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ATTORNEY GENERAL OPINION NO. 83- 154

Honorable Fred L. Weaver  
State Representative, First District  
House Minority Leader  
Rural Route No. 1  
Baxter Springs, Kansas 66713

Re: Kansas Constitution--Education--State Board of  
Education; Authority

Kansas Constitution--Education--Legislature;  
Authority

Synopsis: Under Article 6, Section 2(a) of the Kansas Constitution, as interpreted by the Kansas Supreme Court in State ex rel. v. Board of Education, 212 Kan. 482 (1973) and NEA-Fort Scott v. U.S.D. No. 234, 225 Kan. 607 (1979), the State Board of Education is endowed with the authority to exercise general supervision of public schools and other educational institutions and all the educational interests of the state, except those functions delegated to the State Board of Regents. This authority is limited to matters which will equalize and promote the quality of education for the students of this state, including such matters as the accreditation of schools, certification of school personnel, and establishment of minimum curriculum and graduation requirements. Within such matters, measures adopted by the State Board have priority over conflicting legislation.

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The Kansas Constitution reserves to the legislature the exclusive authority over all other matters relating to education, including the establishment of public schools and other public educational institutions, and the provision for finance of all the educational interests of the state. The State Board of Education has no constitutional authority in regard to these matters. Cited herein: Kan. Const., Art. 6, §§1, 2(a) and 6.

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Dear Representative Weaver:

You seek an opinion clarifying "the areas of potential conflict" between the legislature and the State Board of Education, and ask "how far does the state's constitutional mandate reach and is there any case law which draws some boundaries," and "if the legislature and the State Board of Education are not in agreement then . . . which has supreme authority."

Your inquiry, of course, relates to the provisions of Article 6, Section 2(a) of the Kansas Constitution. This section of the constitution provides:

"The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law."  
(Emphasis added.)

In State ex rel. v. Board of Education, 212 Kan. 482 (1973), (commonly known as the Peabody case), the Kansas Supreme Court determined that the above-emphasized provisions of Art. 6, §2(a) are "self-executing." Id. at Syl. ¶6. This means that those provisions need no supplementary legislation to make them effective. See, e.g., State ex rel. v. Deck, 106 Kan. 518, 521 (1920). Consequently, the State Board needs no grant of authority from the legislature to exercise general supervision of public schools, educational institutions, and all the educational interests of the state. This also means that, while the legislature may enact legislation to facilitate or assist the State

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Board in exercising its power of general supervision, the legislature may not enact laws that conflict with or which are in derogation of the authority granted the State Board by the constitution. See, e.g., State ex rel. v. Board of Education, supra, at Syl. ¶7. Thus, there is a potential for conflict.

We are aware of only one case wherein the Kansas Supreme Court was called upon to determine whether a legislative enactment conflicted with the constitutional authority of the State Board of Education. The case is NEA-Fort Scott v. U.S.D. No. 234, 225 Kan. 607 (1979). This case involved certain amendments to the Teachers' Collective Negotiations Act during the 1977 legislative session. These amendments assigned negotiation and mediation functions to the Secretary of the Department of Human Resources. These functions, under previous law, had been performed by the State Board of Education.

In determining that the reassignment of these functions from the State Board to the Secretary of Human Resources was proper, the Court stated:

"The authority granted to the secretary in no way conflicts with the basic mission of the State Board of Education. The board's [basic] mission is to equalize and promote the quality of education for the students of this state by such things as statewide accreditation and certification of teachers and schools." (Emphasis added.) 225 Kan. at 610-611.

The Court also stated, in responding to the argument that the Peabody case (cited above) strongly inferred that matters such as collective negotiations between teachers and local boards of education must be supervised by the State Board of Education:

"That case [State ex rel. v. Board of Education (the Peabody case), supra] did not relate to collective negotiations and, although it is authority for holding article 6, section 2 is self-executing, the case did not hold that said constitutional provision exhausts legislative powers on all subjects related to the field of public education. In fact, the case specifically holds otherwise. It must be kept in mind the constitution limits rather than confers power. Article 6, section 2 limits the power of the State Board of Education to

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'general supervision' of public schools [educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents]." 225 Kan. at 611-612.

From the above-quoted statements of the Court, we discern that the constitutional power of the State Board of Education is limited to accomplishing its basic mission of equalizing and promoting the quality of education for the students of this state. Certainly, regulations of the State Board which are confined to matters relating to the quality of education for the students of this state are within the State Board's constitutional authority. Specifically, certain matters which relate to the quality of education, such as "statewide accreditation and certification of teachers and schools," are within the powers of the Board. NEA-Fort Scott v. U.S.D. No. 234, supra, at 611. To these matters, we believe it would be appropriate to add minimum curriculum and graduation requirements, applicable throughout the state. These and similar matters, in our judgment, are subjects properly addressed by the State Board under its constitutional supervisory authority.

Thus, in regard to these matters, the State Board of Education may exercise its constitutional authority without legislation or unfettered thereby. Of course, this does not mean that the legislature may not adopt legislation on these same subjects. The legislature is merely prohibited from enacting legislation which is out of harmony with or which is in derogation of the State Board's supervisory authority under the constitution. Thus, it is only in the event of a conflict between legislation and State Board regulation relating to the quality of education that the legislation would be ineffective.

However, the constitution prescribes certain matters relating to education which are solely within the control of the legislature. Article 6, Section 1 prescribes that the legislature shall provide for educational improvement "by establishing and maintaining public schools, educational institutions and related activities." Also, Article 6, Section 6(b) states: "The legislature shall make suitable provision for finance of the educational interests of the state."

These provisions, in our judgment, make it clear that all matters which relate to the establishment of public schools or other educational institutions, or which relate to the financing of such schools or institutions, are within the exclusive control of the legislature. In addition, the Court's

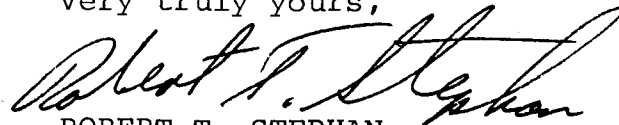
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decision in NEA-Fort Scott v. U.S.D. No. 234, supra, establishes that all matter relating to collective negotiations, including negotiations between school personnel and boards of education, are matters for the legislature and not the State Board of Education.

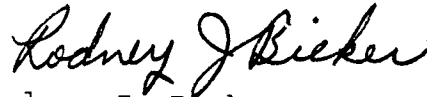
Consequently, in response to your specific inquiries, it is our opinion that based upon the provisions of sections 1, 2(a) and 6 of Article 6 of the Kansas Constitution and the decisions of the Kansas Supreme Court in State ex rel. v. Board of Education (the Peabody case), supra, and NEA-Fort Scott v. U.S.D. No. 234, supra, the State Board of Education is endowed with the authority to exercise general supervision of public schools and other educational institutions and all the educational interests of the state, except educational functions delegated to the State Board of Regents. This authority, however, is limited to matters which will equalize and promote the quality of education for the students of this state. This includes such matters as the accreditation of schools, certification of school personnel, and establishment of minimum curriculum and graduation requirements. When confined to such matters, measures adopted by the State Board have priority over conflicting legislation.

The constitution, however, reserves to the legislature the exclusive authority over all other matters relating to education, including the establishment of public schools and other public educational institutions and the provision for finance of all the educational interests of the state. The State Board of Education has no constitutional authority in regard to these matters. The State Board has constitutional authority only in matters relating to the equalization and promotion of the quality of education for the students of this state.

Very truly yours,



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RTS:BJS:RJB:jm