



STATE OF KANSAS

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January 29, 1976

ATTORNEY GENERAL OPINION NO. 76-35

Mr. Merle R. Bolton
Commissioner of Education
Kansas State Department of Education
120 East 10th
Topeka, Kansas 66612

Re: Schools--Tuition, Fees and Charges

Synopsis: The textbook rental law, K.S.A. 72-4141 *et seq.* does not authorize school districts to assess and collect fees and supplemental charges for the use, rental or sale of educational materials other than textbooks; secondly, that there presently exists no statutory authority for Kansas school districts to assess and collect fees and supplemental charges for enrollment in any class conducted by it, or for use, rental or purchase of educational supplies, equipment, materials or other items or facility privileges furnished to students for use in such courses; third, that there exists no constitutional obligation upon Kansas school districts to furnish personal educational supplies and equipment to its students.

* * *

Dear Commissioner Bolton:

Article 6, § 6(b) of the Kansas Constitution provides in pertinent part thus:

"No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or

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supplemental charges as may be authorized
by law."

Questions have arisen concerning legal authority for certain charges assessed pupils by unified school districts. No district may charge tuition to any student required by law to attend such school except "such fees or supplemental charges as may be authorized by law." Tuition has generally been defined as a charge for attendance at and participation in the educational program of the school. From time to time, various charges have been argued to be exempt from prohibitions against tuition, on the ground that such charges, characterized as "fees" of various kinds, do not constitute tuition. Generally, such arguments have not been successful. Annotation, *Validity of Public School Fees*, 41 A.L.R.3d 752 *et seq.* The distinction does not exist under article 6, § 6(b), for in addition to the prohibition against "tuition," it also provides that there may be charged only "such fees or supplemental charges as may be authorized by law."

Thus, in order to justify any fee or supplemental charge which may be in question, it is necessary to find express statutory authority therefor.

K.S.A. 72-4141 *et seq.* authorizes the board of education of any school district to establish and operate a school textbook rental plan. Thereunder, the board "shall purchase school textbooks to be used by the pupils upon the payment by such pupils of a rental fee." Under K.S.A. 72-4145, the board may establish a revolving fund "for the purpose of purchasing textbooks from time to time for rental purposes and repairing books previously purchased." It provides that

"all money collected by the board in the operation of the plan from rental of books, payment for books lost or destroyed, and all fines, shall be placed therein."

The board is empowered to hold "pupils responsible for any damages to, loss of, or failure to return such books at the time and to the person that may be designated by the board." Clearly, the board is thus authorized to fix and assess charges for rental of books, and fines and charges for damage to books, or failure to return them promptly or to return them at all.

The question arises what items fall within the term "textbook." In *People v. Board of Education of School District No. 5*, 175 Ill. 9, 51 N.E. 633 (1898), the court stated thus:

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"Webster defines a 'text-book' as 'a book or manual used in teaching; a book for students, containing the principles of a science or any branch of learning.' Stormonth's Pronouncing Dictionary defines a 'text-book' to be 'a book to be used as a standard book for a particular branch of study, for the use of students.'" 51 N.E. at 634.

In *Affholder v. State ex rel. McMullen*, 51 Neb. 91, 70 N.W. 544 (1897), the court considered the constitutionality of a law empowering school districts to purchase and furnish textbooks to students. The title of the act was thus: "An act to provide cheaper text books and for district ownership of the same." A section of the act also stated that "the provisions of this act shall include all school supplies." It was objected that the title referred to textbooks alone, and that the reference to school supplies introduced another subject into the bill than was enumerated in the title, in violation of a state constitutional provision, the analog of our Article 2, § 16. The court stated thus:

"The general object of the act under consideration was to require school districts, at public expense, to furnish text-books for the use of the children attending school. . . . [T]he question is whether the words 'school supplies,' found in the tenth section of the act, are embraced within the meaning of the term 'text-books.' 'School supplies,' as used in this act, means maps, charts, globes, and other apparatus necessary for use in schools, and we think that a chart or a map or a globe is as much a text-book as a reader or speller, within the purposes and intention of the act under consideration. . . . We do not think the term 'text-books' should be given a technical meaning, but that it is comprehensive enough to and does include globes, maps, charts, pens, ink, paper, etc., and all other apparatus and applicances which are proper to be used in the schools in instructing the youth. . . ."

We are not faced here with the need to reconcile the term "textbooks" and "school supplies." The act refers to textbooks and books interchangeably and, in my judgment, does not authorize rental charges for equipment, supplies and any other items than textbooks.

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K.S.A. 72-4141 *et seq.* authorizes charges for the rental of textbooks only, and fines and assessments for damage thereto and for failure to return them promptly or failure to return them at all. It does not authorize charges for instructional material and equipment other than textbooks. A textbook is defined by *Websters Third New International Dictionary* (G. & C. Merriam 1968) as a "book containing a usu. systematic presentation of the principles and vocabulary of a subject." Newspapers and filmstrips for in-class use; drawing material such as paper, pencils and erasers; mechanical drawing equipment such as a T-square, drafting sets and the like, slide rules required for in-class use; band and vocal music material; workbooks; films and movies are all, in my opinion, clearly not textbooks. There is no authority, either express or necessarily to be implied, for charges for such materials. Paperback and hardback books both may, of course, constitute textbooks, for which rental charges are authorized by K.S.A. 72-4141 *et seq.*

Secondly, you ask whether the boards of education of unified school districts have authority to prescribe, assess and collect fees for the rental and use of a variety of items.

Questions concerning the legality of various fees and charges assessed by schools have arisen most frequently in states whose constitutions mandated a free public school system. The Montana Constitution, *e.g.*, requires that the legislature establish and maintain a "general, uniform and thorough system of public, free, common schools." In *Granger v. Cascade County School District No. 1*, 499 P.2d 780 (Mont. 1972), plaintiffs argued that

"the school cannot impose fees or charges for anything, whether required or elective, that is encompassed in the constitutional requirement of a 'thorough system of public, free, common schools.' According to plaintiffs, this would encompass all categories referred to in the foregoing paragraph and would prohibit the school district from collecting or attempting to collect any such fees or charges, and from requiring or attempting to collect any such fees or charges, and from requiring or attempting to require students or their parents to furnish any supplies, equipment, or materials necessary to take part in any courses or activities within the scope of the authority of the school district."
499 P.2d at 783-784.

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As a corollary, plaintiffs contended there was no statutory authority to impose any such fees or charges. In response, the school district contended that

"the free, public education required by the Montana Constitution means 'tuition free' mandatory courses and does not apply to incidental fees and charges for elective or optional courses or extracurricular activities . . . [and that] the Constitution was not intended to prohibit it from furnishing better educational opportunities and training than minimum standards would require which is possible only through imposition of nominal fees for optional, extracurricular, and non-required courses and activities."

The fees and charges involved were characterized thus:

"The various fees and charges involved in the instant case can be roughly classified in the following categories: (1) personal school supplies such as pencils, pens, erasers, crayons, glue and similar supplies required to be furnished by the student and his parents; (2) charges for workbooks and materials used in specific courses; (3) charges for athletic equipment and towel usage in mandatory physical education courses; (4) athletic equipment, towel usage and insurance charges for interscholastic athletics; (5) musical instrument rental fees for band and orchestra classes; (6) tuition fees for summer school and summer music; (7) Driver's Education charges; (8) miscellaneous charges for extracurricular activities such as activity tickets, yearbooks, pictures and the like."

The trial court concluded that "certain of these fees were required to be paid and certain of these materials were required to be furnished for courses or projects that are required by the defendant School District," such items including, but not restricted to, work books, towel usage fees for mandatory physical education, field trip fees if a part of a regular class project, and current event magazines, and held that mandatory courses and activities must be furnished free of charge, and that charges and fees could not be

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assessed for materials, workbooks, and the like furnished in conjunction therewith. On appeal, the court upheld the order of the district court, and extended it further:

"The fundamental difficulty with the district court's language lies in the use of the phrase 'courses or projects that are required by the defendant School District' for which fees may not be charged, on the one hand, and 'courses and projects which are not required or for activities which are optional or extracurricular' for which fees may be charged on the other hand. Just what is meant by a 'required course or activity' as distinguished from an optional or extracurricular course or activity?

For example, at the high school level certain specific courses are required for graduation and no difficulty is presented in finding that these fall in the 'required course' category. But what about the large number of courses offered, no one of which is specifically required for graduation, but from which the student must amass a given number of credits in order to satisfy the total educational requirement for graduation? Courses falling in this category are required in the sense that a given number must be taken in order to satisfy the total educational requirements for graduation, but they are optional in the sense that the student may elect which specific courses to take in order to satisfy such total educational requirements."

The court stated the controlling principle thus:

"Is a given course or activity reasonably related to a recognized academic and educational goal of the particular school system? If it is, it constitutes part of the free, public school system commanded by Art. XI, Sec. 1 of the Montana Constitution and additional fees or charges cannot be levied, directly or indirectly, against the student or his parents. If it is not, reasonable fees or charges may be imposed."

Thus, the court pointed out,

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"an individual student has a freedom of choice, within the limits of the educational framework . . . to pursue a course of study directed toward business, a trade, college preparatory, commercial, secretarial, or some other goal without regard to his financial ability to pay additional fees or charges."

In *Paulson v. Minidonka County School District No. 331*, 93 Idaho 469, 463 P.2d 935 (1970), plaintiffs challenged a requirement that a student pay a \$25.00 fee, itemized as a \$12.50 textbook fee, and a \$12.50 activity fee, regardless of the student's participation in any particular activity. Unless the fee was paid, the student's transcript would not be furnished upon graduation. Concerning this fee, the court stated thus:

"If a student . . . wishes a transcript of his scholastic achievement he must pay the entire \$25.00, one-half of which is expressly consigned to fund extra-curricular activities. Items which are 'extra-curricular' are, by definition outside of or in addition to the regular academic courses or curriculum of a school. A levy for such purposes, imposed generally on all students whether they participate in extra-curricular activities or not, becomes a charge on attendance at the school. Such a charge contravenes the constitutional mandate that the school be free. But it should be noted that, because social and extra-curricular activities are not necessary elements of a high school career, the constitution does not prohibit appellants from setting fees to cover costs of such activities to be paid by students who wish to exercise an option to participate in them.

The other half of the \$25.00 fee, the \$12.50 'textbook fees' stands on different grounds. Textbooks are necessary elements of any school's activity. They represent a fixed expense peculiar to education, the benefits of which insure to every student in equal proportion (ignoring differences in ability and motivation) solely as a function of his being a student. Unlike pencils and paper, the student has no choice in the quality or quantity of textbooks

he will use if he is to earn his education. He will use exactly the books, prescribed by the school authorities, that his classmates use; and no voluntary act of his can obviate the need for books nor lessen their expense. School books are, thus, indistinguishable from other fixed educational expense items such as school building maintenance or teacher's salaries. The appellants may not charge students for such items because the common schools are to be 'free' as our constitution requires." 463 P.2d at 938-939.

In *Bond v. Ann Arbor School District*, 383 Mich. 693, 178 N.W.2d 484, 41 A.L.R.2d 742 (1970), the court concluded thus:

"Applying either the 'necessary elements of any school's activity' test or the 'integral fundamental part of the elementary and secondary education' test, it is clear that books and school supplies are an essential part of a system of free public elementary and secondary schools."

Some courts have held that constitutional mandates of free public school systems do not require free textbooks. See, e.g., *Carpio v. Tuscon High School District No. 1 of Pima County*, 21 Ariz.App. 241, 517 P.2d 1288 (1974) and *Board of Education v. Sinclair*, 65 Wis.2d 179, 222 N.W.2d 143 (1974).

Former article 6, § 2 of the Kansas Constitution required that the legislature establish a "uniform system of common schools." In *Board of Education v. Dick*, 70 Kan. 434, 78 Pac. 812 (1904), the court held that the legislature was without power to authorize a board of education to charge tuition for enrollment in its public schools, on the ground that "common schools" required by the constitution were synonymous with "free schools," and that tuition was thus constitutionally impermissible. In 1966, however, article 6 of the Kansas Constitution was substantially amended by adoption of a new article by the voters. The reference to common schools was deleted. Section 1 of the article now requires the legislature to

"provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may

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be organized and changed in such manner as
may be provided by law."

It is necessary to question whether "public schools" means "free schools," for section 6(b) of the new article speaks directly to the question of tuition, fees and charges:

"No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law."

Tuition is generally defined as a charge for enrollment or admission to a class or school. It is prohibited for all students required by law to attend a class or a school. Thus, no tuition may constitutionally be charged students who have reached the age of seven years and who are under the age of sixteen years. K.S.A. 72-1111. While tuition is constitutionally prohibited to that extent, school districts may assess and collect "such fees or supplemental charges as may be authorized by law." Text-book rental fees, charges for failure to return books or for belated return, and charges for damage to such books are specifically authorized by K.S.A. 72-4141 through -4147. Under K.S.A. 72-5386, students may be required to pay for all school property in the possession of the student which is not returned by the student "upon transfer of any such student from one school district of the state to any other school district." Charges for food service are authorized by K.S.A. 1975 Supp. 72-5119. Charges for adult supplemental education are authorized by K.S.A. 1975 Supp. 72-4525. Parking fees and fines for the misuse of parking areas are authorized by K.S.A. 1975 Supp. 72-9104.

You inquire concerning the authority of school districts to assess a variety of other charges, such as fees for the rental or use of physical education uniform, towels and the like; fees for laboratory science materials, including specimens; materials fees, such as for wood used in a woodworking project of which the student will retain ownership; fees for the use of safety equipment, such as safety goggles in a welding course; fees or charges for art supplies used in art courses; fees for band materials, including instruments, music and other supplies; fees for the use of tools and other equipment in vocational or industrial arts courses, such as auto mechanics; for enrollment in particular courses, such as regular driver's education courses; fees for current events and other reading matter, such as *Weekly Reader*, which you advise are required in some elementary schools.

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Article 6, § 6(b) authorizes Kansas school districts to charge its students only those fees and supplemental charges as may be authorized by law. It is a settled principle in this jurisdiction that school districts have only those powers expressly granted, and those reasonably and necessarily implied therefrom. The general authority of boards of education is stated at K.S.A. 72-8205 thus:

"The board shall have authority to prescribe courses of study for each year of the school program and provide rules and regulations for teaching in the unified district and general government thereof, and to approve and adopt suitable textbooks and study material for use therein subject to the plans, methods, rules and regulations formulated and recommended by the state board of education."

In addition, under K.S.A. 72-1033, it shall have control of the school district property, including "all furniture, fittings, and equipment, such as books, maps, charts, and instructional apparatus." These provisions are absolutely silent as to the power of the board to assess any fees or supplemental charges for education provided under its jurisdiction. The constitution requires that such charges be "authorized by law." In the ordinary parlance of both lawyers and laymen, this means that to justify a particular charge or fee, or classes thereof, there must be some law which authorizes them. In view of the express constitutional provision that fees and supplemental charges be authorized by law, there is no basis upon which to imply legislative authority in local boards to assess fees and charges for education merely from its "general government" of the district.

The question arises whether there are any fees or supplemental charges which a school district may assess absent express or clearly and necessarily implied authority therefor. May, *e.g.*, a district collect admission charges from its students for admission to interscholastic athletic contests. Stated otherwise, to what kinds of fees and supplemental charges does the constitutional provision extend. In my judgment, it extends to those fees and charges for enrollment in any course for which credit is given towards graduation, to any rental, purchase, use or other fee or assessment for workbooks, materials, equipment, and any other items furnished by the district for the use of its students, including consumable materials, as enrollees in any course of instruction offered by the school in which the student is enrolled for the purpose of completing

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the hours of study which lead to graduation. Thus, a district may assess no charge for consumable supplies used and furnished for teaching purposes in such classes as welding, cooking, industrial arts, business and secretarial skills, home economics and the like. While each of many such courses may be optional, students select from among them to fulfill their educational goals, and to complete the hours of study required for graduation. No fees or supplemental charges may be assessed for enrollment in such classes or for the rental, purchase or use of materials, consumable or otherwise, which are furnished by the district to such students, unless and until express statutory authority is provided therefor.

It may be argued that materials charges may be justified in those instances in which the student retains ownership of the project which is constructed or fashioned from such materials. Whether such charges are in fact justified must be determined by the legislature. In many instances a student is required, in order to complete the course, to demonstrate his or her familiarity with the skills taught therein, by the completion of one or more projects. The project becomes an integral part of the course, and a charge for materials used therein becomes, in essence, a fee or supplemental charge for enrollment in and graduation from the class, for which no statutory authority presently exists.

An activity fee which is mandatory is clearly prohibited, for there exists no present statutory authority therefor. If participation in intramural athletic competition is required, the district may not assess any fee or supplemental charge for participation therein, or for use of uniforms, equipment, towels, and the like. If an activity is extracurricular and optional, and thus is not an integral part of the educational program of the school which the student is required to complete, article 6, § 6(b) is not applicable to such charges, in my judgment. If, for example, a lyceum program is presented under the auspices of the school during school hours, and attendance is required or absences must be excused, the program must be regarded as a part of the educational program of the school presented for the cultural and educational benefit of its students, and no charge may be assessed therefor, unless and until statutory authority is provided.

You inquire concerning certain miscellaneous charges which do not fall squarely within the foregoing, among them driver's licenses or permits for driver's education courses, locker fees, and fines for delinquent return of library books. Driver's instructional permits are required under K.S.A. 8-239(b) and other classes of licenses are required under other provisions of article 8, K.S.A. The fee for such permits and licenses is not assessed

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by the school district, but by the Division of Vehicles of the State Department of Revenue, and liability for the fee rests with the student. It is not, thus, a fee or charge which falls within article 6, § 6(b). That section does not, in my judgment, require the district to satisfy the liability of any student for a fee assessed by a separate governmental subdivision, as well as state agencies, or to reimburse the student for the costs thereof. A school library is obviously an asset and tool of the educational plant. A mandatory library fee is clearly prohibited, as is a library privilege fee, for there is no authority for such charges, and such a fee is one for the use of educational facilities of the district. However, a library fine is not a fee for use, but a fee for misuse, as it were, and is not a fee or supplemental charge for access to and use of educational materials constituting an integral part of the educational program of the school. A mandatory locker fee is likewise prohibited, for by its very mandatory character, it becomes a fee or supplemental charge for enrollment and participation in the program of the school. If it is not mandatory, it is difficult to conclude as a matter of law that the fee is one for attendance at, enrollment in, and graduation from the educational program of the school, and thus, I cannot conclude that it is a fee or supplemental charge within article 6, § 6(b).

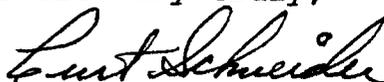
Lastly, you ask whether, if certain of the above fees and rental charges are not presently authorized by Kansas law, the unified school district may require the student or parent to furnish supplies and equipment for which the district is not itself authorized to assess fees and supplemental charges. In several of the cases cited above, the courts were called upon to determine the district's obligation to furnish textbooks, educational supplies and the like to students under constitutional provisions mandating systems of free public schools. The term "free" does not appear in article 6 of the Kansas Constitution. Tuition is constitutionally prohibited, but only for those students who are required by law to attend school. Subject to this restriction, the legislature is free to authorize by law the assessment and collection of such fees and supplemental charges as it sees fit. There is no express *constitutional* provision which imposes upon Kansas school districts any obligation to furnish textbooks, pencil, paper, and other supplies or equipment. Obviously, a requirement that a student furnish a costly microscope for his or her personal use as a prerequisite to enrollment in a laboratory science class would be prohibitive, and should probably be deemed to be an indirect fee or supplemental charge which the district is not authorized to impose absent express or clearly and necessarily implied statutory authority. However, there is no constitutional obligation upon the district to furnish pencils, paper, erasers, rulers, and other items of equipment which a student may deem needful for the completion of particular courses. Thus, while I cannot but conclude that the district is itself constitutionally

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prohibited from imposing fees and supplemental charges for enrollment in its courses or for the use, rental or sale of materials, equipment and supplies furnished by the district to its students in connection with their enrollment and completion of the educational courses of the district, *unless and until statutory authority is provided therefor*, I must at the same time conclude that the district may require the students themselves to furnish many of such items.

To recapitulate in response to your specific questions, first, I conclude that the textbook rental law, K.S.A. 72-4141 *et seq.* does not authorize school districts to assess and collect fees and supplemental charges for the use, rental or sale of educational materials other than textbooks; secondly, that there presently exists no statutory authority for Kansas school districts to assess and collect fees and supplemental charges for enrollment in any class conducted by it, or for the use, rental or purchase of educational supplies, equipment, materials or other items or facility privileges furnished to students for use in such courses; third, that there exists no constitutional obligation upon Kansas school districts to furnish personal educational supplies and equipment to its students.

Yours very truly,



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