



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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June 3, 1980

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ATTORNEY GENERAL OPINION NO. 80-116

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

Re: Schools--Non-Certificated Personnel--Scope of
Employment

Synopsis: Pursuant to K.S.A. 1979 Supp. 72-1106(e), local boards of education possess the authority to employ non-certificated personnel to supervise students participating in any activity which is not a part of a subject or course of instruction included in the school's formal curriculum. Cited herein: K.S.A. 1979 Supp. 72-1106.

* * *

Dear Mr. Bolton:

You seek our opinion as to whether local boards of education may employ non-certificated persons to serve as directors of school plays or music recitals, as sponsors of various school clubs and organizations, or as coaches. Your inquiry is prompted by subsection (e) of K.S.A. 1979 Supp. 72-1106, which states: "Boards of education may employ non-certificated personnel to supervise pupils for noninstructional activities." In our judgment, resolution of your inquiry hinges upon the meaning of the term "noninstructional activities."

In this regard, you call our attention to a letter opinion issued by the Attorney General on November 10, 1969, in which then Attorney General Kent Frizzell concluded that, under the above-quoted statutory language, "a Board of Education may hire non-certificated personnel to do vitually anything except teach." In that opinion, a copy of which is attached hereto, the Attorney General also stated:

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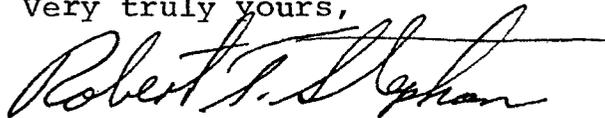
"We have found no instance of judicial interpretation or definition of either of the terms 'supervise' or 'instructional activities' by the courts of this state. However, it would seem to us that the commonly accepted understanding and usage of those terms would adequately define the legislative purpose underlying that provision.

"The term 'supervise' ordinarily connotes authority to control, direct or manage. The term 'instructional activity' would, in our judgment, refer to those activities directly related to the formal training and education of the student in regular curriculum subjects." (Emphasis added.)

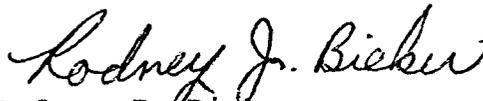
We concur in the foregoing conclusions. In our judgment, it was the thinking of the legislature that "education activities" occur during those periods of time that pupils are under the direct supervision of their teacher or teachers and are being formally instructed in subjects included in the school's formal curriculum. During all other periods of time, the legislature perceived that pupils are engaged in "noninstructional activities." Based upon this premise, it appears that when the legislature enacted the provisions currently contained in subsection (e) of K.S.A. 1979 Supp. 72-1106, it intended to grant local boards of education broad authority to employ non-certificated personnel to supervise pupils participating in any of the wide variety of noninstructional activities associated with formal education.

Thus, we reiterate and affirm the prior conclusion of this office that "non-instructional activities" refer to those activities which are not directly related to the formal training and education of the student in regular curriculum subjects. Hence, in our judgment, a board of education may hire non-certificated personnel to do virtually anything except teach a subject or course included in the school's formal curriculum.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm