



STATE OF KANSAS

Office of the Attorney General

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Attorney General

October 24, 1975

ATTORNEY GENERAL OPINION NO. 75- 409

Mr. Tom M. Reeves
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Re: Schools--Compulsory Attendance--Private Schools

Synopsis: The Kansas compulsory attendance law requires attendance by pupils within the specified age group at public schools or at private schools taught by a competent instructor during the periods that the public school in the district in which the student resides is in session. Accreditation is not required of such private schools, and certification is not required of instructors therein as evidence of competence. Boards of education have no authority, express or implied, to evaluate the competency of instructors at private schools operating within their respective territorial limits, and not report students in fact attending such schools as constructively truant merely because the board or its designee disapproves of the qualifications or credentials of the instructor or instructors of such schools.

* * *

Dear Mr. Reeves:

K.S.A. 72-1111 requires compulsory school attendance of certain children as follows:

"Every parent, guardian or other person
in the state of Kansas, having control over or

charge of any child who has reached the age of seven (7) years and is under the age of sixteen (16) years, shall require such child to attend continuously a public school or a private, denominational or parochial school taught by a competent instructor, each school year, for such period as the public school of the school district in which the child resides is in session."

The responsibility of the board of education toward these requirements is set out at K.S.A. 1974 Supp. 72-1113 in pertinent part as follows:

"(a) Each board of education shall designate one or more employees, whose responsibility it shall be to report to the judge of the juvenile court of the county which is the home county of the school district all cases of truancy. Such designation shall be made no later than September 1 of each school year, and shall be certified to the appropriate juvenile court judge no later than ten (10) days thereafter by the clerk of the board of education.

(b) Whenever a child is required by law to attend school and such child is not enrolled in a public or nonpublic school, such child is a truant. Reports of truancy under this subsection shall be made by designees of boards of education of public school districts under subsection (a) of this section.

* * *

(f) As used in this section 'board of education' means the board of education of a school district or the governing authority of a nonpublic school. *The provisions of this act shall apply to both public and nonpublic schools.* [Emphasis supplied.]

Thus, truancy occurs and is required to be reported when a child between the ages of seven and fifteen years, inclusive, is inexcusably absent from and inexcusably fails to attend continuously a

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a public school or a private, denominational or parochial school taught by a competent instructor for such period as the school of the school district in which the child resides is in session, unless, of course, the student is excused from attendance by other provisions of K.S.A. 72-1111 not pertinent hereto.

There is no state requirement that a private school be accredited by the State Department of Education. Similarly, the statutory course requirements of K.S.A. 72-1101 and -1103 apply only to accredited schools. It is necessary that the building or structure operated or used for a private or nonpublic school be inspected by the State Fire Marshal. K.S.A. 31-144. However, we find in the state school law no other requirement imposed upon private schools than that classes be taught by a "competent instructor." Here, the Legislature originally used and has since retained the requirement only that the instructor be "competent," and has not adopted any additional requirement of certification as found in art. 13, ch. 72, K.S.A. Indeed, K.S.A. 72-1388 states thus:

"The state board of education, in accordance with law, is authorized to make rules and regulations covering the issuance, renewal, reinstatement and registration of certificates for teachers and other personnel in the state department of education and *in schools and institutions under the general supervision of the state board of education*" [Emphasis supplied.]

Thus, state law does not go so far as to require certification of teachers in private schools, nor to authorize the State Board of Education to adopt rules and regulations regarding the certification of such teachers.

The competence of a teacher must be determined, thus, independently of any certification or lack thereof. We are advised, however, that the instructor in the Benton Farm Commune School in your area has indeed been certified as a secondary school teacher, and that the educational and professional credentials of the individual are superior. An instructor in a private school is not as a matter of law ineligible to so teach merely because he or she is not certified, and lack of certification for the courses or educational program taught is not *per se* nor *prima facie* nor *ipso facto* suggestive of incompetence. Competence must be determined in each instance on the basis of the credentials and qualifications of the individual in question. We are advised by officials of the Kansas Department of

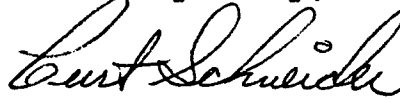
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Education that in the instance which prompts your inquiry, the qualifications and credentials of that individual are superior.

Thus, so long as a private school is taught by a competent instructor, satisfies the requirements of the State Fire Marshal, and is in session during the period required by K.S.A. 72-1111, a child attending such school satisfies the requirements of the Kansas compulsory attendance law.

Moreover, it is settled that a unified school district has only those powers prescribed by statute and those necessarily and reasonably to be implied therefrom. The board of education has no authority, either express or implied, to evaluate the competence of an instructor of a private and nonpublic school, or to approve or disapprove the qualifications of any such instructor at a private and nonpublic school located within the territorial limits of the school district. The district, through its employees designated by the board, is authorized to report absence from a public or private school. If a student is in fact attending such a private school, the district, or its designated representative, is not at liberty to deem such student constructively truant merely because the board, or its designee, chooses to disapprove of the qualifications and credentials of instructors at the private school in question.

Yours very truly,



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CTS:JRM:kj

cc: Mr. Dave Kester
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