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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 11, 1974

Opinion No. 74- 43

James W. Bibb
Director of the Budget
Department of Administration
Statehouse
Topeka, Kansas 66612

Dear Mr. Bibb:

You advise that § 6(a) of 1974 House Bill No. 1666, an appropriation bill, is proposed to be amended by inserting the following in pertinent part:

"Optometry education assistance contract program \$20,000

Provided, That the board of regents shall expend such funds for contracting with accredited colleges and schools of optometry for admission of Kansas residents into such schools."

You inquire whether, if this amendment is duly added, there are any restrictions which would impair the Board from carrying out the purpose of the Legislature in adopting an optometry education assistance program.

We understand that the purpose of this appropriation is to provide funds with which the Board of Regents may contract with accredited colleges and schools of optometry in other states for the admission of Kansas residents into such schools.

This information was not available from any statutory enactment or from the language in the proposed appropriation bill. As a result, there is no statutory basis upon which to determine what the appropriation is intended to support, apart from the generally descriptive language of the appropriation of optometry education assistance. The amendment proposed in

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standard to govern the use of the funds, absent substantive statutory authority, in the event of any misappropriation or misuse of such moneys.

The general contractual powers of the Board are set forth at K.S.A. 76-712 thus:

"The universities and colleges of this state are state agencies and state institutions and shall be controlled by, and operated and managed under the supervision of the board of regents. For such control, operation, management or supervision, the board of regents may make contracts and adopt orders, policies or rules and regulations and do or perform such other acts as are authorized by law or are appropriate for such purposes."

The contracts in question do not relate to the control, operation and management of Kansas institutions. In our view, based upon the information we presently have, this assistance program requires statutory authority other than the general contracting power provided by K.S.A. 76-712. K.S.A. 74-3219 authorizes the Board to enter into

"reciprocal agreements with colleges and universities, hereafter called institutions, located in other states, and with the boards or agencies having control and supervision over such institutions, for the mutual utilization of the educational facilities under the control of each of the parties to such reciprocal agreements to the extent hereinafter set forth."

This authority, which is explicitly separate from that conferred upon the Board for the management of Kansas institutions under K.S.A. 76-712, extends only to reciprocal agreements. No information which we presently have suggests that the optometry education assistance contract program proposed to be funded by the appropriation amendment is reciprocal in nature, or pursuant to an existing reciprocal agreement. Thus, we cannot but conclude that K.S.A. 74-3219 likewise provides no authority for the program.

Absent any applicable statutory authority for the expenditure of state moneys for this purpose, unrelated to the operation, control and management of Kansas institutions of higher education, we cannot but conclude that legislative action is necessary to provide substantive authority for the program.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm