



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

October 11, 1977

ATTORNEY GENERAL OPINION NO. 77- 334

Mr. John K. Corkhill
Executive Secretary
Public Employees Retirement System
400 First National Bank Tower
Topeka, Kansas 66603

Re: Retirement--Employers--Kansas State High School Activities Association

Synopsis: The Kansas State High School Activities Association is not an eligible employer for participation in the Kansas Public Employees Retirement System.

* * *

Dear Mr. Corkhill:

You inquire whether the Kansas State High School Athletic Activities Association, Inc., is an employer who is eligible for participation in the Kansas Public Employees Retirement System. K.S.A. 1976 Supp. 74-4902(13) defines the term "eligible employer" to mean and include

"the state of Kansas, and any county, city, township, special district or any instrumentality of any one or several of the aforementioned whose employees are covered by social security and are not covered by or eligible for and will not become eligible for another retirement plan authorized under the laws of the state of Kansas which is in operation on the entry date."

Mr. John K. Corkhill
Page Two
October 11, 1977

K.A.R. 80-1-10 elaborates on the term "instrumentality" as found in the foregoing, stating thus:

"For the purpose of determining membership in the system under K.S.A. 1974 Supp. 74-4902 of the act, the term 'instrumentality' shall include only those instrumentalities which are presently or shall hereafter be covered under the agreement between the federal social security administration and the state of Kansas for the coverage of public employees within the state of Kansas under old age survivors and disability insurance section of the federal social security program or instrumentalities created under K.S.A. 12-2801 et seq. and covered by the old age survivors and disability insurance section of the federal social security program."

The Kansas State High School Activities Association is a private nonprofit corporation which is organized, apparently, for the regulation, supervision, promotion and development of school "activities," as defined by K.S.A. 72-133, as amended. K.S.A. 72-130, as amended by ch. 239, L. 1977, prescribes certain requirements which must be met by

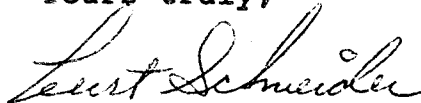
"[a]ny association with a majority of the high schools of the state as members and whose purpose is the statewide regulation, supervision, promotion or development of any of the activities referred to in this act and in which any public school of this state may participate directly or indirectly"

Such associations are required to file an annual financial report with the State Board of Education. K.S.A. 72-130(a). The size and general composition of its board of directors and executive board are fixed by statute. Amendments, additions, alternations or modifications of its articles of incorporation or bylaws must first be approved by the State Board of Education prior to adoption. K.S.A. 72-130(b), as amended, requires any such organization to have an appeal board, which shall hear the appeal of any student, parent or guardian or member school which is aggrieved by a decision of the board of directors or executive board of the association.

Mr. John K. Corkhill
Page Three
October 11, 1977

In Opinion No. 76-72, the Attorney General concluded that the Kansas open meeting law, K.S.A. 1976 Supp. 75-4317 et seq., did not apply to the Association, because it was an "independent nongovernmental entity, a private nonprofit incorporated association," and as such, was not a legislative or administrative body of the state or of its political subdivisions. In response to that opinion, the 1977 legislature provided that an association falling within the scope of the initial paragraph of K.S.A. 72-130 as amended must be "subject to the provisions of the Kansas open meetings law, and any amendments or supplements thereto." Although subject to the open meeting law, the Association remains, just as it was, an independent nongovernmental entity, and a private nonprofit incorporated association. Clearly, it is not an "instrumentality" as defined by K.A.R. 80-1-10, and thus, its members are not public employees who are entitled to participate in the Kansas Public Employees Retirement System.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj