



STATE OF KANSAS

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July 28, 1981

ATTORNEY GENERAL OPINION NO. 81-179

Mr. John L. Vratil
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Attorneys at Law
P.O. Box 8030
Prairie Village, Kansas 66208

Re: Schools--Purchase of Insurance--District as Self-
Insurer Regarding Health Care Services

Synopsis: A board of education is not authorized, under the provisions of K.S.A. 72-8414, 72-8415a or 72-8415b, to establish a trust fund or execute a trust agreement in connection with the provision of insurance benefits or health care services to the employees of the school district. Cited herein: K.S.A. 72-8414, 72-8415a, 72-8415b.

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Dear Mr. Vratil:

As counsel for Unified School District No. 512 (Shawnee Mission), you seek our opinion as to the legal propriety of a plan proposed by the district to act as a self-insurer to provide health care services, and other benefits, to employees of the school district.

You explain that the Board of Education of U.S.D. No. 512, ostensibly under authority granted by K.S.A. 72-8414, 72-8415a and 72-8415b, proposes to

"establish and implement a self-insured medical and life insurance plan for the benefit of School District employees. As

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proposed, the District intends to establish a trust fund for the purpose of receiving contributions from the School District and participating employees of the District. All claims, the expenses of administration, and other miscellaneous related expenses will be paid out of that trust fund. The trust fund will be administered by a designated trustee (in all probability, a local bank) in accordance with the provisions of a trust agreement to be prepared and executed on behalf of the School District."

You further explain that

"[u]nder the terms of the proposed self-insured plan, the District will make available hospital, surgical, and major medical coverage, plus a limited amount of group life insurance, to all eligible employees of the School District. The group life insurance will also include accidental death and dismemberment insurance, as well as provisions for waiver of premium in the case of disability."

You seek our opinion whether the above-referenced statutes authorize the board to establish such a trust fund and execute a trust agreement for the purposes indicated above.

The statutes under review herein provided thusly:

"The board of education of any school district or the board of trustees of any community college may procure contracts insuring its certificated employees and other employees or any class or classes thereof under a policy or policies of group life, group health, disability income, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance or may procure contracts with health maintenance organizations or may act as a self-insurer to provide health care services for such employees. The dependents of any such certificated employee or other employee may be insured under group policies which provide hospital, surgical and/or medical expense insurance or under contracts entered into with health maintenance organizations to provide health care

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services or may have health care services provided for by any school district or community college that acts as a self-insurer under this section. The contributions of employees to the premiums for insurance issued to the employer, or any group of employers, as the policyholder, or for the provision of health care services may be deducted by the employer from the employees' salaries when authorized to do so in writing by the respective employees." (Emphasis added.) K.S.A. 72-8414.

"If the board of education of any school district or the board of trustees of any community college elects to act as a self-insurer under the provisions of K.S.A. 72-8414, it shall by resolution create a separate health care services reserve fund in the budget of the school district or community college, whichever is applicable, which shall be a reserve fund for the payments of claims, judgments and expenses of health care services. Any balance remaining in such reserve fund at the end of the fiscal year shall be carried forward into the reserve fund for succeeding fiscal years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof or supplemental thereto, except that in preparing the budget of such school district or community college, the amounts credited to and the amount on hand in such reserve fund, and the amount expended therefrom shall be included in the annual budget for the information of the residents. Interest earned on the investment of moneys in such fund shall be credited to such fund." (Emphasis added.) K.S.A. 72-8415a.

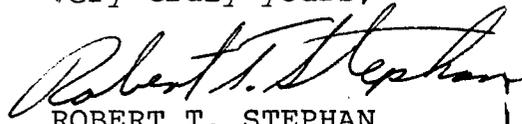
"Any school district or community college that elects to become a self-insurer under the provisions of K.S.A. 72-8414 may transfer such amounts from its general fund to the health care services reserve fund as may be deemed necessary to meet the cost of health care services." K.S.A. 72-8415b

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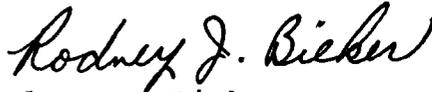
In Gragg v. U.S.D. No. 287, 6 Kan. App.2d 152 (1981), the Kansas Court of Appeals held: "A school district is an arm of the state existing only as a creature of the legislature to operate as a political subdivision of the state. A school district has only such power and authority as is granted by the legislature and its power to contract . . . is only such as is conferred either expressly or by necessary implication." Id. at Syl. ¶2. This is a well established rule of law in the state of Kansas. See, e.g., Wichita Public Employees Union v. Smith, 194 Kan. 1 (1964); Jt. Consolidated School District No. 2 v. Johnson, 163 Kan. 202 (1947); and Blankenship v. School District No. 28, 136 Kan. 313 (1932). Furthermore, in State, ex rel., v. Rural High School District No. 7, 171 Kan. 437 (1951), the Kansas Supreme Court held that any reasonable doubt as to the existence of authority by a school board should be resolved against the existence of such authority. Id. at 441.

It is obvious that the above quoted statutory provisions do not expressly authorize the creation of a trust fund or the execution of a trust agreement by a board of education. Nor, in our judgment, is such authority necessarily implied from those provisions. Indeed, K.S.A. 72-8415a specifically contemplates the creation of a reserve fund controlled by the board of education, rather than a separate trustee. Therefore, based upon the rules of law stated above, it is our opinion that the provisions of K.S.A. 72-8414, 72-8415a and 72-8415b do not authorize a board of education to establish a trust fund or execute a trust agreement in connection with the provision of insurance benefits or health care services to the employees of the school district.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

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