STATE OF KANSAS

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June 15, 1978

ATTORNEY GENERAL OPINION NO. 78-196

Mr. Merle R. Bolton
Commissioner of Education
State Department of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Community Junior Colleges--State Aid--Amounts

Synopsis: The sum of $137,573 should not be deducted from future aid payments to the Dodge City, Pratt and Garden City community junior colleges for offering courses which were not approved by the State Department of Education and receiving credit hour and out-district state aid for enrollment in such courses, because these courses were subsequent to the offering thereof found to be approvable and were in fact approved. Monies received by the Fort Scott community junior college in the fiscal years 1975, 1976 and 1977 under a contractual agreement with the Southeast Kansas Area-Vocational School for reimbursement for vocational education programs must be taken into consideration in determining whether reimbursed expenditures for vocational education by the community junior college should be deducted from amounts payable to the college under K.S.A. 1977 Supp. 71-615, and under the circumstances of the contractual agreement, expenditures by the college which were reimbursed pursuant to the agreement should not be deemed to be expenditures in excess of the limitations of K.S.A. 1977 Supp. 71-612 *et seq.*, which warrant imposition of the sanctions provided by K.S.A. 1977 Supp. 71-615. The procedure now followed by the Department of Education for computing community junior colleges' general fund budget limitations complies with K.S.A. 1977 Supp. 71-611(c).

Dear Commissioner Bolton:

You request my opinion concerning certain actions taken by the State Department of Education.

First, you advise that during fiscal 1977, the Department paid $1,593,683.90 in credit hour and out-district state aid to the Dodge City, Pratt and Garden City community junior colleges, under K.S.A. 71-301 and 71-602 through -605, based upon claims submitted by the colleges, prior to the annual audit. Findings of the Department auditors disclosed that $137,573 of this aid had been paid on the basis of courses which had not been approved by the Department. Department personnel conducted a subsequent study after this audit, and determined that these courses, with perhaps negligible exceptions not pertinent here, were in fact approvable, and that many had in fact been approved in prior years. Lack of approval for fiscal 1977 was due to clerical and administrative oversight by officials of the three community junior colleges involved. Thereupon approval applications were submitted by the colleges involved, and on September 23, 1977, after a review of the courses, the State Board approved these courses. You advise that state aid in the amount of $137,573 could have been and still may be withheld from future aid payments, but the Board has determined not to do so. You request my opinion whether the Department of Education should deduct the sum of $137,573 in future state aid payments due to the three junior colleges under the circumstances described above.

K.S.A. 1977 Supp. 71-601 provides in pertinent part thus:

> "'Credit hour' shall mean one hour's instruction per week for eighteen (18) weeks or its equivalent in a given subject or course which is part of the course of study approved by the state board, but shall not include any subject or course . . . not approved by the state board . . . ."

K.S.A. 1977 Supp. 71-602 specifies the basis for distribution of credit hour state aid, which is based upon the quoted definition.

The clear intent of this provision is to assure that credit hour and out-district state aid shall not be paid on the basis of any course of instruction which is not approved by the State Board of Education. Here, payments were made on the basis of courses which had not, at the time of the payments, been submitted for approval due to administrative error or oversight. When audits disclosed that the lack of approval of a number of courses on which the state aid distribution had been based, the State Department had two alternatives, either to refuse to review the unsubmitted courses to determine if they were indeed approvable and to demand repayment of the $137,573 without regard to the approvability of the courses, or it could proceed as it in fact did, to determine if the courses were in fact approvable and, if so, approve the previous distribution of state aid on the basis that, on the basis of facts disclosed subsequent to the distribution, it was indeed correct.

The state aid distribution to the community junior colleges is a statutory entitlement. K.S.A. 1977 Supp. 71-601 does not in mandatory terms require that the approval of courses on the basis of which credit hour and out-district state aid is based be given prior to the offering thereof. The statutory scheme affords no basis whatever for a conclusion that a failure to submit courses for approval prior to the offering thereof automatically forecloses the authority of the Board to review those courses at a later time and to adjust the distribution of state aid therefor accordingly. The board has continuing statutory authority to review and approve the course offerings of community junior colleges, and I find nothing whatever in ch. 71, K.S.A., to suggest that such approval may not be applied retroactively, as in this instance. In my judgment, the Department should not and indeed, now has no authority to deduct $137,573 from future state aid payments from the Dodge City, Pratt and Garden City community junior colleges under the circumstances described above, for all statutory requirements for the distribution which was in fact made have now been met.

Secondly, you advise that during fiscal years 1975, 1976, and 1977, the Fort Scott Community Junior College operated under a contractual agreement with the Southeast Kansas Area Vocational School for reimbursement of vocational education programs. Under that agreement, the proceeds of the college two mill vocational education levy were collected by the college and remitted to the Area Vocational Technical School. The college, in turn, paid all its vocational education expenses from its general fund, and was reimbursed therefor by the Southeast Kansas AVTS dollar for dollar. The money thus received by the college was credited to its general fund, and regarded as a reimbursement for its vocational education expenditures. You advise that this procedure was followed primarily to alleviate a cash flow problem of the college. All vocational education expenditures of the college are now being paid from the vocational education fund, and the fiscal 1977 audit report has been adjusted accordingly. You request my opinion whether the State Department of Education should consider the reimbursement which the college received from the Southeast Kansas Area Vocational Technical School as an expenditure against the general fund and deduct from future state aid payments the amount expended above the general fund limitation, or regard the payments as a reimbursed expense.

K.S.A. 1977 Supp. 71-615 states thus:

> "In case a community junior college expends in any fiscal year an amount for operating expenses which exceeds the limitations provided in this act, the state board of education shall determine the excess and deduct the same from amounts payable to the community junior college during the next fiscal year."

Clearly, vocational educational expenses should not have been paid from the general fund. K.S.A. 1977 Supp. 71-614. However, this admitted violation does not resolve how the college's vocational expenditures, and reimbursement therefor, should be treated for purposes of the quoted statute. Under the agreement, the college turned over its entire proceeds from the vocational education levy to the AVTS. The college made expenditures for vocational education from its general fund; however, in substance, those expenditures were made against credits due from the AVTS pursuant to the reimbursement agreement. The payments received by the college from the AVTS were clearly reimbursements. K.S.A. 1977 Supp. 71-615 provides the vehicle by which the State Department enforces the budget limitations applicable by the act to community junior colleges. To invoke that sanction on the basis of an overexpenditure which was in fact an expenditure made under a contractual agreement as described above providing for a dollar-for-dollar reimbursement thereof is entirely unjustified, in my judgment. A reimbursed expense is, of course, an expense. The fact that it is reimbursed under an agreement such as that described above requires that the reimbursement be taken into consideration in determining whether the excess, but reimbursed, expenses should be deducted from amounts payable to the college under K.S.A. 1977 Supp. 71-615. Although the vocational education expenditures of the college were made from the general fund, they were in substance made against credits due the college under its agreement with the AVTS, and in my judgment, those expenditures afford no basis upon which to invoke the sanction of K.S.A. 1977 Supp. 71-615. To invoke those sanctions would be to penalize the college primarily for an administrative and contractual agreement which may have been ill-considered, rather than for an actual disregard of statutory budget limitations.

Lastly, you advise that the procedure of the Department for computing community junior colleges' general fund budget limitations has been questioned. K.S.A. 1977 Supp. 71-611(c) states thus:

> "'Budget per student' means the legally adopted budget of operating expenses of a district divided by the quotient of the total of all credit hour enrollments on September 15 plus the total full-time equivalent enrollment for courses taught in the summer term and the full-time equivalent enrollment for courses approved to be conducted as of September 15, the beginning dates of which courses are after September 15 but prior to December 1, divided by 15."

K.S.A. 1977 Supp. 71-612 states thus:

> "[N]o community junior college shall budget or expend for operating expenses per student more than one hundred five percent (105%) of the budget per student in the preceding fiscal year. If the enrollment in a community junior college in the current fiscal year has decreased less than ten percent (10%) from the enrollment in the preceding fiscal year, the amount which the community junior college may budget and expend under this section may be computed on the basis of the enrollment in the preceding fiscal year."

Under K.S.A. 1977 Supp. 71-612, the budget per student in any given fiscal year shall be based on the September 15 enrollment of the preceding year, so long as the enrollment does not decrease more than 10 per cent. K.S.A. 1977 Supp. 71-611 requires that computation of the budget per pupil be made by dividing the legally adopted budget of operating expenses by the September 15 enrollment, *i.e.*, the September 15 enrollment of the current year, not the preceding year. *I.e.*, in determining the maximum budget or expenditure per student under K.S.A. 1977 Supp. 71-612, the limitation is fixed at 105% of the budget per student in the preceding fiscal year. The enrollment date to be followed in determining the budget per student under K.S.A. 1977 Supp. 71-611(c) is fixed at September 15, of the current year. Obviously, in determining the budget per student, subsection (c) contemplates that the number of students enrolled shall be fixed as of September 15 of the current budget year. Had the legislature intended to apply the September 15 enrollment figure of any other than the current year, it could, and would, have so stated. Absent any other direction, the September 15 enrollment is the enrollment on that date of the current year for which the budget per student is computed, and not for any past year or years.

Yours truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

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