



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

January 29, 1975

Opinion No. 75- 33

The Honorable Robert H. Miller
State Representative
House of Representatives
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Representative Miller:

You inquire whether the board of education of a unified school district may lawfully spend funds of the district to advertise in support of or in opposition to proposed constitutional amendments or candidates for public office. You advise that in a review of several statutes which authorize districts to expend funds for specific activities, you find no specific authority. At the same time, you find no specific prohibition against such expenditures.

There is, as you have found, no express authority for such expenditures. K.S.A. 72-8205 sets forth the general authority of boards of education in pertinent part as follows:

"Except as otherwise provided . . .
the board shall have and may exercise
the same powers and authorities as
were immediately prior to this act
conferred uniformly upon boards of
education in cities of the first
class, and, in addition thereto,
the powers and authority expressly
conferred by law."

Former K.S.A. 72-1612 set forth those general powers as follows:

"The public schools of each city school
district shall be governed by a board of

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education, and shall constitute a body corporate and politic, possessing the usual powers of a corporation for public purposes, under the name and style of 'The board of education of the city of _____ of the state of Kansas,' and in such name may contract, sue and be sued, and acquire, hold and convey real and personal property in accordance with law."

Again, by way of a general grant of power, former K.S.A. 72-1623 commences thus:

"The board shall establish and maintain a system of free public schools for all children residing in the . . . school district and may make all necessary rules and regulations for the government and conduct of such schools, consistent with the laws of the state. . . ."

In State ex rel. McAnarney v. Rural High School District No. 7,
171 Kan. 437, 233 P.2d 727 (1951), the court stated thus:

"In this state it has long been the rule that school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence."
171 Kan. at 44.

A unified school district, as noted above, have no express power or authority whatever to act in its corporate capacity to support or oppose a proposed constitutional amendment or to assist or

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oppose a candidate for public office. Similarly, there is no express authority whatever to expend public funds of the district for such purposes.

In Kroeger v. Rural High School Dist. No. 3, 171 Kan. 347, 232 P.2d 430 (1951), the court reiterated the rule thus:

"[T]he power of such a district to contract is only such as is conferred by express statute or by fair implication from the statute. That such is the rule is not open to debate and our disposition of this appeal is in light thereof."
171 Kan. at 353.

The board may expend funds of the district only in the discharge of its statutory duties, and in the promotion of the public duties committed to it by law. A school board "is created to conduct and foster the education of the children of the community." Whitlow v. Board of Education, 108 Kan. 604 (1921). The board has no authority, whatever, to expend funds of the district for any purpose other than those entrusted to it by law. The board has no authority to contract for advertising, or otherwise to spend funds of the district, to support or oppose questions of public policy submitted to the electorate, proposed constitutional amendments, or candidacies for public office. It makes no difference that a proposed constitutional amendment e.g., may be deemed by the board to have some bearing to the interests of education, as it perceives them, for the board in its corporate capacity has no authority to expend public funds to promote or oppose a particular political viewpoint, or for the purpose of seeking to influence the views of the electorate upon a question submitted to them for their decision according to law.

Yours very truly,



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Attorney General

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