



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER
ATTORNEY GENERAL

December 27, 1978

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

ATTORNEY GENERAL OPINION NO. 78-390

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

Re: School Districts--Budgets--Board of Tax Appeals

Synopsis: In granting an application by a school district for an increased budget under K.S.A. 1977 Supp. 72-7071, the State Board of Tax Appeals has no authority to prescribe limitations upon the 1979-1980 or any other future budget of the applicant school district, for those limitations are prescribed by K.S.A. 1977 Supp. 72-7055. When the Board approves an increased budget under the referenced statute, that budget becomes the only legally adopted budget of the district, and that budget as increased, alone may be considered in determining the effect of K.S.A. 1977 Supp. 72-7055 upon future budgets, and upon the determination of median budgets per pupil.

* * *

Dear Commissioner Bolton:

You advise that pursuant to K.S.A. 1977 Supp. 72-7046, as amended by ch. 296, § 5, L. 1978, the State Board of Education is required to determine medium budgets per pupil for enrollment categories based upon intervals of one hundred students. The median budget per pupil so determined is utilized by K.S.A. 1977 Supp. 72-7055 in prescribing budget and expenditure limitations for unified school districts:

Mr. Merle R. Bolton
Page Two
December 27, 1978

"(a) In any school year commencing after June 30, 1977, no district shall budget or expend for operating expenses per pupil more than (1) one hundred fifteen percent (115%) of the amount of its budget per pupil in the preceding school year or (2) one hundred five percent (105%) of the median budget per pupil in the preceding school year of districts within the same enrollment category as such district during such year, as such median and category are specified under K.S.A. 1977 Supp. 72-7044 and 72-7046, and amendments thereto, whichever of (1) or (2) above is the lower amount per pupil. Notwithstanding the foregoing, any district may budget or expend for operating expenses per pupil (1) not more than one hundred five percent (105%) of its budget per pupil in the preceding school year"

You inquire what procedure should be followed in determining the budget per pupil in certain districts concerning which the State Board of Tax Appeals has recently entered orders in appeals under K.S.A. 1977 Supp. 72-7071. That section authorizes the Board to "authorize a district to increase its legally adopted budget of operating expenses or its expenditures" upon a finding by the Board of any one of seven separate circumstances, including "[u]n-usual occurrences [which] have affected or will affect the enrollment of the district so as to cause an increase in operating expenses greater than the district is permitted . . ." under the limitations of art. 70, ch. 72, K.S.A.

The State Board of Tax Appeals has recently acted upon a number of applications by boards of education to increase their operating budgets for 1978-1979 above the legal maximum, based most commonly upon unforeseen enrollment declines. You enclose one such order of the Board, entered respecting U.S.D. No. 215, Docket No. 3794-78-SC. In that order, the Board found that the decline in enrollment constituted an "unusual occurrence" within the meaning of K.S.A. 1977 Supp. 72-7071, and authorized an increase of the budget of operating expenses of the district for the 1978-1979 school year of \$114,164.00. The Board went further, however, to observe that the restoration of budget authority "must be temporary in nature if it is to cause budgetary adjustment in future years in light of a declining enrollment pattern," and concluded thus:

Mr. Merle R. Bolton
Page Three
December 27, 1978

"Therefore, in an effort to accommodate such budgetary re-adjustment we shall order that this restoration be limited to the 1978-79 fiscal year. Further, we shall order that for the 1979-80 fiscal year the maximum legal budget for purposes of establishing a base upon which to build, be that, which by operation of law this district was reduced to prior to making its appeal necessitated by declining enrollment."

In its order, the Board recited that "K.S.A. [1977 Supp.] 72-7071 in its grant of authority . . . does not specify the duration of the effectiveness of our order as it relates to school appeals." In the nature of things, an order of the Board of Tax Appeals under that provision authorizing a district to "increase its legally adopted budget of operating expenses or its expenditures" applies only to the budget from the constraints of which relief is sought, *i.e.*, to the current year budget. Obviously, the Board has no authority to authorize a budget increase *in futuro*, *i.e.*, respecting a budget not yet legally adopted. Similarly, the Board has no statutory authority to impose limitations *in futuro*, upon budgets not yet adopted.

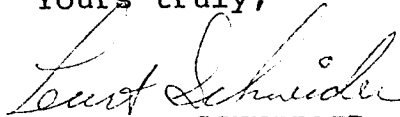
When the Board approves a request by a school district to increase its budget under K.S.A. 1977 Supp. 72-7071, the order of the Board approving such a request operates to amend that current year budget. Once that budget is thus amended, the effect of that amendment upon succeeding budget years is determined by statute, and specifically K.S.A. 1977 Supp. 72-7055, and not by any discretionary order of the Board. When the 1978-1979 budget is increased by an order of the Board of Tax Appeals, that budget, as duly increased, becomes the legally adopted, and the only legally adopted, budget of that school district for 1978-1979. As such, it becomes the controlling budget under K.S.A. 1977 Supp. 72-7055 for the purpose of determining the limitations on the 1979-1980 budget.

The State Board of Tax Appeals is a statutory body, and it has only those powers expressly granted to it by statute. Under K.S.A. 1977 Supp. 72-7071, the Board is authorized to authorize a district to increase its legally adopted budget. It has no authority under that section, or elsewhere, to impose limitations upon future budgets of the applicant school district. Once the Board approves an increased budget, it is that budget which by operation of law becomes the controlling budget for determination

Mr. Merle R. Bolton
Page Four
December 27, 1978

Stated otherwise, in acting upon an application by U.S.D. No. 215, to increase its current 1978-1979 budget by a given amount, the State Board of Tax Appeals has no authority to prescribe any limitations whatever upon the 1979-1980 or any other future budgets of the applicant school district. The legislature has prescribed those limitations by K.S.A. 1977 Supp. 72-7055, and the State Board of Tax Appeals has no authority thereunder to increase or reduce those limitations. The purport of the order is to establish a wholly fictitious and nonexistent budget per pupil for U.S.D. No. 215 as the basis for its permissible 1979-1980 budget increases. The effect of the order of the Board was to restore budget authority in the amount of \$114,164.00 to the district, resulting in a maximum legal budget of \$1,191,000.00. That budget, under K.S.A. 1977 Supp. 72-7055, and that budget alone, may be considered in the determination of median per pupil budgets, and in the permissible increases under that statute for 1979-1980.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj