



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 15, 1983

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 83- 169

Honorable Denise C. Apt
Representative, Tenth District
810 Meadowbrook
Iola, Kansas 66749

Re: Schools--Vocational Education--Plan for Establishment; Approval by State Board of Education

Synopsis: The State Board of Education lacks the discretion to reject a plan for the establishment of a proposed area vocational school solely for the reason that the legislature may not provide additional financial support therefor. Cited herein: K.S.A. 72-4416, Kan. Const., Art. 6, §§1, 2 and 6.

* * *

Dear Representative Apt:

You seek our opinion on whether the State Board of Education may reject a plan for the establishment of an area vocational school, even though the information submitted in support of the establishment of the area vocational school, as prescribed in K.S.A. 72-4416, indicates the area vocational school meets the criteria established by the Board. Specifically, you inquire whether a plan may be rejected because of concern that a new area vocational school may create a demand for financial support in excess of the amount the state legislature may provide.

In our judgment, the State Board lacks the authority to deny a plan on this basis alone. This conclusion is premised in part upon our consideration of Sections 1, 2(a) and 6(b) of Article 6 of the Kansas Constitution, which provide, respectively:

"§1. Schools and related institutions and activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

"§2. State board of education and state board of regents. (a) 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.

"§6. Finance. . . .

"(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision."
(Emphasis added.)

These sections of the constitution clearly prescribe certain duties which are the responsibility of the state legislature and certain other duties which are the responsibility of the State Board of Education.

Under Article 6, Section 1, the duty to provide for, inter alia, vocational improvement, by establishing and maintaining public schools, educational institutions and related activities, is placed squarely upon the legislature. However, in providing for the establishment of schools, institutions and related activities, the legislature may require the State Board to lend assistance. See Article 6, Section 2(a), supra, and State ex rel. v. State Board of Education, 215 Kan. 551 (1974), in which case, the Kansas Supreme Court held:

"Under Art. 6, Sec. 1 and 2 of our constitution the State Board of Education is authorized to perform any duties pertaining to the educational interests of the state which the legislature deems wise and prudent to impose upon the board, and the legislature has authority to delegate to that board the power to perform duties which, in the general classification of powers of government, are legislative in character" Id. at Syl. ¶3.

Pursuant to its authority to delegate to the State Board of Education the power to perform duties legislative in character, the legislature has prescribed, in K.S.A. 72-4416, that the State Board review plans for the establishment of new area vocational schools, conduct hearings and investigations in regard to any such plan, and, based upon the factors prescribed by the legislature, approve, modify and approve as modified, or reject any such plan. This all is set forth in K.S.A. 72-4416, which provides:

"Any board may present a plan to the state board for the establishment and operation of any area vocational school. The plan may specify that the area vocational school is to be a department or a division of a school district or a community junior college or an institution under the state board of regents or any municipal university. The plan shall be prepared in such form as is prescribed by the state board.

"Information included in support of the plan shall include, but not be limited to the following:

"(a) Concentration of population within a reasonable community service area;

"(b) Total school enrollments in grades one through eight, and in grades nine through twelve, separately;

"(c) Number of persons graduating from high school within the area;

"(d) Probability of growth in school enrollments within the area;

"(e) Identification of vocational education services needed within the area;

"(f) Local interest and attitudes toward the program;

"(g) Ability to contribute to the financial support of the program;

"(h) Consideration of the area in relation to other programs or requests for programs of vocational education to prevent, as nearly as is practicable, overlapping or duplication of educational services.

"Upon receipt and examination of a plan, the state board shall conduct hearings and make such investigations related to the plan as it deems appropriate. If the plan submitted is approved, or approved after amendment, the state board may designate a school district, community junior college, an institution under the control of the state board of regents or a municipal university as an area vocational school."

When functioning under the provisions of this statute, the State Board is performing the legislative function of determining whether an educational institution should be established. The State Board is performing this function only pursuant to a delegation of legislative authority. Consequently, the State Board has only such authority as has been conferred upon it by the legislature. See, e.g., State ex rel. Dix v. State Board of Education, 224 Kan. 38 (1978). Like any executive agency or department to whom the legislature delegates administrative authority, the State Board, legally, must confine its actions within the parameters of the authority conferred by the legislature. See, e.g., Cray v. Kennedy, 230 Kan. 663 (1982) and the cases cited therein at 675-676. As was said in Cray, supra:

"The Kansas cases have consistently held, whether in the case of administrative acts or in the adoption of rules and regulations, that administrative agencies must act within the ambit of their specific statutory authority and not beyond." 230 Kan. at 675.


Thus, the power of the State Board under the provisions of K.S.A. 72-4416 is only as broad as the specific statutory authority conferred therein.

Honorable Denise C. Apt
Page Five

The matters that the State Board is to consider are adequately detailed in the statute or necessarily implied therefrom. K.S.A. 72-4416 neither states expressly, nor implies, that the State Board is to consider whether the legislature will provide the financial support necessary to maintain additional area vocational schools. Such speculation is beyond the authority delegated to the State Board. Thus, the State Board, except as an interested observer and a source of information and recommendations, may not consider, upon review of an application for an area vocational school, whether the legislature will provide funding for an area vocational school which meets the legislative and administrative criteria.

Therefore, based upon the above considerations, we are of the opinion that the State Board of Education lacks the discretion to reject a plan for the establishment of a proposed area vocational school solely for the reason that the legislature may not provide additional financial support therefor.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm