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June 18, 1981

ATTORNEY GENERAL OPINION NO. 81-135

Mr. Donald A. Bell
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Re: Schools--Boards of Education; Organization, Powers, Finances--Lease of Real and Personal Property

Synopsis: Lease payments made by a school district pursuant to a lease agreement entered into under the authority of K.S.A. 72-8225 must be included in determining the school district's maximum budget authority under the provisions of the School District Equalization Act. Cited herein: K.S.A. 72-7055, as amended by section 77 of Senate Bill No. 470, 72-8225, as amended by section 2 of House Bill No. 2048.

* * *

Dear Mr. Bell:

On behalf of Unified School District No. 480 (Liberal, Kansas), you seek an opinion from this office on a matter concerning the provisions of K.S.A. 72-8225. You explain that the school district proposes to enter into a lease agreement, as lessee, for certain school equipment. The term of the lease would be ten years.

K.S.A. 72-8225, as amended by section 2 of 1981 House Bill No. 2048, effective July 1, 1981, authorizes such leases. The last sentence thereof provides:

> "The provisions of the cash basis and budget laws shall not apply to any lease made under authority of this section in such a manner as to prevent the intention of this section from being made effective."

The question you ask is whether lease payments, to be made by a school district under the authority of 72-8225, are to be included in determining the school district's maximum budget authority under the School District Equalization Act.

The pertinent section of that Act is K.S.A. 72-7055, which was amended by section 77 of 1981 Senate Bill No. 470. Although the validity of that amendment has been challenged in a case now pending before the Kansas Supreme Court, the question you pose will not be affected by the decision in that case, since the answer to your inquiry does not turn upon the amount of the school district's budget authority under that statute. Rather, it concerns whether the proposed lease payments by the school district are to be included in the computation of the district's budget authority under 72-7055, irrespective of the limits of that authority.

The school district maintains that such lease payments, although the same are to be paid from the general fund of the school district, are not to be included in making the determination of its maximum budget authority under 72-7055. The district believes the reference to "budget laws" in the above-quoted statement from K.S.A. 72-8225 indicates a legislative intent to exclude such lease payments from the budget contraints provided in 72-7055. In our judgment, the contention of the school district must be rejected.

It is true that "[t]he first rule of statutory construction is to ascertain, if possible, the intent of the legislature." Nordstrom v. City of Topeka, 228 Kan. 336, 340 (1980) and Brinkmeyer v. City of Wichita, 223 Kan. 393, Syl. ¶2 (1978). It also is well-settled that, "[i]n determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical backgroud of the enactment [and] the circumstances attending its passage." Arredondo v. Duckwall Stores, Inc., 227 Kan. 842, Syl. ¶1 (1980) and Brown v. Keill, 224 Kan. 195, Syl. ¶3 (1978).

A review of the legislative history of K.S.A. 72-8225 reveals that it was first enacted in 1970 (L.1970, 298, §1). The last sentence of the statute, which sentence is the basis of your

inquiry, was included in the original enactment. The provisions of that sentence have not been amended, subsequently, except for substitution of the word "section" for the word "act." See 1981 H.B. 2048, §2. However, the School District Equalization Act, including K.S.A. 72-7055, was not enacted until 1973 (L.1973, ch. 292). Therefore, it is impossible that the legislature intended for the last sentence of K.S.A. 72-8225 to relate to the budget limitation contained in K.S.A. 72-7055.

In addition, when construing a statute, "[i]t must be presumed the legislature had and acted with full knowledge and information as to the subject matter of the statute, as to prior and existing law and legislation on the subject of the statute . . . ." Rogers v. Shanahan, 221 Kan. 221, 225 (1976) and the cases cited therein.

When the legislature enacted 72-8225, it made reference to "the cash basis and budget laws." At the time of the enactment of 72-8225, both the cash basis law and the budget law (K.S.A. 10-1101 et seq. and K.S.A. 79-2925 et seq., respectively), were in existence. The laws were, and are, two separate, yet related, laws, which deal with different subjects. See State, ex rel., v. Republic County Comm'rs, 148 Kan. 376, 381 (1938). This is why the legislature said "the cash basis and budget laws" (emphasis added), and it was to those laws that the legislature made reference in 72-8225.

Thus, based upon the above-quoted rules of statutory construction, and the legislative histories of K.S.A. 72-7055 and 72-8225, it is our opinion that lease payments made by a school district, pursuant to a lease agreement entered into under the authority of 72-8225, must be included in determining the school district's maximum budget authority under the provisions of the School District Equalization Act.

Very truly yours,

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