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ATTORNEY GENERAL OPINION NO. 83-38

Honorable Ed C. Rolfs  
Representative, Sixty-Fifth District  
Room 155-E, State Capitol  
Topeka, Kansas 66612

Re: Schools--Community Colleges--State Aid and Fiscal  
Provisions; Credit Hour and Out-District State Aid

State Departments; Public Officers, Employees--  
Department of Administration--Allotment System

Synopsis: Community colleges are entitled to receive only that amount of credit hour and out-district state aid as is appropriated for those purposes by the legislature and allowed under an allotment system instituted under the authority of K.S.A. 75-3722 et seq. A community college is not paid less credit hour or out-district state aid than it is entitled to receive under Article 6 of Chapter 71 of the Kansas Statutes Annotated if it receives its proportionate share of the money appropriated for such purposes by the legislature and allowed under an allotment system. Cited herein: K.S.A. 1982 Supp. 71-602, K.S.A. 71-604, K.S.A. 1982 Supp. 71-607; K.S.A. 75-3722, 75-3724.

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Dear Representative Rolfs:

You seek our opinion on whether additional amounts of credit hour and out-district state aid should be provided in the state budget for fiscal year 1984 (FY 1984) since reductions in these state aid

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payments for fiscal year 1983 were made under the allotment system instituted under the provisions of K.S.A. 75-3722 et seq. You indicate that, under K.S.A. 1982 Supp. 71-602 and 71-607, community colleges are allowed state aid at a fixed rate per credit hour, with certain adjustments not pertinent to your inquiry. You also explain that, due to the allotment system initiated at the first of this year, community colleges will not receive the total amount allowed to them under the formulas provided in those statutes. You then cite the last paragraph of K.S.A. 71-604 and ask if the provisions of that paragraph require that additional amounts of state aid be included in the state's budget for FY 1984.

Before reviewing the provisions of K.S.A. 71-604, we believe it is important to discuss, generally, the purpose and effect of an allotment system. (For an indepth discussion of an allotment system, see Attorney General Opinion No. 82-160, dated July 26, 1982.)

Inauguration of an allotment system is authorized under the provisions of K.S.A. 75-3722 to 75-3725a, inclusive. As we explained in Attorney General Opinion No. 82-160,

"K.S.A. 75-3722 contemplates the use of an allotment system under two general circumstances. The first paragraph of the statute addresses the permissive use of an allotment system when it is 'necessary or beneficial to the state,' whereas the first portion of the statute's last paragraph requires inauguration of the allotment system '[w]henever for any fiscal year it appears that the resources of the general fund or any special revenue fund are likely to be insufficient to cover the appropriations made against such general fund or special revenue fund.'" (Emphasis in original.)  
Id. at p. 6.

It is general knowledge that the allotment system inaugurated at the first of this year was initiated because it appeared very likely that the resources of the general fund would be insufficient to cover appropriations made against it. Thus, initiation of the allotment system was required by law.

K.S.A. 75-3722 also expressly states the purpose for inauguration of a mandatory allotment system, i.e., "to assure that expenditures for any particular fiscal year will not exceed the available resources of the general fund or any special revenue fund for

that fiscal year." In addition, K.S.A. 75-3724 makes it clear that no appropriation to any state agency subject to the allotment system becomes available to the agency for expenditure until an allotment has been applied for and approved as provided in the act. This statute also makes it clear that amounts requested to be allotted to any state agency may be increased or decreased. Of course, the power given to decrease requested amounts is consistent with and necessary to achieve the ultimate purpose of the allotment system, which, of course, is to prevent a deficit in the state general fund or any special revenue fund. K.S.A. 75-3722. Moreover, this power makes it clear that notwithstanding the amount appropriated by the legislature, the amount of moneys actually made available to a state agency may be less than the total amount appropriated.

With this background in mind, we turn to the consideration and analysis of K.S.A. 71-604. This statute provides:

"[1] From the reports and information so submitted and other information available to it, the state board shall determine the amount the community college is entitled to receive as provided in K.S.A. 71-602 and 71-607, and amendments thereof.

"[2] If the amount of any appropriation for credit hour state aid shall be insufficient to pay in full the amount each community college is entitled to receive for credit hour state aid, then the amount so appropriated shall be prorated among all community colleges in proportion to the amount each is entitled to receive. If the amount of any appropriation for out-district state aid shall be insufficient to pay in full the amount each community college is entitled to receive for out-district state aid, then the amount so appropriated shall be prorated among all community colleges in proportion to the amount each is entitled to receive. The state board may audit the records of any community college applying for a part of any money so appropriated, to verify the accuracy of the reports submitted by such community college. The state board may adopt rules and regulations for the administration of this act and acts amendatory thereof.

"[3] In the event any community college is paid more than it is entitled to receive under any distribution made under this act or acts amendatory thereof, the state board shall notify such community college of the amount of such overpayment and said community college shall remit the same to the state board and it shall deposit the same in the state treasury to the credit of the general fund, and if any such community college fails so to remit, the state board shall deduct the excess amount so paid from future payments becoming due to such community college.

"[4] In the event any community college is paid less than the amount to which it is entitled under any distribution made under this act or the act of which this act is amendatory, the state board shall pay the additional amount due at any time within the fiscal year in which the underpayment was made or within sixty (60) days after the end of such fiscal year." (Emphasis and number in brackets added to facilitate further discussion.)

We have indicated that this statute is comprised of four paragraphs. You suggest the last of these paragraphs perhaps requires that additional amounts of state aid be given to community colleges under the facts of this case. A careful review of the provisions of that paragraph reveal, however, that a duty is imposed upon the state board of education only if "any community college is paid less than the amount to which it is entitled under any distribution made under this act . . . ." (Emphasis added.) It is important to note that this paragraph of the statute does not provide for an additional payment if any community is paid less than the amount to which it is entitled under the act. A community college is due an added amount only if it is paid less than the amount to which it is entitled under any distribution made under the act. Thus, in our judgment, this paragraph of K.S.A. 71-604 provides for an additional payment to a community college only if an error is made in distributing moneys to the community college.

The allotment system instituted at the first of this year did not cause an error to be made in distributing state aid to community colleges. It simply reduced the total amount of the credit hour and out-district state aid that was available for distribution to all of the community colleges. Therefore, in our judgment, the allotment system merely activated the distribution procedure mandated by the second paragraph of K.S.A. 71-604, which, in relevant part, provides:

"If the amount of any appropriation for credit hour state aid shall be insufficient to pay in full the amount each community college is entitled to receive for credit hour state aid, then the amount so appropriated shall be prorated among all community colleges in proportion to the amount each is entitled to receive. If the amount of any appropriation for out-district state aid shall be insufficient to pay in full the amount each community college is entitled to receive for out-district state aid, then the amount so appropriated shall be prorated among all community colleges in proportion to the amount each is entitled to receive."

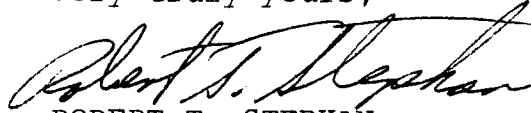
These provisions, in our judgment, make it clear that, notwithstanding the provisions of K.S.A. 1982 Supp. 71-602 and 71-607, the amount of credit hour and out-district state aid to which each of the community colleges is entitled is limited by the appropriations made for those purposes by the legislature. However, these appropriations are subject to the provisions of K.S.A. 75-3722 et seq., the allotment system. Thus, in our judgment, it follows that the amount of credit hour and out-district state aid to which each of the community colleges is entitled is limited to the amount appropriated for those purposes and as allowed therefor under an allotment system. Moreover, in our judgment, so long as a community college receives its proportionate share of the moneys available for credit hour and out-district state aid, it is not entitled to an additional payment under the provisions of the last paragraph of K.S.A. 71-604. Thus, we are of the opinion that, unless an error was made in distributing the amount of credit hour and out-district state aid available under the allotment system, no additional moneys for these purposes need be provided in the FY 1984 state budget.

In summary, therefore, it is our opinion that community colleges are entitled to receive only that amount of credit hour and out-district state aid as is appropriated for those purposes by the legislature and allowed under an allotment system instituted under the authority of K.S.A. 75-3722 et seq. A community college is not paid less credit hour or out-district state aid than it is entitled to receive under Article 6 of Chapter 71

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of the Kansas Statutes Annotated if it receives its proportionate share of the money appropriated for such purposes by the legislature and allowed under an allotment system.

Very truly yours,



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Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm