

FILE

Subject

Schools  
Community Junior  
Colleges

Copy to



STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

August 29, 1974

Opinion No. 74- 299

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

Dear Commissioner Whittier:

K.S.A. 71-301 states in pertinent part thus:

"(a) The board of trustees shall charge to and collect from each student tuition at rates per credit hour enrolled which shall be established at an amount not less than eight dollars (\$8) per credit hour and not more than thirteen dollars (\$13) per credit hour

. . . .  
(b) The board of trustees, in accordance with rules and regulations of the state board, shall determine and collect an amount of out-district tuition to be charged for each student attending the community junior college whose residence is outside of the community junior college district. The board of county commissioners of any county charged with payment of out-district tuition shall levy a tax on all the taxable property of the county sufficient to pay all out-district tuition charges authorized by this act. . . . Upon receiving a statement of charges for out-district tuition, the board of county commissioners shall allow and pay the same promptly . . . except out-district tuition shall not be paid for any student resident in a community junior college district except on prior approval of the chief school administrator of the community junior college district shall be a sum equivalent to the number of full-time equivalent out-district students times the average maintenance and operating costs per full-time student of the community junior

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college less the tuition paid by the students and less state aid for the student and less anticipated federal aid . . . ."

K.S.A. 71-608 directs thus:

"No out-district state aid entitlement and no credit hour state entitlement shall be based upon enrollment of any student in a community junior college of a community junior college district in which the student does not reside, if the student resides in another community junior college district, except on prior approval of the chief school administrator of the community junior college district of which the student is a resident."

You inquire, first, whether a community junior college may refuse admission to an out-district student on the ground that the student has not been released by the chief administrator of the community junior college district of which the student is a resident. Nothing in either of the statutes quoted above implies that the approval of the chief administrator of the community junior college district of which the student is a resident is a prerequisite to enrollment by that student in another community junior college. If the chief administrator of a community junior college district refuses to approve enrollment of a resident of that district in another community junior college, the sole legal effect of that disapproval is to prohibit payment of out-district tuition on behalf of that student by the board of county commissioners otherwise liable therefor, and under K.S.A. 71-608, to prohibit payment of out-district state aid entitlement and credit hour state entitlement based on enrollment of any such student. Such enrollment itself is not prohibited, however, and absent such a prohibition, there is no basis for an admissions policy which would bar enrollment of any student who did not have a "release" from the chief administrator of the district of his residence. Such a policy would dignify the ramification of such an administrator's approval or disapproval beyond the statutory operative effect of such an approval or disapproval.

Secondly, you inquire whether a community junior college may charge and collect out-district tuition from a student who enrolls without a release from the chief administrator of the community junior college district of which the student is a resident. It may not. The tuition which may be charged to and collected from a student is prescribed by K.S.A. 71-301(a). Out-district tuition, as prescribed by K.S.A. 71-301(b), is not chargeable to any student. Rather, it is an amount "charged for each student attending the community junior college whose residence is outside of the . . . district," and collected from the respective boards of county com-

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missioners, payable from the levy authorized for that purpose. There is no basis whatever for charging out-district tuition to a student under any circumstances.

Thirdly, you inquire whether a community junior college may accept an out-district student who has not obtained a release from the chief administrator of the district of his residence and not collect out-district tuition for that student. The first sentence of K.S.A. 71-301(b), which directs that the "board of trustees . . . shall determine and collect . . . out-district tuition to be charged for each student . . . whose residence is outside of the community junior college district," is but one sentence of the section. It should not be abstracted from the context and read as if it stands alone. In effect, it prescribes a duty to collect out-district tuition, the extent of which must be measured by the correlative duty to pay which is imposed upon the respective boards of county commissioners. According to K.S.A. 71-301(b), the board of trustees must forward a "statement of charges for out-district tuition" to the board of county commissioners liable therefor, which must pay the same, except for out-district tuition for any student whose attendance at a community junior college lacks the approval of the chief administrator of the district of which the student is a resident. Clearly, as stated earlier, disapproval of the chief administrative officer is not a bar to the student's attending a community junior college of a district other than that of his residence. Lack of a release, however, forecloses any liability of the board of county commissioners for out-district tuition for that student. There being no liability on behalf of the board of county commissioners in such instances, and there being no liability of the student whatever for out-district tuition, the duty of the board of trustees to collect out-district tuition for such students becomes a legal nullity. Where there is a duty to collect, and no correlative duty to pay, the duty to collect becomes a duty legally impossible of performance, and hence, in net effect, no duty at all.

Lastly, you inquire whether a president of a community junior college district may arbitrarily refuse to approve a statement for out-district tuition, or must he provide a reason or justification for any disapproval. In addition, you inquire what would be considered reasonable grounds for disapproval. The cited statutes are, curiously, absolutely silent as to the grounds upon which such approval should be granted or withheld. In our view, it would be eminently sound administrative practice were the chief administrator to furnish a written statement of reasons for his actions in disapproving a statement for out-district tuition. However, there exists no precise statutory basis upon which we may say that this is required as a matter of law. As stated above, the statute is silent as to the grounds upon which such action is to be taken. We think it would be appropriate for the State Board to prescribe,

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in its administrative and regulatory capacity, guidelines or grounds upon which such applications for approval are to be considered by the chief school administrators of the community junior colleges of the state.

Yours very truly,



VERN MILLER  
Attorney General

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