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May 27, 1981

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ATTORNEY GENERAL OPINION NO. 81-119

W. W. Musick, Superintendent  
Unified School District No. 239  
P. O. Box A  
Minneapolis, Kansas 67467

Re: Schools -- Health Programs -- Extent of School's  
Duty to Provide; Power to Contract

Synopsis: Pursuant to Kansas statutes and regulations, a school district is required to offer instruction in the area of health and hygiene. In the performance of this duty, a school board could enter into an interlocal agreement (as provided by K.S.A. 12-2901 et seq.) with a county whereby the county health department would assist in the planning and presentation of health-related instructional programs. In addition, such agreement could provide for the rendering by the county health department of these health services which the district is required to provide by statute. Cited herein: K.S.A. 72-1101, 72-1204, 72-5201, 72-5204, 72-5208, 72-5210, K.A.R. 1980 Supp. 91-30-12.

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Dear Mr. Musick:

As Superintendent for Unified School District No. 239 (Minneapolis-Delphos), you request our opinion on two questions which concern the district's responsibilities in the area of health programs. Specifically, you wish to know whether the district may enter into a contract with the Ottawa County Health Department which provides for the rendering of certain

W. W. Musick  
Page Two  
May 27, 1981

health-related services by the department, in return for a fee of \$10 per student per year. Additionally, you wish to know the extent of the district's responsibilities in providing certain health programs, presumably to assist the board in determining which services to include in such contract.

As you are aware, this office has noted, in prior opinions, that Kansas boards of education may exercise only those powers which are expressly conferred or which are necessary by implication to exercise such express authority. Blankenship v. School Dist. 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). 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 Nos. 74-93 (use of funds for teacher conventions), 75-33 (contributions to political campaigns), 79-82 (construction of parking spaces along city street), 80-1 (donation to civic group for upkeep of recreational facilities), and 80-260 (contract for alcoholism and drug abuse counseling).

In the area of health, we note at the outset that each board of education is authorized, by virtue of K.S.A. 72-1101, to offer courses of instruction in "health and hygiene," among other subjects, in each elementary school. While such specific statutory language is not used for high schools, each board is empowered by administrative regulation to require, as a prerequisite to graduation, the completion of 1 unit of "physical education which may include one-half unit of health." (K.A.R. 1980 Supp. 91-30-12). Accordingly, as a board is empowered to make such requirements, it should also have the power to take such steps as are necessary to meet them.

As to your specific inquiry regarding Unified District No. 239, you wish to know whether the board may enter into a contract with the Ottawa County Health Department whereby the latter would "provide for healthy lifestyle curriculum." Such curriculum, we are informed, would include emphasis on such topics as nutrition, exercise, stress, drug use and abuse and so forth, and would involve the use of speakers, films

W. W. Musick  
Page Three  
May 27, 1981

and parents of students, in addition to teachers. As this type of program would help the board to fulfill its duty to offer health and hygiene-related instructions, it is our opinion that such a contract may be entered into validly.

The mechanics for an agreement of this type are covered by K.S.A. 12-2901 et seq., which deal with interlocal agreements between governmental entities. As the requirements contained therein are somewhat lengthy, albeit not difficult to meet, the drafting of the agreement itself would best be left to the board's attorney and the county attorney.

Your second inquiry involves the extent of the district's duty to offer health services to its students. As above, the existence of statutes authorizing board action would provide a basis for an interlocal agreement under which the county health department would render the necessary services in return for a set compensation. While the board would still be ultimately responsible for the performance of the duties given it by law, the completion of such duties by the county health department would be one way for the board to meet its obligations without duplicating the county's efforts.

The specified obligations of the board are found, with one exception, in Article 52 of Chapter 72 of the Kansas Statutes Annotated. Therein are found statutes providing for annual free dental inspections (K.S.A. 72-5201 et seq.), vision screening (K.S.A. 72-5204 et seq.), and the obtaining of certifications regarding such inoculations and tests as may be required by law (K.S.A. 72-5208 et seq.). These latter statutes, it may be noted, place the primary duty upon the student (and so presumably his or her parents), to obtain the required inoculations or tests. Additionally, as K.S.A. 72-5210 provides for the county health department, "upon application of the school board," to provide the necessary procedures in the event the parents of the child fail to do so, this would not appear to be a service for which the board itself is responsible. However, the statutes cited above which require dental and vision examinations, together with those requiring hearing tests (K.S.A. 72-1204 et seq.), do require board action, and in our judgment could be included in an interlocal agreement with the county health department.

In conclusion, pursuant to Kansas statutes and regulations, a school district is required to offer instruction in the area of health and hygiene. In the performance of this duty, a school board could enter into an interlocal agreement (as

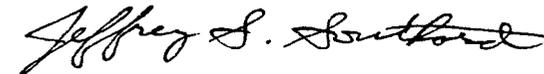
W. W. Musick  
Page Four  
May 27, 1981

provided by K.S.A. 12-2901 et seq.) with a county, whereby the county health department would assist in the planning and presentation of health-related instructional programs. In addition, such agreement could provide for the rendering by the county health department of those health services which the district is required to provide by statute.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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Assistant Attorney General

RTS:BJS:JSS:hle:jm