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June 15, 1979

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ATTORNEY GENERAL OPINION NO. 79- 122

Mr. M. D. Boyles, Superintendent
Unified School District No. 278
Mankato, Kansas 66956

Re: Schools--School Textbooks--When Free Textbooks
Required

Synopsis: The opinion of the Attorney General issued on August 18, 1971, has not been superseded by subsequent legislation and, if the requirements of K.S.A. 72-4107a are fulfilled, a board of education must furnish textbooks free of charge. In addition, a board of education may refuse to furnish a child free textbooks only if the board finds that the application therefor is not meritorious. Finally, while it is the duty of the board of education to determine the merits of any application filed pursuant to K.S.A. 72-4107a, no administrative regulations have been promulgated for a board of education to follow in making said determination. Such rules, however, may be established by the board.

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Dear Mr. Boyles:

You ask us to clarify an opinion issued August 8, 1971, by Attorney General Vern Miller. Said opinion concerns the provisions of K.S.A. 72-4107 and 4107a, regarding the provision of textbooks, free of charge, to students.

It appears that a question has arisen as to when textbooks must be provided to students free of cost. You indicate that there seems to be a conflict between K.S.A. 72-4107 and K.S.A.

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72-4107a. You, therefore, request an interpretation of these two statutes. In addition, you ask if any regulations have been established which a board of education may follow in making a decision in regard to granting or denying a request for free textbooks?

K.S.A. 72-4107 provides:

"The board of education of any school district may provide a revolving fund for the purpose of enabling the purchase, for the use of the students in the schools of the district, the necessary school textbooks. The treasurer of each board of education is hereby authorized and directed to pay out of said funds all orders lawfully drawn for the purchase of such textbooks.

"Each clerk of a board of education shall replace the moneys paid out of the revolving fund with cash received by him, if any, for the books sold to the patrons of said school. Each school district may provide the pupils in said district with textbooks free of cost."
(Emphasis added.)

K.S.A. 72-4107a provides:

"Whenever the parents or guardian of any child attending any of the public schools are unable to purchase textbooks or provide rental fees for said child, the board of education of the district in which said child resides shall, if written application is made and said board finds the application meritorious, furnish said child with the regular adopted textbooks free of cost."
(Emphasis added.)

Your reservations about the interrelation between K.S.A. 72-4107 and 72-4107a, all stem from an opinion issued by Attorney General Vern Miller on August 8, 1971. In that opinion,

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Mr. Miller concluded that a school district, pursuant to K.S.A. 72-4107, may, but is not required to, provide textbooks free of charge to all pupils who are enrolled in the district.

On the other hand, Mr. Miller explained that pursuant to K.S.A. 72-4107a, a district is required to provide textbooks free of charge to a student whose parent or guardian is unable to pay for them.

That opinion has not been superseded by subsequent legislative enactment, and we fully concur with the conclusions reached therein.

From Mr. Miller's opinion, it should be clear that K.S.A. 72-4107 allows a board of education to provide textbooks free of charge to ALL students in the school district. It makes no reference to the financial ability of the students' parents or guardians to pay for the textbooks. Thus, pursuant to K.S.A. 72-4107, a board may provide textbooks free of charge, regardless of the economic status of any student's family.

K.S.A. 72-4107a, on the other hand, requires a board of education to provide textbooks free of charge to any student whose parents cannot afford to pay for them. However, the statute provides that written application for the free textbooks must be made by the child's parents or guardian, and the board must find that the application is "meritorious." Thus, if a child's parents make written application to the board of education, asking that said board provide textbooks to their child free of charge because the parents cannot afford to pay for them, and the board finds that the parents' economic situation is such that they really cannot afford to pay for such textbooks, the board must provide textbooks free of charge.

However, while a board of education does have the right, and the duty, to determine the merits of any written application whereby a request is made that textbooks be furnished, free of cost, to a child, it is only when the board finds that such an application is not meritorious that it may refuse to provide such textbooks free of charge.

There remains, then, only your inquiry concerning whether regulations have been adopted which establish guidelines for a board to follow in determining the merits of an application

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for the provision of textbooks free of cost. Our research disclosed no such regulations. Therefore, we may offer you only general advice.

By Article 6, Section 5 of the Constitution of the State of Kansas: "Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards." Moreover, the language of K.S.A. 72-4107a strongly implies the Legislature intended that the local board of education examine, investigate, hold hearings or do whatever it feels necessary in order to determine the merits of an application for the provision of free textbooks. Clearly, therefore, the burden is upon the board of education to determine the merits of each request.

As no guidelines have been established by statute or administrative regulation, it is our opinion that a local board of education is free, pursuant to its constitutional authority, to promulgate rules and regulations which will be followed and uniformly applied in determining the merits of all applications filed pursuant to K.S.A. 72-4107a.

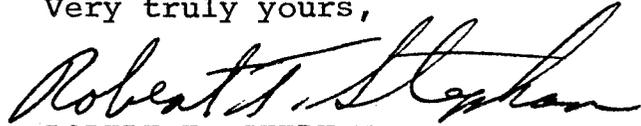
Based upon the guiding principles of due process and equal protection of the law, it is our opinion that any such rules and regulations must be reasonable and uniform, and be in the best interests of the child. Also, an opportunity should be provided for the parents to supply information supporting their request that their child or children be provided textbooks free of charge. Beyond these generalities, we can offer no advice.

In summary, we advise you that the opinion of the Attorney General issued on August 18, 1971, has not been superseded by subsequent legislation and, if the requirements of K.S.A. 72-4107a are fulfilled, a board of education must furnish textbooks free of charge. In addition, a board of education may refuse to furnish a child free textbooks only if the board finds that the application therefor is not meritorious. Finally, while it is the duty of the board of education to determine the merits of any application filed pursuant to K.S.A. 72-4107a, no

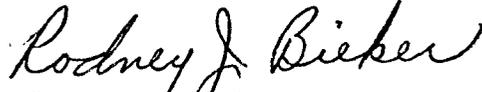
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administrative regulations have been promulgated for a board of education to follow in making said determination. Such rules, however, may be established by the board.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

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