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ATTORNEY GENERAL OPINION NO. 81- 216

Garry Anthony, President
Unified School District No. 507
P. O. Box 279
Satanta, Kansas 67870

Re: Schools -- Boards of Education; Organization,
Powers, Finances -- Expending Public Funds for
Lobbying on Proposed Severance Tax

Synopsis: Unlike Kansas cities and counties which exercise constitutional or statutory "home rule" powers, school districts are creatures of statute and, as such, enjoy only those powers expressly conferred, by law, together with those implied powers which are necessary for the effective exercise and discharge of the powers and duties expressly conferred. No statutory authority exists, either expressly conferred or necessarily implied, authorizing the expenditure of school districts funds to contribute to a lobbying effort on a proposed state-wide severance tax. Cited herein: K.S.A. 1980 Supp. 19-101a, K.S.A. 19-101c, 72-1612, 72-1623, 72-5326, 72-8205, Kan. Const., Art. 12, §5.

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Dear Mr. Anthony:

On behalf of Unified School District No. 507 you request our opinion regarding "a school district's right to contribute to the lobbying effort on the severance tax." Upon review of the statutes which authorize the spending of school district funds for specific activities, we find no specific authority for, nor specific prohibition against, such expenditure.

In considering the powers granted local school boards, it has long been the established rule in Kansas that such bodies are creatures of statute and, as such, have only powers which

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are expressly authorized or necessarily implied. Blankenship v. School District No. 28, 136 Kan. 313 (1932); Morton Salt Co. v. School Dt. No. 136, 31 F.2d 155 (D.C. Kan. 1929); Stewart v. Gish, 109 Kan. 206 (1921); State v. Board of Education, 59 Kan. 501 (1898); School District Re: Brown, 2 Kan. App. 309 (1896). Specifically, school funds may be expended only for purposes authorized by statute, either expressly or necessarily implied. Joint Consolidated School District No. 2 v. Johnson, 163 Kan. 202 (1947); Rose v. School District 94, 162 Kan. 720 (1947). This limitation on a school district's powers also has been recognized consistently by this office. See, e.g., Kansas Attorney General Opinion Nos. 73-317, 74-93, 77-129, 79-82, 80-1 and 80-3.

As previously noted, a survey of the statutes authorizing the expenditure of funds for school district purposes reveals no specific statutory authority for expenditure of funds for general lobbying purposes. Hence, we must turn to the general statutory authority of boards of education. K.S.A. 72-8205 states, in pertinent part, as follows:

"Except as otherwise provided . . . the board shall have and may exercise the same powers and authorities as were immediately prior to this act conferred upon boards of education in cities of the first class, and, in addition thereto, the powers and authority expressly conferred by law."

Formerly, K.S.A. 72-1612 set forth those general powers as follows:

"The public schools of each city school district shall be governed by a board of education, and shall constitute a body corporate and politic, possessing the usual powers of a corporation for public purposes, under the name and style of 'the board of education of the city of _____ of the State of Kansas', and in such name may contract, sue and be sued and acquire, hold and convey real and personal property in accordance with the law."

Again, by way of a general grant of power, former K.S.A. 72-1623 provided:

"The board shall establish and maintain a system of free public schools for all children residing in the . . . school district and make all necessary rules and regulations for the government and conduct of such schools, consistent with the laws of the state"

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This provision remains incorporated in K.S.A. 72-1623.

Even under these general statutory grants of power above, a unified school district lacks the necessarily implied powers to contribute public funds to hire a professional lobbyist to lobby for or against a proposed state-wide severance tax. In our judgment, such expenditure cannot be necessarily implied in order to effect the express statutory powers noted above. The expenditure of public funds to hire a lobbyist to lobby the Kansas legislature regarding a proposed severance tax on mineral production is not a necessary exercise of the district's corporate powers nor essential to establishing a "free public school system." When in doubt as to whether a particular power is to be implied, the Kansas courts resolve the issue against any grant of power. In State ex rel., McAnarney v. Rural High School District No. 7, 171 Kan. 437 (1951), the court stated:

"In this state, it has long been the rule that school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence." 171 Kan. at 444.

Accord: Byer v. Rural High School Dt. No. 4, 169 Kan. 351 (1950); Township Board of Ash Creek v. Robb, 166 Kan. 138 (1948); School District v. Robb, 150 Kan. 402 (1939).

Your request is no doubt prompted by the well-publicized opinion of this office which concluded that Kansas law permits counties to expend public funds for lobbying the legislature when such is for a "public purpose." Kan. Att'y Gen. Op. No. 81-208. Admittedly, the legislature's determinations regarding the levy of a mineral tax and the resulting distribution of revenues may favorably or adversely affect the interests of a school district. The enactment of such a tax may increase or decrease the availability of revenues for school district purposes. The district, its board and patrons, thus, have a keen interest in the outcome of the current debate. However, unlike cities and counties which have "home rule" powers [Kan. Const., Art. 12, §5 and K.S.A. 1980 Supp. 19-101a], school districts are strictly limited to those powers bestowed upon them by the legislature. The extensive "home rule" powers granted Kansas counties are not to be confused with the limited statutory powers granted Kansas school boards. "Home rule" powers were bestowed upon county government "for the purpose of giving to counties the largest measure of self-government." K.S.A. 19-101c. It is upon these broad powers

that Kansas Attorney General Opinion No. 81-208 is based, and it is this crucial fact which distinguishes the conclusion reached here from the prior opinion regarding counties. Thus, due to the lack of express or necessarily implied statutory authority, a school district has no right to expend public funds for professional lobbying services related to the proposed severance tax on Kansas mineral production.

In reaching this conclusion we call your attention to the analogous result reached in Kansas Attorney General Opinion No. 75-33, where a previous Attorney General considered whether a school district could lawfully expend public funds to support or oppose constitutional amendments or candidates to public office. In finding that school districts lacked such power, Attorney General Schneider said:

"The board may expend funds of the district only in the discharge of its statutory duties, and in the promotion of the public duties committed to it by law. A school board 'is created to conduct and foster the education of the children of the community.' Whitlow v. Board of Education, 108 Kan. 604 (1921). The board has no authority, whatever, to expend funds of the district for any purpose other than those entrusted to it by law. The board has no authority to contract for advertising, or otherwise to spend funds of the district, to support or oppose questions of public policy submitted to the electorate, proposed constitutional amendments, or candidacies for public office. It makes no difference that a proposed constitutional amendment e.g., may be deemed by the board to have some bearing to the interests of education, as it perceives them, for the board in its corporate capacity has no authority to expend public funds to promote or oppose a particular political viewpoint, or for the purpose of seeking to influence the views of the electorate upon a question submitted to them for their decision according to law." Id. at 3.

For your information, we note the Kansas Association of School Boards (KASB) operates as a state-wide organization for the benefit of member districts and retains in its employ a registered lobbyist. The KASB is funded pursuant to the very specific statutory authority of K.S.A. 72-5326. This section states:

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"The board of education of any school district or board of trustees of any community junior college is hereby authorized to appropriate money out of its general fund to pay the annual dues in the Kansas association of school boards."

The funding of KASB, therefore, is allowed by this express grant of statutory authority and thus satisfies the legal test previously described herein. The Kansas legislature has specifically described the permissible expenditure of public funds for membership in this organization; it has not so provided for an expenditure of funds to the Legislative Policy Group or other special interest organization.

In addition, we note Attorney General Opinion No. 75-226, wherein the Attorney General stated that, not only does this statutory section permit funds to be expended for this organization, it also impliedly prohibits school district funds being spent for similar organizations. This legal conclusion is supported by the case of LeSueur v. LeSueur, 197 Kan. 495 (1966), wherein the Court said:

"The direct mention of this discretionary authority [to grant or refuse a divorce] implies exclusion of any other implied authority. The general rule is thus stated in 82 C.J.S., Statutes, §333a, p. 668:

"'Under the general rule of express mention and implied exclusion, the express mention of one matter excludes other similar matters not mentioned; every positive direction in a statute contains an implication against everything contrary to it; the specification of one particular class excludes all other classes; and an affirmative description of powers granted implies a denial of all non-described powers.'" 197 Kan. at 500.

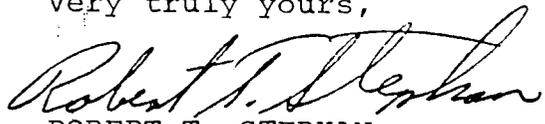
This doctrine of "expressio unius est exclusio alterius" -- that is, the granting of an express authority to fund one organization excludes the implication of authority to join like organizations -- adds weight to our conclusion that the lobbying effort proposed here would be unlawful. The legislature could have provided for expenditures to other organizations or particular lobbying efforts. It has not done so.

Therefore, it is our opinion that Kansas school districts may not expend funds to contribute to lobbying efforts of the Legislative Policy Group regarding the proposed severance

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tax. It has long been the rule in Kansas that school districts are creatures of statute and enjoy only those powers expressly conferred and those powers clearly implied therefrom which are necessary for the effective exercise and discharge of those powers and duties expressly conferred. Such express or implied authority to expend funds to contribute to the lobbying effort on the severance tax is not evident through a survey of the applicable statutory sections. Further, the express permission to support Kansas Association of School Boards given by the legislature in K.S.A. 72-5326 impliedly excludes school district contributions to other similar organizations. It is of no consequence that the school district officers believe that the severance tax will affect the interests of education; the board in its corporate capacity has no authority to expend public funds to contribute to this lobbying effort.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle