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ATTORNEY GENERAL OPINION NO. 87- 189

Mr. Robert Christensen  
Chapin & Penny, Attorneys  
P.O. Box 148  
Medicine Lodge, Kansas 67104

Re: Schools -- Organization, Powers and Finances of  
Boards of Education -- Changing Use of Schools;  
Disposition of Senior Class Funds

Synopsis: The senior class funds of a high school class which is merged with another school within the same district should be distributed in accordance with the nature of the property interest claimed by the students. If the students have a legitimate expectation of receiving benefits from the fund, then the moneys should be distributed to the schools actually attended. Otherwise, the moneys should be distributed to the district's senior class as designated by the board. Cited herein: K.S.A. 72-8205; 72-8213; 72-8233.

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Dear Mr. Christensen:

As attorney for Unified School District No. 254, you have requested our opinion concerning the disposition of funds held by the local school board when an attendance facility's use is changed. Specifically, you inquire how senior class funds should be distributed when some of the high school students of the "closed" facility choose to attend a school other than the one with which the "closed" facility is merged.

The facts you have presented are as follows:

"In the spring of 1987 decision was made by the Board of Education of U.S.D. #254 to close down the high school attendance facility in Sharon, Kansas, and merge those classes with Medicine Lodge High School, Barber County North. As a result of dissatisfaction with this board decision, a majority of the Sharon High School students elected not to attend Medicine Lodge High School and transferred to high schools out of the district. Primarily, the majority of the senior class of 1988 transferred to Attica High School."

Those transferring seniors have requested that the board of education distribute a pro rata share of the senior class fund to the Attica senior class fund.

We find little guidance in the statutes for determining the proper disposition of the funds. School closings are generally regulated by K.S.A. 72-8213, however, subsection (g) of that statute states that the section is not to be construed to limit the authority of a board to change the use of a school building if it continues to be used for pupil attendance. It is our understanding that the Sharon facility is being used for primary grades education.

In the absence of statutory guidance, we believe that common law principles apply to the extent that the funds in question are property of the senior class, not of the board. Whether the legal relationship between the class and the board be framed in terms of a trust or a debt, it is clear that the beneficial interest in the fund belongs to the senior class. The Kansas Department of Education has promulgated Guidelines For School Activity Funds (May, 1987), and classified the type of funds in question as a Group 4 account. While the moneys are reported as agency funds on the district's main financial statements, it is acknowledged that, by definition, the moneys belong to the class, organization or club. Guidelines, at page 24. We need not define with precision the relationship as either a trust or a debt, as the result of either theory is the same.

In determining the rights of the students, whether they be beneficiaries of a trust or creditors, the controversy should be resolved by looking to the interests of the claimants as either members of a group or as individuals. If claiming as a

group, we believe that the students who are attending Attica High School have no enforceable interest in the fund. The board has determined that the group previously attending Sharon High School has been merged with Medicine Lodge High School. As governing body of the district, we believe that the board, and not the students, is authorized to designate the district's official high school class. K.S.A. 72-8205(c). Students who enroll in an out-of-district school are deemed to have graduated from the school district attended, unless they attended school out-of-district pursuant to an interdistrict agreement authorized by K.S.A. 72-8233. We believe, therefore, that the students who attend Attica High School instead of Medicine Lodge High School have voluntarily disassociated themselves from the group previously known as Sharon High School class of 1988, and have accordingly surrendered their rights to the class fund as a group.

As individuals, the students may have property interests in the fund which are protected by the Fourteenth Amendment. The final determination calls for an examination of facts to which we have insufficient information. However, we believe that guidelines are available to assist in the factual determination. The nature of the interest relies on the benefit the students hope to receive from the fund. As stated in Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972),

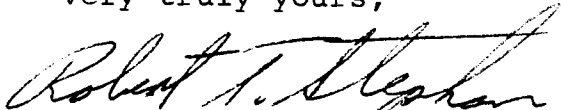
"[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." 408 U.S. at 577, 33 L.Ed.2d at 561.

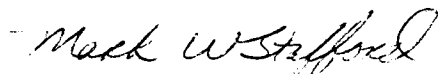
While this does not establish a clear test for resolving your question, it does serve as a basis for the following factors which should be considered. First, it should be determined whether moneys in the fund are sufficiently severable to be apportioned in light of individuals' input. Second, the intent of the student as depositor, and of the school as holder, should be considered to establish the legitimacy of any expectation or promise of benefit. Third, a windfall should not be gained by those who took no part in raising the money. Finally, the intent of third parties who indirectly contributed to the fund through purchases or donations is important for deciding whether the intended benefit was for

particular students or for whomever graduated from the school at a given time.

After considering the above factors, if the students as individuals have a legitimate expectation of receiving the benefits of the funds, then the funds should be distributed to those individuals' school. To do otherwise would violate the due process clause of the 14th Amendment. If, on the other hand, the individuals merely have a unilateral expectancy, the funds should benefit what is now the senior class of Sharon High as established by the board, which is now merged with the senior class of Medicine Lodge.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
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