

Subject

FILE

*Schools - Area  
Westwood Tech*

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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

July 12, 1974

Opinion No. 74- 233

Robert H. Meyer  
Jewell County Attorney  
Mankato, Kansas 66956

Dear Mr. Meyer:

You inquire concerning certain work projects being undertaken by the Heavy Equipment Department of the North Central Kansas Area Vocational-Technical School at Beloit, Kansas. You advise that you represent six heavy equipment operators of the Beloit area who take the position that certain activities of this Department of the School represent unfair competition, in that tax-supported and publicly owned equipment and student personnel are used in performing dirt-moving work for public, semi-public, and for private individuals. Toward that end, you inquire what power or authority, if any, the School may have to conduct training missions with their equipment and students off-campus.

You indicate that the contractors in question do not object to several projects undertaken by the School, such as those for public benefit, done at greatly reduced cost, for the Kansas State Park and Resources Authority, at Glen Elder Reservoir. Generally, no objection is raised to work which might otherwise not have been done at all, and as to which the School was not in competition with contractors in the private sector.

You enclose with your letter a copy of the minutes of a meeting held October 11, 1973, of the Advisory Committee of the Heavy Equipment Department of the School. These minutes contain a detailed description of the kinds of work undertaken by the Department theretofore. For the City of Beloit, the Department had done work in the city park, snow removal, new trenches for a city landfill, cleaning out a dam, and work at the Beloit Cemetery. The Department at that time was engaged in stripping overburden on a gravel pit for Mitchell County. The minutes continue thus:

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"Also in the past the Heavy Equipment Department has worked for the City of Jewell, Kansas (lake clean-out); Kansas State Park Authority (work at Glen Elder Reservoir and at Webster Reservoir); Cawker City High School, (football field); Sylvan Grove U.S.D. (football field and burying 10,000 gallon fuel tank); City of Sylvan Grove (land fill-new trench).

Also work for private parties, two projects, one for Tommy Smythe, Beloit (building pond); and for Paul Mears, Beloit (landleveling and pond building). As stated by these individuals before the work was started, the school was assured that the work done was work that would not get done any other way."

The minutes indicate that the subject of future work to be done by the Department was discussed at length. One guideline discussed and proposed to govern the choice of future work was threefold: 1) to do no private work; 2) to do work only for tax-supported governmental bodies, i.e., cities, counties, townships, and state agencies; and 3) when no such work was available, to seek a ruling from this office or other agency concerning what types of work the Department could do, particularly regarding private work or work for any other type of organization. It was apparently the consensus of the local contractors that the Department should restrict its projects to work for the county, township, and state agencies, such as the Park and Resources Authority, and particularly that the Department should not undertake levelling site preparation work for the Beloit industrial development group.

Statutory guidance for resolving the question of the authority of the School to undertake work such as discussed above is slight. The area vocational-technical schools are established pursuant to K.S.A. 72-4408 et seq. K.S.A. 72-4412(g) defines "vocational education" as

"vocational or technical training or retraining which is given in schools or classes (including field or laboratory work and remedial or related academic and technical instruction incident thereto) under public supervision and control or under contract with the state board or a board or board of control and is conducted as part of a program designed to prepare individuals for gainful employment as semi-skilled or skilled workers . . . ."  
[Emphasis supplied.]

Thus, as a purely legal matter, training of students through field work is prima facie within the statutory authority of the School, whether the work is conducted on campus, in simulated

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training projects, or off campus, in "live" earth-moving projects.

In our letter to you of January 16, 1974, we cited paragraph 9.22 of the State Vocational Education Plan, which set forth certain standards as follows for cooperative vocational education programs:

"The program will provide on-the-job training that (1) is related to existing career opportunities susceptible to promotion and advancement, (2) does not replace other workers who perform similar work, (3) employs student learners in conformity with Federal, State and local laws and regulations, and in a manner not resulting in exploitation of the student-learner for private gain, (4) is conducted in accordance with a written training plan or agreement between local educational agency and employer included in program application . . . ."

