

Don't Judge a Bill by its Title

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Most are aware that OEA works tirelessly in the state legislature both to enact statutes that benefit public education and to stop legislation that poses a threat to teachers and students. This job is made extremely difficult by one universal truth that pervades modern politics: few people, including legislators, ever actually read or fully understand proposed legislation before endorsing it. Sadly, many legislators, lobbyists, school groups and even other unions, simply take a bill's title at face value and determine whether or not to support the bill based on its heading alone.

At OEA, however, we actually do read every piece of legislation that comes down the pike, and more often than not we find that the title directly contradicts the substance of the legislation. A prime example of this phenomenon occurred over the last few months in a bill misnamed the "Educator Protection Act," which was later retitled the "School Protection Act." Reading the title together with the description provided by the bill's sponsors would lead most to believe that the bill would protect teachers from liability; however, the text of the original bill did exactly the opposite.

Specifically, the bill required that courts apportion liability between a school district and a teacher for acts the teacher committed "within the scope of employment." Why is this a problem? Well, under the current law, (called the Governmental Tort Claims Act), teachers cannot be held liable for any action that occurs within the scope of employment, i.e. action they take at the direction of their supervisor or in the reasonable exercise of their duties.

Let me emphasize: No individual liability whatsoever can be imposed under current Oklahoma law for teacher actions within the scope of employment. Conversely, the first version of the "School Protection Act" would require courts to apportion liability between the School District and the teacher. In short, where teachers could not be held liable at all before, under the proposed legislation, courts could impose up to 100 percent of the liability on the teacher individually. Obviously, we saw this as a major concern.

And the problems didn't end there. Under current law, Districts and their insurance carriers are required to indemnify teachers for costs incurred in defending against suits brought for actions that occurred within the scope of employment. Under the original "School Protection Act," however, a teacher would be individually liable for whatever percentage the court assigned. This means neither the District nor the District's insurance companies would defend or indemnify the teacher.

Of course, the bill's sponsors conveniently failed to mention the above provisions in their press releases. After OEA battled with them for weeks, they grudgingly removed portions of the above language. However, the most offensive provisions remained, specifically stating that teachers were liable for actions occurring within the scope of their

employment in certain vaguely defined circumstances. Here again, existing law would protect the teachers completely for actions done in furtherance of their duties, regardless of the circumstances. The new bill still created new liabilities for teachers (and all other school employees), which were simply not acceptable. Additionally, the bill did nothing to limit suits where the teacher's conduct allegedly occurred outside the scope of employment, which is where a teacher's real potential liability lies. Hence, we opposed the legislation.

The above explanation is fairly cursory and it would take a great deal more room than what is allotted in this article to detail the long-term detrimental impact of the bill. But therein lies the problem. Few organizations or individuals take the time to understand the complexities of this type of legislation or its long-term impact. All too often people base their opinions on short, immediate-gratification-style one liners, rather than the in-depth legal analysis necessary to understand complex legislation.

The above act would have increased liability for teachers, principals and even superintendents. Despite this fact, we were inundated with calls from other teacher groups, school board associations, principals, and superintendents who came out in support of the bill and questioned why we opposed it. Here again, no one that we spoke with understood the impact of the above provisions and most had never read beyond the bill's title, instead simply gaining their information from newspaper clippings. Fortunately, with a great deal of work on behalf of OEA staff and the assistance of several legislators, the bill did not pass.

The truth is that we do actually read beyond a bill's title and we look out for teachers' interests even when everyone else is heading in the opposite direction. To use my mother's vernacular, "If every other teacher and administrator group were to jump off a cliff, would OEA follow?" That is exactly what has happened with the "School Protection Act," and the answer is a resounding "No!"