



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 10, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 80-260

Dale Dennis
Assistant Commissioner of Education
Kansas State Department of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Schools--Board of Education--Power to Contract With
Nonprofit Association

Synopsis: The governing body of a school district has only such powers as are conferred upon it by statute, either specifically or by clear implication. In the absence of such authority, a board of education may not use public funds to contract with a nonprofit organization for the purpose of providing programs in alcohol and drug counseling and prevention. However, insofar as a board is empowered to directly employ counselors, programs of this type could be offered directly by the board through district employees. Cited herein: K.S.A. 1979 Supp. 39-711a, K.S.A. 72-67,115, 72-7513, K.S.A. 1979 Supp. 72-8222, 72-8302, K.S.A. 72-8401.

* * *

Dear Mr. Dennis:

On behalf of the State Board of Education, you request our opinion on a question concerning the power of a board of education to expend public funds to provide drug and alcohol counseling services to pupils through a private organization. Specifically, you indicate

Dale Dennis
Page Two
December 10, 1980

that Unified School District No. 305 (Salina) wishes to enter into a contract with a nonprofit organization, Central Kansas Foundation for Alcohol and Chemical Dependency, Inc. (Foundation). In return for the payment of a specified amount by the district, it is proposed that the Foundation will provide a certified counselor who will work with district personnel in setting up programs for pupils with alcohol or drug-related problems, i.e., experimentation, abuse or dependency. Before taking any definite action, the district board of education wishes to know if they are empowered by law to enter into such an agreement.

In our opinion, the answer to the board's inquiry must be in the negative, i.e., a district may not expend its funds pursuant to such a contract. Unlike cities or counties, Kansas boards of education enjoy no powers of home rule, and may only exercise those powers which are expressly conferred by statute or which are necessary by implication to exercise such express authority. Blankenship v. School District No. 28, 136 Kan. 313, 316 (1932). These restrictions apply to the making of contracts [Wichita Public Schools Employees Unions v. Smith, 194 Kan. 1, 4 (1964)], as well as to the expenditure of district funds [Jt. Consolidated School District No. 2 v. Johnson, 163 Kan. 202, 208 (1947)]. Furthermore, Kansas courts have held that any reasonable doubt as to the existence of such a power should be resolved against its existence. State ex rel. McAnarney v. Rural High School District No. 7, 171 Kan. 437, 441 (1951).

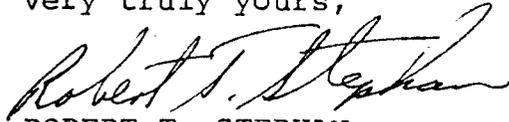
As a result of the limited authority conferred upon districts and their governing boards, Kansas law is replete with statutes which provide the necessary authority for a district to act, even in the most mundane of matters. For example, K.S.A. 72-8401, et seq., set forth the types of insurance a district may purchase, K.S.A. 1979 Supp. 72-8222 authorizes the hiring of security personnel, and K.S.A. 72-67,115 allows districts to operate programs for pre-school age children. The power to enter into contracts for special situations is also the subject of statute, as witness K.S.A. 1979 Supp. 72-8302(b) (leasing of school buses to other organizations or educational authorities) and K.S.A. 1979 Supp. 39-711a (use of school facilities to provide meals for the aged). In the absence of such authority, it has consistently been the opinion of this office that a district is without the power to make these types of commitments. See, e.g., Attorney General Opinion No. 70-72 (contribution to area health council), 74-93 (use of funds for teacher conventions), 75-33 (contributions to political campaigns), 79-82 (construction of parking spaces along city street), and 80-1 (donation to civic group for upkeep of recreational facilities).

Dale Dennis
Page Three
December 10, 1980

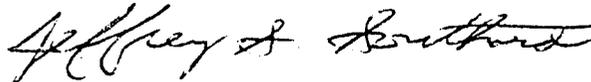
In the present case, we have been unable to find any statutory provision which authorizes the making of such a contract for services with a nonprofit organization. Nor are we able to conclude that the incurring of this type of obligation is authorized by necessary implication, i.e., as part of the board's obligation to conduct and foster the education of the district's children. Whitlow v. Board of Education, 108 Kan. 604, 608 (1921). However, we do not mean to imply that the board could not, as part of the duties of one of its own employees, offer alcohol or drug counseling. The power of a district to hire counselors is recognized by implication at K.S.A. 72-7513(a)(4), and the use of such authorized personnel to offer services of this type would obviate the need to contract for such programs.

In conclusion, the governing body of a school district has only such powers as are conferred upon it by statute, either specifically or by clear implication. In the absence of such authority, a board of education may not use public funds to contract with a nonprofit organization for the purpose of providing programs in alcohol and drug counseling and prevention. However, insofar as a board is empowered to directly employ counselors, programs of this type could be offered directly by the board through district employees.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJs:JSS:phf