Since that letter, we have determined that, so far as appears, the projects in question are not being undertaken by the School pursuant to any cooperative vocational education program, i.e., a cooperative work-study program of vocational education conducted through a cooperative agreement between the educational agency and employers who provide training through on-the-job work. Here, the projects in question are merely undertaken by the Heavy Equipment Department of the School itself, and not pursuant to any agreement with another employer of student personnel. Thus, the cited standards are inapplicable, and to respond to your specific questions in your letter of April 3, it is hence not necessary that when the School sends its student personnel and equipment to do work for the City of Beloit, private individuals, or for other parties, such as the industrial development group, that such party furnish supervisory and training personnel.

Nonetheless, the question remains what lawful limitations, if any, are required by law to be imposed upon work projects undertaken by the Heavy Equipment Department. Under K.S.A. 72-4412(c), area vocational technical schools have broad authority to provide training through field work. The projects described above all represent precisely that, i.e., the furnishing of vocational heavy equipment training through field work. The further question remains whether any limitations are to be implied as a matter of public policy against the performance of work by students of the school which would otherwise be done by contractors in the private sector.

In Dickinson Theaters v. Lambert, 136 Kan. 498, 16 Pac. 515 (1932), the City of Hiawatha had entered into an agreement for the lease

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of the municipal auditorium to a private individual for use as a motion picture theater. A competitor to the lessee brought suit challenging the right of the city to do so. The Court stated thus:

"It has been the policy of our government to exalt the individual rather than the state . . . and to have the various units of our government perform governmental functions, leaving to individuals commercial enterprises for profit . . . .

"We conclude that the amendment . . . did not authorize the lease of the building, or any part thereof, for the conduct of a purely commercial enterprise, and if the statute were so construed as to grant such authority it would be void as against the public policy of this state."

In State ex rel. Coleman v. Kelly, 71 Kan. 811, 81 Pac. 450 (1905), the Court enunciated its very firm view on this question of public policy:

"It has been the policy of our government to exalt the individual rather than the state, and this has contributed more largely to our rapid national development than any other single cause. Our constitution was framed, and our laws enacted, with the idea of protecting, encouraging and developing individual enterprise, and if we now intend to reverse this policy, and to enter the state as a competitor against the individual in all lines of trade and commerce, we must amend our constitution and adopt an entirely different system of government." 71 Kan. at 836.

In empowering area vocational technical schools to do "field" work, the Legislature did not, of course, authorize such schools to act broadly as general contractors in providing earth-moving services in general competition with the private sector. On the one hand, however, the statutory authority of the School is sufficient to authorize the performance of work off campus on "live" projects. In other words, the School is not, in our opinion, restricted as a matter of law to on-campus work, which would necessarily amount only to simulated practice training.

In short, the naked legal statutory authority of the School permits it, in our opinion, to undertake earth-moving projects which are necessary to provide adequate training opportunities for its students. If this be so, as we believe it to be, it is unnecessary, and indeed legally irrelevant, to distinguish between work performed for a tax-supported body, such as a city, county or

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township, and work done for a non-tax-supported body, whether it be a private individual or the Beloit industrial development group. Either kind of work is done off-campus, and is, at least potentially, work which would otherwise be done by private contractors.

The overriding criterion is whether the off-campus work is necessary in order to provide adequate training for students of the School. In the minutes enclosed with your letter of the Advisory Committee meeting, for example, the discussion whether the School should do site preparation and levelling work for BID did not, so far as the minutes reflect, involve this specific point at all, i.e., whether at that time, the School so lacked adequate field opportunities for student training as to justify undertaking the BID work.

For many years, as pointed out above, the Kansas Supreme Court has enunciated a strong public policy against intrusion by public governmental entities into commercial enterprise. When the School, in strict adherence to its statutory authority to provide field training in the operation of heavy equipment, undertakes only those projects which are demonstrably necessary to provide that training, which is, after all, in the strict performance of its statutory mission, the School does not, in our opinion, offend against the stated public policy outlined above. When, however, the School determines to undertake a given off-campus project based upon considerations other than the necessity to provide adequate field training to its students, it necessarily skirts the edge of forbidden activity under the long-standing public policy of the state.

I hope the foregoing will be of assistance to you and all parties involved in this matter. If further questions arise concerning the matter, please do not hesitate to call upon us again. We appreciate your patience and indulgence in the delay of this reply to your letter.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm