

STATE OF KANSAS

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May 7, 1976

ATTORNEY GENERAL OPINION NO. 76- 150

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

Re: Schools--Vocational Education--Use of Funds

Synopsis: Moneys appropriated pursuant to ch. 9, § 7, L. 1975, for area vocational-technical school programs may be expended for costs of buildings and fixed equipment, so long as such funds are not used as matching funds for non-state-source funds and expended for such purposes jointly therewith. Proceeds from the levy authorized by K.S.A. 1975 Supp. 72-4420 may be expended for the construction of buildings and the purchase of school buses for vocational education programs.

* * *

Dear Commissioner Bolton:

You request my opinion upon two questions which have been raised concerning area vocational schools and area vocational-technical schools.

First, you inquire whether a school district may use state funds which are appropriated by the state for area vocational-technical school programs for the construction of buildings to house vocational education programs which are approved by the State Department of Education. This question requires a construction of the terms of an appropriation and proviso thereto found at ch. 9, § 7, L. 1975, which provides in pertinent part thus:

"(a) There is appropriated for the above agency [Department of Education] from the state general fund the following:

* * *

Area vocational-technical school program (state)3,620,646
. . . .*Provided further, That no state money shall be used to match costs of buildings and fixed equipment, that not to exceed 30 percent of the total cost of non-fixed equipment shall be matched by state funds, and that not to exceed 35 percent of the total cost of operational and instructional costs shall be matched by state funds*" [Emphasis supplied.]

By the terms of the proviso, no part of the \$3,620,646 may be used to "match costs of buildings and fixed equipment" The question which is posed is whether this proviso prohibits any use whatever of any part of the \$3,620,646 for costs of buildings and fixed equipment, or whether it prohibits only use of these funds to match other funds for those purposes. The term "match" has come to have a fixed usage in the jargon of federal grantsmanship. Eligibility for a grant of federal funds for a particular purpose may be conditioned upon agreement by the grantee to furnish corresponding funds from its own resources to be used jointly with the federal funds for the project. Funds required to be furnished by the grantee, and used jointly with the federal funds, are commonly referred to as "matching funds." The grantee may be required to furnish funds to match the federal money *in toto*, or in a specified proportion of the federal funds. The proviso makes no reference to federal or other non-state funds, however. It prohibits use of the appropriated moneys to "match" specified costs, however, and not to "match" federal or other moneys available to defray those costs.

It may be argued, likewise, that this proviso reflects a legislative intent to forbid use of the moneys so appropriated for the costs of buildings and fixed equipment under any circumstances. To implement this imputed legislative intent, the proviso must be construed to prohibit use of the appropriated funds to defray the costs of buildings and fixed equipment, and to prohibit application of the monies to satisfy any costs of these items, whether used alone or jointly with federal or other funds. An extremely literal construction of the direction that no state money shall be used to "match [certain] costs" may be argued to support this interpretation. However, elsewhere in the same proviso, where the legislature undertook to restrict or prohibit the use of appropriated moneys for a particular purpose,

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it did so unequivocally and without reference to the matching of costs. It provided, thus, that "not less than \$349,021 shall be used for new programs," a substantial departure from the preceding restrictions whereby the use of state moneys to "match" certain costs was prohibited.

A direction that funds shall not be used for a specific purpose is clear and unambiguous. A direction that funds shall not be used to match costs incurred for a certain purpose is less so. In my judgment, there is a material difference between the two restrictions. The difference in language indicates, in my opinion, that the legislature sought to impose differing kinds of restrictions. *I.e.*, a direction that state moneys shall not be used to match costs for certain purposes is, despite the omission of any reference to federal or other non-state-source moneys, a direction that state moneys shall not be used jointly with funds from any other source for the specified purposes, and not a direction that state moneys shall not be used *at all* for the specified purposes.

Construed thus, it is my opinion that state moneys approved by ch. 9, § 7, L. 1975, for area vocational-technical school programs, may not be used to match non-state-source moneys, and expended jointly for the specified purposes, and in particular, for costs of buildings and fixed equipment. However, if state moneys are proposed to be used solely and alone for the costs of buildings and fixed equipment, that use is not prohibited by the proviso.

Such a construction does not necessarily affront any legislative intent. It may very well have been the view of the legislature that the use of state moneys to match available federal funds, and thus enlarge the resources available for construction and fixed equipment, would lead to overbuilding and an excess of equipment, whereas a forced reliance upon state moneys alone for such capital expenditures would forestall possible reckless overexpenditures for such purposes.

Secondly, you inquire whether a unified school district may expend proceeds from the two mill levy authorized by K.S.A. 1975 Supp. 72-4420 for the construction of buildings to house vocational education programs approved by the State Department of Education. That provision states in pertinent part thus:

"The board of education of any school district may levy a tax of not to exceed two (2) mills upon the taxable tangible property within the school district for the purpose of providing revenue for the cost of establishing, conducting, maintaining and administering


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vocational education courses or programs which are currently approved by the state board and for payment of tuition and fees for vocational education courses or programs approved by the state board. All moneys received by a school district from a tax levy made under authority of this section shall be deposited in the vocational education fund of the school district."

In an opinion dated March 30, 1973, issued by Attorney General Vern Miller to Commissioner Whittier, the permissible uses of this fund were considered. There, it was inquired whether proceeds from this levy could be used for the construction of buildings and for the purchase of school buses to be used for vocational education purposes. On the ground that the legislature had made express provision for levies for capital outlay purposes of school districts in other statutes, and that K.S.A. 72-4420 did not expressly enumerate capital expenditures as a purpose of the levy, it was concluded that such "capital expenditures are not . . . within the permissible scope of expenditures authorized by K.S.A. 72-4420 for "establishing, conducting, maintaining and administering vocational education courses or programs"

Upon further consideration of this question, it is my judgment that this construction is unduly restrictive. In that opinion, it was acknowledged that, indeed, physical facilities are necessary to house vocational education programs. The uses to which proceeds from the two mill levy are put should be determined, I believe, by the terms of that statute alone, absent any ambiguity therein which compels reference to other statutes to be construed *in pari materia*. K.S.A. 1975 Supp. 72-4420 authorizes the use of the proceeds from that levy to defray, without restriction or qualification, all costs of establishing, conducting, maintaining and administering vocational education courses or programs" Any district which proposes to establish, and any district which is operating, a vocational education program must meet numerous capital expenditures. Nothing in the express provisions of K.S.A. 1975 Supp. 72-4420 compels the conclusion that such expenditures may not be met from the proceeds of this levy. Accordingly, the conclusion stated in page 5 of the opinion of March 30, 1973, to Commissioner Whittier is withdrawn. It is my judgment that the proceeds of that levy may lawfully be applied to capital expenditures, including the construction of buildings, for the purpose of providing vocational education programs and courses which are approved by the State Board of Education.

Yours very truly,


CURT T. SCHNEIDER
Attorney General