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March 3, 1980

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ATTORNEY GENERAL OPINION NO. 80- 61

Merle R. Bolton
Commissioner of Education
State Department of Education
120 E. 10th Street
Topeka, Kansas 66612

Re: Schools--Teachers' Certificates--
Certification of Instructors at
Community Junior Colleges

Synopsis: K.S.A. 1979 Supp. 72-1393, relating to rules or regulations by the state board of education concerning certification of certain personnel at community colleges, should be construed both as prohibiting the adoption of any additional such policies, and voiding any existing requirements which require such certification. A regulation which makes certification of vocational teachers at a community college a pre-condition to the receipt of state assistance is accordingly of no effect after the effective date of the statute. Attorney General Opinion Nos. 75-197 and 75-197A are hereby withdrawn.

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Dear Mr. Bolton:

As Commissioner of Education, you have requested the opinion of this office on the following question:

"Can the Kansas State Board of Education require vocational certification of instructors as a criteria for the payment of vocational differential at Kansas Community Junior Colleges?"

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A question somewhat similar to this was previously addressed by the Attorney General in Opinion Nos. 75-197 and 75-197A. There, K.S.A. 1975 Supp. 72-1393 was examined as to the effect it would have upon certification requirements for community college instructors in federally-reimbursed vocational programs. The opinions concluded that the statute was prospective in application and additionally did not affect certification requirements for vocational instructors. As such, the department of education could continue to enforce prior regulations requiring such instructors to be certified. However, upon reviewing this result in light of K.S.A. 1979 Supp. 72-1393 and other relevant statutes, it is the opinion of this office that such a conclusion was incorrect. Accordingly, Opinion Nos. 75-197 and 75-197A are hereby withdrawn.

The statute which is at the heart of your question, K.S.A. 1979 Supp. 72-1393, was enacted by the Legislature in 1975, and states:

"The state board of education is hereby prohibited from adopting rules and regulations which require certification of administrators, teachers or instructors in any two-year college or in any public community junior college or which require any such administrators, teachers or instructors to meet any other conditions for qualification for employment in any such two-year college or public community junior college. From and after the effective date of this act, any requirements in any rules and regulations adopted by the state board of education which conflict with the prohibition prescribed in this section shall be null and void."
(Emphasis added.)

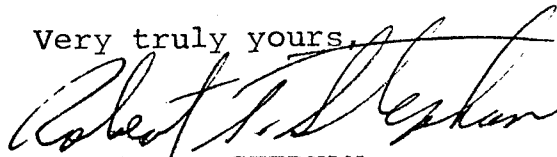
The statute as it appears above was in fact adopted twice by the Legislature in 1975, once in House Bill No. 2529 and once in House Bill No. 2530 (L. 1975, ch. 359,360). Each bill modified and then approved a different administrative regulation modifying certification requirements for certain community college employees. The modifications, made to K.A.R. 91-1-4 and 91-1-22, were extensive, and had the effect of eliminating any provisions which required such certification. Following these revisions, the quoted material above was added in a clear effort by the Legislature to indicate its feelings concerning such activities by the state board of education. We also note that the prohibition extends to any instructors in public community junior colleges, regardless of what the subject matter of their courses or programs may be.

To find that this statute has only a prospective application would be to disregard the underscored portion of the statute as set out above. Specifically, the first sentence states that the board is "hereby prohibited from adopting" such rules and regulations. Clearly, this speaks to actions in the future. If the second underscored sentence is also prospective, it adds nothing more, and is mere excess verbiage, i.e., it is unnecessary to state that any future regulation is null and void if the board is prohibited from adopting such at the outset. In construing statutes, such a result is to be avoided. Herd v. Chambers, 156 Kan. 614 (1944). Here, this may be done only by concluding that K.S.A. 1979 Supp. 72-1393 was intended to nullify any existing rules and regulations still in force after the date of the act, as well as to prohibit the adoption of such provisions in the future and to eliminate proposed restrictions in the two regulations being submitted for approval.

The practical effect of such construction would be to leave the state board of education without the power to require certification of any instructor in a community junior college. This would include vocational instructors, as the statute does not draw any exceptions based on the particular individual's field of expertise. In view of this specific legislative pronouncement, it follows that any indirect requirement of the type you describe in your request is likewise without effect, i.e., making certification one of the criteria for the receipt of vocational aid (such as vocational differential under K.S.A. 1979 Supp. 71-602). However, in view of the fact that even such indirect requirements are to end as of May 1, 1980, the point will shortly be a moot one.

In conclusion, K.S.A. 1979 Supp. 72-1393, relating to rules or regulations by the state board of education concerning certification of certain personnel at community colleges, should be construed both as prohibiting the adoption of any additional such policies, and voiding any existing requirements which require such certification. A regulation which makes certification of vocational teachers at a community college a pre-condition to the receipt of state assistance is accordingly of no effect after the effective date of the statute. Attorney General Opinion Nos. 75-197 and 75-197A are hereby withdrawn.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General