

WITHDRAWN

See Opinion No. 77-155

**Curt T. Schneider**  
Attorney General

1977

ATTORNEY GENERAL OPINION NO. 77- 15

The Honorable Ronald R. Hein  
State Senator  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: State Board of Education--Academic Degree Authority--  
-Proprietary Schools

Synopsis: Because it is not authorized to approve applications for authority to award academic or honorary degrees by licensees under the Kansas Proprietary School Act, K.S.A. 72-4916 *et seq.*, the Board of Education may not entertain applications from such parties and permit such applicants to commence a period of candidacy and evaluation therefor.

\* \* \*

Dear Senator Hein:

In Opinion No. 76-70, the Attorney General concluded that the State Board of Education was not authorized to endorse its approval upon articles of incorporation or amendments thereto so as to permit schools which are licensed under the Kansas Proprietary School Act, K.S.A. 72-4916 *et seq.*, to confer academic and honorary degrees.

Since issuance of that opinion, counsel for the Kansas Association of Private Career Schools contacted this office, and submitted a very able argument supporting a contrary conclusion, *i.e.*, that a proprietary school which was found by the Board to be a "bona fide institution of higher learning" which was engaged in "providing instruction in the arts and letters, sciences and professions" as required by K.S.A 17-6105 should be deemed eligible for degree-granting authority under that section, notwithstanding

The Honorable Ronald R. Hein  
Page Two  
January 11, 1977

its licensure under the Kansas Proprietary School Act, K.S.A. 72-4916 *et seq.* Although the argument is not without merit, and certainly does not offend any clearly articulated policy of the State of Kansas, the exemption of degree-granting institutions from the proprietary school act, see K.S.A. 72-4920(f), implies that degree-granting authority and licensure under the latter act are mutually exclusive. An appropriate statutory amendment to dispel this implication would permit a more careful and precise definition of the effect of licensure under the proprietary school act, upon the institution's eligibility for degree-granting authority. Until such legislative clarification is rendered, however, we feel any amendment of Opinion No. 76-70 would be premature.

Specifically, you inquire whether a licensee under the Proprietary School Act may apply to the State Board of Education for degree-granting authority and commence the several-year candidacy period prescribed by the Board for eligible applicants if the applicant otherwise satisfies the requirements of the State Board for such candidacy. Neither K.S.A. 17-6105 nor K.S.A. 72-4916 *et seq.* provides guidance on this score. Lacking authority to award degree-granting authority to such an applicant, it may be argued that the Board is without jurisdiction to entertain the application in the first instance. As a matter purely of statutory construction, I find no express or necessarily implied prohibition against consideration of such an application.

However, although the State Board is a constitutional body, we deal here with statutory powers vested in it, and in order to find some authority to proceed with evaluation and a period of candidacy for an applicant for degree-granting authority to which the Board is not empowered to make a final award of such authority, it is necessary, in my judgment, that there be some reasonable basis for implying such authority. If the Board lacks authority to grant approval to such an applicant, it has no implied basis, in my judgment, upon which to entertain such applications and conduct a period of evaluation during any candidacy which may be required by its rules.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj