

Subject

FILE
Schools - Pupils
Tuition

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

August 8, 1974

Opinion No. 74- 261

L. L. Van Petten
Superintendent
Derby U.S.D. 260
120 East Washington
Derby, Kansas 67037

Dear Superintendent Van Petten:

In your letter of July 5, you state that you have been informed by John E. Snyder, Assistant Commissioner for Vocational Education, and Mr. David Kester, counsel for the State Department of Education, as follows:

"Contracts made for tuition payments before July 1, 1974, are to be honored by the respective unified school district for payment to one year hence of July 1, 1974."

K.S.A. 72-4417, as amended by 1974 Senate Bill 958, states in pertinent part as follows:

"(b) . . . (1) Such tuition or fees, or tuition and fees, except tuition for post-secondary students, may be paid for the student in accordance with any agreement made under K.S.A. 72-4421. . . ."

By your letter of July 8 and enclosure therewith, it appears you have since been advised by counsel for your board that under the above-quoted statutory language, the board is not authorized to pay, pursuant to any agreement entered into heretofore under K.S.A. 72-4421, tuition for any student who enrolled in a vocational education course prior to July 1, the effective date of the act. We believe that Assistant Commissioner Snyder correctly states the import and effect of Senate Bill 958. The enactment does strip the board of the power to contract and agree to pay such tuition after July 1. However, when a student enrolls prior

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to July 1, and the district is obligated under an existing agreement to pay the tuition or any portion thereof for the vocational education course in which the student is enrolled, that agreement remains binding. Article I, § 10 of the United States Constitution provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ." Although the Legislature may, of course, withdraw authority from the boards which it has previously granted to pay such tuition, it cannot abrogate an obligation once incurred. Thus, if a student was enrolled prior to July 1 in a course for which the district must pay all or any part of the tuition, the district remains liable therefor, in our view, notwithstanding Senate Bill 958.

You raise the further question, whether "district high school summer school students to AVTS who are not enrolled in any local district summer courses, [are] to be classified as 'post-secondary students.'" Section 1(b) of the bill states thus:

"'Post-secondary student' means a student who is regularly enrolled in a school and who is not required to pay tuition under K.S.A. 72-4422, and
(1) has graduated from high school, or
(2) has not graduated from high school, is not regularly enrolled in a school district, and has attained the age of sixteen (16) years."

In order to be classified as a "post-secondary" student under this provision, if the student has not graduated from high school, he must have attained the age of sixteen years of age, and secondly, not be regularly enrolled in a school district. The obvious legislative intent was to encompass as "post-secondary" students two groups of students, first, those who have completed their high school education and graduated therefrom, and secondly, those who have signified, at least for the present, the end of their high school education by reaching the age of sixteen and failing to enroll in the school district.

The very term "post-secondary student" imports a student who has either completed his high school education, or has withdrawn from the program. The Legislature appropriately chose to define such a student as one who has graduated from high school or, alternatively, as one who has reached a given age and is no longer regularly enrolled in high school. A student who has just completed his junior year of high school in the spring, and who fully intends to enroll for and complete the senior year of high school, cannot with any accuracy be described as a "post-secondary student." As of any July 1, few students in the ordinary course are regularly enrolled in a high school program. Yet, under the position taken by the opinion enclosed with your letter, any such student who was sixteen years of age would be deemed a "post-secondary

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student" merely because there was no high school offering in which he could possibly be enrolled, notwithstanding the actual fact that the student was merely awaiting the commencement of the next high school term.

The purpose of Senate Bill 958 was to require the state to assume the greater portion of costs of post-secondary education. The term "post-secondary education" was defined accordingly. A student cannot be deemed to be a "post-secondary" student who is in fact in the midst of his secondary education merely by virtue of the fact that he is not "regularly enrolled" in a school. The term "post-secondary student" was not drawn with the view that educators would blind themselves to the actual facts and practices of secondary education in this state.

We certainly agree with your counsel that, unquestionably, those persons sixteen (16) years of age who have graduated from high school or, alternatively, who have withdrawn or "dropped out" of high school are properly classified as "post-secondary" students under the act. Those students sixteen years of age who are not "regularly enrolled" in a secondary education program merely because of summer vacation, and who have neither graduated from high school nor otherwise signified their intention to abandon their secondary education, are not, in our view, "post-secondary" students under Senate Bill 958.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm