | 1                | 1   | 4               |
| Contracts   | 4                | 4                | 2   | 10              |
| Student and personnel matters                               | 5                | 8.0              | 6   | 19              |
| Represent the board in all litigation                       | 6                | 8.0              | 7   | 21              |
| Associate with other specialized counsel when needed        | 10.5             | 10               | X   | 31.5            |
| Laws and regulations  | 8                | 5                | 5   | 18              |
| Finances  | 7                | 6                | 8.5 | 21.5            |
| Property matters  | 9                | 8.0              | 8.5 | 25.5            |
| Advice under the rules of the Administrative Procedures Act | 10.5             | X                | X   | 32.5            |
| Bidding procedures  | X                | X                | 10  | 32              |

Note: X = 11 or one more than the last rank.

<sup>a</sup>SBA = School board attorney.

<sup>b</sup>SBC = School board chairmen.

<sup>c</sup>SS = School superintendent.

superintendents. They agreed with the chairmen on ranking general counsel first in the listings, while the school board attorneys listed it third.

The superintendents ranked contracts second in the services to be provided by the school board attorney, and the other study participants ranked it fourth. Also the superintendents and chairmen attached more importance to laws and regulations by ranking it fifth, whereas the school board attorneys placed it eighth, according to Table 23.

The overall rankings established the area of general counsel first, collective bargaining and negotiations second, attendance at meetings third, and contracts fourth.

Comparison of the Responses Relative to the Conditions That Might Require the Services of an Attorney Other Than the School Board Attorney

The category of student and personnel matters was ranked highest by the school board attorneys and second by the superintendents according to the data in Table 24. The school board chairmen apparently did not agree on the magnitude of importance assigned to that area by the other study participants in their responses to Question 3 concerning the conditions that might warrant additional legal counsel.

Collective bargaining was ranked higher (2.5) by the chairmen than by the school board attorneys (5) or the superintendents (4.5). Also the chairmen ranked expertise needed first in their ordering, indicating that they viewed specialization as an important justification for employing

TABLE 24

Ranking of the Eight Most Frequently Mentioned Conditions  
That Might Require the Services of an Attorney  
Other Than the School Board Attorney

| Conditions   | Ranking by        |                  |                  | Sum of<br>Ranks |
|--|-------------------|------------------|------------------|-----------------|
|  | SBAA <sup>a</sup> | SBC <sup>b</sup> | SSC <sup>c</sup> |                 |
| Student and personnel matters                                | 1                 | 5.5              | 2                | 8.5             |
| Expertise needed   | 2                 | 1                | 3                | 6               |
| Conflicts  | 3                 | 2.5              | 1                | 6.5             |
| When the school board attorney<br>has a conflict of interest | 4                 | 5.5              | 7                | 16.5            |
| Collective bargaining  | 5                 | 2.5              | 4.5              | 12              |
| Federal and state actions                                    | 6                 | 4                | 4.5              | 14.5            |
| When advised by the school<br>board                          | 7                 | X                | 6                | 22              |
| Unable to respond  | 8                 | X                | X                | 26              |
| None   | X                 | 8.0              | 8                | 25              |
| When the school board sees the<br>need                       | X                 | 8.0              | X                | 26              |
| Litigation   | X                 | 8.0              | X                | 26              |

Note: X = 9 or one more than the last rank.

<sup>a</sup>School board attorney.

<sup>b</sup>School board chairman.

<sup>c</sup>School superintendent.

other legal counsel in addition to the regular school board attorney.

It should be noted that some chairmen and superintendents felt that the school board attorney could handle all legal situations and expressed that feeling by ranking none eighth in their ordering of the conditions that might require additional legal counsel.

By combining the rankings given by the groups of study participants, the condition of expertise needed was first, conflicts was second, student and personnel matters was third, and collective bargaining was fourth.

Comparison of the Responses to Question 4 Relative to the Conditions of Employment Between School Districts and Attorneys

Table 25 shows the rankings of the conditions of employment between school districts and attorneys. Only the four most frequently mentioned conditions are presented, because the other conditions mentioned were single entries which made further ranking impossible.

Formal contracts were specified by the school board attorneys as the most desirable aspect of the employment conditions. These contracts should contain the specific services to be provided and the method of remuneration for those services. But the other two groups of study participants did not agree. They listed the method of a set retainer for certain services, such as advisory activities, and a fee schedule for additional services performed.

TABLE 25

Ranking of the Four Most Frequently Mentioned Conditions  
of Employment Between School Districts and  
Attorneys According to the Study Participants

| Conditions                    | Ranking by       |                  |                  | Sum of<br>Ranks |
|-------------------------------|------------------|------------------|------------------|-----------------|
|                               | SBA <sup>a</sup> | SBC <sup>b</sup> | SSC <sup>c</sup> |                 |
| Formal contracts              | 1                | 3                | 2                | 6               |
| Retainer plus hourly schedule | 2                | 2                | 3                | 7               |
| Full-time attorney            | 3                | 4                | 4                | 11              |
| Retainer plus fee             | 4                | 1                | 1                | 6               |

Note: X = 5 or one more than the last rank.

<sup>a</sup>School board attorney.

<sup>b</sup>School board chairman.

<sup>c</sup>School superintendent.

The attorneys and chairmen did agree on the second ranking. They listed the method of remuneration that incorporated a retainer for certain basic services and an hourly fee for additional time spent in serving the legal needs of the school district.

A full-time attorney was ranked third by the school board attorneys and fourth by the chairmen and superintendents. All of the study participants, in responding to the desirability of a full-time attorney, noted that the size and complexity of the school district would dictate whether such an action should be taken, and then there was not total agreement on the advisability of having a full-time attorney for the school district.

The combined rankings show formal contracts and retainer plus fee at the top of the order, with retainer plus hourly schedule third and full-time attorney fourth.

#### Comparison of the Responses Relative to the Qualifications of Attorneys

According to the data presented in Table 26, formal qualifications and experience were ranked first by the school board attorneys. This category was ranked third by the chairmen and second by the superintendents. These types of qualifications were more important to the school board attorneys than to the chairmen, who ranked personal attributes and special training as more desirable. The superintendents felt that special training was most important and

TABLE 26

Ranking of the Six Most Frequently Mentioned  
Qualifications of Attorneys

| Qualifications  | Ranking by       |                  |     | Sum of<br>Ranks |
|---|------------------|------------------|-----|-----------------|
|   | SBA <sup>a</sup> | SBC <sup>b</sup> | SSC |                 |
| Formal qualifications and<br>experience                   | 1                | 3                | 2   | 6               |
| Personal attributes                                       | 2                | 1.5              | 3   | 6.5             |
| Special training  | 3                | 1.5              | 1   | 5.5             |
| No special training                                       | 4                | 6                | X   | 17              |
| Prior experience with school<br>operations                | 5                | 5                | 4   | 14              |
| Attendance at seminars                                    | 6                | 4                | 5.5 | 15.5            |
| Most school board attorneys<br>lack proper qualificaitons | X                | X                | 5.5 | 19.5            |

Note: X = 7 or one more than the last rank.

<sup>a</sup>School board attorney.

<sup>b</sup>School board chairman.

<sup>c</sup>School superintendent.

accorded it first place in their ordering of desired qualifications.

Personal attributes weighed heavily with the school board chairmen. They obviously felt the need for someone on whom they could depend for guidance and help.

No special training was ranked fourth by the school board attorneys, and the chairmen ranked it sixth. The superintendents did not list it at all among the six most frequently mentioned qualifications from this group.

Attendance at seminars was seen as more important to the school board chairmen, who ranked it fourth, than to the school board attorneys (6) or the superintendents (5.5). The school board attorneys and superintendents indicated that prior experience with school operations was more important than attendance at seminars.

The superintendents also indicated that most attorneys lacked proper qualifications. They ranked this area last in their top six listings.

By combining the rankings as shown in Table 26, special training was accorded the highest rank. It was followed by formal qualifications and experience. Personal attributes was third, and prior experience with school operations was fourth.

#### Summary

In this chapter the data from the field study were compared. The attorneys cited significantly more conditions

that could justify the employment of an attorney other than the school board attorney. There was much agreement among the three groups of respondents concerning the areas of needed legal services. School board attorneys most frequently mentioned collective bargaining and negotiations as an area of legal service that the school board attorney should provide, and the other groups most frequently mentioned general counsel. The school board chairmen did not mention student and personnel matters as frequently as did the other respondents relative to conditions that might require the services of an attorney other than the school board attorney. The school board attorneys indicated their preference for formal contracts as part of their employment conditions with local school districts. On qualifications, the attorneys felt that the formal law degree and experience was sufficient, but the superintendents indicated that special training was needed. The school board chairmen were split between special training and personal attributes.

## CHAPTER V

### DISCUSSION OF THE DATA: THEORETICAL IMPLICATIONS

This chapter contains two sections. In the first section, the writer reviews, in light of the field data, the nine theoretical propositions developed in Chapter II concerning the provision of legal services to local school districts. The second section contains a discussion of the implications of the data for various aspects of educational organization and administration.

#### Analysis of the Field Data Relative to the Theoretical Propositions Derived From the Literature

In Chapter II the writer developed nine theoretical propositions that were derived from the research and related literature concerning legal services.

These propositions were:

1. Each local school district must have the services of legal counsel.
2. School districts must have equal access to legal services without regard to their wealth, size, or geographic location.
3. The state attorney general cannot be considered as a continuing source of legal counsel for local school districts.

4. The state department of education must consistently provide legal assistance to local school districts and act as a coordinator of special legal services that may be required by these school districts.
5. The local school board attorney must be the most available source of legal counsel for the school district.
6. The conditions of employment for attorneys utilized by local school districts must be standardized among the school districts.
7. Policies must be established by the local school board concerning the role and functions of the school board attorney.
8. Attorneys retained by local school boards must have special training in school law.
9. Student and personnel problems form a large area for which special legal services must be provided to the school board and administrative staff on a continuing basis.

Proposition 1 was supported by the field data in that all but one of the school districts retained local legal counsel. The one exception indicated that the state department of education served their legal needs.

Proposition 2, dealing with equal access to legal services, was not supported directly by the field data. However, there was expression of the need for equal access to

legal services. Concern was reported by some of the study participants that size and wealth of the district did influence the amount of legal services required and the ability of the district to maintain the availability of legal counsel. Logic would dictate that specialized full-time counsel was very expensive to maintain for a small district.

Proposition 3, concerning the role of the attorney general, was sustained in that his office was not mentioned as a source of legal counsel. In personal correspondence the attorney general of Florida stated that there was no official relationship between his office and the local school districts relative to legal services.

The data did not support directly Proposition 4, which dealt with the legal services provided by the state department of education. In an interview with general counsel, Florida state department of education, the attorney stated that his office had no formal relationship with the local school districts and that his staff, consisting of four other attorneys, worked mostly on the state level. He did say that he tried to respond to local requests for help as his time permitted. The field data revealed an occasional perception of the need for intermediate coordination of legal services for local school districts, in order to provide the quality of legal counsel needed.

Proposition 5 was supported by the information supplied by the study participants. This proposition indicated that

the local school board attorney was the most available source of legal counsel. The support is made apparent by comparing the overall top rankings in Table 22 and Table 23 concerning general services and general counsel and the emphasis given to the attendance of the school board attorney at school board meetings.

For Proposition 6, dealing with the conditions of employment of attorneys utilized by the school districts, there was little support reported by the study participants. The perceptions of these conditions of employment varied widely throughout Florida and followed no consistent pattern. Table 25 shows some of the points discussed by the study participants. There was no standardized method of remuneration for services rendered; none was revealed by the field data. Consequently, Proposition 6 was supported neither by perceptions of need nor by reported practices.

The data generally supported Proposition 7, concerning the establishment of policies to govern the role and function of attorneys retained by local school districts. This emphasis can be seen in Table 25 relative to formal contracts that would clarify this area if utilized. The attorneys reported the need for greater definition in their duties and responsibilities; the superintendents also supported this need. The school board chairmen did not support this proposition as strongly as did the school board attorneys and school superintendents.

Proposition 8, regarding special training in school, was supported by the field data as a perceived need. The data, as seen in Table 26, when combined placed special training in school law first in the rankings. However, unsolicited reported practices did not support this proposition. Reported training was usually in the form of seminars for current school board attorneys.

Proposition 9, concerning student and personnel problems, was supported in that these problems were ranked second, behind general services, as an area needing legal counsel. This proposition was further confirmed in the interviews with the general counsel, Florida state department of education. He stated that most of his contact with local school districts involved personnel or student problems.

#### Implications of the Data

This section deals with the implications of the data on various aspects of organizational and administrative processes of local school districts as influenced by the need for and the provision of legal services, as well as implications for training and further research.

#### Implications for School District Organization

As can be easily seen from the data presented in the report, there is a well defined need for legal services in a large number of areas normally identified in traditional school district operations. Other areas presently emerging

as influencing factors in the decision-making processes of school board members and school district administrators were also identified. Such needs have influenced and are influencing changes in the organizational approaches that have been traditionally utilized by school districts. It is incumbent upon those dealing with organizational theory to consider these changing needs.

Since 1940 the number of school districts in the United States has decreased from 115,000 to less than 18,000 in 1975. However, the student population has increased during the same period of time until the year of 1974. With this increase in district size there has been an increased complexity in the organizational structure of school districts. Not only has the size and complexity of the school districts increased, but also the amount of services that they have been expected to provide has increased.

Legislation has been enacted that has mandated the provision of many services and programs. These enactments have influenced the district organizational structure and created a greater influence of the state on the programs and organizational development of local school districts. Since education is a state responsibility, there has been a greater involvement of the state in the local school programs.

The concept that each student should have equal access to educational opportunities has been substantiated by the

courts. An issue that could affect the educational opportunities of a child would be whether the school district in which the student lived had equal access to legal services in order to be able to act with proper counsel and, in cases of actual litigation, to be represented adequately. It has been made clear that the potential liability of a school district can actually exceed its budget. Should the district have to expend funds because of court suits or because of having acted ill-advisedly, then there would be less money available to put into the educational program that directly affects the education of the children.

From the data presented in this report, local school districts did not receive consistent legal service from their state departments of education, and the state attorneys general only provided opinions on issues when asked by state agencies. Consequently, local school districts relied on their local attorney for legal counsel.

Some of the study participants suggested that a full-time attorney should be hired by the local school districts to provide the needed legal services. They added that this would be financially feasible only for school districts whose student population was in excess of 20,000. A majority of the school districts in Florida would not be able to enjoy the full-time services of an attorney under such a criterion.

There was not consensus on the question of a full-time attorney. One attorney strongly expressed his opinion that a full-time school board attorney would be vulnerable to bias because of the employer-employee relationship. His opinion was that a firm of attorneys should be retained in order to provide a full range of legal services. In this manner, he concluded that the counselor-client relationship could be maintained with the school board.

Since there was, at the time of the preparation of this study, a large number of smaller school districts which by themselves would be unable to afford the services of a full-time attorney or those of a firm of attorneys, a scheme of regionalizing legal services may be a viable option. It could be envisioned that the regional legal service districts would be under direction and funding of the state. Through such an organization it may be possible for the smaller school districts to enjoy the services of legal specialists when needed.

Another possibility would be to consolidate the school districts in order to take advantage of economies of scale and to abandon using school districts whose boundaries are coterminous with county boundaries. The theoretical implication of such an action would be to reduce the number of large school districts and small school districts and to increase the number of the medium-sized school districts.

The data presented in this research report clearly indicated the need and desirability of legal counsel for

school districts. As previously mentioned in the review of the literature, one school board member stated that the use of a school board attorney was the best "sleep insurance" (Nolte, 1974, p. 51) that he could buy. Most of the study participants generally agreed on this need.

Some of the study participants also suggested that an attorney should be retained for the use of the superintendent and his staff. Some even suggested that the attorney be full time and a staff member. They pointed to the need of an attorney to handle the internal legal affairs of the school district. Several problems immediately appear when considering this proposition. Such a position would be very expensive to the smaller school districts. Also the role of such an attorney could become very powerful and detrimental to the leadership of the school superintendent, should the various relationships traditionally associated with the superintendent shift to the full-time attorney. Also the salary of such an attorney could very easily be more than that of the superintendent, which could be the source of problems relative to the professional relationship. Perhaps a more acceptable alternative would be for the superintendent to designate a staff member to become a specialist in the legal aspects of school district operations.

It may be theoretically possible to use law students on an internship basis or new attorneys seeking experience to help with the internal problems of public school

administration. Such a program would enable the law student to gain experience in public school law. Also it would provide an opportunity for a new attorney to gain experience and supplement his income as he develops his own private practice.

Collective bargaining was ranked consistently high by the study participants as an area in which school districts needed legal counsel and service. In the changing realm of personnel administration, collective bargaining and negotiations will play an important role. Any organizational concept or theory should incorporate provisions for dealing with these areas. School boards and superintendents cannot ignore the increasing militancy of public employees. Organizational development should be carried out in such a manner as to provide appropriate staffing and expertise to represent the interests of the school board and the administration.

#### Implications for Educational Leaders of School Districts

School district administration is being influenced by the roles of the various officers in the district, as their importance and influence are enlarged by the legislative and judicial branches of state and national governments. This is particularly true with respect to school board attorneys and other attorneys retained by local school districts. The increased need for legal services has created greater dependence of the school districts on attorneys.

The school administrator in 1975 has to operate under very strict conditions in that he is accountable not only to the school board but also to the state. In recent years there has been a proliferation of laws, statutes, and regulations concerning public school operations. The school district administrative staff has to be aware of and in compliance with the conditions specified by these laws and regulations. It may be said that school districts have to operate with a legal over-burden. Any administrative theory that is utilized in school district operations must incorporate features of flexibility and change in order to stay abreast of the changes made by courts and legislatures.

Because of the increased legal requirements of school districts and the accompanying need for legal advisors, the power of school boards and school district administrators to make independent decisions is decreasing. Thus the question of who controls the schools is raised. Is there local control, or do the local school boards and school administrators simply carry out the mandates of the state legislature and state department of education.

With this increasing dependence on legal advisors, the role of the school board attorney, whose theoretical role is to advise, can shift to decision-maker. One school board chairman wrote that their school board attorney acted as a non-voting member of the board. Another chairman revealed his view that the attorney representing his board exhibited

the professional bearing that the school superintendent lacked. The implication here is that the school superintendents must exhibit the skills and abilities necessary to maintain the respect of the school board as true professionals. Otherwise, his opinions and recommendations will become secondary to those of the attorneys retained by local school districts, whether they are on his personal staff or retained by the school board.

The school administrator and his role must change in response to the different requirements with which he is being confronted. He must be a professional who is equipped with the skills and abilities to provide the leadership for his school district. He must be able to deal with experts and other professionals on an equal level. Otherwise he will be just a token leader, and the power base will shift from his office to the offices of those who exhibit these skills. Even though the superintendent has this dependence on legal advisors and has need for legal services, he must maintain his leadership position.

There are theoretical bases for power in all district organizations. Traditionally these have been the areas of finance, instruction, operations, and personnel. Now it could be possible, theoretically at least, for another power base to exist in the internal structure of the school district. That base of power would be the legal specialist or the attorney providing legal services to the school district.

It has been stated that power is a function of the amount of influence that can be exerted on the decision-making process. With many of the decisions made by school boards and school district administrators being dependent upon legal opinion, it can be easily seen how the attorney or legal advisor can establish a broad base of power.

In order to limit the influence of such legal specialists, it may be necessary to terminate their services after a specified period of time. Some of the school superintendents suggested that the school board attorney serve from two to eight years. Another suggestion made by the study participants in response to the question concerning conditions of employment for attorneys retained by local school districts was that formal contracts be established in which the specific duties and responsibilities of the attorney retained are clearly defined and delineated.

Some of the study participants indicated in their comments that the school board attorney should act as advisor only to the school board. If he were the only attorney retained by the school district, the superintendent would be without legal counsel. It may be theoretically best for the school board attorney to represent only the interests of the school board and to act as their advisor on all matters that may come before the board. However, the superintendent should have access to legal counsel for himself and his staff. There would be theoretical advantages to

having separate counsel for the school board and the superintendent. If such an arrangement were effectuated, the superintendent's attorney could work very closely with or be on the collective bargaining team representing the school district. This attorney also could prosecute and handle student discipline and personnel problems. Should any hearings arise as a result of these problems, the school board attorney would be free to act as the advisor to the board and as legal judge at any hearings. This would preclude the necessity of the school board attorneys' actively prosecuting a case before the board and, at the same time, acting as the legal advisor to the board. The school board attorney acting in both capacities was seen as undesirable by some of the study participants.

The data from the research indicated that collective bargaining is an area that must be considered in the administrative aspects of school district operations. There is an increasing militancy among the teachers, as can be seen by the growth of the American Federation of Teachers, affiliated with the AFL-CIO, and the emphasis being given to collective bargaining by the National Education Association. A problem that the writer sees developing is that the collective bargaining process may have a tendency to make adversaries of the school district administration and the instructional and non-instructional personnel. The influence of the bargaining process on democratic and collegial

approaches to administration will need to be investigated to determine if the approach can survive in such an environment.

#### Implications for Training

Due to the increased complexity of school district operations, leadership training programs need to be expanded to include the development of the skills necessary to cope with the problems currently facing school administrators. The superintendent must have the ability to manage the affairs of the school district. He must also be able to express the professional leadership capabilities that are being expected of persons either elected or appointed to the superintendency. The superintendent must be able to deal effectively with other professionals such as attorneys, legal specialists, and other experts. School administrators are being called upon to deal with other professionals inside and outside of the educational community. Their preparation as public school administrators cannot be left to chance or be the result of his previous classroom experience.

It is necessary that those responsible for the training programs for educational administrators incorporate into those programs experiences that will prepare the student to deal effectively with collective bargaining, due process for students and school district employees, union representatives, legislators, school board members, and other

conditions where special training may be helpful. Internship programs should be mandatory for all students of educational administration in order that they may gain experience without jeopardizing a situation, after they have obtained an administrative position, because of inexperience.

The data gathered through this research effort clearly indicated that, in the opinion of the study participants, special training is very desirable for attorneys being considered for employment by local school districts. Several of the study participants wrote that most of the attorneys lacked the skills and special qualifications in school law prior to assuming positions as legal counselors to school boards and to school districts. This was further evidenced by the response of some of the attorneys that they were still learning their jobs and would be able to respond more adequately after a few months on the job. One can only wonder about the vulnerability of a school district which had to depend upon an attorney who was still learning his job. Errors in judgment made by such an attorney relative to procedures and processes could be very costly to a school district.

Since there is no apparent procedure whereby an attorney can gain experience in public school law other than on the job, it may be desirable to develop courses in public school law in the law schools and to provide incentives for

law students to spend part of their training time as interns in local school districts.

An alternative would be for the general counsel of the state department of education to provide special training programs for attorneys to be retained by local school districts, prior to the assumption of their duties.

#### Implications for Research

The theoretical knowledge available in the field of legal services for local school districts is limited. Further research should be conducted to determine the influence that attorneys retained by local school districts have on the decision-making process. There were indications in the data presented here that the school board attorney is in a position to influence many of the decisions made by school board members and school district administrators. The study participants cited many areas in which they felt that legal services were needed. It appears to the writer that should the school board attorney have a personal bias on an issue, it would be rather easy for him to influence the decision that was made simply by offering his opinion.

Another issue that may merit further research in the area of legal services is the extent that decision making is controlled through the influence of state regulations. Is local control of public schools real or imaginary? What services do the local school boards provide? Is the local

school board so dependent upon legal advisors that it no longer makes independent decisions?

Since most attorneys retained by local school districts lack prior experience in public school law, the training programs for attorneys should be researched in order to determine if it is feasible to develop a training program, either in law school or prior to the assumption of a position in the school district.

Another area that may merit further research and investigation is that of the effect that collective bargaining and its accompanying legal ramifications may have upon the relationship between teachers and school administrators. The writer is concerned about the impact that negotiations and master contract execution may have upon building principals and faculties. Will the democratic and collegial aspects of administration be increased, or will they be diminished?

#### Summary

In the first section of this chapter, the writer reviewed the nine theoretical propositions developed earlier in the report and discussed the results of the field data relative to those propositions.

The field data reported by the three groups of study participants generally supported Propositions 1, 3, 5, 7, and 9. Support was found for Propositions 2 and 8 in perceptions of need, but support was lacking in perceived

practice. Propositions 4 and 6 were supported neither in perceptions of need nor in perceptions of practice.

The implications of the data gathered from the review of the literature and the field study were discussed in the second section as they related to various aspects of organizational and administrative processes of local school districts. There were indications of an increasing need for legal services for school districts; providing these services can affect the operations of public schools. The roles and functions of various school officials may be affected by the use of attorneys in the school districts, whether as staff members or consultants. There were implications concerning the training of both educational administrators and attorneys in order to deal with the complexities of public school administration. Further research is needed concerning the influence of the local school board attorney on the decision-making process in local school districts, training programs in school law for attorneys, and the impact of collective bargaining on administrative procedures.

## CHAPTER VI

### SUMMARY, CONCLUSIONS, IMPLICATIONS, AND A THEORETICAL DESIGN FOR LEGAL SERVICES

#### Summary

The focus of this study was on the legal services needed by local school districts and the means of providing such services. The first part of the problem was to establish theoretical propositions concerning the provision of legal services to local school districts as derived from available research and related literature. The second part of the problem was to test the theoretical propositions by gathering empirical data from a state system of school districts. Specifically, the objective of the second part of the study was to determine the perceptions of local school board chairmen, school superintendents, and school board attorneys in Florida relative to the following questions:

1. What legal services are needed by local school districts?
2. What should be the responsibilities of local school board attorneys in providing these services?
3. Under what special circumstances, if any, should attorneys other than the school board attorney be retained by the local school district?

4. What should be the terms and conditions of employment of attorneys retained by local school districts?
5. What should be the qualifications of attorneys retained by local school districts?

The perceptions of the study participants were determined by asking them to respond to these questions in the form of a questionnaire (see Appendix A). Specifically, 200 questionnaires were sent to 66 school board attorneys, 67 school board chairmen, and 67 school superintendents. Of the 128 questionnaires returned, 39 were from school board attorneys, 36 were from school board chairmen, and 53 were from school superintendents. A total of 2,083 comments were made by the 128 study participants in response to the questionnaire. These comments were analyzed and assigned to the category of response that was indicated by the subject of the comment. The school board attorneys consistently provided more comments to each question than did the other two groups of study participants, with the exception of Question 5. To this question the superintendents supplied the most comments. The school board chairmen were the least responsive of the three groups of study participants as measured by the number of comments made to each question.

The findings of this study include: (1) the findings relative to the support of the set of theoretical propositions for legal services derived from the literature and

(2) the perceptions of the field study participants as reported in the questionnaires.

### Theoretical Propositions

From the review of the research and related literature, the writer developed nine theoretical propositions concerning the provision of legal services to local school districts. These propositions were:

1. Each local school district must have the services of legal counsel.
2. School districts must have equal access to legal services without regard to their wealth, size, or geographic location.
3. The state attorney general cannot be considered as a continuing source of legal counsel for local school districts.
4. The state department of education must consistently provide legal assistance to local school districts and act as a coordinator of special legal services that may be required by these school districts.
5. The local school board attorney must be the most available source of legal counsel for the school district.
6. The conditions of employment for attorneys utilized by local school districts must be standardized among the school districts.

7. Policies must be established by the local school board concerning the role and functions of the school board attorney.
8. Attorneys retained by local school boards must have special training in school law.
9. Student and personnel problems form a large area for which special legal services must be provided to the school board and administrative staff on a continuing basis.

Question 1: Legal Services Needed

Listed below are 16 areas of legal services most frequently mentioned by the school board attorneys, the school board chairmen, and the school superintendents as being needed by the local school districts in the state of Florida. The listings are in rank order which was established by combining the ranks developed for each group of study participants.

1. General services.
2. Student and personnel matters.
3. Collective bargaining and negotiations.
4. Litigation.
5. Oversee contractual activities.
6. Finances.
7. Purchases and sales of property.
8. Professional legal counsel.
9. Liability and immunity.

10. Taxation.
11. Documents.
- 12.5. New legislation and statutes.
- 12.5. Services for a large corporation.
- 14.5. Specialists for certain court cases.
- 14.5. Bids and bidding procedures.
16. Matters pertaining to school board members.

These areas were accounted for in the 10 most frequently mentioned areas of legal services needed that were ranked according to study participant groups.

Question 2: Legal Services That Board Attorneys Should Provide

The following list of legal services that the school board attorney should provide was derived from the rankings of the 10 most frequently mentioned areas of service according to the study participants:

1. General counsel.
2. Collective bargaining and negotiations.
3. Attendance at meetings.
4. Contracts.
5. Laws and regulations.
6. Student and personnel matters.
7. Represent the board in all litigation.
8. Finances.
9. Property matters.
10. Associate with other specialized counsel when needed.

11. Bidding procedures.
12. Advise under the rules of the Administrative Procedures Act.

Question 3: Employing Special Attorneys

Conditions that might require legal counsel in addition to the school board attorney are listed below. As indicated previously, these are listed in the rank order of frequency mentioned by the participants in the field study.

1. Expertise needed.
2. Conflicts.
3. Student and personnel matters.
4. Collective bargaining.
5. Federal and state actions.
6. When the school board attorney has a conflict of interest.
7. When advised by the school board attorney.
8. None.
- 10.0. Unable to respond.
- 10.0. When the school board sees the need.
- 10.0. Litigation.

These conditions were derived from the rankings accorded by the study participants.

Question 4: Terms and Conditions of Employment

The following are terms and conditions of employment to be considered when the school district retains an attorney as mentioned by participants in the field study: formal

contracts, retainer plus fee, retainer plus hourly schedule, and a full-time attorney.

Question 5: Qualifications of Attorneys

The following qualifications to be considered when an attorney is to be retained by a local school district were identified by the participants in the field investigation.

1. Special training.
2. Formal qualifications and experience.
3. Personal attributes.
4. Prior experience with school operations.
5. Attendance at seminars.
6. No special training.
7. Most school board attorneys lack proper qualifications.

Conclusions

There were two main thrusts of this investigation:

(1) to review the literature in order to develop a set of theoretical propositions concerning legal services for local school districts and (2) to examine the perceptions of school board attorneys, school board chairmen, and school superintendents concerning the needs of local school districts for legal services and the means of providing such services.

In regard to the nine theoretical propositions supported by the literature, the field data generally supported Propositions 1, 3, 5, 7, and 9. Propositions 2 and 8 were

supported by perceptions of what was needed, but not by perceptions of actual practice. Propositions 4 and 6 were neither supported by perceptions of need nor by perceptions of practice.

Relative to the five questions which gave direction to the study, the writer reached the following conclusions based on the field data:

1. A variety of legal services were needed by local school districts. These ranged from general counsel to assistance on parliamentary procedure. Matters dealing with students and employees, including collective bargaining, were emphasized as complex areas in public school administration for which legal assistance was needed.
2. The school board attorney was perceived to be involved in almost every phase of the operations of the local school district. The range of services that the school board attorney should provide was similar to the listing of legal services needed.
3. Perceived conditions requiring the services of an attorney other than the school board attorney were identified as those that resulted from a lack of expertise or conflict of interest on the part of the school board attorney. There was an emerging need for the school superintendent to have separate legal counsel to represent the interests of the superintendent and his staff.

4. There was no strong agreement among the study participants concerning the terms and conditions of employment of attorneys. Needs were indicated for policies and formal contracts that specified duties, responsibilities, and procedures for remuneration for services rendered.
5. Special training in school law was perceived by the study participants as the most desirable qualification of attorneys retained by school districts.

#### Implications

Of the 200 possible study participants in the field study, 128 responded to the questionnaire. Since the study participants were unrestricted by a highly structured questionnaire, their responses can only add to the definition of reality about the effects of and needs for legal services.

The sheer volume of the 2,083 comments made in response to the five questions, averaging over 400 comments per question, cannot be easily ignored.

As previously mentioned, the empirical aspect of the study was limited to the state of Florida. However, the extensive analysis of the literature to develop the theoretical propositions provided a basis for making the results of the study widely applicable. The actions of the courts and those of the Congress of the United States have affected

public schools throughout the nation. The great volume of literature reviewed by the writer has indicated that the many legal requirements confronting public schools were common to many school districts.

Because of the increased mobility of the population of the United States, educational programs will continue to become more closely aligned in content and process. As this condition develops, the implications of this study will become more universal in nature.

#### Training Implications

Because of the development of a distinct body of law for public schools, it is only logical that those dealing with this law need special training and experience in order to apply these laws. This concept of training is directed not only toward attorneys but toward school administrators as well.

In Florida, an individual can be elected to the superintendency of a school district with little or no experience in administration. In 1975, there were 16 school districts that had appointed superintendents. In the other 51 districts, the superintendents were elected. Is the elected or the appointed superintendent better qualified to deal with the legal problems facing the school districts? This question could have considerable impact on administrative theory as it relates to central office administration of a school district. Should the degree of success of a

local school district be a function of politics? If unskilled and untrained superintendents were elected, what effect would such a condition have on the basis of power within the district? Would the superintendent be just a figurehead? If the superintendent was unable to maintain the respect of the school board as a professional, would the role of the board shift from discretionary decision making to ministerial decision making?

#### Legal Counsel for School Superintendents

Special legal counsel for the school superintendent, separate and apart from that of the school board, was cited by some of the study participants as a need for legal services in addition to the legal services provided by the school board attorney. The advantages noted were: (1) assist the district staff on a more frequent and involved basis; (2) prosecute cases before the school board when the school board attorney acts as the legal advisor to the board; (3) work closely with collective bargaining, either as a team member or team advisor; (4) represent the interests of the superintendent when conflicts develop between the board and the superintendent.

If the school superintendent is allowed to retain separate counsel, the previously mentioned problem of power and influence may be compounded further by such an action. A great deal would depend on the ability of the superintendent to control the decision-making process. Otherwise

he might find himself in a power vacuum. The implication is clear that the superintendent in 1975 needs skills above and beyond those needed for simple custodial care of a school district.

#### The Availability of Legal Services for Local School Districts

Another aspect of legal services revealed by the data and by the comments made by some respondents to the questionnaire concerned the ability of the small school districts to maintain the availability of legal assistance on an equal level with the large districts. Are small school districts penalized in this regard because of size? Is a child's access to a quality education jeopardized because of school district size? Does the state have the responsibility to see that all students have an equal opportunity for a good education?

In the theoretical aspects of providing legal services to local school districts, it appears to the writer that these services should be made equally available to all school districts regardless of size and that the state has the responsibility to see that these services are made available.

Two options include the consolidation of school districts, which may not be politically acceptable, or the establishment of legal services regions throughout the state staffed by attorneys with the special training needed to deal with the peculiar problems encountered in public school

administration. The costs incurred under the second option could be borne by the state under a special appropriation by the legislature. Such an appropriation could be administered by the office of the general counsel for the state department of education. Expenses would need only to be verified by the local school district.

#### Further Research Needed

Because of the need for legal services in many areas of the operations of a school district and the expectation expressed by the study participants that the school board attorney would provide many of the legal services, further research should be conducted to determine the degree of influence that the school board attorney exerts on the decision-making processes. One can imagine that a school board attorney who has served for many years could be a very powerful entity in the school district. In some districts he may represent the private interests of the school board members, and as such these members may be vulnerable to his influence, or he may be vulnerable to their influence. Because of the changing politics, the school attorney may be the one consistent factor at the school board and school superintendent level.

Further research is needed regarding the length of service of attorneys retained by the school district as a factor in their serviceability to the school district and, also, regarding the conditions or criteria that would justify the retention of a full-time in-house attorney.

A Theoretical Design for the Provision of  
Legal Services to Local School Districts

Since public education has been identified as a function and responsibility of the respective states of the United States and since it has become established that all students in public schools should have equal access to an education, it then rests upon the states to provide equal access to legal services for the local school districts. The body of law concerning public school operations has expanded greatly in recent years and has grown to involve complex questions concerning educational processes. When such questions have been encountered, the services of a legal specialist have often been required.

Special interest groups, through collective efforts, have been able to secure the legal services of experienced professionals to represent their causes. In order to provide able legal counsel for local school districts, it is incumbent upon those responsible for organizational development in education to recognize this need and to instigate action to satisfy it.

The following statements represent the writer's theoretical design for the provision of legal services to local school districts:

1. The general counsel for the state department of education establishes, with the approval and funding of the state legislature, legal services regions throughout the state. A region is

established for each 150,000 students in the kindergarten through twelfth-grade program.

2. Each legal services region is headed by an attorney who is a legal assistant to the local school districts in that region. He coordinates the training and assists in the selection of attorneys retained by local school districts. This legal assistant also makes available legal specialists as needed by the local school districts. He also provides legal counsel should a local school board attorney become incapacitated or unavailable.
3. The individual school district retains competent legal counsel to assist in its operations and to represent the interests of the school board.
4. Legal counsel is retained to assist the superintendent in carrying out his duties and responsibilities and to prosecute cases involving students and school district employees. This attorney reports only to the superintendent. A full-time in-house attorney is not employed by the school district.
5. The school superintendent of each district designates someone on his staff to be a legal specialist in the day-to-day operations of the school district. This designated staff member reports only to the superintendent.

6. Courses in school law are made available to law students in law schools as well as internships in local school districts in order for the student to gain knowledge and field experience concerning school operations.
7. Attorneys retained by local school districts are trained in school law, either in seminars conducted by the regional legal assistant or in law school prior to assuming their positions in the school districts.
8. Formal contracts, specifying duties and responsibilities, are established between the attorney and the agency retaining the attorney, whether state or local school district. The basis for remuneration for services is on an hourly basis using a standardized schedule. An exception is the regional legal assistant who is full time on a previously established salary schedule.

APPENDICES

APPENDIX A  
LEGAL SERVICES QUESTIONNAIRE

1. In your opinion what legal services are needed by local school districts?

2. What are some of the legal services that you think a school board attorney should provide?



5. Based upon your experience what do you think should be the qualifications of attorneys retained by local school districts?

APPENDIX B

RESPONSES MADE BY THE STUDY PARTICIPANTS  
TO THE QUESTIONNAIRE

TABLE 27  
 Responses Made by the Study  
 Participants to Question 1

| Services  | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|---|------------------|------------------|-----------------|
| General services  | 43               | 42               | 72              |
| Student and personnel matters   | 43               | 22               | 48              |
| Collective bargaining and negotiations                                    | 33               | 22               | 43              |
| Litigation  | 20               | 16               | 32              |
| Oversee contractual activities  | 20               | 9                | 19              |
| Finances  | 24               | 4                | 18              |
| Purchases and sales of property   | 13               | 8                | 10              |
| Professional legal counsel  |                  | 18               |                 |
| Liability and immunity  | 11               |                  | 5               |
| Taxation  |                  | 9                |                 |
| Documents   |                  | 3                | 6               |
| New legislation and statutes  | 4                | 3                | 2               |
| Services for a large corporation  | 4                |                  |                 |
| Specialists for certain court cases                                       |                  |                  | 4               |
| Bids and bidding procedures   |                  | 2                | 4               |
| Matters pertaining to school board members                                |                  | 3                |                 |
| Insurance   | 3                |                  | 1               |
| Full-Time attorney  |                  |                  | 3               |
| Legal advice under the provisions of the<br>Administrative Procedures Act |                  | 2                |                 |
| Facilities  | 2                |                  |                 |
| Services should be tailor-made for<br>the particular political entity     | 2                |                  |                 |

TABLE 27--(Continued)

| Services  | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|---|------------------|------------------|-----------------|
| Unable to answer  | 2                |                  |                 |
| Parliamentary procedures  | 1                | 1                |                 |
| Budget amendments   |                  | 1                |                 |
| Business activities same as any corporation                       |                  | 1                |                 |
| Help and advice received from the state; no local attorney needed |                  | 1                |                 |
| Public documents law  | 1                |                  |                 |
| Accreditation   | 1                |                  |                 |
| Liaison among legal specialists                                   | 1                |                  |                 |
| Child custody problems  | 1                |                  |                 |
| Vandalism   |                  |                  | 1               |
| Selection of architects   |                  |                  | 1               |
| Legal specialist through consolidated government                  |                  |                  | 1               |
| Needs will vary from district to district                         |                  |                  | 1               |
| Total   | 229              | 167              | 271             |

<sup>a</sup>SBA = School board attorneys.

<sup>b</sup>SBC = School board chairmen.

<sup>c</sup>SS = School superintendents.

TABLE 28  
 Responses Made by the Study  
 Participants to Question 2

| Services  | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|---|------------------|------------------|-----------------|
| General counsel   | 36               | 41               | 65              |
| Attendance at meetings  | 29               | 26               | 32              |
| Collective bargaining and negotiations                            | 40               | 26               | 37              |
| Contracts   | 27               | 16               | 44              |
| Student and personnel matters                                     | 18               | 6                | 23              |
| Laws and regulations  | 10               | 12               | 26              |
| Associate with other specialized counsel<br>when needed           | 6                | 4                | 4               |
| Represent the board in all litigation                             | 13               | 6                | 17              |
| Property matters  | 9                | 6                | 9               |
| Finances  | 11               | 9                | 9               |
| Prepare legal documents and resolutions                           |                  | 3                |                 |
| Review of school board actions                                    | 5                |                  |                 |
| Bidding procedures  |                  | 1                | 5               |
| Advice under the rules of the Administrative<br>Procedures Act    | 6                |                  |                 |
| Review and prepare resolutions                                    | 3                |                  |                 |
| He should be kept informed by the board<br>and the superintendent | 2                |                  |                 |
| Provide counsel on workmen's compensation<br>and insurance        | 1                |                  |                 |
| School board attorney should be available                         | 1                |                  |                 |

TABLE 28--(continued)

| Services  | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|---|------------------|------------------|-----------------|
| School board attorney should follow the guidelines established by statute and case law                              | 2                |                  |                 |
| Can't respond because of my position as the school board attorney   | 1                |                  |                 |
| I'm still learning my job   | 1                |                  |                 |
| School board attorney should attend the school board association meetings and others designated by the school board |                  |                  | 1               |
| Superintendent should be the only contact with the school board attorney during and between board meetings          |                  |                  | 1               |
| Depends on the size of the district and the financial arrangements with the school board attorney                   |                  |                  | 1               |
| School board attorney is not employed; legal services are provided through the city                                 |                  |                  | 1               |
| Too much legal advice is troublesome if not requested   |                  | 1                |                 |
| School board attorney should be responsible to school board members   |                  | 1                |                 |
| No need for a school board attorney; contact the state for help   |                  | 1                |                 |
| School board attorney should be used in all areas; he possesses a more disciplined approach                         |                  | 1                |                 |
| Total   | 221              | 160              | 275             |

<sup>a</sup>SBA = School board attorneys.

<sup>b</sup>SBC = School board chairmen.

<sup>c</sup>SS = School superintendents.

TABLE 29  
 Responses Made by the Study  
 Participants to Question 3

| Conditions   | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|--|------------------|------------------|-----------------|
| Expertise needed   | 16               | 10               | 17              |
| Conflicts  | 15               | 9                | 21              |
| Student and personnel matters  | 24               | 5                | 19              |
| Collective bargaining  | 12               | 9                | 9               |
| Federal and state actions  | 10               | 7                | 9               |
| When the school board attorney has a<br>conflict of interest                     | 13               | 5                | 4               |
| When advised by the school board attorney  | 8                | 1                | 8               |
| None   |                  | 3                | 3               |
| Unable to respond  | 2                |                  |                 |
| When the school board sees the need  |                  | 3                |                 |
| Litigation   |                  | 3                |                 |
| Time and location requirements   |                  |                  | 2               |
| When public interest warrants such actions<br>in the opinion of the school board |                  |                  | 2               |
| Bond counsel during bonding procedures   | 1                |                  | 1               |
| During tort actions  | 1                |                  |                 |
| School board attorney should work with<br>firms retained by insurers             | 1                |                  |                 |
| When involved with Securities and<br>Exchange Commission                         | 1                |                  |                 |
| When involved with Internal Revenue<br>Service                                   | 1                |                  |                 |
| Experts in state and federal law; the<br>districts need a pool                   |                  | 1                |                 |

TABLE 29---(Continued)

| Conditions  | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|---|------------------|------------------|-----------------|
| None if the school board attorney and superintendent do their jobs                                      |                  | 1                |                 |
| When the school board attorney is overloaded  |                  | 1                |                 |
| During processes of property purchases  |                  | 1                |                 |
| Any public official in the execution of his duties  |                  |                  | 1               |
| One or two attorneys should be retained by the 67 districts to issue reviews periodically on school law |                  |                  | 1               |
| School board attorney should handle most situations   |                  |                  | 1               |
| Depends on the size or complexity of the school district  |                  |                  | 1               |
| School board attorney should advise the school board and the superintendent                             |                  |                  | 1               |
| Arbitration of damage suits   |                  |                  | 1               |
| Total   | 106              | 59               | 100             |

<sup>a</sup>SBA = School board attorneys.

<sup>b</sup>SBC = School board chairmen.

<sup>c</sup>SS = School superintendents.

TABLE 30  
 Responses Made by the Study  
 Participants to Question 4

| Conditions   | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|--|------------------|------------------|-----------------|
| Formal contracts   | 15               | 6                | 16              |
| Retainer plus fee  | 9                | 13               | 19              |
| Retainer plus hourly schedule  | 11               | 11               | 13              |
| Full-time attorney   | 10               | 3                | 8               |
| Hourly rate  | 5                | 1                | 3               |
| Retain a legal firm  |                  |                  | 4               |
| Depends on the size and complexity of the district                             |                  |                  | 4               |
| Should not represent other agencies  | 3                | 1                | 1               |
| Permissible to represent other agencies  | 2                |                  |                 |
| Retainer   | 2                |                  |                 |
| Retainer plus billing for work in court and for non-advisory activities        | 2                |                  |                 |
| No response  | 2                |                  |                 |
| Expenses incurred should be reimbursed   | 1                |                  |                 |
| Serve at the pleasure of the school board or fixed term not to exceed one year | 1                |                  |                 |
| School board attorney should serve both the board and the superintendent       | 1                |                  |                 |
| Retainer plus costs for school board business                                  |                  | 1                |                 |
| Negotiations with the attorney   |                  | 1                |                 |
| Services should be put out on a bid basis                                      |                  | 1                |                 |
| Shared with other governmental bodies; school board pays part of the cost      |                  | 1                |                 |

TABLE 30--(Continued)

| Conditions   | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|--|------------------|------------------|-----------------|
| School board attorney should be responsible to school board, not to superintendent |                  | 1                |                 |
| None, since an attorney isn't retained   |                  | 1                |                 |
| Fee basis for attorneys other than the school board attorney                       |                  |                  | 1               |
| Share an attorney with other public agencies                                       |                  |                  | 1               |
| Attorney should attend school board meetings when needed                           |                  |                  | 1               |
| Limit the school board attorney to 8 years of service                              |                  |                  | 1               |
| Employ the school board attorney for no less than 2 years                          |                  |                  | 1               |
| Retain legal counsel for the superintendent and staff                              |                  |                  | 1               |
| No response  |                  |                  | 1               |
| Total  | 64               | 41               | 75              |

<sup>a</sup>SBA = School board attorneys.

<sup>b</sup>SBC = School board chairmen.

<sup>c</sup>SS = School superintendents.

TABLE 31  
 Responses Made by the Study  
 Participants to Question 5

| Qualifications  | SBA <sup>a</sup> | SBC <sup>b</sup> | SS <sup>c</sup> |
|---|------------------|------------------|-----------------|
| Special training  | 11               | 21               | 40              |
| Formal qualifications and experience                    | 29               | 13               | 28              |
| Personal attributes                                     | 23               | 21               | 27              |
| Prior experience with school operations                 | 9                | 9                | 26              |
| Attendance at seminars                                  | 6                | 11               | 5               |
| No special training                                     | 10               | 5                | 2               |
| Most school board attorneys lack proper qualifications  |                  |                  | 5               |
| Requirements vary                                       | 4                |                  |                 |
| Experience with employee relations in the public sector |                  |                  | 3               |
| Jack-of-all-trades                                      | 2                |                  |                 |
| Unable to respond                                       | 1                |                  |                 |
| I'm still learning my job                               | 1                |                  |                 |
| Attorney not needed                                     |                  | 1                |                 |
| Use a county attorney                                   |                  | 1                |                 |
| Retain the attorney long enough to gain experience      |                  |                  | 1               |
| Total   | 96               | 82               | 137             |

<sup>a</sup>SBA = School board attorneys.

<sup>b</sup>SBC = School board chairmen.

<sup>c</sup>SS = School superintendents.

APPENDIX C

KINDERGARTEN THROUGH 12TH-GRADE MEMBERSHIP OF  
THE FLORIDA SCHOOL DISTRICTS FOR 1973-74

TABLE 32

Kindergarten Through 12th-Grade Membership of  
the Florida School Districts for 1973-74

| Districts | Membership |
|-----------|------------|
| Alachua   | 22,002     |
| Baker     | 3,190      |
| Bay       | 19,267     |
| Bradford  | 3,716      |
| Brevard   | 57,821     |
| Broward   | 131,536    |
| Calhoun   | 2,050      |
| Charlotte | 5,445      |
| Citrus    | 6,106      |
| Clay      | 12,744     |
| Collier   | 10,820     |
| Columbia  | 6,807      |
| Dade      | 238,674    |
| De Soto   | 3,403      |
| Dixie     | 1,632      |
| Duval     | 108,183    |
| Escambia  | 46,643     |
| Flagler   | 1,375      |
| Franklin  | 1,869      |
| Gadsden   | 9,657      |
| Gilchrist | 1,330      |
| Glades    | 952        |

TABLE 32--(Continued)

| Districts    | Membership |
|--------------|------------|
| Gulf         | 2,680      |
| Hamilton     | 2,143      |
| Hardee       | 4,129      |
| Hendry       | 3,779      |
| Hernando     | 5,279      |
| Highlands    | 7,325      |
| Hillsborough | 110,862    |
| Holmes       | 3,253      |
| Indian River | 9,084      |
| Jackson      | 7,853      |
| Jefferson    | 2,418      |
| Lafayette    | 773        |
| Lake         | 16,703     |
| Lee          | 25,510     |
| Leon         | 20,382     |
| Levy         | 3,999      |
| Liberty      | 954        |
| Madison      | 3,550      |
| Manatee      | 18,723     |
| Marion       | 20,530     |
| Martin       | 7,539      |
| Monroe       | 9,821      |
| Nassau       | 7,131      |
| Okaloosa     | 25,846     |

TABLE 32--(Continued)

| Districts  | Membership |
|------------|------------|
| Okeechobee | 3,979      |
| Orange     | 83,186     |
| Osceola    | 7,492      |
| Palm Beach | 68,932     |
| Pasco      | 19,401     |
| Pinellas   | 88,916     |
| Polk       | 57,878     |
| Putnam     | 10,442     |
| St. Johns  | 7,300      |
| St. Lucie  | 11,699     |
| Santa Rosa | 11,445     |
| Sarasota   | 22,777     |
| Seminole   | 29,105     |
| Sumter     | 4,557      |
| Suwannee   | 4,582      |
| Taylor     | 3,706      |
| Union      | 1,467      |
| Volusia    | 34,571     |
| Wakulla    | 2,142      |
| Walton     | 3,902      |
| Washington | 3,151      |

Note. These data are from Report of the commissioner of Education Tallahassee: Florida State Department of Education, 1975.

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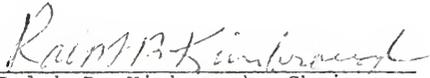
## BIOGRAPHICAL SKETCH

Ronnie O'Neil Kirkland was born February 21, 1940, at Glen Saint Mary, Florida. He graduated from Baker County High School in 1958 as the valedictorian of his class. From 1958 to 1960 he attended Brigham Young University. He served as a missionary for the Church of Jesus Christ of Latter-day Saints to the Mexican people from 1960 to 1963. In 1965 he received the degree of Bachelor of Arts with a major in Spanish and a minor in Russian from Brigham Young University. At this time he was commissioned an officer in the Air Force Reserves of the United States and went on active duty as a line navigator in the Strategic Air Command until 1970.

Mr. Kirkland continued his education at the University of Florida and was awarded the degrees of Master of Education in 1971 and Specialist in Education in 1974. He taught Spanish at the Baker County High School and served as principal of the Baker County Junior High School. During this period he served as president of the Baker County Education Association and a member of the Board of Directors of the Florida Education Association. Mr. Kirkland is the principal of Westside Elementary School in Baker County, Florida

Ronnie O'Neil Kirkland is married to the former Norma Griffin of Lovell, Wyoming, and has two daughters: Sabrina ReNae and Amy Candacy.

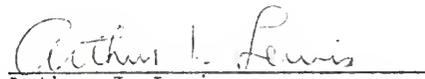
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Ralph B. Kimbrough, Chairman  
Professor of Education

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.

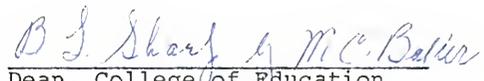
  
Michael Y. Nunnery  
Professor of Education

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.

  
Arthur J. Lewis  
Professor of Education

This dissertation was submitted to the Graduate Faculty of the College of Education and to the Graduate Council, and was accepted as partial fulfillment of the requirements for the degree of Doctor of Philosophy.

December, 1975

  
Dean, College of Education

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Dean, Graduate School



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