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ATTORNEY GENERAL OPINION NO. 90- 9

William B. Swearer
400 Wiley Building
P.O. Box 1907
Hutchinson, Kansas 67504-1907

Re: Schools-Community Colleges--Organization, Powers and Finances of Boards of Trustees--Powers and Duties of Boards of Trustees; Acceptance of Complimentary Tickets

Synopsis: Complimentary tickets to college-sponsored events may be accepted by the members of the board of trustees for Hutchinson Community College as gifts because those tickets have been voluntarily conferred upon the trustees, no additional consideration is required of the trustees, and no public funds have been expended in purchasing the tickets. Cited herein: K.S.A. 71-201; 72-8207.

* * *

Dear Mr. Swearer:

As the attorney for the board of trustees of Hutchinson Community College, you request our opinion regarding the ability of the individual trustees to accept complimentary tickets to college-sponsored events. The complimentary tickets would permit the trustees to attend events for which an admission is normally charged or tickets required, such as football and basketball games, theater productions, and other fine arts productions.

Administrative agencies are creatures of statute and their power is dependent upon authorizing statutes; therefore, any exercise of authority claimed by the agency must come from within the statutes. Pork Motel, Corp. v. Kansas Department of Health and Environment, 234 Kan. 374, 378 (1983). There is no general or common-law power that can be exercised by an administrative agency. State ex rel. Secretary of Social and Rehabilitation Services v. Fomby, 11 Kan.App.2d 138, 141 (1986). The power of a board of trustees of a community college are contained in K.S.A. 71-201 et seq. While the board is granted broad authority regarding the management and control of the college, no statute exists authorizing compensation of the trustees for their services to the community college. The members of a local school board are authorized to receive reimbursement for necessary expenses incurred in the performance of their official duties, K.S.A. 72-8207; however, no such authority has been extended to the trustees of a community college. It is, therefore, beyond the authority of the trustees to demand public funds or monies as compensation for their service or as reimbursement for expenses incurred in the performance of their duties.

However, the situation presented here does not involve an expenditure of public funds as compensation or reimbursement to the trustees. Rather, the college administration has elected to confer upon the individual trustees tickets for college-sponsored events, apparently with the intention of encouraging attendance of the trustees at such events. The trustees are not required to use the tickets or to provide any additional consideration in exchange for the tickets. The tickets, therefore, take on the appearance of a gift to the individual trustees.

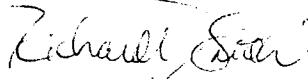
A "gift" is defined in Black's Law Dictionary 619 (5th Ed. 1979) as "a voluntary transfer of property to another made gratuitously and without compensation." In order for the gift to be valid there must be: (1) an intention to make a gift; (2) a delivery by the donor to the donee; and (3) an acceptance by the donee. Truax v. Southwestern College. 214 Kan. 873, 877 (1974). During a telephone conversation on December 28, 1989, you indicated that the trustees have not requested the tickets; the tickets are conferred upon the individual trustees at the start of the season of the respective activities. The tickets remain in the possession of the individual trustees until the trustees elect to use them. The trustees are not required to attend the events for which tickets have been conferred though the administration of the college encourages their attendance as a show of support

of the college. Under the circumstances you presented, the tickets are a valid gift to the trustees. As a valid gift which does not require the expenditure of public funds, the members of the board of trustees of a community college may accept the complimentary tickets conferred upon them.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

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