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ATTORNEY GENERAL OPINION NO. 90- 132

The Honorable Rick Bowden  
State Representative, Ninety-Third District  
433 Walnut  
Goddard, Kansas 67052

Re: Schools--Teachers' Certificates--Examination for  
Certification; Passing Score Determined by State  
Board

Synopsis: The board of education may set the standards for  
teacher certification, but it may not supervise or  
direct the functions delegated by law to the board  
of regents or institutions under the board of  
regents. Since the board of education has seen fit  
to require successful completion of an approved  
teacher education program and a recommendation by a  
teacher education institution as requirements for  
certification, applicants who choose to enroll in  
regents institutions must meet the minimum test  
score established by the board of regents in order  
to receive the recommendation needed for  
certification. The board of regents has the  
authority to set the minimum score that must be  
attained in order to receive a recommendation for  
certification. Cited herein: K.S.A. 72-1388; 72-  
1394; 72-1395; 72-1396; 76-712; 76-716; 76-717;  
76-725; K.A.R. 91-1-27; 91-1-27a; 91-1-27b (1990  
Supp.); 91-1-28; Kan. Const., art. 6, § 2.

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Dear Representative Bowden:

You request our opinion regarding teacher certification requirements set by the state board of education. Specifically, your question is this:

"Does the Kansas Board of Regents have statutory authority to set a passing score for recommendation for certification of a teacher higher than that established by the State Board of Education pursuant to K.S.A. 72-1395?"

As we understand it, the board of regents has established a policy requiring a minimum score of 172 on each section of the Pre-Professional Skills Test (PPST) before a regents institution may recommend a graduate for certification as a teacher. Board of Regents Policy Manual, Item 1.(1)(b). The state board of education uses the PPST as a part of its precertification examination and requires a score of only 168. Since the board of regents requires a higher score for giving a recommendation, an applicant for certification who attends a regents institution may score high enough on the PPST to satisfy the state board of education's certification requirement, but not be recommended for certification because the person's score does not meet the board of regent's minimum to receive a recommendation. You question whether this situation is contrary to the law governing certification of teachers.

Article 6, section 2 of the Kansas Constitution provides, in part:

"(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.

"(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. . . ."

The Kansas Supreme Court has held that the portion of section 2(a) which gives the board of education general supervisory powers is self-executing and that no supplementary legislation is necessary to put it into operation. State, ex rel., v. Board of Education, 212 Kan. 482, syl. §§ 6, 3 (1973). In Attorney General Opinion No. 81-236, we concluded that the subject of teacher certification in public schools is an area within the basic mission of the state board of education and, therefore, a matter subject to the general supervisory powers of that board under article 6, section 2(a) of the constitution. See NEA-Fort Scott v. U.S.D. No. 234, 225 Kan. 607, 610-611 (1979); and Attorney General Opinions No. 90-30, 83-154. The board of education thus has authority to enact rules and regulations prescribing requirements for teacher certification even absent legislation authorizing such regulations. Attorney General Opinions No. 81-236, 83-154. See also Bauer v. U.S.D. No. 452, 244 Kan. 6, 12-13 (1988) (state board of education has sole authority to set standards for the issuance of certificates to teach in Kansas); K.S.A. 72-1388.

Pursuant to its constitutional authority and under the provisions of K.S.A. 72-1388 and 72-1394 to 72-1396, the board of education has promulgated K.A.R. 91-1-27, 91-1-27a, 91-1-27b and 91-1-28 relating to teacher certification and precertification examination. K.A.R. 91-1-27a requires applicants for certification to take and satisfactorily pass a precertification examination. K.A.R. 91-1-27b (1990 Supp) provides certain exceptions to the precertification examination requirement. K.A.R. 91-1-27 sets forth requirements for certification which are in addition to satisfactorily passing the precertification examination. This regulation provides in part:

"(a) A certificate shall be issued to those applicants who hold a baccalaureate degree and have completed an approved program, or to those who are otherwise qualified for certification.

. . . .

"(d) Recommendation. Each application for initial certification shall be accompanied by a recommendation from the head of the college, department or school of education of the teacher education

institution that a certificate be issued to the applicant. . . ."

Since the regulation of teacher certification is within the board of education's constitutional authority, the board could do away with any or all of these requirements regardless of any conflicting legislation. See State, ex rel. v. Board of Education, 212 Kan. at 488; and Attorney General Opinions No. 81-236, 83-154. In fact, the board has promulgated a regulation which sets out a procedure by which certification may be granted to persons who do not satisfy all the requirements for certification. K.A.R. 91-1-28. However, while the board of education has constitutional authority to set the requirements for certification, including obtaining a degree and receiving a recommendation for certification from a teacher education institution, it has no authority to prescribe the criteria for receiving a recommendation from a regents institution. This is a matter which has been "delegated by law to the state board of regents" pursuant to article 6, section 2 of constitution and K.S.A. 76-712, 76-716, 76-717 and 76-725. In other words, the board of education may set the standards for teacher certification, but it may not supervise or direct the functions delegated by law to the board of regents or institutions under the board of regents. Since the board of education has seen fit to require successful completion of an approved teacher education program and a recommendation by a teacher education institution as requirements for certification, applicants who choose to enroll in regents institutions must meet the minimum test score established by the board of regents in order to receive the recommendation needed for certification. The board of regents has the authority to set the minimum score that must be attained in order to receive a recommendation for certification.

Very truly yours,

  
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