



STATE OF KANSAS

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January 2, 1980

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ATTORNEY GENERAL OPINION NO. 80-1

Gary Girard, President
Board of Unified School District No. 356
P. O. Box 218
Conway Springs, Kansas 67031

Re: Schools--Board of Education--Powers Regarding
Expenditure of School Funds

Synopsis: Absent express statutory authority a board of education may not donate school funds for the purpose of either helping a municipal government pay for the repair or maintenance of facilities owned by the latter or helping a civic organization undertake the same functions. However, a lease agreement with the city for the use of such facilities is permitted by K.S.A. 1979 Supp. 72-8225, and the payment of maintenance or other expenses (including repairs) may be included in such lease.

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Dear Mr. Girard:

As President of the Board of Unified School District No. 356, you have requested our opinion on the following three inter-related questions:

(1) Can a district legally give school funds to a city government to help pay for the repair, upkeep or improvement of a city facility, i.e., city tennis courts?

(2) Can a district legally donate school funds to a civic organization which is trying to raise money for the repair, upkeep or improvement of such a city facility?

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(3) Can a district legally enter into a rental or lease agreement with a city government for the use of such a city facility?

You inform us that the City of Conway Springs has two tennis courts which it operates in the city park, located across the street from the high school. As the district has no tennis courts of its own, students from the high school use the city facilities for both regular physical education classes and team training and competition. While the severe weather of the past two winters has caused the condition of the courts to deteriorate, the city does not have the funds required to repair them. Instead, a local women's organization has undertaken the repairs as a service project and has approached the school board for donations. In view of previous opinions of this office, you wish to know what steps, if any, the district may take to aid in the repair of these facilities, from which it derives a great deal of benefit.

In our opinion, the answer to your first and second inquiries must be in the negative, i.e., a district may not use its funds, either by gift to a city or donation to a civic organization, for the repair of facilities in which it has no property interest. We have been unable to find any statutory authority which authorizes the making of such payments, and it is the rule in Kansas that no generalized residue of implied power exists in the absence of such authority. This general rule was reiterated in State ex rel. McAnarney v. Rural High School District No. 7, 171 Kan. 437 (1951) thus:

"In this state it has long been the rule that school districts . . . have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence." 171 Kan. at 441. (citations omitted.)

See also Wichita Public Schools Employees Union v. Smith, 194 Kan. 2 (1964).

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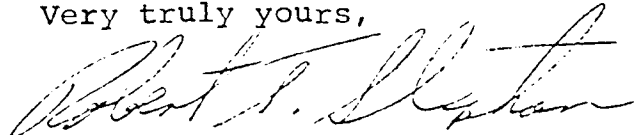
Accordingly, the district has no authority, express or implied, to make the voluntary contributions involved in your first two inquiries. However, this does not mean that the district is without recourse, for we note that specific statutory authority does exist for a district to enter into lease agreements, which is the subject of your third inquiry. K.S.A. 1979 Supp. 72-8225 provides, in pertinent part:

"The board of education of any school district, as lessee or lessor, may enter into written contracts for the use of real or personal property, The term of any such lease may be for not to exceed three (3) years. Such lease may provide for annual or other payment of rent or rental fees and may obligate the school district to payment of maintenance or other expenses." (Emphasis added.)

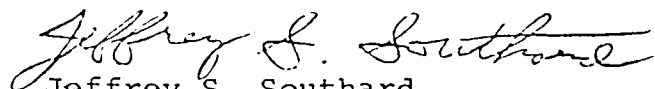
From this, we would conclude that the district might in fact lease the courts from the City for the times it requires. As part of the lease, the statute would appear to permit the payment of "maintenance or other expenses," leaving it possible that repair costs could be so included. Additionally, this result does not conflict with the prior opinions of this office you noted in your request, namely, Attorney General Opinions No. 77-129 and 79-82. There, the determinative factors were the lack of statutory authority and the absence of any property interest of the district in the land to be improved. Here, both elements would be satisfied if the district entered into a lease agreement pursuant to K.S.A. 1979 Supp. 72-8225.

In conclusion, absent express statutory authority, a board of education may not donate school funds for the purpose of either helping a municipal government pay for the repair or maintenance of facilities owned by the latter or helping a civic organization undertake the same functions. However, a lease agreement with the city for the use of such facilities is permitted by K.S.A. 1979 Supp. 72-8225, and the payment of maintenance or other expenses (including repairs) may be included in such lease.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk