



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER
ATTORNEY GENERAL

December 12, 1978

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78- 385

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

Re: Schools--Correspondence

Synopsis: International Correspondence Schools is presently engaged solely in interstate commerce and is thus not subject to state regulation, in effect the Kansas Proprietary School Act, K.S.A. 72-4916 *et al.*

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Dear Dr. Bolton:

You inquire as to whether International Correspondence Schools is in violation of the Kansas Proprietary School Act, K.S.A. 72-4916 *et al.* Before such a determination may be made, the underlying question whether the school may constitutionally be subjected to regulation by this state must be addressed.

It is settled that regulation of interstate commerce is exclusively a federal and not a state concern. So, too, is the proposition that a company engaged exclusively in interstate commerce may engage in solicitation of business in a state without leave or hindrance from that state, *Furst v. Brewster* 282 U.S. 493, 51 S. Ct. 295, 75 L. Ed. 478 (1931). See also *Angeo - Chilian Corp. v. Alabama* 288 U.S. 218, 53 S. Ct. 373, 77 L. Ed. 710 (1933).

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States may not impose restrictions upon correspondence schools which are engaged solely in interstate commerce, *International Text Book Co. v. Pigg* 217 U.S. 91, 305 S. Ct. 481, 54 L. Ed. 678 (1908). The prohibition against state regulation of correspondence schools does not apply, however, to schools which are engaged in intrastate commerce within the regulating state. It is the characterization of business as interstate or intrastate which is critical. That determination must be based upon the facts of each specific case. The mere solicitation of business within a state by a correspondence school is alone not enough to justify a characterization of a company's activities as intrastate. *International Textbook Company v. Pigg, supra; Eli Lilly & Co. v. Sav-On Drugs, Inc.* 366 U.S. 276, 81 S. Ct. 1316, 6 L. Ed. 2d 288, reh. den. 366 U.S. 978, 81 S. Ct. 1913, 6 L. Ed. 2d 1268 (1961). The courts have, however, found "intrastate" activity susceptible to state regulation where such solicitation is coupled with some additional element. Such factors as the salesman having the authority to approve contracts without reference to the home office, rental of a sales office paid for by the company, telephone listings in the classified and regular sections of a telephone directory, presence of a secretary in the sales office whose salary is paid directly by the corporation and the presence of several salesmen paid on a salary and not a commission basis, have, at various times been relied upon by the courts. See *Dackman v. Isoue* 36 N.Y.S.2d 625 (Sup. Ct. 1942), *National Schools v. Los Angeles*, 287 P.2d 151 (1955), *Merriman v. Harter* 52 N.M. 154, 280 P.2d 1045 (1955), *State v. Williams* 253 N.C. 337, 117 S.E.2d 444 (1960), *Materials Research Corp. v. Metron Inc.* 64 N.J. 74 (1973) and see generally 92 A.L.R. 2d 523.

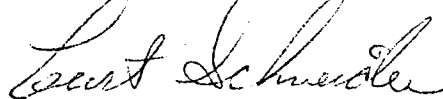
You advise that International Correspondence Schools maintains no office or physical facilities in this state and has no field representatives soliciting individual citizens within the state. They indicate that all future business activity will be limited to solicitation and enrollment of personnel on military installation located in the state. In light of the discussion above and the information you provide, I am of the opinion that International Correspondence Schools, is engaged solely in interstate commerce, is not engaged in business in this state, and is therefore not subject to the requirements outlined in the Kansas Proprietary School Act. Thus it is unnecessary to consider whether or not its activities would come within the terms of that statute.

While correspondence schools engaged in interstate commerce are not subject to regulation by the states, they are subject to the

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jurisdiction of the Federal Trade Commission, *Federal Trade Commission v. Civil Service Training Bureau, Inc.* 79 F.2d 113 (6th Cir. 1935). Any complaints concerning the operations of such schools should be directed to the Federal Trade Commission which is charged with enforcement of the *Trade Practice Rules for Private Home Study Schools, Federal Code of Regulations* 16:116,254

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:SDT:MR:jm