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ATTORNEY GENERAL OPINION NO. 91- 112

The Honorable Richard R. Reinhardt
State Representative, Eighth District
R.R. #1, Box 118
Erie, Kansas 66733

Re: Schools-Community Colleges--Organization, Powers and Finances of Boards of Trustees--Boards of Trustees; Powers and Duties; Political Campaign Posters and Signs on Campus

Synopsis: The campus of a community college, at least for its students, possesses many of the characteristics of a public forum. For the board of trustees of a community college to prohibit or restrict speech based on the content of that speech, the board must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. The board may enforce regulations of the time, place and manner of expression if such regulations are content-neutral, are narrowly tailored to serve a significant governmental interest and leave open ample alternatives of communication. The presence of political campaign posters and signs in or on buildings located on the campus of a community college does not jeopardize the tax-exempt status of the community college. Cited herein: K.S.A. 1990 Supp. 71-201, as amended by L. 1991, ch. 213, § 1; Kan. Const., art. 11, § 1; 26 U.S.C.A. § 501; 26 C.F.R. § 1.501(c)(3)-1; U.S. Const., Amend. I.

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Dear Representative Reinhardt:

As representative for the eighth district, you request our opinion regarding whether the board of trustees of a community college may restrict or prohibit the placement of political campaign posters and signs in or on buildings located on the campus of the community college. You also ask whether the tax-exempt status of the community college is jeopardized if such activity is not prohibited.

Communication by signs, placards or posters is closely akin to "pure speech" and is entitled to comprehensive protection under the first amendment of the United States constitution. See Tinker v. Des Moines Independent School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969); Boos v. Barry, 484 U.S. 808, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988).

"In balancing the government's interest in limiting the use of its property against the interests of those who wish to use the property for expressive activity, the [United States Supreme] Court has identified three types of fora: the traditional public forum, the public forum created by government designation and the nonpublic forum. Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 45-46, 103 S.Ct. 948, 954-955, 74 L.Ed.2d 794 (1983). The proper First Amendment analysis differs depending on whether the area in question falls in one category rather than another. In a traditional public forum or a public forum by government designation, we have held that First Amendment protections are subject to heightened scrutiny:

"In these quintessential public forums, the government may not prohibit all communicative activity. For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. . . . The State may also enforce regulations of the time, place and manner of expression which are content-neutral, are narrowly tailored to serve a

significant government interest, and leave open ample alternative channels of communication.' Id. at 45, 103 S.Ct. at 955.

"We have further held, however, that access to a nonpublic forum may be restricted by government regulation as long as the regulation 'is reasonable and not an effort to suppress expression merely because officials oppose the speaker's view.' Id. at 46, 103 S.Ct. at 955." Board of Airport Comm'rs of the City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 572-73, 107 S.Ct. 2568, 2571, 96 L.Ed.2d 500 (1987).

The Supreme Court of the United States has recognized that the campus of a public university, at least for its students, possesses many of the characteristics of a public forum. Widmar v. Vincent, 454 U.S. 263, 267 n. 5, 102 S.Ct. 269, 273 n. 5, 70 L.Ed.2d 440 (1980). With respect to persons entitled to be there, the Supreme Court leaves no doubt that the first amendment rights of speech and association extend to the campuses of state universities. Widmar, 454 U.S. at 268, 102 S.Ct. at 274. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Tinker, 393 U.S. at 506, 89 S.Ct. at 736.

At the same time, the Supreme Court has recognized that first amendment rights must be analyzed "in light of the special characteristics of the school environment." Tinker, 393 U.S. at 506, 89 S.Ct. at 736; Widmar, 454 U.S. at 267 n. 5, 102 S.Ct. at 273 n. 5. The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. Greer v. Spock, 424 U.S. 828, 836, 96 S.Ct. 1211, 1217, 47 L.Ed.2d 505 (1976). Those actions which materially and substantially disrupt the work and discipline of the school are prohibitible. Healy v. James, 408 U.S. 169, 189, 92 S.Ct. 2338, 2350, 33 L.Ed.2d 266 (1972).

The board of trustees of a community college "shall have custody of and be responsible for the property of the community college and shall be responsible for the management and control of the college." K.S.A. 1990 Supp. 71-201, as amended by L. 1991, ch. 213, § 1. "[The board of trustees

of a community] college has the inherent power to promulgate rules and regulations; [] it has the inherent power properly to discipline; [] it has power appropriately to protect itself and its property; [] it may expect that its students adhere to generally accepted standards of conduct.'

Esteban v. Central Missouri State College, 415 F.2d 1077, 1089 (CA. 8 1969), cert. denied, 398 U.S. 965, 90 S.Ct. 2169, 26 L.Ed.2d 548 (1970). Just as in the community at large, reasonable regulations with respect to the time, the place and the manner in which student[s] [] conduct their speech-related activities must be respected." Healy, 408 U.S. at 192, 92 S.Ct. at 2352. However, if the board of trustees attempts to implement a content-based regulation, such as regulating placement of posters and signs advocating political candidates, a heavy burden rests on the board of trustees to demonstrate that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. Tinker, 393 U.S. at 511, 89 S.Ct. at 739.

"The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process."
Tinker, 393 U.S. at 512, 89 S.Ct. at 739-40.

Because the exercise by students and teachers of their first amendment rights is an important part of the educational process, failure of the board of trustees to prohibit such activity will not jeopardize the tax-exempt status of the community college. Article 11, section 1(b)(2) of the Kansas constitution states:

"All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, farm machinery and equipment, merchant's and manufacturer's inventories and livestock and all household goods and personal

effects not used for the production of income, shall be exempted from property taxation." (Emphasis added).

The question is not whether the property is used partly or even largely for the purpose stated in the exemption provisions, but whether it is used exclusively for that purpose. Board of Wyandotte County Comm'rs v. Kansas Ave. Properties, 246 Kan. 161, 166 (1990). The test of whether an enterprise is educational for ad valorem tax purposes is whether its property is used exclusively to carry out a purpose recognized in law as educational. National Collegiate Realty Corp. v. Board of Johnson County Comm'rs, 236 Kan. 394, Sy. ¶ 4 (1984). The exchange of information among students is an important part of the educational process.

A similar exemption exists at the federal level regarding income taxation.

"(a) Exemption from taxation. - An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

. . . .

"(c) List of exempt organizations. - The following organizations are referred to in subsection (a):

. . . .

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes. . . , no part of the net earning of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including

the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C.A. § 501.

An example of an educational organization is "[a]n organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on." 26 C.F.R. § 1.501(c)(3)-1(d)(3)(ii). The educational organization will remain tax-exempt provided its actions do not constitute the acts of an action organization as defined in 26 C.F.R. § 1.501(c)(3)-1. The board of trustees of a community college is not participating or intervening in a political campaign when it fails to prohibit individuals from exercising their rights under the first amendment. The presence of political campaign posters or signs on or in buildings located on the campus of a community college will not jeopardize the tax-exempt status of the community college.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
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