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ATTORNEY GENERAL OPINION NO. 89- 119

The Honorable Bill Graves  
Secretary of State  
2nd Floor, State Capitol  
Topeka, Kansas 66612

Re: Census--Census Data for Reapportionment of  
Senatorial and Representative Districts--Definitions

Synopsis: L. 1989, ch. 257 requires the secretary of state to obtain data to make specified adjustments to the federal decennial census. The provisions of L. 1989, ch. 257 dealing with residency of college students are applicable to all individuals who are enrolled in nine or more credit hours and to all individuals seeking an academic degree at a university or college. The act does not apply to those individuals not seeking an academic degree who are enrolled in fewer than nine credit hours and those individuals attending a proprietary school or vocational-technical school. Cited herein: K.S.A. 72-4919; K.S.A. 1988 Supp. 72-4412; L. 1989, ch. 257.

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Dear Secretary Graves:

You request our opinion regarding an interpretation of certain terms in L. 1989, ch. 257. Specifically you question whether the provisions of L. 1989, ch. 257 are applicable to those individuals attending a proprietary school or vocational-technical school. You also question whether a high school student enrolled for college credit or an individual

enrolled in continuing education courses falls within the act.

"College" is defined in L. 1989, ch. 257, §2 as "a public or private postsecondary educational institution, including community colleges, which offers two year or four year educational programs." Two factors of this definition work to exclude proprietary schools and vocational-technical schools from application of the provisions of L. 1989, ch. 257. First, the legislature concentrated on the educational aspects of an institution to bring it within the definition. Second, by expressly including community colleges within the definition, proprietary schools and vocational-technical schools were impliedly excluded.

A proprietary school is defined in K.S.A. 72-4919(a) as "any business enterprise operated for a profit, or on a nonprofit basis, which maintains a place of business within the state of Kansas, or solicits business within the state of Kansas, and which is not specifically exempted by the provisions of this act. . . ." (Emphasis added.) Although proprietary schools offer and maintain courses of instruction or study, these courses do not include the educational diversity generally associated with a college course of study. Because a proprietary school lacks the educational feature of a college, proprietary schools are not included in the definition of "college" in L. 1989, ch. 257, §2.

The goal of vocational education is to "prepare individuals for gainful employment as semi-skilled or skilled workers or technicians or subprofessionals . . . or to prepare individuals for enrollment in advanced technical education programs . . ." through vocational or technical training or retraining. K.S.A. 1988 Supp. 72-4412. Vocational-technical schools do not provide the education necessary in acquiring baccalaureate or higher degrees or for preparation for employment in professional occupations. Vocational-technical schools provide training rather than education, and therefore are distinguishable from "college" as defined in L. 1989, ch. 257, §2.

The maxim expressio unius est exclusio alterius also works to exclude proprietary schools and vocational-technical schools from the definition of "college" under L. 1989, ch. 257, §2. The maxim provides that the express mention of one matter excludes other similar matters not mentioned. 82 C.J.S. Statutes §333, p. 668. By expressly including community colleges in the definition of "college", the


legislature impliedly excluded proprietary schools and vocational-technical schools.

The purpose of L. 1989, ch. 257 is to assist in adjusting the census through a determination of the residency of students. Therefore, the term "student" should be liberally construed to include all individuals enrolled in nine or more credit hours and all individuals seeking an academic degree. The determination of whether an individual is seeking an academic degree is purely subjective and could, therefore include high school students enrolled in college-level courses. It is not necessary for individuals seeking an academic degree to be enrolled in nine or more credit hours to fall under the provisions of L. 1989, ch. 257. Individuals enrolled in less than nine hours of continuing education courses do not fall within the definition of "student" as they are deemed to have already received their academic degree. Taking into consideration the purpose of the act, the only individuals not included in the definition of "student" are those enrolled in fewer than nine credit hours who are not seeking an academic degree.

Very truly yours,



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