



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 80-243

Jeffrey A. Chubb
Assistant County Attorney
Montgomery County Courthouse
Independence, Kansas 67301

Re: Schools--Suspension and Expulsion of Pupils--Truancy
as Grounds for Such Action

Synopsis: A child required by law to attend school who is inexcusably absent therefrom is a truant, as defined by K.S.A. 1979 Supp. 72-1113. Such child is subject to the exclusive jurisdiction of the district court, which may, pursuant to the Juvenile Code, K.S.A. 1979 Supp. 38-801 et seq., issue such orders or make such dispositions as it deems necessary in order for the child to attend school. Accordingly, a school board's power to suspend or expel a child pursuant to K.S.A. 72-8901 does not extend to cases involving truancy. Cited herein: K.S.A. 1979 Supp. 38-802, 38-816, 38-817, 38-826, K.S.A. 72-1029, K.S.A. 1979 Supp. 72-1111, 72-1113, K.S.A. 72-8901, K.S.A. 1979 Supp. 72-8902, 72-8904.

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Dear Mr. Chubb:

On behalf of the County Attorney of Montgomery County, you request our opinion on a question which concerns the ability of the local school board to suspend or expel a student on the grounds of truancy. In other words, the board wishes to remove pupils from class because of their non-attendance of those same classes.

As you note in your letter to us, the grounds upon which a student may be suspended or expelled are set out at K.S.A. 72-8901. The five specific statutory grounds established there are:

"(a) Willful violation of any published regulation for student conduct adopted or approved by the board of education, or

"(b) conduct which substantially disrupts, impedes or interferes with the operation of any public school, or

"(c) conduct which substantially impinges upon or invades the rights of others, or

"(d) conduct which has resulted in conviction of the pupil or student of any offense specified in chapter 21 of the Kansas Statutes Annotated or any criminal statute of the United States, or

"(e) disobedience of an order of a teacher, peace officer, school security officer or other school authority, when such disobedience can reasonably be anticipated to result in disorder, disruption or interference with the operation of any public school or substantial and material impingement upon or invasion of the rights of others."

This statute is a successor to K.S.A. 72-1029, which limited the board's power to situations where the pupil was "guilty of immorality or persistent violation of the regulations of the school." The changes were made with an eye to the increased concern of the courts in recent years to the right of all persons to due process of law, in that specific acts are set out as grounds for suspension or expulsion, and notice, hearing and appeal procedures are clearly enunciated (K.S.A. 1979 Supp. 72-8902, 72-8904). See, R. Bennett, The 1970 Kansas Legislature in Review, 39 J.B.A.K. 107, 185 (1970).

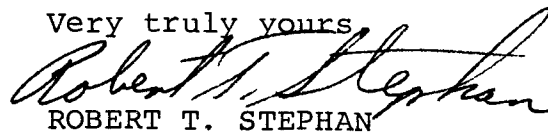
Unlike suspension or expulsion, which may result from a student's violation of district regulations or the rights of other students, truancy involves a student's violation of state law, namely K.S.A. 1979 Supp. 72-1111, which provides for compulsory school attendance for children between 7 and 16 years old. Failure to be enrolled in school (whether public or private) leaves such a child a truant, as does unexcused absence for more than 3 consecutive days or 5 total days in a semester (K.S.A. 1979 Supp. 72-1113). While the district is responsible for determining the validity of excuses and for keeping records of attendance, any cases of truancy are to be reported to the district

court, pursuant to K.S.A. 1979 Supp. 72-1113(a). Once this is done, the child may be dealt with through the Juvenile Code, K.S.A. 1979 Supp. 38-801 et seq. The same definition of truancy is adopted there [at K.S.A. 1979 Supp. 38-802(f)] as is set out above, and the court is empowered to make an appropriate disposition of the matter, if after notice and hearing it is determined that the child is in fact a truant. (K.S.A. 1979 Supp. 38-816, 38-817). Such a resolution can include placing the child on probation in the custody of its parents, in a youth residential facility, or in the custody of the state department of social and rehabilitation services. [K.S.A. 1979 Supp. 38-826(b)]. In any of these alternative dispositions, the child can be ordered back to school by the court.

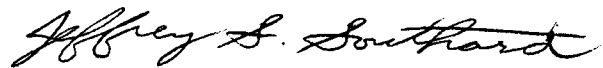
In light of the above statutory handling of the problem of a truant child, it is our opinion that a school district is without the power to take action on its own, through suspension or expulsion, on the same grounds. We note that of the five separate bases set forth for the latter actions at K.S.A. 72-8901, none deal with the non-attendance of a student. Rather, they address situations where a student creates problems through his or her conduct while at school. It is a general rule that school districts may only exercise such powers as are specifically conferred upon them by statute, and that no generalized residue of implied power exists in the absence of such authority. State ex rel., McAnarney v. Rural High School District No. 7, (71 Kan. 437 (1951)). Additionally, to find otherwise would have the effect of giving a school district concurrent jurisdiction with the courts over the area of truancy, a result which should be avoided unless clearly commanded by statute. Finally, it is unclear how the public interest would be served by the suspension or expulsion of a truant student. Public policy would seem to require that in such cases efforts be made to get the child back into class and to keep him or her there, instead of furthering his non-attendance. See, Nutt v. Bd. of Education, 128 Kan. 507, 509 (1929).

In conclusion, a child required by law to attend school who is inexcusably absent therefrom is a truant, as defined by K.S.A. 1979 Supp. 72-1113. Such child is subject to the exclusive jurisdiction of the district court, which may, pursuant to the Juvenile Code, K.S.A. 1979 Supp. 38-801 et seq., issue such orders or make such dispositions as it deems necessary in order for the child to attend school. Accordingly, a school board's power to suspend or expel a child pursuant to K.S.A. 72-8901 does not extend to cases involving truancy.

Very truly yours,


ROBERT T. STEPHAN

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