



STATE OF KANSAS

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November 26, 1980

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ATTORNEY GENERAL OPINION NO. 80-249

Dr. John S. Shaw
Superintendent
Unified School District No. 395
P.O. Box 790
LaCrosse, Kansas 67548

Re: Schools--Boards of Education--Power to Close or
Change the Use of Attendance Facilities

Synopsis: A board of education may close an "attendance facility" (school building) at any time, without the consent of voters in the "attendance center" in which such facility is located, except as otherwise specifically provided in K.S.A. 72-8213. A board of education may change the use of any such attendance facility so long as at least three (3) high-school grades, three (3) junior high-school grades, or six (6) elementary school grades are offered in such attendance facility. Cited herein: K.S.A. 72-8213.

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Dear Dr. Shaw:

At the direction of the Board of Education of Unified School District No. 395, you request an opinion on several questions regarding the closing, or a change in the use of, attendance facilities located in U.S.D. No. 395.

You advise that U.S.D. No. 395 currently maintains seven buildings in which classes are taught. In two of the buildings, grades 9 through 12 are offered, and, in the other buildings, two or

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more of the grades kindergarten to eight are offered. One of the buildings in which grades 9 through 12 are offered is located in McCracken, Kansas, and is known as "McCracken High School."

The Board apparently is unaware of the statutory definition of the term "attendance center," and asks that we provide "a clear definition" of that term. The Board also wishes to know which, if any, of the school buildings currently maintained in the district are "attendance centers." Also, the Board is interested in knowing whether it can close any of the school buildings without "a vote of the patrons in that area." Finally, the Board asks if it possesses the authority to change McCracken High School to a junior high school.

The answer to each of the foregoing inquiries is provided in K.S.A. 72-8213. Said statute, in part, provides:

"For the purpose of this section the following terms shall have the following meanings: The term 'attendance facility' means a school building which has been property of school district disorganized pursuant to this act, but which, at the time under consideration, is owned by the unified district. The term 'attendance center' means the area around an attendance facility consist-
ing of the territory in such unified district
of the disorganized district which formerly owned such attendance facility." (Emphasis added.)

In accordance with the above-quoted definitions, it is obvious that an "attendance facility" is any school building currently owned by a unified school district which was formerly the property of a school district that existed prior to the unification of school districts. It also is obvious that if any of the school buildings now owned by U.S.D. No. 395 were owned by a predecessor school district at the time U.S.D. No. 395 was organized, such buildings are "attendance facilities," and one or more "attendance centers" (i.e., areas of land) exist in Unified School District No. 395.

Turning to the question of whether the board of education can close an attendance facility without the consent of the electors within the attendance center of such facility, we note the provisions of subsection (a) of K.S.A. 72-8213. Under these provisions, a board of education may close any attendance facility

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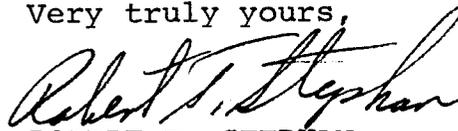
at any time, unless the attendance facility to be closed was being operated, at the time the unified school district was organized, by a school district, and "at least three-fourths (3/4) of the territory and at least three-fourths (3/4) of the taxable tangible valuation of the district which formerly owned such building is included in the unified school district." (Emphasis added.) K.S.A. 72-8213(a). As we have no knowledge of the facts which existed at the time U.S.D. No. 395 was organized, we cannot state which, if any, of the attendance facilities that may exist in U.S.D. No. 395 can be closed without the consent of the electors of any attendance center in said unified school district. An investigation would have to be conducted to determine if an attendance facility to be closed met the requirements of subsection (a) of 72-8213. Only then could a definitive answer to this inquiry be provided. However, our purpose here is merely to advise you of the legal conditions prerequisite to the closing of an attendance facility.

The matter of closing an attendance facility is entirely distinct from the subject of changing the use of an attendance facility. Such a change in use is provided for in subsection (e) of K.S.A. 72-8213. Said subsection provides:

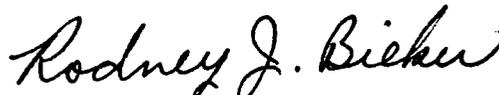
"Nothing in this section shall be deemed to restrict or limit the authority of any board to change the use of any attendance facility, so long as at least three (3) high-school grades, three (3) junior high-school grades, or six (6) elementary school grades are offered in such attendance facility." (Emphasis added.)

Under this statutory provision, it is clear that the Board of Education of Unified School District No. 395 may change the use of the high school building in McCracken to that of a junior high school, provided that said school is an "attendance facility" and at least three (3) junior high school grades are offered in such attendance facility.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm