



STATE OF KANSAS

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**Curt T. Schneider**  
Attorney General

March 20, 1978

ATTORNEY GENERAL OPINION NO. 78-138

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

Re: Colleges and Universities--Conferring of Degrees--  
Regulation

Synopsis: Regulation of church-related institutions of higher education in conferring academic and honorary degrees by the Board of Education pursuant to K.S.A. 17-6105 is not violative of the First Amendment of the United States Constitution.

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Dear Mr. Bolton:

You inquire whether K.S.A. 17-6105 concerning the regulation of institutions of higher education in conferring academic and honorary degrees, when applied to church-related institutions in Kansas, violates the First Amendment of the United States Constitution.

K.S.A. 17-6105 provides as follows:

"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 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 corporation organized before July

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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 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, requisite for the conduct of an institution of higher learning."

The constitutionality of state regulation of religious conduct has been the subject of much litigation. Through these cases the distinction has been made by the United States Supreme Court between the regulation of belief and of action. In the case of Cantwell vs. Connecticut, 310, (1953)US 296 the Court recognized and explained this distinction in its construction of the First Amendment as follows:

"The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. [On] the other hand, it safeguards the free exercise of the chosen form of religion. Thus, the Amendment embraces two concepts,--freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. No one would contest the proposition that a State may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee. It is equally clear that a State may by general

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and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment."

In our view, the state has an obvious, keen interest in maintaining the integrity of the academic and honorary degrees awarded by institutions of higher education located in the state. K.S.A. 17-6105 seeks to accomplish such regulation by subjecting the corporate authority of institutions proposing to award such degrees to the scrutiny of the State Board of Education. The statute provides criteria for use by the Board of Education in exercising its responsibility under the statute, and these criteria are wholly secular in nature. Nowhere does this statute seek to regulate the beliefs of any college or university administrator, faculty member or student; it merely limits the authorized actions of institutions of higher education in accomplishing a valid public purpose, the prohibition against so-called "diploma mills" and similar unsubstantial educational institutions.

Therefore, we conclude that K.S.A. 17-6105, as applied to church related institutions of higher education in Kansas, constitutes a reasonable regulation of such institutions and does not contravene the First Amendment of the United States Constitution.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

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