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ATTORNEY GENERAL OPINION NO. 83- 105

Lawrence Foth
Executive Director
Advisory Council for Vocational
Education
Kansas State Education Building
120 East Tenth Street
Topeka, Kansas 66612

Re: Federal Job Training Partnership Act--State
Education Coordination and Grants--Agency to
Which Federal Funds Made Available

Synopsis: If one or more cooperative agreements are entered into by those parties specified in 29 U.S.C.A. §1533(a)(1), then sums available for those purposes specified in section 1533 are to be provided by the Governor to the state education agency responsible for education and training. In Kansas, this agency is the State Board of Education. Thus, if one or more cooperative agreements are made, the federal moneys provided the state under 29 U.S.C.A. §1533 must be made available to the State Board of Education. Those moneys may not be made available directly to service delivery areas. The State Board, of course, must use the moneys received for the purposes, and subject to the requirements, prescribed in section 1533. Cited herein: 20 U.S.C.A. §2461; 29 U.S.C.A. §§1503, 1531, 1533.

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Dear Mr. Foth:

You seek our opinion on whether federal moneys provided to the state under section 1533 of Title 29 of the United States Code Annotated (29 U.S.C.A. §1533) must be made available to the State Board of Education for allocation to the service delivery areas in the state, or whether those moneys may be disbursed directly to those service delivery areas.

The federal statute about which you inquire is part of the Job Training Partnership Act (Pub. L. 97-300), and governs the use of certain moneys made available to the state. The statute provides:

"(a) The sums available for this section pursuant to section 1602(b)(1) shall be used by the Governor to provide financial assistance to any State education agency responsible for education and training--

"(1) to provide services for eligible participants through cooperative agreements between such State education agency or agencies, administrative entities in service delivery areas in the State, and (where appropriate) local educational agencies; and

"(2) to facilitate coordination of education and training services for eligible participants through such cooperative agreements.

"(b) The cooperative agreements described in subsection (a) shall provide for the contribution by the State agency or agencies, and the local educational agency (if any), of a total amount equal to the amount provided, pursuant to subsection (a)(1), in the grant subject to such agreement. Such matching amount shall not be provided from funds available under this Act, but may include the direct cost of employment or training services provided by State or local programs.

"(c)(1) Funds available under this section may be used to provide education and training, including vocational education services,

and related services to participants under title II. Such services may include services for offenders and other individuals whom the Governor determines require special assistance.

"(2) (A) Not more than 20 percent of the funds available under this section may be spent for activities described in clause (2) of subsection (a).

"(B) At least 80 percent of the funds available under this section shall be used for clause (1) of subsection (a) for the Federal share of the cost of carrying out activities described in clause (1). For the purpose of this subparagraph, the Federal share shall be the amount provided for in the cooperative agreements in subsection (b).

"(3) Not less than 75 percent of the funds available for activities under clause (1) of subsection (a) shall be expended for activities for economically disadvantaged individuals.

"(d) If no cooperative agreement is reached on the use of funds under this section, the funds shall be available to the Governor for use in accordance with section 1531." 29 U.S.C.A. §1533.

A review of this federal statute clearly indicates that subsections (a), (b), and (c) thereof are premised upon the existence of one or more cooperative agreements between those parties identified in clause (1) of subsection (a). This is made clear by the provisions of subsection (d). Consequently, we have no hesitancy in concluding that the provisions of subsections (a), (b), and (c) of this federal statute are operational only if one or more cooperative agreements are made between those parties specified in clause (1) of subsection (a). Of course, if no such agreements are made, the federal moneys provided are "available to the Governor for use in accordance with section 1531." 29 U.S.C.A. §1533(d).

If, however, one or more cooperative agreements are made, subsection (a) of section 1533 is operative, and, in our judgment, provides the answer to your inquiry. The statute plainly states that sums available for this section shall be used by the Governor to provide financial assistance to any state education agency responsible for education and training. The only question which

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arises from these provisions is which agency in Kansas is the "State education agency responsible for education and training."

The answer to this question is provided by the provisions of paragraph (23) of 29 U.S.C.A. §1503 and paragraph (11) of 20 U.S.C.A. §2461.

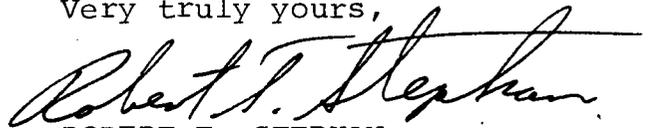
Section 1503 prescribes definitions of terms used in the Job Training Partnership Act, including, of course, those terms used in section 1533. In paragraph (23) of section 1503, the term "State education agency" is defined to mean "such an agency as defined in section 2461(11) of Title 20." Paragraph (11) of 20 U.S.C.A. §2461 provides:

"The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law."

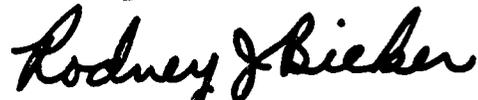
Given this definition of State educational agency, it is our opinion that 29 U.S.C.A. §1533(a) requires that sums available under that subsection be used by the Governor to provide financial assistance to the Kansas State Board of Education in order that the objectives set forth in clauses (1) and (2) of subsection (a) of the statute can be achieved.

Thus, we are of the opinion that, if one or more cooperative agreements are made, the federal moneys made available to the state under 29 U.S.C.A. §1533 must be made available to the State Board of Education. Those moneys are not to be made available directly to the service delivery areas. The State Board, of course, must use the moneys received for the purposes, and subject to the requirements, prescribed in section 1533.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm