

FILE

Subject

*State Boards
Education*

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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

August 2, 1974

Opinion No. 74- 253

Erle W. Francis, Attorney
State Board of Education
Suite 19, Capitol Federal Bldg.
700 Kansas Avenue
Topeka, Kansas 66603

Dear Mr. Francis:

You inquire concerning K.S.A. 72-130 et seq., and the relationship of the State Board of Education and the Kansas State High School Activities Association thereunder.

K.S.A. 72-130 applies by its terms to

"[a]ny organization with a majority of the high schools of the state as members and whose purpose is the statewide regulation, supervision, promotion or development of any of the activities referred to in this act and in which any public school of this state may participate directly or indirectly"

The Association, we assume, is such an organization. Under K.S.A. 72-130(1), the Association is required to report fully to the State Board of Education by September 1 of each year concerning its operation for the preceding calendar year, including a complete and detailed financial report certified by a certified public accountant, and including a copy of all reports and publications issued by the Association. On the face of this provision, it is a reporting requirement merely, and imposes neither a duty nor any authority upon the State Board to act upon such reports.

Under subsection (2) of this section, at least two members of the board of directors of the Association, which must consist of not less than thirty members, must be representatives of the State Board of Education.

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Subsection (3) states thus:

"On or before July 1, 1969, [the Association must] adopt amendments to its articles of incorporation and bylaws in conformity with the provisions of this act, and submit the same to the state board of education for its approval or disapproval. Also any additions, alterations or modifications of such articles or bylaws made at any time shall first be submitted to the state board of education for its approval or disapproval. If any such articles of incorporation, bylaws or any amendment, addition or alteration thereto is disapproved by the state board of education, the same shall not be adopted."

You inquire specifically concerning this section, whether the Board of Education enjoys any implied general powers over the operation of the Kansas State High School Activities Association greater than those expressly set out here. It does not. The language of this section is plain and unambiguous. The State Board of Education has no power to amend, add to, modify or alter either the bylaws or the articles of incorporation of the Association. Nor is the State Board empowered in any official capacity to propose such changes. It may only approve or disapprove such a change which is itself proposed by the Association.

The articles of incorporation and the bylaws of the Association are, of course, the organic documents of the Association. The State Board of Education has no power to repeal or amend any provision of either, with or without the consent of the Association. To reiterate, it may only approve or disapprove a proposed change therein which is initiated and submitted by the Association for the Board's review.

When the State Board of Education does approve a change in either the articles of incorporation or its bylaws, that change does not become a rule or regulation of the Association. K.S.A. 77-415(4) states thus:

"'Rule or regulation' means a rule, regulation, standard, statement of policy or general order, including amendments or repeals thereof, of general application and having the effect of law, issued or adopted by an agency to implement or interpret other legislation enforced or administered by such agency or to govern the organization or procedure of such agency. Every statement of general policy and every interpretation of a statute specifically adopted by an agency to govern its enforcement or administration of legislation shall be adopted by the agency and

filed as a regulation as provided in this act."

The term "state agency" is defined by K.S.A. 77-415(1) to mean

"any officer, department, bureau, division, board, authority, agency, commission, or institution of this state, except the judicial and the legislative branches, which is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state."

The Kansas State High School Activities Association is not a "state agency," as defined above. Its articles of incorporation and bylaws are not adopted pursuant to any statutory authority other than the power enjoyed by any incorporated association under the general corporation code of the State of Kansas. Its articles and bylaws govern its own affairs, but do not have the force and effect of state law. Its articles and bylaws are not administered or enforced by any state agency, for none is empowered to do so.

K.S.A. 72-7514 states thus:

"The state board [of education] is hereby authorized to adopt rules and regulations not in conflict with law or any and all matters within its jurisdiction, except as is otherwise specifically provided by law."

K.S.A. 72-7513 states more fully:

"In general, but not by way of limitation, consonant with other applicable statutory provisions, the state board of education shall:

(a) Adopt and maintain standards, criteria, guidelines or rules and regulations for the following:

(1) School libraries and textbooks and other educational materials;

(2) Courses of study and curriculum;

(3) Accredite schools including elementary, secondary and junior colleges, public and nonpublic;

(4) Certification of administrators, teachers, counselors and supervisors of school districts and of the state department of education and of teachers and administrators of nonpublic schools;

(5) Have general supervision of school nurses.

(b) Administer the laws of this state concerning the matters named in this section and all other matters relating to the general supervision of the public schools and institutions under supervision of the state board of education."

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Clearly, in approving or disapproving a change in any fashion of either the articles of incorporation or the bylaws of the Kansas High School Activities Association, the State Board of Education adopts no rule or regulation whatever, and the action of the Board in expressing such approval or disapproval constitutes merely that, and no more.

Lastly, you inquire whether the State Board of Education may assign schools to various athletic leagues. We agree with you that it can not. The extravagant suggestion that the Board does have such power rests, apparently, on Article 6, § 2(a) of the Kansas Constitution, which states thus:

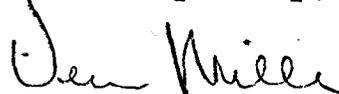
"The legislature shall provide for a state board of education which shall have *general supervision* of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law." [Emphasis supplied.]

In *State ex rel. Miller v. Board of Education of U.S.D. No. 398*, 212 Kan. 482, 511 P.2d 705 (1973), the court addressed the meaning of the underscored language above:

"Considering the frame of reference in which the term appears both in the constitution and the statutes, we believe 'supervision' means something more than to advise but something less than to control. . . ."

Manifestly, the State Board of Education has no power whatever by its own rule or regulation to assign individual school districts to participation in any particular athletic league. Such a regulation would involve the intrusion of the State Board into the control of individual districts' activities, beyond the scope of "general supervision" which the Board exercises over educational interests of the state.

Yours very truly,



VERN MILLER
Attorney General

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