



STATE OF KANSAS

Office of the Attorney General

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Attorney General

November 5, 1975

ATTORNEY GENERAL OPINION NO. 75- 418

Mr. Merle R. Bolton
Commissioner of Education
Kansas State Education Building
120 East 10th Street
Topeka, Kansas 66612

Re: Schools--Vocational Education--Post Secondary Students--
Tuition Rate

Synopsis: The statutory language of K.S.A. 72-4433 and application of the definitions found in K.S.A. 72-4430 to the tuition formula contained therein do not allow the State Board of Education to establish different rates of tuitions for post-secondary students when the basis for that differential is contingent upon whether one is enrolled in day or evening programs.

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Dear Commissioner Bolton:

You have requested an opinion from this office relative to the Vocational-Technical Institute located at Kansas State College of Pittsburg, Pittsburg, Kansas. Specifically, you have stated that the Vocational-Technical Institute presently receives its funding pursuant to K.S.A. 72-4430 *et seq.* These sections of the law allow the institute to submit to the State Board of Education each year their proposed tuition schedule for State Board approval. Following this approval they are then reimbursed from State funds for 90 percent of their expenditures incurred for post-secondary students. The problem arises by virtue of the fact that the Institute conducts both a "day" and "evening" program. The 90 percent reimbursement formula works well for the "day program" section in that these programs receive money

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from the Board of Regents, such money being considered as local money in determining the amount of tuition approved by the State Board of Education.

Accordingly, the question arises whether the State Board of Education may approve two separate tuition costs for post-secondary students at the same institution.

In order to resolve this question, it is necessary to examine the interrelationship between the various statutes found at K.S.A. 72-4430 *et seq.* First K.S.A. 22-4431 establishes that "Every school shall be entitled to receive post-secondary aid each school year in an amount equal to ninety percent (90%) of the product of local cost per enrollment hour and total post-secondary enrollment." Secondly, K.S.A. 72-4433 states that "The rate per hour of tuition for post-secondary students shall be fixed by each board subject to approval of the state board at the commencement of each school year for such school year. Such rate shall be an amount equal to ten percent (10%) of the local cost per enrollment hour." Next, K.S.A. 72-4430 provides a rather extensive definitional section which undertakes to conceptualize the operative terms in both of the above statutes. Since, in our view, resolution of this controversy requires primarily a simple definitional application to these operative terms, this statute in its entirety provides:

"As used in this act, unless the context otherwise requires:

(a) 'Area vocational school,' 'area vocational-technical school,' 'board,' 'state board' and 'school year' shall have the meaning ascribed thereto in K.S.A. 72-4412.

(b) '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.

(c) 'Operating budget' means the adopted operating budget, as approved by the state board, for a school, except for amounts budgeted for acquisition or improvement of land and construction, reconstruction or remodeling of buildings.

(d) 'Federal aid' means federal moneys distributed to a school.

(e) 'State aid means state moneys distributed by the state board to a school for vocational education purposes, except post-secondary aid moneys.

(f) 'Post-secondary aid' means financial aid paid or payable under section 3 [72-4432].

(g) 'Local cost' means the operating budget, less state aid and federal aid.

(h) 'Total enrollment' means the total number of hours all students of a school are enrolled in a school year.

(i) 'Local cost per enrollment hour' means local cost divided by total enrollment.

(j) 'Total post-secondary enrollment' means the total number of hours all post-secondary students are enrolled in a school year.

(k) 'School' means an area vocational school or an area vocational technical school."

Finally, K.S.A. 72-4417(d) bears relevance to this question in that it provides:

"(d) All tuition and fees charged for vocational education by any board shall be in such amounts as are authorized by rules and regulations adopted by the state board establishing general guidelines for tuition and fee schedules in vocational education courses and programs, except that tuition of post-secondary students shall be fixed in accordance with section 4 [72-4433]."

The clear implication of this latter citation is that in regards to K.S.A. 72-4430 *et seq.* and post-secondary students, the statute is controlling as to the manner their tuition charges are to be computed.

Referring to these statutes and in particular to K.S.A. 72-4430 and the definitions contained therein, the amount any particular vocational school may charge as tuition is explicitly determined by K.S.A. 72-4433. Keeping this statute in mind, the above cited definition of "post-secondary student" does not differentiate between those students enrolled in day and evening programs. Secondly, the statute requires each post-secondary student to pay an amount per enrolled hours equal to 10% of the local cost per enrollment hour. This latter term is defined by sub section (i) of K.S.A. 72-4430 to mean local cost divided by

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total enrollment. "Local cost" encompasses the operating budget less state and federal aid. "Operating budget" is not viewed as being compartmentalized into departments or divisions as between day and evening programs, but rather, is the cost to operate the school as an entirety. Total enrollment is defined to mean the "total number of hours all students of a school are enrolled in a school year." The fact that the operation of the day program may cost less is of no significance to the individual's tuition cost since tuition is contingent only upon the dividend of the entire school's local cost and the total number of hours all students are enrolled. The differential in actual costs is alone no justification for a differential in tuition since it may well be argued that actual cost of any one particular course or program may differ from that of another irrespective of the day and evening dichotomy. A most notable example would be the difference in the actual operating costs for a science related program and a humanities pursuit. The equipment for the former would alone amount for differing tuitions. Accordingly, application of the definitions to the formula found in K.S.A. 72-4433 results in the conclusion that there is no statutory justifications for a difference in tuition rates between post-secondary students attending day and evening programs. Although it is recognized that since the day program receives additional funding from the Board of Regents which further defrays the cost of operating the day curriculum, the mandate of K.S.A. 72-4417 explicitly requires tuition for post-secondary students to be computed in accordance with K.S.A. 72-4433. This must be deemed controlling.

It is, therefore, the opinion of this office that the statutory language of K.S.A. 72-4433 and application of the definitions found in K.S.A. 72-4430 to the tuition formula contained therein do not allow the State Board of Education to establish different rates of tuitions for post-secondary students when the basis of that differential is contingent upon whether one is enrolled in day or evening programs.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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