



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 16, 1976

ATTORNEY GENERAL OPINION NO. 76-94

Mr. Joseph G. Shalinsky
State Board of Pharmacy
Post Office Box 6150
Argentine Station
Kansas City, Kansas 66106

Re: Board of Pharmacy--Kansas Pharmacy Tripartite Committee
for Evaluation of Continuing Educational Programs--
Collection of Fees

Synopsis: Fees collected by the Kansas Tripartite Committee for
Evaluation of Continuing Educational Programs for the
processing and evaluation of various pharmacy educa-
tional programs are not exacted by the Board of Phar-
macy pursuant to provisions of the Pharmacy Act and
thus do not come within the purview of K.S.A. 1975
Supp. 74-1609.

* * *

Dear Mr. Shalinsky:

A request for an opinion from this office has been made on behalf of the Board of Pharmacy inquiring whether the processing and evaluation fees charged by the Kansas Pharmacy Tripartite Committee for Evaluation of Continuing Educational Programs (Committee) are categorically encompassed by the provisions of K.S.A. 1975 Supp. 74-1609. We are advised that the Committee is composed of several registered pharmacists, including some members of the Board, who serve at the request of the Board. The Committee's primary function is to review and evaluate various pharmacy education programs which may be offered state licensed pharmacists for continuing education purposes. It assists the Board by making recommendations as to the acceptability of a particular program relative to the continuing education objectives specified in K.S.A. 1975 Supp. 65-1632. The Board, however, is not obligated in any way to follow the recommendations of the Committee. We further understand that the Committee by

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its own initiative exacts a fee from the several organizations requesting evaluation by the Committee of the various pharmacy education programs which they offer. The assessment of this fee precipitates the question here presented: Must the Board's secretary exercise control per K.S.A. 1975 Supp. 74-1609 over the fees charged by the Committee?

K.S.A. 1975 Supp. 74-1609 provides in pertinent part:

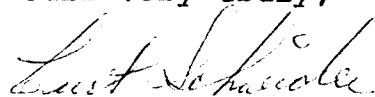
".

The executive secretary shall receive and receipt for all fees collected under this act. The executive secretary of the board shall remit all moneys received by or for such secretary from fees, charges or penalties to the state treasurer at least monthly."

It is apparent from the foregoing that the question evolves to the single issue of whether or not the fees assessed by the committee can be reasonably considered as "fees collected under this act." It is our view that such fees cannot be so labeled.

The law requires that the Board approve pharmacy education programs which are to be credited for the continuing education requirement that has become a condition precedent for annual registration. K.S.A. 1975 Supp. 65-1632. That the Board approves or disapproves a particular program is a discretionary act which only it can exercise. The Committee functions separate and apart from the Board, albeit at the Board's request. This, however, in and of itself does not create authority to exist and function under the act where the law is otherwise silent. The Committee is quite simply an unofficial screening body for pharmacy education programs which can only impart recommendations that are accorded whatever persuasive weight the Board allows. Insofar as this is the ultimate power which the Committee may exercise we must conclude that since the Committee exists and functions without statutory authority the fees collected for evaluating the various pharmacy education programs are so exacted for the Committee's benefit, and notwithstanding that the Board may ultimately benefit from its assistance, we cannot but conclude that such fees do not fall within the scope of the Kansas Pharmacy Act.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj