



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 1, 1975

Opinion No. 75- 197

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

Dear Commissioner Whittier:

You have requested an opinion from this office in light of the passage of House Bills 2529 and 2530, as to whether junior college instructors in federally reimbursed vocational programs are required to be certified in accordance with Kansas Administrative Regulation 91-1-9 (hereinafter K.A.R.).

The outcome-determinative language in each piece of legislation may be found in Section 2 of both bills. Each provides:

"The state board of education is hereby prohibited from adopting rules and regulations which require certification of administrators, teachers or instructors in any two-year college or in any public community junior college or which require any such administrators, teachers, or instructors to meet any other conditions for qualification for employment in any such two-year college or public community junior college. From and after the effective date of this act, any requirements in any rules and regulations adopted by the state board of education which conflict with the prohibition prescribed in this section shall be null and void." [Emphasis supplied.]

From the standpoint of grammatical construction, the underlined portion of the above could arguably apply the new certification

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requirements of House Bill 2530, Section (1) (A) (2) to all teachers, supervisors, directors, and other personnel having responsibilities for vocational education at two-year colleges and public community colleges irrespective of the fact that the program under which they operate is federally reimbursed. Support for this conclusion is derived from the fact that the emphasized portion of the above statute could be construed rather broadly to state that from and after the effective date of House Bill 2530, any requirements in any rules and regulations adopted by the State Board of Education which conflict with the prohibitions prescribed in this section shall be null and void.

It is not altogether clear whether the phrase ". . . any rules and regulations adopted by the state board of education . . ." refers prospectively to those rules and regulations adopted after the effective date of House Bill 2530 or retroactively to all past as well as future rules and regulations promulgated by the State Board of Education. Support for this latter interpretation is inferred from the fact that if this last sentence of House Bill 2530 was to operate only prospectively, the phrase "from and after the effective date of this act . . ." would have been more properly inserted immediately subsequent to the word "education" so that entire sentence would read

Any requirements in any rules and regulations adopted by the state board of education from and after the effective date of this act, which conflict with the prohibition prescribed in this section shall be null and void.

Viewing the effect of the last sentence in isolation, this conclusion would probably be the correct one. However, the presence of several other factors undermine and reverse this conclusion.

First, it must be presumed that at some point during the deliberative processes of either or both Houses, the Legislature was appraised of the requirements of K.A.R. 91-1-9 and its potential conflict with the then proposed House Bill 2530. The fact that this legislation purports to alter and modify only K.A.R. 91-1-24 and 91-1-22 is a strong indication that there was no intent to modify any other rule or regulation. Evidence supporting this conclusion is found at subsection (1) (A) (2) of that bill which states:

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"Teacher Preparation Requirements: Except as otherwise provided, the instructor in any two-year or community junior college shall be certified as a junior college teacher and shall have completed forty semester hours in the area of specialization in which he teaches. At least ten semester hours of graduate credit shall be in this area of specialization." [Emphasis supplied.]

In other words, this language manifests the legislature's recognition that passage of House Bill 2530 would not be so broad as to operate against all past and future rules and regulations of the Board which relate to certification of all instructors at any two-year college or public community junior college. Clearly then, the conclusion is that the legislature was cognizant of the fact that House Bill 2530 would operate upon only those instructors whose certification was controlled by former K.A.R. 91-1-22. Accordingly, certification of vocational instructors at community junior colleges and two-year colleges remains controlled by rules and regulations apart from the modified portions of former K.A.R. 91-1-22 and 91-1-4 and is not affected by passage of House Bill 2530.

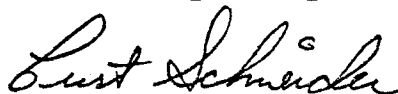
The final indice in support of this conclusion is found in Section 2 of both House Bill 2529 and House Bill 2530. Construing the phrase "The state board of education is hereby prohibited from adopting rules and regulations . . ." in pari materia with the phrase in the last sentence which states "From and after the effective date of this act," the operation of its prohibitive effect is clearly prospective. The words "from adopting" connote something that is to be done rather than an act already accomplished. Furthermore, if the legislature had wished the language of these statutes to implicitly repeal or modify any and all K.A.R.'s which conflict with either bill, it would have been a simple matter for the legislature to specifically refer to those regulations as it did with K.A.R. 91-1-4 and 91-1-22 in House Bill 2529 and 2530 respectively or insert language which would indicate application to those rules and regulations previously adopted.

Accordingly, it is the opinion of this office that vocational instructors in federally reimbursed programs at two-year colleges or public community junior colleges are subject to the certification

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requirements expressed in K.A.R. 91-1-9 which are not altered
by the adoption of House Bill 2529 or 2530.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the printed name.

CURT T. SCHNEIDER
Attorney General

CTS:HW:kj