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March 30, 1979

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ATTORNEY GENERAL OPINION NO. 79-43

Mr. Olin K. Petefish
Attorney at Law
Petefish, Curran and Immel
643 Massachusetts Street
Lawrence, Kansas 66044

Re: Schools--Boards of Education--Closing Schools

Synopsis: It is the manifest legislative intent that the term "city unified school district," as used in K.S.A. 72-8213(b), means a unified school district which has included within its territory a city having a population in excess of 20,000. The board of education of any such city unified school district is authorized by this statute to close any of its attendance facilities at any time such board finds the same should be closed to improve the school system of such school district. Such closure, pursuant to this statutory provision, may be made without the board having obtained the prior consent of the majority of the resident electors of the city unified school district.

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Dear Mr. Petefish:

As counsel for Unified School District No. 497, Douglas County, Kansas, you request our opinion concerning the authority of the board of education of said school district to close some of the attendance facilities within the territory of said unified

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school district. More specifically, you inquire if, in our opinion, said school district is a "city unified school district" within the provisions of K.S.A. 72-8213(b) and, consequently, is not required to first obtain the consent of the resident electors in order to close attendance facilities, which at the time of unification, were being operated by school districts number 55, 95 and 100, but are now located within Unified School District No. 497.

You explain that prior to unification, the city of Lawrence comprised school district number 60. Thereafter, said district joined with certain other districts, including districts number 55, 95 and 100, to form Unified School District No. 497, Douglas County, Kansas.

K.S.A. 72-8213(b) provides:

"The board of any city unified school district which such city has a population in excess of 20,000 may close any of its attendance facilities at any time such board finds the same should be closed to improve the school system of such school district. The limitations of subsection (a) of this section shall not apply to any closing under this subsection (b)."

Your inquiry arises from the fact that, when the legislature enacted the provisions of K.S.A. 72-8213(b) in 1967, it failed to define the term "city unified school district." As there is no reasonable doubt, based upon the clear and unambiguous provisions of this subsection, that the legislative intent when it enacted this subsection was to allow the board of education of a city unified school district to close any of its attendance facilities without first obtaining voter approval, the task herein is to determine the meaning of "city unified school district."

Although said term is not, itself, defined in any statute, the legislature, did, in enacting the school unification acts (see L. 1963, ch. 393; L. 1965, ch. 420; and L. 1965, ch. 410), define the following terms:

- (1) "The term 'unified district' means a school district organized under the authority of this act."
(L. 1963, ch. 393, §2 and L. 1965, ch. 410, §2.)
- (2) "The term 'city district' means the school district of a board of education of a city of the first or second class." (L. 1963, ch. 393, §2 and L. 1965, ch. 410, §2.)
- (3) "The term 'city unified district' means a unified district having a territory which includes a city of first or second class having a population of more than ten thousand (10,000) and also every unified district the organization order for which provides for election at large." (L. 1965, ch. 410, §30.)

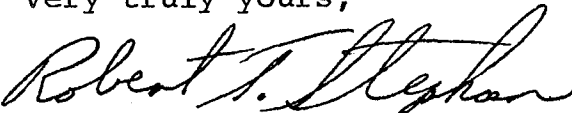
Given these definitions and the well-settled rules of statutory construction that, in construing a statute, one must consider statutes in existence when the statute being construed was enacted [Motor Equipment Co. v. Winters, 146 Kan. 127, 132 (1937), cited with approval in State, ex rel., v. Shawnee County Comm'rs, 159 Kan. 87, 90 (1944) and Natural Gas Pipeline Co. v. Commission of Revenue & Taxation, 163 Kan. 458, 466 (1947)], and that the words of a statute must be taken in the sense in which they were understood at the time the statute was enacted [United Parcel Service, Inc. v. Arnold, 218 Kan. 102 (1975); Natural Gas Pipeline Co. v. Commission of Revenue & Taxation, *supra*; and State, ex rel, v. Moore, 154 Kan. 193 (1941)], it is our opinion that the term "city unified school district," as used in K.S.A. 72-8213(b), means a unified school district having a territory which includes a city of the first or second class. In our judgment, such definition reflects the apparent legislative intent in the use of said term, since it gives expression to the sense in which the words used therein were understood at the time this statutory provision was enacted. This conclusion is based on our reading of the previously noted definitions of similar terms.

It must be noted, however, that for a board of education of such a district to be empowered to close any attendance facility or facilities without first obtaining voter approval therefor, the city included within the territory of said district must have a population in excess of 20,000.

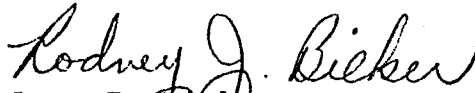
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In light of the definition herein given the term "city unified school district," and given the fact that the territory comprising Unified School District No. 497, Douglas County, Kansas includes therein the city of Lawrence, which city has a population in excess of 20,000, it is our opinion that the board of education of said unified school district may close any of its attendance facilities at any time such board finds the same should be closed to improve the school system of said unified school district. It is further our opinion, that such attendance facility closure may be made by said board without having first obtained voter consent therefor. Finally, as K.S.A. 72-8213(b) expressly provides: "The limitations of subsection (a) of this section shall not apply to any closing under this subsection (b)," it is our opinion that said board of education may close any attendance facility located within the territorial boundaries of said district, irrespective of the former district within which such attendance facility was located prior to unification.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm