



STATE OF KANSAS

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April 13, 1983

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ATTORNEY GENERAL OPINION NO. 83- 58

Erle W. Francis
Francis and Francis
Capitol Federal Building, Suite 179
700 Kansas Avenue
Topeka, Kansas 66603

Re: Schools -- State Board of Education -- Gifts and
Bequests; Management and Expenditure through
Trust Fund

Synopsis: The creation of an independent trust fund outside
the state treasury, containing gifts, grants,
donations or bequests and administered by state
board of education members acting as trustees,
is not contemplated by the existing statutes,
and would require a separate enabling act
by the legislature. Cited herein: K.S.A. 58-2431,
72-7518, 72-7518a, 75-4201, 75-4210a, Kan. Const.,
Art. 6, §§1, 2.

* * *

Dear Mr. Francis:

As attorney for the Kansas State Board of Education, you re-
quest our opinion on the authority of the board to create the
Kansas Educational Assistance Trust Fund ("Fund"). The fund
would be separate from any state moneys and would be adminis-
tered by the board members acting as trustees. As set forth
in your letter, the trustees would furnish grants to educa-
tional institutions for the establishment or operation of
"exemplary programs." You inquire whether the board is em-
powered to establish such a trust under existing statutes,
or if enabling legislation would be required.

As you note, under K.S.A. 72-7518, the board may "receive
and expend, or supervise the expenditure of, any donation,
gift, grant or bequest made to the state board of education

for furthering any phase of education." A related statute, K.S.A. 72-7518a, further states [at subsection (a)]:

"The state board of education, or any institution under the jurisdiction of such board, with the approval of the state board of education may apply for, accept and receive any private donation, gift, grant or bequest made for any purpose related to the operation or function of such board or institution. Such board or institution may hold, administer and expend any such gift, grant or bequest in accordance with any terms or conditions imposed by the donor." (Emphasis added.)

Under the authority provided by K.S.A. 72-7518 and 72-7518a, the board administers such donations as another of its functions, much as any state agency can under K.S.A. 58-2431. Moneys so received are a part of the state treasury, although held as special moneys in a custodial account and not as part of the general fund. K.S.A. 1982 Supp. 75-4201, K.S.A. 75-4213.

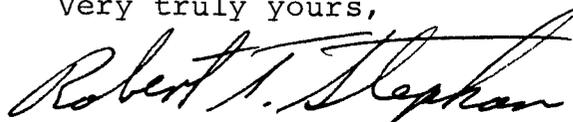
In order to create a separate, legally-constituted trust, with the board members as trustees, you ask whether further legislation is required. While the authority of the board under Article 6, Section 2, of the Kansas Constitution extends to the "general supervision" of public schools, it is the legislature which is authorized to provide for "related activities," by Article 6, Section 1. NEA-Fort Scott v. U.S.A. No. 234, 225 Kan. 607 (1979). In our opinion, the establishment and operation of a trust fund outside the state treasury to aid exemplary programs would be a related activity under the control of the legislature, since it is the legislature which is authorized by the Kansas Constitution to "provide for intellectual, educational, vocational and scientific improvement" (Article 6, §1) and which is required to "make suitable provision for finance of the educational interests of the state." (Article 6, §6(b).) Control of the fund could be delegated to the board, which would oversee its operations as one of its "other duties" under Article 6, Section 2, but such control would have to be authorized by the legislature.

In conclusion, pursuant to K.S.A. 72-7518 and 72-7518a, the state board of education may receive, hold and expend any private donations, gifts, grants or bequests which are made for the purpose of furthering any phase of education. However, the creation of an entirely independent trust fund outside the state treasury, administered by board members

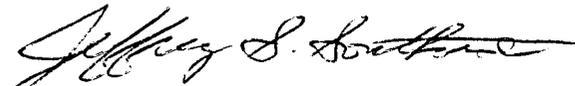
Erle W. Francis
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acting as trustees, is not contemplated by the existing statutes, and would require a separate enabling act by the legislature.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle