



STATE OF KANSAS

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August 29, 1977

ATTORNEY GENERAL OPINION NO. 77- 285

Mr. John J. Conard
Executive Officer
Kansas State Board of Regents
Suite 1416 - Merchants National
Bank Tower
Topeka, Kansas 66612

Re: Board of Regents--Osteopathic Medical Students--Admission
and Loan Agreements

Synopsis: The Board of Regents, in the implementation of 1977 House Bill 2463, is not authorized to enter into admission agreements pursuant to section 1 thereof respecting students who have been admitted into colleges of osteopathic medicine prior to execution of such admissions agreements. Thus, implementation of the admission agreement program must await the admissions process for the 1978-1979 academic year. The bill authorizes the Board of Regents to enter into such agreements providing for the payment of the sum of \$6,000 for each of the four years that a Kansas student who is admitted pursuant to such an agreement is enrolled in such agreement. The Board of Regents has no authority to negotiate any such agreements for a lesser amount payable to colleges of osteopathic medicine, despite the willingness of such colleges to accept a lesser amount, for the legislature did not authorize agreements for any lesser or greater amount. Any such agreement should include a fiscal termination clause, in the event appropriations required to fund such obligations in future years are not forthcoming. The bill provides no effective remedy to enforce a student's agreement to practice in Kansas for at least two consecutive years upon completion of training, when such student does not seek or receive a loan authorized under section 2 of the

bill. If a student who is admitted pursuant to an admissions agreement authorized by section 1 does receive a loan authorized by section 2, the practice obligations of such student under both sections 1 and 2 should be deemed to be served concurrently, rather than to be cumulative and consecutive obligations. Loans authorized by section 3 of the bill to second, third and fourth year students may be made immediately for such loans are entirely independent of the admissions agreements authorized by section 1 and the loan program for first year students authorized by section 2."

* * *

Dear Mr. Conard:

The 1977 Legislature enacted House Bill 2463, designed to encourage the education of Kansas students in osteopathic medicine. See ch. 267, L. 1977. You inquire concerning several questions which have arisen in the implementation of the law.

Section 1(a) of the act provides thus:

"Within the limits of appropriations therefor and in accordance with this act, the state board of regents is hereby authorized to annually enter into agreements in accordance with subsection (b), with a college or colleges of osteopathic medicine approved by the state board of healing arts, for admission of not to exceed ten (10) Kansas students in the freshman class, where such students have entered into agreement with the state board of regents which requires each such student to:

(1) Prepare himself or herself for the general practice of osteopathic medicine by professional training; and

(2) Enter practice in Kansas upon completion of his or her intern training or family practice residency training program, for a minimum of two consecutive years in Kansas in general practice within six (6) months of completion of said training."

You inquire, first, whether the Board of Regents may enter into agreements with one or more colleges of osteopathic medicine respecting students who have already been admitted, and who are scheduled to enroll in classes commencing in the next several

Mr. John J. Conard
Page Three
August 29, 1977

days or weeks. You indicate that the admission process of most colleges of osteopathic medicine is completed by March of any given year, and there has been some question whether the agreements authorized by section 1(a) may apply to students whose admission is already completed, and indeed, was complete prior to the effective date of the bill, which became effective July 1, 1977.

The ostensible purpose of the bill is to procure guaranteed admission of not to exceed ten positions in the freshman class of one or more colleges of osteopathic medicine for "Kansas students" who engage themselves to practice in Kansas upon completion of intern or family practice residency training. The bill doubtless represents a legislative purpose to alleviate, at least in some small measure, the current physician shortage in several areas of the state, although obviously, the ten positions which are authorized to be reserved by agreements entered into under section 1 may very well be either greater or fewer than the number of Kansas students who are actually admitted to freshman classes in colleges of osteopathic medicine in the spring of this year or of any recent year. Section 1 betrays no legislative purpose merely to provide financial assistance to admitted or enrolled students, but rather to assure that positions are reserved for the admission of Kansas students by providing financial incentives to colleges of osteopathic medicine to reserve positions in their freshman classes for such students. No such purpose is served by the execution of agreements under section 1 with colleges respecting students who have already been admitted. In my judgment, that section does not authorize the Board of Regents to enter into agreements with colleges of osteopathic medicine to reserve positions for students who were admitted prior to the execution of such agreements. The language of section 1 is clear in at least that regard, that such agreements are to provide for the admission of Kansas students. As to students who have already been admitted, such an agreement serves no purpose whatever, and is within neither the letter nor the purpose of section 1.

Section 1(b) of the bill provides in pertinent part thus:

"Each agreement with a college of osteopathic medicine shall provide that the state board of regents will pay to the college accepting such Kansas students, the sum of six thousand dollars (\$6,000) for each of the four years that each such student is enrolled in said college"

Mr. John J. Conard
Page Four
August 29, 1977

You inquire whether, in the event that a college of osteopathic medicine is willing to accept a lesser amount, may the Board of Regents lawfully agree to pay such lesser amount as may be agreed upon. Obviously, it would be to the financial advantage of the state to negotiate agreements for lesser amounts than \$6,000 provided by this section. Unfortunately, however, the legislature did not choose to authorize negotiation of the amount authorized to be paid. It might, had it so chosen, have authorized the Board of Regents to enter into agreements providing for the payment of a sum not to exceed a prescribed amount, such as \$6,000. The legislature allowed no such flexibility, however. As a matter of law, I have no basis upon which to conclude that the Board is not authorized to negotiate the amount to be paid to colleges of osteopathic medicine in agreements entered into pursuant to section 1, for that amount is fixed by unambiguous and very definite language at \$6,000 per student per year.

As you point out, section 1(b) requires that the agreement provide for the payment of the sum of \$6,000 "for each of four years that each such student is enrolled in said college," thus creating an obligation which extends beyond the term of any given appropriation. Under section 1(a), the Board is authorized to enter into such agreements "[w]ithin the limits of appropriations therefor." Obviously, the Board cannot, in the execution of agreements for freshman positions in any given year, foresee the availability of appropriations to make the required payments for those students in the remaining three years of their enrollment. In my judgment, any such agreement should include an appropriate fiscal termination clause, to permit termination of the agreement in the regrettable eventuality that a subsequent legislature should refuse to appropriate the funds required to fully fund existing contractual obligations.

Section 2(a) of the act provides that "[e]ach Kansas student entering into an agreement under this act may receive from the board a loan in the amount not exceeding three thousand dollars . . . for each year such student is enrolled in the college of osteopathic medicine." [Emphasis supplied.] The note must provide that the debt becomes due and payable in the event the student discontinues his or her studies, fails to enter into practice in Kansas within six months of completion of intern or family practice residency training, or fails to "complete one full year of practice in Kansas for each year the student was granted a loan, after entering practice in Kansas." As you point out, a student may or may not apply for such a loan, and the Board is not required to accept all or any of the loan applications it does receive from eligible students. Thus, you inquire whether there are any effective remedies available to the Board of Regents

Mr. John J. Conard
Page Five
August 29, 1977

to assure that a Kansas student who is admitted to a position which is reserved by an agreement under section 1 of the bill will in fact practice in Kansas. Under section 1, an agreement between the Board of Regents and colleges of osteopathic medicine shall provide for positions for Kansas students who have entered into agreements with the Board of Regents to enter into practice in this state within six months after completing his or her training, and to continue that practice for at least two consecutive years. There is no effective remedy provided in the bill for enforcement of this agreement. The feasibility of any civil action for damages or for injunctive relief to enforce such an agreement is highly conjectural at this point.

You also inquire whether, assuming a student who is admitted pursuant to an agreement under section 1 also receives a loan under section 2, the practice obligations of the student under both sections 1 and 2 are to be deemed cumulative, or whether they may be served concurrently. In my judgment, the practice obligations should be construed to be concurrent rather than cumulative. Under both sections 1 and 2, the student agrees to enter into practice within six months after completing intern or residency family practice training. Under section 1(a)(2), the student is to enter practice "for a minimum of two consecutive years in Kansas . . . within six (6) months of completion of said training." Section 2(b) contains a similar six-months provision, and further requires the student to "complete one full year of practice in Kansas for each year the student was granted a loan, after entering practice in Kansas." Both the two years of practice required by section 1(a) and the years of practice required by section 2 are practice obligations which commence within the same period of time, i.e., within six months of completion of the student's training, and in my judgment, the two practice obligations should be deemed to be served concurrently.

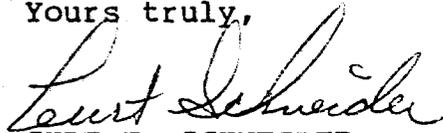
Lastly, you inquire whether, if section 1 requires that the Board must await the admissions process for the next academic year to implement agreements under that section, as I have construed it, the Board may nonetheless proceed to implement section 3 of the act, which authorizes loans as follows, in pertinent part:

"The state board of regents is authorized to enter into agreements with not to exceed ten (10) students who are or will be enrolled in the second, third or fourth years of education in September, 1977, in a college of osteopathic medicine approved by the state board of healing arts."

Mr. John J. Conard
Page Six
August 29, 1977

The loans authorized by section 3 to second, third and fourth year students are entirely independent of admissions agreements authorized by section 1 or of the loan program to first year students authorized by section 2, and in my opinion, the Board of Regents is authorized to proceed to make loans authorized by section 3 immediately.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj