



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 223

Dr. Merle R. Bolton
Commissioner of Education
State Department of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Schools--Community Colleges--Change of Residence;
Effect on Out-District Tuition Liability

Synopsis: K.S.A. 71-401 concerns only a person who is a resident of a county in which there is located the principal campus of the community college in which the person is enrolled, but who has not been a resident of that county for six months or more.

K.S.A. 71-401 creates an exception to the general rule that out-district tuition is not paid for a person enrolling in a community college whose current residence is in the county in which the principal campus of the community college is located. The statute evidences a legislative intent that if a person enrolls in a community college located in the county of such person's residence, but such residence has not been established for at least six months prior to such enrollment, then the current residence of the person is to be ignored, and reference made to the former residence of the person for the purpose of determining whether out-district tuition is to be charged for said person. Cited herein: K.S.A. 1981 Supp. 71-301 (as amended by L. 1982, ch. 282, §1), K.S.A. 71-304, 71-305, 71-401, 71-406.

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Dear Dr. Bolton:

You seek our assistance in construing the provisions of K.S.A. 71-401.

In essence, you ask two questions concerning this statute. First, you ask whether this statute has any effect on the payment of out-district tuition when a person changes residence from a Kansas county in which there is not located a community college to another Kansas county in which there is not located a community college. Second, you ask whether out-district tuition is to be charged for persons enrolled in a community college who are residents of the county in which the community college is located, but who have not been residents of that county for six months prior to enrolling in the community college.

We believe the answers to both inquiries are contained in the language of K.S.A. 71-401, which, in part, provides:

"Persons enrolling in a community college who . . . have not been residents of the county in which is located the principal campus of such community college for six (6) months prior to enrollment for any term or session are nonresidents of such community college district for . . . out-district tuition . . . purposes." (Emphasis added.)

In our judgment, the language emphasized above clearly identifies the persons to whom this statute relates. This provision concerns only enrollees who are residents of a county in which there is located the principal campus of a community college, but who have not been residents of that county for six months or more. Thus, this statute does not affect the payment of out-district tuition in regard to any person whose residence is outside a county in which there is located a community college. The county of such person's residence is required to pay out-district tuition based upon the person's enrollment in the community college, under the provisions of K.S.A. 1981 Supp. 71-301, as amended by L. 1982, ch. 282, §1. Hence, in answer to your first inquiry, we conclude that K.S.A. 71-401 does not have any effect on the payment of out-district tuition for persons who change residence from one Kansas county to another Kansas county, and neither county has located therein the principal campus of a community college. The county in which the person is a resident is required to pay out-district tuition, if the person enrolls in a community college. The county, not having a community college which is the legal residence of a particular person, must be determined by the facts of each case. See K.S.A. 71-402, 77-201 Twenty-third, and Kan. Att'y Gen. Op. Nos. 80-230 and 76-51.

On the other hand, if a person changes residence from a Kansas county, in which there is not located the principal campus of

a community college, to a Kansas county, in which there is located the principal campus of a community college, and the person enrolls in the community college of the county in which he or she currently resides, but such residence has not been established for at least six months prior to the person's enrollment in the community college, then the provisions of K.S.A. 71-401 are applicable. Under those provisions, such person is declared to be a nonresident of the community college district "for out-district state aid entitlement [and] out-district tuition . . . purposes." (Emphasis added.)

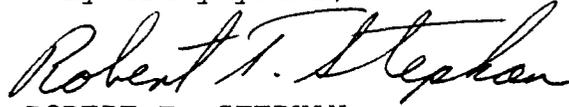
It is apparent from this language that the legislature intended that out-district tuition would be paid for persons who have been residents of a community college district for only the brief period of time specified in K.S.A. 71-401, and since out-district tuition is payable only by those counties in which a community college is not located, it also is apparent that the legislature intended that the residence of such a person be deemed to be in some place other than the county of the person's recently-established residence. We believe the legislature intended that reference be made to such person's former residence for the purpose of determining whether out-district tuition is to be charged. This, in our judgment, is the only reasonable interpretation of the provisions of this statute. Therefore, if the former residence of a person described in K.S.A. 71-401 was outside the state of Kansas, no out-district tuition would be charged, but the student would pay out-of-state student tuition. See K.S.A. 71-406. If the former residence of such a person was a Kansas county, in which there is located the principal campus of a community college, then no out-district tuition could be charged, unless certain conditions existed. See K.S.A. 71-304 and 71-305. However, if the former residence of such a person was in a Kansas county in which there is not located the principal campus of a community college, then the county of former residence would be required to pay out-district tuition for the student. K.S.A. 1981 Supp. 71-301, as amended by L. 1982, ch. 282, §1.

Thus, we believe K.S.A. 71-401 creates an exception to the general rule that out-district tuition is not paid for a student whose current residence is in the county in which is located the principal campus of the community college in which the student is enrolled. The statute evidences a legislative intent that if a person enrolls in a community college located in the county of such person's residence, but such residence has not been established for a least six months prior to such enrollment, then the current residence of the person is to be ignored, and

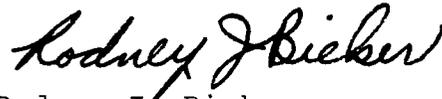
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reference made to the former residence of the person for the purpose of determining whether out-district tuition is to be charged for said person.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm