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July 23, 1980

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ATTORNEY GENERAL OPINION NO. 80-162

Dr. Joseph R. Ciotti
Superintendent of Schools
Unified School District No. 261
1745 West Grand Avenue
Haysville, Kansas 67060

Re: Schools--Capital Outlay Levy--Use of Proceeds

Synopsis: Moneys in the capital outlay fund of a unified school district may not be used to purchase band uniforms. Cited herein: K.S.A. 1979 Supp. 72-8804; L. 1974, ch. 320, §2; L. 1969, ch. 353, §4.

* * *

Dear Mr. Ciotti:

On behalf of the Board of Education of Unified School District No. 261, you seek our opinion as to whether the school district can purchase approximately \$20,000 worth of band uniforms using moneys from the capital outlay fund of the district.

The permissible uses of capital outlay fund moneys are prescribed in K.S.A. 1979 Supp. 72-8804, which, in relevant part, provides:

"Any moneys in the capital outlay fund of any school district . . . may be used for the purpose of construction, reconstruction, repair, remodeling, additions to, furnishing and equipping of school buildings, architectural expenses incidental thereto, the acquisition of buildings for school purposes

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and school building sites, the acquisition of school buses and the acquisition of other equipment." (Emphasis added.)

The question is whether band uniforms are "equipment" within the scope of the above quoted statute.

"Equipment" is "an exceedingly elastic term, the meaning of which depends on context." Black's Law Dictionary, (4th Ed., 1957) p. 621. In a particular context, equipment may include uniforms. (See Steinfeld v. Jefferson County Fiscal Court, 229 S.W.2d 319 (1950), holding that uniforms are part of a police forces' equipment.) However, in a different context, "equipment" may include only machines, tools, applicances and implements. (See Edkins v. Board of Education of the City of New York, 26 N.Y.S.2d 996 (1941).) Unfortunately, the context of K.S.A. 1979 Supp. 72-8804, standing alone, provides little assistance in determining the legislative intent underlying the law, although the legislative history of K.S.A. 1979 Supp. 72-8804 tends strongly to indicate the legislature used "equipment" to mean only machines, tools, appliances and implements.

The provisions of K.S.A. 72-8804 were originally enacted in 1969 (L. 1969, ch. 353, §4), but made no provision for the use of capital outlay funds to acquire "equipment." However, in 1974, the statute was amended to provide that such funds could be used for the acquisition of "other equipment." (See L. 1974, ch. 320, §2.) The amendment allowing capital outlay funds to be used to acquire equipment was enacted upon the recommendation of the Special Committee on Education Master Planning and Related Matters, an interim study committee. The report of the Committee, in relevant part, states:

"Capital Outlay Expenditures.. The Committee recommends amendment of K.S.A. 72-8801 and 72-8804, relating to capital outlay expenditures by school districts (HB 1632). These amendments propose to permit school districts to expend proceeds from the capital outlay levy authorized in K.S.A. 72-8801 or money received from issuance of bonds under K.S.A. 72-8805 or 72-8810 for the acquisition of equipment. This would be in addition to the other expenditures of such funds which are presently set forth in the law.

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"The State Department of Education has reported that it has had to respond negatively to occasional inquiries by school districts about whether such capital outlay levy or bond proceeds could be used for purchase of miscellaneous items of equipment such as an administrative automobile or a tractor to be used as a lawnmower. Such items are not supposed to be purchased from the general fund of the district since they are considered to be capital outlay items. The definition of capital outlay, for purposes of itemizing those things that may be purchased from proceeds of capital outlay tax levy or from bonds issued pursuant to the above-cited laws, presently is too narrow to cover some types of equipment." (Emphasis added.) Reports of Special Committees to the 1974 Legislature, Part II, Proposal No. 53, p. 53-10.

This report, in our judgment, provides an indication that the intent of the legislature, in amending 72-8804, was to broaden the scope of those items which could be purchased with capital outlay funds. However, the report mentions only an automobile and a tractor, and states the definition of capital outlay "presently is too narrow to cover some types of equipment." This statement leads us to believe that, while the legislature meant to broaden the scope of items that could be purchased with capital outlay funds, it did not intend to open the "flood gates" to allow school districts to purchase any and all "equipment" using capital outlay funds.

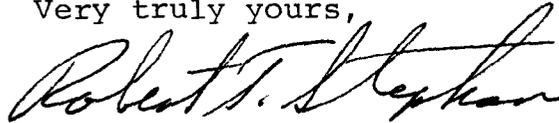
As the statute, prior to its amendment, provided for the purchase of school buses, and as the report of the interim committee indicates the "equipment" contemplated by the legislature was an automobile and a tractor, it would appear the legislature used the term "equipment" to include items of a type classifiable as machines, tools, appliances or implements.

This conclusion is buttressed by the other provisions of K.S.A. 1979 Supp. 72-8804. The statute provides that capital outlay levy proceeds may be used for "the acquisition of buildings for school purposes, the acquisition of school building sites, the acquisition of school buses, and the acquisition of other equipment" (emphasis added). Considering the legislative history of 72-8804 in conjunction with the context of the statute, we are constrained to conclude that the legislature used the term "equipment" to mean and include only machines, tools, appliances

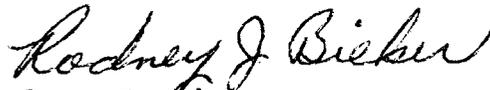
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and implements. To conclude the legislature intended that term to be more broadly interpreted is inconsistent with the context within which the term is employed in the statute. If the legislature intended a broader meaning of the term, neither the language of the statute, nor the history of the law reflect that intent. Thus, it is our opinion that the term "equipment" was used in a restricted sense to mean only machines, tools, appliances and implements. Therefore, we conclude that moneys in the capital outlay fund of a unified school district may not be used to purchase band uniforms.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm