

FILE

Subject

*Schools Financing
Use of Funds*



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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

March 14, 1974

Opinion No. 74- 93

Honorable Charles Laird
State Representative
Suite 800
First National Bank Tower
Topeka, Kansas 66603

Dear Representative Laird:

You inquire concerning the legality of certain kinds of expenditures made or proposed to be made by boards of education of the unified school districts of this state.

Any appraisal of the legality of any given expenditure must be made in the light of statutory authority provided therefor. "[S]chool funds can be expended by the district board only for purposes authorized by the statute either expressly or by necessary implication." Joint Consolidated School District No. 2 v. Johnson, 163 Kan. 202 at 208, 181 P.2d 504 (1947). Boards of education are creatures of statute, and as such enjoy only those powers expressly conferred by statute, and those powers implied therefrom which are necessary for the effective exercise and discharge of the powers and duties expressly conferred. Blankenship v. School District No. 28, 136 Kan. 313, 15 P.2d 438 (1932).

First, you inquire whether it is permissible for boards of education to belong to the National Association of School Boards either by direct affiliation or through the Kansas Association of School Boards. K.S.A. 72-5326 states thus:

"The board of education in any school district or the board of trustees of any community junior college is hereby authorized to appropriate money out of its general fund to pay the annual dues in the Kansas association of school boards."

Since 1947, when the predecessor of this section was first enacted, the Legislature has not extended its terms to authorize

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expenditure of funds of the district for membership in other than the Kansas Association of School Boards. There is, thus, no express statutory authority for a district to expend district funds for membership in the National Association of School Boards. Nor is there any basis in any existing statute for implying such authority. Accordingly, we conclude that any payment from district funds for membership in the National Association is unauthorized, and unlawful.

Secondly, you inquire whether a district may lawfully pay expenses of Board members to state or national conventions from funds of the district. Conflicting views have been taken by the courts on this general issue. In Smith v. Holovtchiner, 101 Neb. 248, 162 N.W. 630 (1917), an action was brought to enjoin the payment of \$250 in travelling expenses incurred by the board president and school superintendent in attending, at the board's direction, the Fourth International Congress on Hygiene, and visiting several technical schools. The court stated thus:

"Section 7027, Rev. St. 1913, provides for the levy and collection of taxes deemed necessary, as shown by the report of the board, for school purposes named, including the support of schools, purchase of school sites, and erection and furnishing of school buildings. Statutes granting power to tax are construed strictly. The purpose for which the tax is levied must come within the statute from which the power is derived.

Cases, challenging the right to expend the public funds for expenses of public officers in attending conventions, have been before the courts, and the courts appear to have uniformly held that these are not within the scope of proper public expenditures. In the case at hand, the real object in attending the convention was educational. Strictly speaking, it had nothing directly to do with either the support of the schools, or the erection and furnishing of school buildings. Counsel for appellants believes that modern conditions require a more liberal rule. While it cannot be disputed that the municipality might derive great benefit from what its delegates might learn at the convention, yet experience has shown that, when the control of a fund and the use of it may be lodged in the same person, a situation arises which is subject to such flagrant abuses that courts have thought that this was an additional reason for that rule of strict construction made to protect the rights of taxpayers."

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The court accordingly held the expenditures to be unauthorized, and enjoined the payment.

A modern and liberal view was taken in Day v. City of Newton, 174 N.E.2d 426 (Mass. 1961). An action was brought to require the city to restore to its budget funds to cover the travel expenses of the school committee or board, to attend a convention of the National School Boards Association under a statute which required that "the municipalities must provide the money that is necessary for the support of public schools." The trial court upheld the expenditure, finding that attendance "affords . . . an opportunity to obtain information and ideas of assistance . . . in the performance and discharge of the [committee's official] duties." The appellate court affirmed, pointing out that "[w]ithin a wide limit 'necessary' [in terms of expenditures] means reasonably deemed by the committee to bear a relation to its statutory mandate." In addition, a Massachusetts statute authorized the payment of expenses incurred for travel "in securing information upon matters in which the city or town is interested or which may tend to improve the service in such department. . . ." The court cautioned that "[a]lthough a public officer may not inform or educate himself generally at public expense, he may make expenditures to obtain information about special aspects of his task."

We agree generally with the views of the court in Day v. Newton, supra. If the governing body of a school district determines that its discharge of its duties and responsibilities will be materially advanced or enhanced through attendance by one or more of its members at seminars, conventions and conferences which deal with matters in which the board in its official capacity is interested, and which relate to its official responsibilities.

These general principles must be considered, however, in the light of specific statutory provisions and history in this state. The predecessor of K.S.A. 72-5326 was enacted in 1947. Ch. 383, § 1, L. 1947, stated thus:

"The board of education of any city of the first or second class and the board of any common-school or of any high school district is hereby authorized to appropriate money out of the general fund to pay the annual dues in the Kansas association of school boards not to exceed twenty-five cents per one hundred thousand dollars assessed valuation or fraction thereof of property subject to taxation by such board, and to pay the actual expenses of not more than one delegate to the

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annual meeting of such association." [Emphasis supplied.]

The underscored language was retained in this act until 1961, when it was deleted. Ch. 340, L. 1961. Thus, although express statutory authority to pay the expenses of a delegate to the annual meeting of the Kansas Association of School Boards was once granted and retained for fourteen years, it has since been repealed.

K.S.A. 72-8207 provides that "[b]oard members shall be paid their necessary expenses incurred in the performance of their official duties." Nothing in ch. 72, K.S.A., suggests that attendance at the annual convention of the Kansas Association of School Boards is an official duty of the boards of education of this state. The term "official duties" is somewhat ambiguous when it is sought to be relied upon as a statutory basis for authorizing payment of travel expenses to conventions, seminars, conferences, and the like. This section may arguably be construed to authorize the payment of expenses incurred by a board member in attending meetings which relate to the business and responsibilities of the board. By its rather express terms, it authorizes only payment of expenses incurred in the performance of "official duties." However, attendance at a given meeting, convention, seminar or conference, may become an "official duty" of the board when the board directs that one or more of its members attend and represent the board. Thus, although the express statutory authority for payment of expenses of attendance by board members at the state convention of the Kansas Association of School Boards was repealed in 1961, there exists today the general authority under K.S.A. 72-8207 for boards to pay from district funds the expenses incurred by members in the performance of official duties of the board. If a board chooses to be represented at a convention of the Association, attendance then becomes an "official duty" for which the district may expend funds. Although, as we have concluded, a district may not spend district funds to become a member of the National Association of School Boards, once again, if at the national convention of that association, there are conferences, seminars, and other programs of interest to a board and relating to its official duties which a Board believes will materially assist it in the discharge of its duties, it may provide funds for attendance. As the court stated in Newton v. Day, supra, "[t]hat the power may be subject to abuse as a means of providing junkets at public expense does not diminish the power."

Third you inquire whether boards of education may pay from district funds the expenses of board attorneys incurred in

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attending state and national seminars. Although we find no statutes specifically authorizing the board to employ an attorney, K.S.A. 72-8201 provides that "[e]ach unified district . . . may sue and be sued." This specific power carries with it the necessarily implied power to employ an attorney and to compensate him for his services. It does not empower the board, in our view, to pay or reimburse expenses incurred by its attorney, in attending seminars and conferences dealing with subjects of general interest and pertinence to school affairs. This, we believe, is consistent with the maxim in Day v. Newton, supra, that "a public officer may not inform or educate himself generally at public expense." An attorney might reasonably judge that his services to the district will be enhanced by exposure to offerings in specialized subjects provided at such seminars. However, the costs of such exposure should not, and we believe may not, be imposed upon the public funds of the district.

You inquire, next, whether boards of education may use tax funds to pay travel, subsistence, and registration fees for Board members and administrators to attend regional meetings, seminars and workshops sponsored by the Kansas Association of School Boards. This question is fully dealt with above, in our comments regarding the application of Day v. Newton, supra.

You question whether a board of education may contract with the Kansas Association of School Boards or any outside group or individual to write a set of board policies in lieu of developing such policies at the local level. A board may contract for such professional assistance and consultation as it deems necessary and appropriate for the discharge of its official responsibilities. Boards of education in this state are, however, elected officials, and they may not delegate their statutory rights and responsibilities to develop policies and programs for the local district to others by contract.

You inquire whether a board of education may pay dues for individual members of the board or administrators to belong to the American Association of School Boards. We think not. K.S.A. 72-5326 authorizes payment from the general fund by any district of "annual dues in the Kansas association of school boards." There is no similar authority for payment of dues for individual members or administrative employees in any other professional association. The lack of such authority is conclusive upon the question.

Lastly, you inquire whether a board of education may pay from funds of the district a "special dues assessment" to be assessed and collected by the Kansas Association of School Boards for

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construction of a building to house the Association. There is no authority whatever for such use of public funds. It is important to reiterate the basic and elementary principles stated by the court in Joint Consolidated School District No. 2 v. Johnson, 163 Kan. 202, 181 P.2d 504 (1947):

"That a public officer entrusted with public funds has no right to give them away is a statement so obviously true and correct as to preclude the necessity for citation of many authorities. (See 43 Am. Jur. 112, § 308.) Equally well established is the proposition that school funds can be expended by the district board only for purposes authorized by the statute either expressly or by necessary implication (47 Am. Jur. 363, § 92)." 163 Kan. 208.

A payment of public funds of the school district to the Kansas Association of School Boards for the construction of a building for that Association is nothing more or less than a gift of public funds to a private association, for which no justification can be made. K.S.A. 72-5326 authorizes districts to pay from the general fund "annual dues" in the Association. We have been furnished a copy of a bulletin or newsletter entitled "Week in Review," dated February 7, 1974, published by the Association. It reports that the Board of Directors of the Association met on February 2, 1974, and authorized the executive committee of the Association to purchase a site for the construction of a new Association office building. It states further that

"Financing of the costs of construction of the new building is to be through a special dues assessment on all KASB member boards, with payment to be made in one, two or three installments, at the option of each local board."

A Kansas school district is authorized to pay "annual dues" in the Association, and no more. A so-called "special dues assessment" is nothing more than a transparent device to divert public funds from the treasuries of the school districts of this state to pay the costs of a building for the benefit of and owned by a private association. Unless and until statutory authority is provided, any payment of such a "special dues assessment" is prohibited and absolutely unlawful.

In summary, it is necessary that each expenditure of public funds of the District be scrutinized carefully, to assure that the expenditure is authorized by law. Such funds are held by the district boards in trust, as it were, for the purposes for

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which such monies were levied and collected. Illegal and unauthorized expenditures will not be permitted, and will result in prompt legal action by this office.

Yours very truly,



VERN MILLER
Attorney General

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