

FILE

Subject

Social Welfare
General
Schools
Textbooks

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

May 10, 1974

Opinion No. 74- 142

Charles V. Hamm
General Counsel, Legal Division
State Department of Social
and Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Dear Mr. Hamm:

K.S.A. 72-4107a states thus:

"Whenever the parents or guardian of any child attending any of the public schools are unable to purchase textbooks or provide rental fees for said child, the board of education of the district in which said child resides shall, if written application is made and said board finds the application meritorious, furnish said child with the regular adopted textbooks free of cost."

You inquire concerning application of this section to legally dependent children who have been placed in foster homes by the Department of Social and Rehabilitation Services.

Under this statute, the board of education of the district in which a child resides must provide that child with the regularly adopted textbooks free of cost "[w]henver the parents or guardian" of that child is "unable to purchase textbooks or provide rental fees for said child." Under the quoted statute, the duty of the district to furnish textbooks free of cost arises whenever the "parents or guardian" are unable to furnish such books, and the board of education finds that the application for free textbooks is "meritorious" when made by or on behalf of a child who has been declared legally dependent and who is placed in a foster home with either a nonparent relative or nonrelative foster parent who is not a guardian of the child, and which child re-

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ceives his or her support from funds allocated to the Department of Social and Rehabilitation Services.

K.S.A. 39-702 defines "dependent children" as

"needy children under the age of eighteen (18), or who are under the age of twenty-one (21) and are students regularly attending a school, college or university, or regularly attending a course of vocational or technical training designed to fit them for gainful employment, who have been deprived of parental support or care by reasons of the death, continued absence from the home, unemployment, or physical or mental incapacity of a parent, and who are living with any blood relative, including those of the half-blood, and including first cousins, nephews, nieces, and persons of preceding generations [who] are denoted by prefixes of grant, great, or great-great, and including the spouses or former spouses of any persons named in the above groups, in a place of residence maintained by one or more of such relatives as his or their own home. * * * *" [Emphasis supplied.]

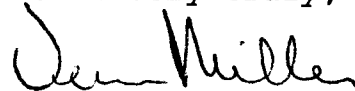
The definition goes on beyond the portion quoted above, to further define as "dependent children" those in circumstances additional to those described above. It is clear, however, from the portion quoted, that a legally dependent child is one by definition who is "needy," and who has been "deprived of parental support or care. . . ." Thus, the fact, or legal status, of legal dependency establishes in and of itself that the parent of the child is unable to furnish the child with textbooks.

Notwithstanding, you indicate that certain boards of education condition the furnishing of textbooks free of cost to a child upon finding that the foster parent or parents are financially unable to furnish the necessary books. Under K.S.A. 72-4107a, the board's duty to furnish textbooks is not conditioned upon the financial ability of the foster parent. This provision provides no authority for a board of education to impose any additional condition upon the furnishing of free textbooks other than those specifically provided. The board may not avoid its statutory responsibility by unilaterally imposing additional conditions thereon for which the law provides no authority, including the condition that persons other than the parent or guardian of a child establish their personal inability to furnish textbooks, for which such persons bear no legal responsibility save that the board of education seeks to place them in the position of an involuntary volunteer.

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The payment of the foster parent for care of the child placed in his or her care by the Department of Social and Rehabilitation Services is not income to the foster family. The foster parent assumes no other financial responsibility for the care and needs of a child so placed. Accordingly, we conclude that when application is made to the board of education of a unified school district by or on behalf of a child who has been declared legally dependent and who is placed in a foster home with either a nonparent relative or nonrelative foster parent who is not a guardian of the child, and when such child receives his or her support from funds allocated by the Department of Social and Rehabilitation Services, the board of education may not question the meritorious nature of the application on the ground of the financial resources of the foster parent or parents.

Yours very truly,



VERN MILLER
Attorney General

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