



STATE OF KANSAS

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CURT T. SCHNEIDER  
Attorney General

December 15, 1975

ATTORNEY GENERAL OPINION NO. 75- 458

George Maier, Jr.  
WEEKS, THOMAS, LYSAUGHT, BINGHAM & MUSTAIN  
CHARTERED  
Home State Bank Building  
Minnesota at Fifth  
Kansas City, Kansas 66101

Re: Schools--Community Junior Colleges--Organizations,  
Powers and Finances of Boards of Trustees--  
President--Term of Office-Cash Basis Law

Synopsis: The Kansas City, Kansas Junior College board of trustees may appoint a president or chief administrative officer for a fixed term exceeding one year at a specified annual compensation without violating the Kansas Cash-Basis Law.

\* \* \*

Dear Mr. Maier:

As representative of the Kansas City, Kansas Community Junior College, you have requested an opinion whether the board of trustees has the power to appoint and fix the compensation of the president or chief administrative officer for a term of office of more than one year.

In this regard, K.S.A. 71-201(4) provides:

"(b) For the effectuation of the purposes of this act, the board of trustees in addition to such other powers expressly granted to it by this act and subject to the rules and regulations of the state board of education is

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hereby granted the following powers: (4) To appoint and fix the compensation and term of office of a president or chief administrative officer of the college."

Since our research indicates that no other statutory provision contained in Chapter 71 directly bears upon this precise question, it must be concluded that standing alone, K.S.A. 71-201(4) gives authority to the board of trustees to establish both the duration of the term and the annual amount of compensation solely within the limits of their own discretion.

You have inquired whether this conclusion remains correct when tested under the restrictions of the Kansas Cash-Basis Law. In limitation on the authority to contract, the Cash-Basis Law, K.S.A. 10-1101 et seq., provides at K.S.A. 10-1113:

"unless otherwise provided in this act, it shall be unlawful after May 1, 1973, for any member of any governing body of any municipality to knowingly vote for or in any manner aid or promote the passage or adoption of any order, motion, ordinance, resolution, legislation or other act of said governing body, creating an indebtedness in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose, or to knowingly vote for the drawing of any order, warrant or check, or other evidence of such indebtedness on the treasury of said municipality, in payment of any such indebtedness, in excess of the amount of funds actually on hand in the treasury at the time for such purpose."

The term governing body is broadly defined by K.S.A. 10-1101(b) to include the "... board of trustees of any community junior college." Similarly, the word "municipality" is defined at subsection (a) of the same statute to mean "community junior college". The chief concern involving municipalities and multi-year contracts with a fixed annual compensation is whether the same requires the municipality to have in its treasury at the time the contract is executed an amount equal to the municipality's total potential obligation through the duration of the agreement.

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It is a long established, well-settled rule of contract law in this state that, absent stipulation to the contrary, the right to payment under the terms of a contract is not earned until at such time as the services are performed. Carney v. Havens, 23 Kan. 82 (1879). In other words, there is no indebtedness accrued by the municipality until the services are performed and there exists an obligation to compensate the one having performed under the terms of the contract. If the contract specifies a three-year duration with bi-monthly compensation, no obligation and hence, indebtedness arises until each pay period after the individual has performed his obligation under the contract for that two-week period.

Accordingly, it is my opinion that the Kansas City, Kansas Junior College board of trustees may appoint a president or chief administrative officer for a fixed term exceeding one year at a specified annual compensation without violating the Kansas Cash-Basis Law. The junior college is only required to have in a junior college fund an amount equal to that amount which will accrue at each salary interval during the fiscal year as that salary becomes due.

Sincerely yours,



CURT T. SCHNEIDER  
Attorney General

CTS:HTW:bv