

Subject

FILE
Schools - Pupils
Tuition

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

June 5, 1974

Opinion No. 74-178

C. Taylor Whittier
Commissioner of Education
120 East 10th Street
Topeka, Kansas 66612

Dear Commissioner Whittier:

You inquire whether the Cowley County Area Vocational-Technical School operated by the Board of Trustees of the Cowley County Community Junior College may charge tuition for secondary school students living within the A.V.T.S. district.

The boundary lines of the Cowley County A.V.T.S. are congruent with those of the Cowley County Community Junior College district and with those of Cowley County itself. At the present time, you advise, U.S.D. 470 (Arkansas City) has 44 students and Unified School District No. 465 (Winfield) has 19 students attending the A.V.T.S., and both unified school districts are paying tuition for such students under contractual agreements which were executed by the A.V.T.S. and the unified districts. It contains the following clause:

"This agreement shall terminate . . . unless prior thereto said Junior College shall have sought and secured, by appropriate legislation or legal opinion from the state Attorney General, clarification of the legal status of the Area Vocational Technical School operated by the Board of Trustees of the Junior College, sufficient to satisfy the State Board of Education."

You indicate that K.S.A. 72-4419 has been interpreted by some as requiring unified school districts to pay tuition for secondary students attending the A.V.T.S., whereas others regard K.S.A. 74-4418(b)(2) as exempting districts from this requirement.

K.S.A. 72-4418 states in pertinent part thus:

"(a) Consonant with subsection (b) of this section, the state board of education shall adopt rules and regulations relating to enrollment procedures for students in vocational education courses or programs.

"(b) Any person may apply to the board of education of the school district (offering and teaching grades 10 to 12) in which the person resides for admittance to a vocational education course or program conducted in another school district. The application shall be . . . subject to the following conditions:

* * *

(2) The course or program applied for is not offered in the vocational education department of the school district in which the student resides, nor in a program which is available to residents of the school district in which the applicant resides under the terms of an agreement made under section 11 [72-4421].

* * *

"(c) Any person may apply for admittance to a vocational education course or program of a community junior college and shall be approved for admittance in accordance with rules adopted by the community junior college to which application is made."

K.S.A. 72-4419 states in pertinent part thus:

"The school district in which a student resides shall pay the tuition of such student to attend any vocational education course or program when such attendance is approved as provided in K.S.A. 72-4418, from its vocational education fund provided for in this act, except that any board receiving funds under an agreement under K.S.A. 72-4421 shall pay such tuition when the student lives in a school district which is a party to an agreement under said 72-4421 if such agreement so provides."

Attendance is approved under K.S.A. 72-4418 if, under (b) (2) thereof, two conditions are met: first, that the course or program applied for is not offered in the vocational education

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department of the school district in which the student resides -- that condition exists here; and secondly, that the course or program applied for is not offered in a program which is available to residents of the school district in which the applicant resides pursuant to an agreement made under K.S.A. 72-4421. In this instance,, the vocational education program of the A.V.T.S. operated by Cowley County Community Junior College is available to secondary students residing in both U.S.D. 470 and 465 by virtue of an agreement between those districts and the A.V.T.S. This requisite of K.S.A. 72-4418(b)(2) being absent, the duty of the unified school districts to pay tuition does not arise under the first clause of the first sentence of K.S.A. 72-4419. In this circumstance, the exception provided for in that sentence becomes operative, whereunder "any board receiving funds under an agreement under K.S.A. 72-4421 shall pay such tuition when a student lives in a school district which is a party to . . . [such an agreement] if such agreement so provides."

- You point out that some school district officials have argued that it is double taxation to permit the board of trustees to levy two mills for vocational education programs conducted by its A.V.T.S. and at the same time require the school districts situated within the A.V.T.S. to make such a levy and to pay from its proceeds tuition for their students attending the A.V.T.S. This does not constitute double taxation in any constitutional sense, for the levies imposed by the unified school district and the A.V.T.S. are imposed by separate taxing bodies, albeit for similar purposes.

However, as we view the statutes cited above, although they are less than clear on the point, when a secondary student attends an A.V.T.S. program conducted by a community junior college district which includes the territory of the unified school district pursuant to an agreement between the A.V.T.S. and the unified school district of the student's residence, and the A.V.T.S. program is available to the residents of the school district pursuant to the agreement, the school district of the student's residence is not required to pay his tuition; rather, the A.V.T.S. which receives funds from the student's unified school district pursuant to the agreement must pay the tuition of students received pursuant to the agreement. Obviously, these statutes are less than clear on this question, and clarification should be considered by the appropriate legislative committee.

Yours very truly,



VERN MILLER
Attorney General

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