The Honorable Ronald R. Hein
State Senator
714 Capitol Federal Building
Topeka, Kansas 66603

Re:  Schools--Proprietary Schools--Academic Degrees

Synopsis: The State Board of Education is authorized to endorse its approval to confer academic or honorary degrees upon the articles of incorporation or amendments thereto of a school which is licensed under the Kansas Proprietary School Act provided the Board determines that such applicant satisfies the criteria of the Board respecting the conduct of a bona fide institution of higher learning, giving instructions in arts, letters, sciences or the professions.

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Dear Senator Hein:

K.S.A. 17-6105 provides that no corporation shall be authorized to confer academic or honorary degrees unless the articles of incorporation or amendments thereto shall so provide, and shall have the approval of the State Board of Education endorsed thereon. It further states thus:

"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."

In Opinion No. 76-70, we considered the question whether a corpora-
tion licensed under the Kansas Proprietary School Act to operate
a proprietary school was eligible to apply to the State Board
of Education for approval to award academic or honorary degrees
pursuant to K.S.A. 17-6105. In that opinion, we concluded that
a proprietary school licensed under the cited act was not eligible
for such approval, reasoning that the purpose of a bona fide insti-
tution of higher learning giving instructions in "the arts and
letters, sciences or professions" was fundamentally incompatible
and inconsistent with a school licensed under the proprietary
school act, 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 improve-
ment . . . ." We stated that "the latter, although 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."

Upon reconsideration, I am persuaded that this conclusion is in
error. Whether an applicant to the State Board of Education for
authority to confer academic or honorary degrees is in fact a
"bona fide institution of higher learning, giving instructions
in arts and letters, science or the professions" is a question
of fact, to be determined by the Board. Certainly, the course
of study prescribed by a proprietary school licensed under the
Kansas Proprietary School Act will not ordinarily satisfy the
requirements for academic degree authority. However, nothing
in K.S.A. 17-6105 disqualifies a proprietary school corporation
as a matter of law from eligibility for approval by the State
Board under that section. A corporation operating a licensed
proprietary school might, in addition to its business, trade,
technical and industrial curricula, offer an educational program
in the "arts and letters, science or the professions" which would
qualify the applicant as "conducting a bona fide institution of
higher learning." The earlier opinion created a conclusive pre-
sumption, as it were, that the offering of a proprietary school
might never meet the enriched standards of traditional academic
institutions of higher learning. There is no basis for this
presumption, for it operates to disqualify from consideration
an applicant which might indeed be qualified to confer academic
or honorary degrees under criteria administered by the State Board of Education in the exercise of its authority under K.S.A. 17-6105. There is no statutory provision or inference therefrom, or consideration of public policy, which warrants a construction of the proprietary school act as disqualifying licensees thereunder from developing and offering a bona fide program of higher education in the arts, letters, sciences or professions, and obtaining approval of degree-granting authority therefor under K.S.A. 17-6105.

Accordingly, Opinion Nos. 76-70 and 77-15 are withdrawn, and I conclude that the State Board of Education is authorized to endorse its approval to confer academic or honorary degrees upon the article of incorporation or amendments thereto of a school which is licensed under the Kansas Proprietary School Act.

Yours truly,

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