



WITHDRAWN

See Opinion No. 77-155

STATE OF KANSAS

## Office of the Attorney General

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Attorney General

February 24, 1976

ATTORNEY GENERAL OPINION NO. 76- 70

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

Re: Corporations--Power to Confer Academic or Honorary  
Degrees--Schools--Proprietary

Synopsis: The Kansas State Department of Education may not  
endorse its approval to confer academic or honorary  
degrees on the articles of incorporation of a school  
licensed pursuant to the Kansas Proprietary School Act.

\* \* \*

Dear Commissioner Bolton:

The authority to grant or confer academic or honorary degrees  
is governed by the provisions of K.S.A. 17-6105 which states:

"No corporation organized after July 1, 1972,  
shall have power to confer academic or honorary  
degrees unless the articles of incorporation  
or an amendment thereof shall so provide and  
unless the articles of incorporation or an  
amendment thereof prior to its being filed in  
the office of the secretary of state shall have  
endorsed thereon the approval of the state  
board of education of this state. No cor-

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poration organized before July 1, 1972, any provision in its articles of incorporation to the contrary notwithstanding, shall possess the power aforesaid without first filing in the office of the secretary of state, a certificate of amendment so providing, the filing of which certificate of amendment in the office of the secretary of state shall be subject to prior approval of the state board of education, evidenced as hereinabove provided. Approval shall be granted only when it appears to the reasonable satisfaction of the state board of education that the corporation is engaged in conducting a bona fide institution of higher learning, giving instructions in arts and letters, science or the professions or that the corporation proposes, in good faith, to engage in that field and has or will have the resources, including personnel, required for the conduct of an institution of higher learning."

Under the Kansas Proprietary School Act, K.S.A. 72-4916 et seq., the term "proprietary school" is defined by subsection (a) of K.S.A. 72-2919 to mean:

"any business enterprise operated for a profit, or on a nonprofit basis, which maintains a place of business within the state of Kansas, or solicits business within the state of Kansas, and which is not specifically exempted by the provisions of this act; and

- (1) which offers or maintains a course or courses of instruction or study; or
- (2) at which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence, or both, to a person or persons for the purpose of training or preparing such person for a field of endeavor in a business, or for avocational or personal improvement, except as hereinafter excluded."

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K.S.A. 72-4920 provides further insight into the Legislature's intended meaning by specifically excluding from the definition of proprietary school those educational institutions with the following characteristics:

"(a) A school or educational institution supported primarily by taxation from either a local or state source.

(b) Nonprofit school owned, controlled, operated and conducted by bona fide religious, denominational, eleemosynary or similar public institutions exempt from property taxation under the laws of this state, but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, shall be subject to the provisions of this act as determined by the state board.

(c) A school or training program which offers instruction of purely avocational or recreational subjects as determined by the state board.

(d) A course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.

(e) A course or courses of study of instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership, and for which no tuition fee is charged to the student.

(f) Private colleges and universities which award a baccalaureate, or higher degree, and which maintain and operate educational programs for which credits are given. A majority of said credits must be transferable to a college, junior college, or university accredited by a national recognized accrediting agency listed by the United States Office of Education under the provisions of chapter 33, title 38, U. S. Code and such subsequent federal legislation as is approved by the state board.

(g) A school which is otherwise regulated and approved under any other law of this state.

(h) A course or courses of special study or instruction financed and/or subsidized by the local or state government, private industry or any person, firm, association or agency, other than the student involved, on a contract basis and having a closed enrollment, except that a school financed and/or subsidized by federal or special funds may apply to the state board for exemption from the provisions of this act and may be declared exempt by the state board when it finds the operation of such school to be outside the purview of this act."

A question has arisen as to whether the State Department of Education may endorse the articles of incorporation of a school licensed pursuant to the Kansas Proprietary School Act and thereby grant to that corporate entity the power to award or confer academic or honorary degrees pursuant to K.S.A. 17-6105. Central to the resolution of this inquiry is what type of institution constitutes a "bona fide institution of higher learning."

K.S.A. 17-1605 is patterned upon and employs the identical language found at Section 125 of the Delaware Corporate Code. My research has been unable to locate a judicial or administrative construction applied to the phrase under the case law of either state.

Some illumination as to the intended scope of the phrase may be gleaned from the statute itself wherein it specifies that the "bona fide institution of higher learning" be one:

"giving instruction in arts and letters, science or the professions or that the corporation proposes, in good faith, to engage in that field and has or will have the resources, including personnel, required for the conduct of an institution of higher learning."

The point to be emphasized is that these additional qualifiers limit the types of "bona fide institutions of higher learning"

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which are to be permitted the privilege of bestowing academic or honorary degrees. Conversely, some "bona fide institutions of higher learning" may be denied the privilege. In this instance, it is my view that those schools or institutions construed as coming within the parameters of the definition of "proprietary school" at K.S.A. 72-4919(a) may not be granted approval by the State Board of Education to confer academic or honorary degrees.

In support of this position, a comparison of the purposes of the two types of schools reveals a fundamental inconsistency or contradiction in function between a bona fide institution of higher learning giving instructions in ". . . the arts and letters, sciences or professions . . ." and one whose purpose is the "training and preparing [of a] person for a field of endeavor in a business, trade, technical or industrial occupation, or for avocational or personal improvement . . .". The former clearly connotes those institutions under the traditional concept of junior or four-year, public or private colleges and universities. The latter, though arguably a "bona fide institution of higher learning", does not provide the type or nature of instruction which is a requisite for degree conferring power. Thus, I am unpersuaded that a school operating within and providing the services specified in the definition of "proprietary school" and not otherwise excluded could also satisfy the requisite of providing instruction in the arts and letters, sciences and professions. Implicit in such regulation is a distinction between the proprietary school and those exempted from K.S.A. 72-4920.

A close scrutiny of K.S.A. 72-4920 and those characteristics which serve to exclude certain institutions from the definition of "proprietary school" reinforces the distinction. K.S.A. 72-4920(a) eliminates all schools which are supported in any manner by local or state taxation. Subsections (b) and (d) further exclude all private or religious affiliated schools which award baccalaureate or higher degrees. In essence, these three provisions describe the salient features of those educational institutions commonly associated with the phrase "bona fide institution of higher learning." For example, subsections (a), (b) and (d) eliminate all colleges and universities in Kansas under the control of the State Board of Regents, all community junior colleges which are supported in part through local

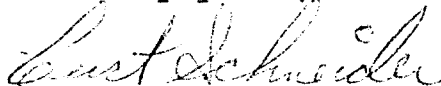
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taxations, and all private or religiously affiliated colleges and universities awarding baccalaureate or higher degrees. The specific exclusion of nearly all Kansas colleges and universities further evidences the Legislature's positive intent that proprietary schools be regarded as separate and distinct from other educational institutions--institutions which give instruction in the arts and letters, sciences or the professions.

There appears to be no means of reconciliation or compatibility of function between these two types of institutions of higher learning such that a school may contemporaneously combine characteristics of both without being excluded from the definition of proprietary school by K.S.A. 72-4920.

Accordingly, it is my opinion that the Kansas State Department of Education may not endorse its approval to confer academic or honorary degrees on the articles of incorporation of a school licensed pursuant to the Kansas Proprietary School Act.

Sincerely yours,



CURT T. SCHNEIDER  
Attorney General

CTS:HTW:bv